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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Trial Court Case No. 2013-CP-10- 3864
Appellate Case No. 2014-001466

Arkay, LLC and Robert R.
Knoth, its member, ... Respondents,

v.

City of Charleston, City of
Charleston Board of Zoning
Appeals, Andrew Pinckney
Inn and Michael A. Molony, ... Appellants.

RECORD ON APPEAL - VOLUME I

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ARKAY, LLC and)
ROBERT R. KNOTH, its member,)
Petitioners,)

v.)

CITY OF CHARLESTON,)
CITY OF CHARLESTON BOARD)
OF ZONING APPEALS, ANDREW)
PINCKNEY INN, and MICHAEL A.)
MOLONY,)

Respondents.)

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
Case No.: 2013-CP-10-3864

CORRECTED
ORDER ON APPEAL

2014 JUN 25 PM 4:21
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

THIS ORDER SUPERSEDES THE COURT'S ORDER OF MAY 30, 2014.

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This case came before me for hearing on April 11th, 2014. Petitioners appeared through the persons of Robert R. Knoth and Richard R. Knoth, and with their attorney, Capers G. Barr, III. Respondent City of Charleston Board of Zoning Appeals appeared through Assistant Corporation Counsel Frances I. Cantwell. Respondent Andrew Pinckney Inn appeared through its attorney Wilbur E. Johnson and Respondent Michael A. Molony appeared with his attorney, Thomas S. Tisdale.

The case presents appeals from two orders of the City of Charleston Board of Zoning Appeals ("BZA"). The first is an order denying a special exception use dated June 4th, 2013. The second is an order denying a variance, also dated June 4th, 2013. The Court is informed that the two orders were decided at separate BZA hearing dates.

Because I find and conclude that the Board of Zoning Appeals order denying special exception use must be reversed, it is not necessary that I rule on the variance

appeal, as my ruling on the special exception use becomes dispositive of the case. My findings and conclusions are based upon the following:

Findings of fact:

Petitioner Robert R. Knoth owns and operates Carolina Polo & Carriage Company, one of five franchised horse carriage tour businesses in the City of Charleston. Mr. Knoth has operated the business, the sole source of his support, since 1990, a period of twenty-four years. From 1990 to 1996 the company and its stable were located at 45 Pinckney Street in the City Market District. The company was relocated to another property at 16 Hayne Street in 1996, after it lost its lease at 45 Pinckney. Other carriage companies continued to operate horse carriage stables from 45 Pinckney Street from 1996 until 2009.



In 2013 Mr. Knoth lost his lease at 16 Hayne Street, but was able to purchase his former location at 45 Pinckney Street to continue his business. Title to 45 Pinckney Street was taken in the name of Petitioner, Arkay, LLC.

In the mid 1990's, and after Mr. Knoth had last used 45 Pinckney Street as a stable, Charleston City Council enacted legislation under its zoning chapter (chapter 54) and also under its tourism chapter (chapter 29) that affect and regulate the horse carriage tour business in the city. As for zoning, Section 54-206 of the city ordinances provides that certain activities are permitted as "Special Exception Uses", provided that certain criteria are met. Section 56-206.p provides for stable use as a special exception in a General Business district, and represents the issue at the heart of this case, as later discussed.

In oral argument, and from a review of the record, all parties agree that Petitioners comply with six of the seven special exception criteria of Section 54-206.p. The point of dissension is whether Petitioners have complied with Section 54-206.p.1.that "The stable is not located within 100 feet of any residential zone district."

The property at 45 Pinckney Street is built on the "zero lot line" on each of its four sides. The east, west, and south sides share common walls with its neighbors. The front of the building, its north side, is constructed flush with the sidewalk. Photos depict an arched doorway entrance to the building, wide enough to admit a vehicle.

gan
Because the building must also house the business offices of Carolina Polo and the office of an ancillary business, Mr. Knoth proposes to create a horizontal property regime ("HPR") at 45 Pinckney Street. A plot plan depicting the HPR shows the building as 37.89 feet wide at the front. The first 11.5 feet into the depth of the building comprises Unit "B" of the HPR. Unit "B" will be used as offices, and under Petitioners' application would be restricted against use as a stable by recorded deed covenants.

Immediately behind Unit "B" is a common area fourteen feet farther into the building, consisting of a customer waiting area and restrooms. Immediately behind the common area, and twenty-five and a half feet from the front of the building is Unit "A" of the HPR, to be used as a stable. Six stalls will be constructed to keep the horses in Unit "A". Access to the common, customer waiting area and restrooms, and to the stables in Unit "A" in the rear of the building is obtained over an ingress/egress easement across Unit "B".

The HPR configuration described above is also depicted on a plot plan dated November 14, 2012, attached as Tab 5 to the Record on Appeal.

Petitioners also procured a survey that measures the closest point from the facade of 45 Pinckney Street to the nearest residential district (Record on Appeal, Tab 5-5). That closest distance is 93.5 feet. In oral argument Petitioners also showed that the north line of 45 Pinckney Street and the south line of the residential district are not parallel, and that they diverge away from each other. Therefore, for approximately one-half of its length, the facade of 45 Pinckney Street is, in fact, one hundred feet or greater from the residential district.

In any event, the measured distance from the residential district to Unit "A" of the HPR, where the property will be used as the stable, is 119 feet.

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At hearing before the BZA, Petitioners argued that the one hundred foot distance to the residential district should be measured from the section of 45 Pinckney Street to be "used" as a stable, which is the 119 foot distance to Unit "A"; and that the measurement should not be taken from the front of the building. Petitioners also filed a five page memorandum with the BZA explaining their rationale that the one hundred foot distance measurement should be taken to the "use" as a stable and not to the physical building within which the stable is contained. (Record on Appeal, Tab 5-3).

The City of Charleston Zoning Administrator agreed with Petitioners' interpretation, concluding that Section 54-206.p describes a "use", and not a physical structure; and that the one hundred foot measurement should be made to the use and not to the building within which the use is contained. The Zoning Administrator informed the BZA that: "There are other types of land uses that are identified in the same section of the Zoning Ordinance where the wording is such that it specifies that you measure from the building or from the property line. In this case, there is no mention of a building or property line that...that is

where you should take the measurement from. So I think it is appropriate that we should measure from the use; and if that use is not at the front of the building, then you don't have to measure from the front of the building." (Record on Appeal, Tab 2; Transcript, p. 11, line 21 through p. 12, line 21),

The Board of Zoning Appeals disagreed. Of the seven members of the BZA, one member was absent, and two recused themselves. The remaining four members denied the special exception application by a vote of three to one.

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In its Order, the BZA concluded that the one hundred foot set-back requirement must be measured from the front of the building at 45 Pinckney Street because the easement across Unit "B" is "appurtenant to, or a part of, the Unit "A", rendering it within the one hundred foot limitation"; and "this Board cannot discern intent to separate the use from its access, when there is but one access to the building..."

Conclusions of Law:

This appeal presents a question of statutory construction. That is to say, what is the construction and the legislative intent of Section 54-206.p.1. of the City of Charleston Zoning Ordinance in its requirement that "The stable is not located within one hundred feet of any residential zoned district"? The more specific question is whether the one hundred foot measurement is to be taken from the building within which the stable is contained; or is it to be measured from the "use" as a stable where, as here, that use is within a building containing other uses?

Issues involving the construction of an ordinance are reviewed under a broader standard of review than is applied to reviewing issues of fact. *Mikell vs. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326 (S.Ct. 2009). Although great deference is

accorded the decisions of those charged with interpreting and applying local zoning ordinances, "a broader and more independent review is permitted when the issue concerns the construction of an ordinance. The determination of legislative intent is a matter of law." *Mikell, supra, citing Charleston County Parks and Recreation Commission vs. Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995); *Eagle Container Co., LLC vs. County of Newberry*, 379 S.C. 564, 666 S.E.2d 892 (S.Ct. 2008).

The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. *Charleston County PRC vs. Somers, supra; City of Columbia vs. Niagara Insurance Co.*, 249 S.C. 388, 154 S.E.2d 674 (1967).

 The Plain Language of the Ordinance.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). If a statute's language is plain, unambiguous, and conveys clear meaning, then "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992); *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 642 S.E.2d 751 (2007).

The ordinance here at issue begins, in pertinent part:

"Sec. 54-206. Special exception uses. (Emphasis added)

"Uses designated in the Table of Permitted Uses and listed below, may be permitted in certain districts where the Board of Zoning Appeals-Zoning after review finds that requirements listed below for such uses are met." (Emphasis added).

By its plain language, Section 54-206 regulates uses, by allowing such uses where the listed requirements for such uses are met. Following its introductory language the section describes nineteen different uses that are permitted in the City of Charleston as special exceptions under the zoning code, provided the statutorily designated requirements are met.

 With only a few exceptions, the nineteen described special uses set out in Section 54-206 describe a specific form of activity as a special use; for example, cemeteries, churches, dairy farms, daycare centers, drive thru tellers, gas stations, and, as relevant to this case, stables.

The special exception requirements for a stable as set forth in Section 54-206.p. are uniquely focused on stables in the horse carriage tour business. For example, Section 54-206.p.2 requires that "The City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable". This Subsection 2 could only apply to tour carriages in the City. The "Certificate of Appropriateness" issued by the Tourism Commission is described in the tourism chapter of the city ordinances in Section 29-212, *et. seq.* The certificate is not issued for a "stable" at all. Rather, it is issued for an "animal drawn vehicle", i.e. a horse carriage. As it relates to the issue before the court, therefore, the required certificate of appropriateness is but an aspect of the "use" of property in a general

business district as a stable, and has no bearing on the physical structure within which the “use” is contained.

Another provision of Section 54-206.p uniquely relating to the horse carriage tour business is subsection 4 which provides that: “A site plan is provided showing that the cleaning/loading/ tacking area shall not impede traffic flow in the public right-of-way.” Subsection 4 describes another aspect of the “use” of an applicant’s property as a horse carriage tour business, without reference to any structure within which it is contained. For a stable “use” to comply with subsection 4, the process of attaching horses to bridles, reins and carriages, referred to as “tacking” must not impede automobile traffic on the streets.

Finally, from a “plain language” analysis of Section 54-206.p, it is noteworthy that the seventh special exception requirement for a stable use, expressed in Section 54-206.p.7 states: “Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted.” (Emphasis added.) In discerning legislative intent, the Court must assume that City Council used the word “buildings” in subsection 7 advisedly. If it were the legislative intent that “stable” as used in 54-206.p referred to a physical structure, rather than a “use” associated with a property, City Council would have stated in subsection 7 that “stables are designed utilizing appropriate ventilation...etc.”. However, by using the word “buildings”, I conclude that City Council intended a differentiation, and envisioned a physical circumstance such as is presented in this case, where the use of the property as a “stable” is but one of several uses contained in a larger “building”. It is noteworthy that the subsection at issue in this case, 54-206.p.1, does not provide that the “building” be not located within one hundred feet of any residential zoned district, but that the “stable” be so located. It is the “use” as a stable, and the attendant, potentially obnoxious characteristics of

keeping and maintaining animals, that City Council intended to be at least one hundred feet distant from a residential zone district.

Therefore, from a plain language analysis of 54-206.p of the Charleston City Ordinances, I conclude that it was the intent of City Council to describe "stable" as a "use" and not as a physical structure from which the one hundred foot measurement to a residential zoned district should be made. ~~This order is specific to ordinances concerning horse carriage tour businesses and stables and shall not be construed to apply to other types of businesses, such as an adult entertainment store or the like, or have any effect on other special exception uses defined by the zoning laws. As previously stated, one of the primary purposes of the zoning law in regard to stables is to prevent objectionable odors from being emitted in residential areas. In contrast, zoning laws or ordinances that prohibit the establishment of an adult entertainment store in a residential area are concerned with the business use itself and has a fundamentally different purpose. Thus, this Order shall not be construed in any way to apply to other types of special exception uses or business establishments.~~

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The Tourism Chapter of the Code of the City of Charleston.

Although not enacted as a part of the zoning ordinances, Sections 29-201, et. seq. of the City Code provide for regulations governing the "Transportation by Animal Drawn Vehicles for Purposes of Touring" in the City of Charleston.

The zoning ordinance providing for stable use as a special exception requires that it must comply with city regulations, which therefore incorporates the provisions of the tourism chapter, Sections 29-201, et. seq. In the tourism chapter, the term "stable" is used to

describe both a physical thing, as well as a "use". Section 29-212(b)(12), for example, defines "stable" to mean "the barn where the animals are kept" and in subsection (13), "stall" to mean "individual space where each animal is kept".

However, "stable" is also used to describe a "use". Section 29-212(e)(1)(a) provides for "the individual company's stable (to have) a current written statement by a veterinarian on file that the animal is fit for such work....". In this context, "stable" is used to describe the ongoing business of the carriage tour company.

gn
The tourism chapter is also relevant to a contextual perspective of the zoning ordinance. Section 29-212(i)(2) of the tourism chapter provides that stables shall be located within "walking distance" of the Medallion Gate at the corner of Church and North Market Streets. The "Medallion Gate" forms the central queue at which laden horse tour carriages must line up to receive from city tourism employees a medallion that assigns each specific, laden horse carriage a sector of the city that the carriage may enter for the purpose of conducting each successive tour. Medallions are assigned by lot. Therefore, no carriage operator, or his passengers, knows in advance, until the carriage receives a medallion, what sector of the city will be assigned for a specific tour. (The device is intended to avoid overcrowding the more favorite historic sections of the city with horse carriages.)

Although "walking distance" is not defined in the tourism ordinance, the ordinance describes the "Market Zone" within which passengers may be loaded or discharged, as being bounded by Pinckney Street to the north, Cumberland Street to south, East Bay Street to the east and Meeting Street to the west. (Section. 29-206(b)). It is reasonable to conclude, therefore, that "walking distance" would bear some logical relationship to the

"Market Zone". Under the tourism chapter stables must be located within "walking distance"; therefore, within the Market Zone.

The record reflects Petitioners' description to the BZA, as well as to this Court in oral argument, of the physical parameters and composition of the "Market Zone" which surrounds the Medallion Gate at North Market and Church Streets. The Court takes note that the placement of a stable in this dense, urban context is markedly different from a stable placed in a rural setting; and that it was in this urban context that City Council adopted the zoning ordinance relating to stables.

Legislative Intent.

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In interpreting a statute the court's primary purpose is to ascertain the intent of the legislature. *Beattie v. Aiken County Dept. of Soc. Serv.*, 319 S.C. 449, 452, 462 S.E.2d 276, 278 (1995). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers." *Id.* (citing *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992)).

It seems clear to this Court that the intent of Charleston City Council in enacting Section 54-206.p was to ensure that the specific and potentially obnoxious aspects of keeping and maintaining horses in a stable would be maintained at a distance no closer than one hundred feet from a residential zone district. The enumerated aspects of 54-206.p are cleaning/loading/tacking of horses and carriages (but as to this issue, only to ensure that automobile traffic is not impeded)(Subsection (4)); the handling of refuse (Subsection (5)); drainage (Subsection (6)); and ventilation to prevent objectionable odors from being emitted (Subsection (7)).

As for the stable "use" itself, I conclude that it is appropriate to consider the definition from the tourism code (the barn "where the animals are kept"), which is also consistent with a dictionary definition. In this urban context, the operatively important phrase is "where the animals are kept"; "kept", in this context, meaning "preserved or maintained".

The area of 45 Pinckney Street where stalls will be constructed, and where horses will be "kept" is Unit "A" of the horizontal property regime depicted on the plot plan in this record. That area, and the "use" of that area, is 119 feet distant from the residential zone district.

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I find and conclude that the Board of Zoning Appeals committed an error of law in construing Section 54-206.p.1 otherwise. The one hundred foot measurement to the residential zone district should be made from the "use" as a stable and not from the façade of the building where no such "use" will be conducted; and where, to the contrary, offices will be placed in an area that by deed covenant may not be used as a stable.

As for the BZA's reliance on the access easement as forming the point of measurement, I likewise conclude that the Board has erroneously construed the ordinance. First, and in addition to my conclusion that the measurement must be taken from the "use" as a stable, the easement is to be titled with Unit "B" of the horizontal property regime and it is not exclusive to Unit "A". Occupants of the adjoining offices, as well as customers will be utilizing the same easement for ingress and egress to offices, customer waiting area and to restrooms. Secondly, however, the horses will no more be "kept" on the access easement then they would be "kept" on the streets of Charleston through which they come and go every day, and from which they enter 45 Pinckney Street.

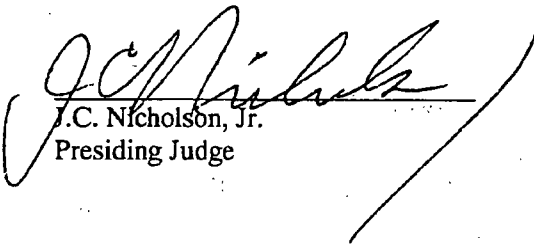
It is a strained and forced construction of Section 54-206.p.1. to say that the potentially obnoxious aspects of maintaining horses in a stable where they are kept, applies as well to the way of their coming and going to the stable; and that is true whether the way be a driveway, street, alley, or, as in this case, a non-exclusive easement also shared with humans.

For the foregoing reasons, it is:

ORDERED AND ADJUDGED that the Order of the Board of Zoning Appeals dated June 4, 2013 on the Application of Petitioners for a Special Exceptions Use be and the same is hereby REVERSED; and it is further,

ORDERED that this cause be remanded to the City of Charleston Board of Zoning Appeals for entry of an order granting the special exception use consistent with the conclusions hereof, and imposing upon Petitioners' special exception use permit such conditions as are consistent with Petitioners' application and with the findings of this Court, including but not limited to the requirement that the Petitioners form and file the horizontal property regime as proposed, as a condition of the special exception use permit.

AND IT IS SO ORDERED.


J.C. Nicholson, Jr.
Presiding Judge

9C
Charleston, South Carolina
~~April~~ 19, 2014
JUNE

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ARKAY, LLC and)
ROBERT R. KNOTH, its member,)
Petitioners,)

v.)

CITY OF CHARLESTON, CITY)
BOARD OF ZONING APPEALS)
ANDREW PINCKNEY INN and)
MICHAEL MOLONY)
Respondents.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2013-CP-10- 3864

MOTION TO ALTER, AMEND
OR RECONSIDER ORDER

(ALL RESPONDENTS)

FILED
2014 JUN 26 PM 12:12
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Respondents hereby move pursuant to Rule 59 (e), SCRCP for an order from this Court amending or reconsidering its Order issued in the within matter dated May 29, 2014 and entered on May 30, 2014. City Respondents received written notice of entry of the Order on June 6, 2014.

The grounds for this motion are as follows:

At issue in this case is the application by Petitioners for a special exception to establish a horse stable at 45 Pinckney Street, in downtown Charleston. A criterion that must be met to qualify for the special exception is that the stable must not be located within 100 feet of a residentially zoned district.

It is undisputed but that one building exists at 45 Pinckney Street, and the building covers the entire site. It is undisputed that the northern façade of the building is within 100 feet of a residentially zoned area. This Court held that the 100 foot measurement was to be taken from the place within the building where the stabling activities are proposed to occur and not from the building itself, and because these activities were beyond the 100 foot separation requirement of the ordinance, the Board of Zoning Appeals (the "Board") committed an error of law in denying the application for a special exception.

The Court's Order is premised on the term "stable" being construed as a verb, and since the stabling activities are to be confined to an area of the building beyond the 100 foot separation requirement, the 100 foot separation requirement was met. Amendment and reconsideration of the Order is sought because zoning does not govern uses in a vacuum. It governs the use as it relates to land, building or structures. S. C. Code Ann. § 6-29-720 (Rev. 2004). Thus, the stable regulations must be applied to the land, building or structure at Pinckney Street. All of 45 Pinckney is covered by a building. That building, by Petitioners' own evidence, is within 100 feet of a residentially zoned district.

Amendment and reconsideration of the Order is sought because, in Sec. 54-206 (p) of the Charleston Zoning Ordinance, the term "stable" is used as a noun. When used as a noun, a stable is a building. See Webster's Encyclopedic Unabridged Dictionary of the English Language, New Revised Edition 1996, p.1382: "Stable: a building for the lodging and feeding of horses, cattle, etc." That City Council intended for the term to be construed as a noun is borne out by the following provisions of the Sec. 54-206 (p):

1. The introductory clause of Sec. 54-206 (p) provides that “Stables shall be permitted...”. In this provision of the ordinance, Council used the term as a noun, not as a verb or adjective. As a noun, a stable is a building.
2. The word “stable” only appears in subsections (1), (2) and (3) of the ordinance. In each of these subsections, the term is used as a noun. Had Council intended for the term to apply to the act of stabling (as urged by the Petitioners), the term would have been used in an active tense or as a modifier. The term was not so used, clearly evincing intent that it was to be construed as a noun. As a noun, a stable is a building.
3. Subsection (7) of the ordinance is telling. It provides that “Buildings are designed...”. All provisions of a statute must be read together. In light of the Council using the term stable as a noun, and thus a building, throughout Sec. 54-206, its use of the term “buildings” in subsection (7) is wholly consistent with an intent that the term be construed as a structure, not just an activity within a structure.

The Court made note that Sec. 54-206 (p) (2) requires the Tourism Commission to issue a Certificate of Appropriateness for the stable, but reasoned that since Certificates of Appropriateness are issued for animal drawn carriages, that the Certificate was an “aspect of the ‘use’ of the property in general”, and has no bearing on the physical structure-in which the use is contained. Respectfully, this finding requires amendment or reconsideration as it disregards the clear use of the term in the Zoning Ordinance as a noun (as described above), and as fundamentally, how the term is used in the Tourism Ordinance.

The Tourism Ordinance imposes specific requirements for stables located downtown that are used in the tourism industry. These requirements are in addition to those of Sec. 54-206 (p). The reference in the Zoning Ordinance to a Certificate of Appropriateness for the stable undoubtedly intended to capture requirements of the Tourism Ordinance for stables used in that industry. The Certificate of Appropriateness is the means by which conformance with the Tourism Ordinance is secured.

And, the Tourism Ordinance leaves no room for interpretation as to what is meant by a stable. The ordinance defines a stable in unequivocal terms. It defines “stable” as the “barn where animals are kept”. Sec. 29-212 (b) (12). The Tourism Ordinance also defines stall, that being the “individual space within the barn where the animals are kept”. Sec. 29-212 (13). Thus there is no doubt but that, under the Tourism Ordinance, a stable is a structure that includes stalls where the animals are kept. Reference to the provisions of the Tourism Ordinance specific to stables brings the point home: stables must be lighted, ventilated and protected from the weather; stables must be free of leaks, including from roofs or plumbing; the interior and exterior of the stable must be kept clean; and there can be no smoking “in” stables. Sec. 29-212 (i)-(1) (a), (e), (i) and (j). None of these provisions makes sense outside the context of a stable being a structure. The Court’s reference to Sec. 29-212 (e) (1) (a) of the Tourism Ordinance for the proposition that the term stable in the Ordinance is not always to be construed as a structure is unavailing because subsection (e) of the ordinance addresses how animals are cared for. It is subsection (i) that defines and addresses what a stable is. In construing statutes, specific statutes are given preference over general ones.

Aside from the use of the term stable as a noun in the Zoning Ordinance, the import of all other provisions of the Ordinance is clear that the term was meant to apply to a structure that was used as a stable. Subsection (4) of Sec. 54-206 (p) applies to the layout of the stable that being its tacking **area**, not the act of tacking, cannot impede the flow of traffic. A tacking area is a physical attribute of a structure. Subsection (6) requires a drainage plan for the property. This has nothing to do with the "activity" of stabling. Subsection (5) requires a plan for the handling of refuse. This provision, and only this provision, is arguably related to the operation of a stable. In balance, when all provisions of Sec. 54-206 (p) are read together, the clear import of the ordinance is that a stable was the use to which a structure or property is put. Here, both the property and its structure are within 100 feet of a residentially zoned area.

Amendment and reconsideration is sought of the Court's finding that City Council adopted the Zoning Ordinance relating to stables in the context of an urban setting. The Zoning Ordinance applies city-wide. It applies in the downtown area as much as it does in the less dense areas of the City, such as John's Island, the Cainhoy Peninsula and the plantation areas up Highway 61. While stables outside the tourist district need not comply with the tourism regulations, they must comply with every other provision of Sec. 54-206 (p). Unimpeded traffic flow, the collection and disposal of refuse, drainage, foul odors and the distance requirement all have efficacy in both urban and non-urban contexts. The Zoning Ordinance and Tourism Ordinance are separate and distinct. That the Petitioners must comply with both sets of regulations does not render either ordinance subservient to or tied to the hip of the other.

Moreover, if, as the Court found, the Tourism Ordinance is relevant to a “contextual perspective” of the Zoning Ordinance, then the Ordinances must be read in *para materi* and reconciled. That would require the adoption of the definition of stable in the Tourism Ordinance, the only ordinance that defines the term. The proof on this issue is clear. A stable is a barn, i.e. a structure.

Amendment and reconsideration is sought of the Court’s ruling that the Board erred in its assessment of the relation of the access easement to the back unit of the Horizontal Property Regime (HPR) to be created at 45 Pinckney Street, the reason being that by law, units of a HPR must have access to a street, either directly or by way of an appurtenant easement. The common area access easement proposed for the back unit at 45 Pinckney Street will run with the fee to the unit and will be essential to its use.

Reconsideration or amendment of the Order is sought because of a seemingly inconsistency. If stable in the zoning context means the act of stabling, independent of the building where that act occurs, then there would be no need to require a HPR. This is so because a HPR is but a form of ownership and does not result in a new lot or a separate building.

Reconsideration or amendment of the Order is sought because, notwithstanding the attempt to limit the reach of the Order to horse carriage tour business stables, the zoning ordinance at issue makes no such distinction. Sec. 54-206 (p) applies to all stables, whether for use in the carriage industry or as part of an equestrian center or as part of a breeding enterprise.

Reconsideration or amendment of the Order is sought because there is an inconsistency in how the Zoning Ordinance and Tourism Ordinances interplay with one another. On the one hand, the Order relies on the tourism regulations to limit the import of the zoning stable regulations to an urban setting, but then rejects the very definition of stable in the tourism regulations. If the Tourism Ordinances have relevance, then all its provisions are in play, including its definition of a stable as a "barn" where animals are kept.

Reconsideration or amendment of the Order is sought because the separation requirement is not solely limited to mitigating odors. The separation requirement also has efficacy in how the structure relates to nearby residential districts in the context of its location and its effect on traffic and drainage.

Zoning governs the use of land, buildings or structures. The zoning regulations contemplate a stable as the use of a building for the purpose of housing animals. Reconsideration or amendment of the Court's order finding to the contrary is requested.

Charleston, S.C.
June 16, 2014



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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
ARKAY, LLC and)
ROBERT R. KNOTH, its member,)
Petitioners,)
v.)
CITY OF CHARLESTON,)
CITY OF CHARLESTON BOARD)
OF ZONING APPEALS, ANDREW)
PINCKNEY INN, and MICHAEL A.)
MOLONY,)
Respondents.)

IN THE COURT OF COMMON PLEAS

Case No.: 2013-CP-10-

2013 JUL -1 PM 4:11
JULIE A. HARRIS
CLERK OF COURT

PETITION AND APPEAL FROM
THE BOARD OF ZONING APPEALS
(SPECIAL EXCEPTION ORDER)

Petitioners allege:

PARTIES

1. ARKAY, LLC is a South Carolina limited liability company and Robert R. Knoth is its sole member. Petitioners are citizens and residents of the City of Charleston; and Petitioner ARKAY holds title to 45 Pinckney Street, the real property at issue in this case.

2. Respondent City of Charleston is a corporate body politic which, through its City Council, has adopted a Zoning Ordinance hereinafter described; and the said Respondent City has created and formed the Respondent City of Charleston Board of Zoning Appeals, as hereafter alleged. Petitioners believe that the City of Charleston is a necessary party hereto.

3. Respondent City of Charleston Board of Zoning Appeals ("BZA") is an appointed board created by the City Council of Charleston under the authority of the

South Carolina Code of Laws for 1976 as amended, Section 6-29-780. The BZA is empowered in accordance with Section 6-29-800 of the South Carolina Code with the authority and power to hear and decide zoning matters, including applications for Special Exception and Variance and other matters as set forth in the Code. Appeals from Defendant BZA are heard by the Charleston County Circuit Court, pursuant to Code Section 6-29-820.

4. Respondents Andrew Pinckney Inn and Michael A. Molony are property owners near the property at issue in this case, who have stated an interest in the manner in which 45 Pinckney St. is used. Petitioners believe they are necessary or are at least interested parties to the within action.

5. This is an Appeal from a decision by the City of Charleston Board of Zoning Appeals orally made at hearing on April 16, 2013 and formalized in writing by Order dated June 4, 2013, (See Ex. "A"), which was mailed to the undersigned as attorney for Petitioners by letter dated June 7, 2013 and received by the undersigned on June 12, 2013. Accordingly, this Court has jurisdiction over the subject matter and parties to the within action, pursuant to Code Section 6-29-820.

EXHIBITS TO THE APPEAL

6. The following exhibits are attached, to which reference will be made in this Petition:

- a. Ex. "A": BZA Order dated June 4, 2013;
- b. Ex. "B": "BZA TABLE OF CONTENTS" dated April 16, 2013, including Tabs 1-10;
- c. Ex. "C": Memorandum, September 4, 2012.

- d. Ex. "D": Application for Special Exception Use dated March 18, 2013.

PROCEDURAL HISTORY AND UNDERLYING FACTS

7. The Zoning Ordinance for the City of Charleston provides in Section 54-206.p. that Stables are permitted in a General Business District as a Special Exception Use, provided that seven Special Exception criteria are met. (See Ex. "B", Tab 1).

8. One of the special exception criteria, and the one central to the issue in this appeal, is that "the stable is not located within 100 feet of any residential zoned district."

9. The property at 45 Pinckney Street consists of a building constructed on the "zero lot line" of the underlying lot. That is to say, the building occupies the entire footprint of its underlying lot.

10. The façade of 45 Pinckney Street therefore immediately abuts the public sidewalk of Pinckney Street, on the northern boundary of the property.

11. The surveyed distance from the façade of 45 Pinckney Street to the nearest residential zone district is 93.5 feet. (See Ex. "B", Tab 5).

12. On September 4, 2012, the undersigned as attorney for Petitioner Knoth submitted a memorandum to Lee Batchelder, the Zoning Official for the City of Charleston, and to Frances Cantwell, City Attorney. The memorandum discussed the provisions of City Ordinance 54-206.p., and more specifically the special exception criteria relating to the 100 foot distance to any residential zoned district. A copy of the Memorandum is attached as Exhibit "C". The Memorandum argues that the provision for a stable "use" in the Special Exception Use Ordinance describes a stable as a "use", rather than as a structure. Therefore, the 100 foot distance requirement of 54-206.p.

should be measured from the use as a stable and not necessarily measured from the building within which the use is contained.

13. The same arguments expressed to Mr. Batchelder and Ms. Cantwell in Exhibit "C" were also presented to the BZA in a slightly different form of memorandum. See Exhibits "B", Tab 3 and "D")

14. At the time of presenting the Memorandum to Mr. Batchelder in September 2012, Petitioner ARKAY did not then hold title to 45 Pinckney Street, but Petitioner Knoth had a contract to buy the property.

15. The concept proposed to the Zoning Official by Exhibit "C" and to the BZA by Exhibit "B", Tab 3 and Exhibit "D" is this:

a. A necessary component to the operation of the business of Carolina Polo & Carriage Company, as would be almost any business, is that there must exist an office space for desks, chairs, filing cabinets, computers, telephones, fax machines, and copy machines.

b. Therefore, 45 Pinckney Street would be subjected to a horizontal property regime under which the front 25 feet of the building would be used and partitioned for offices, restrooms and a waiting area for customers. The front 25 feet would be restricted by a recorded covenant prohibiting the use of that unit as a stable.

c. The rear most 44.71 feet would be a separate condominium unit, to be used as a stable. Access to Unit B, the stable unit, would be obtained by easement across Unit A, the office use.

d. By the condominium configuration, the stable "use" of the property would be 119 feet distant from the nearest residential zoned district.

e. Further rationale was given to Zoning Official Batchelder and the BZA in the memoranda, which positions are incorporated herein by reference.

16. Prior to March 15, 2012, Zoning Official Batchelder informed the undersigned attorney for Petitioners that he concurred with the rationale that the concept of an urban stable in the downtown area of the City of Charleston could be measured from its "use", rather than from the building within which the use is contained.

17. On March 15, 2012, Petitioner Knoth closed the purchase of 45 Pinckney Street, title to which was taken in the name of Petitioner ARKAY.

18., On March 18, 2013, Petitioner ARKAY made its application in writing to the Respondent BZA, seeking approval of a Special Exception Use of the property at 45 Pinckney Street as a stable, in accordance with City Code Section 54-206.p. See Ex. "D", Application.

19. A hearing was held before the BZA on April 16, 2013, at which Zoning Official Batchelder reported to the BZA that he recommended approval of the application, reporting further to the BZA his opinion that the Zoning Ordinance of the City should be interpreted in the context of the downtown city environment, and that it was appropriate to measure the stable from its use, rather than from the building in which the use was contained.

20. The BZA disagreed with and overruled the positions of the Petitioner and Mr. Batchelder and denied the application for special exception use on the ground that the distance of 100 feet should be measured from the façade of the building, rather than from the "use" of the stable within. (See Ex. "A").

GROUND'S FOR APPEAL

21. Petitioners file this Petition in accordance with Section 6-29-820 of the Code of Laws of South Carolina for 1976, as amended, and respectfully allege that the decision of the City of Charleston BZA is contrary to the law in the following particulars:

a. As a matter of law and fact the BZA erred by its holding that the "stable" proposed by Petitioners must be measured from the façade of the building to the nearest residential zone district, in order to comply with the 100 foot distance requirement, rather than from Unit A within the building, which contains "the space where the animals are to be kept"; and further:

(1) The error being that Section 54-206 .p. of the City of Charleston Zoning Ordinance uses the term "stable" to define a use, rather than to describe a building;

(2) The error being that no other reasonable construction of the term "stable" can be applied in light of other provisions in the city ordinances; including but not limited to Section 54-206.p. 2 & 4, that confirms the legislative intent that the Special Exception Use as a stable applies only to carriage tour stables; also, Section 29-201, *et. seq.* requiring that stables be within walking distance of the Medallion Gate at Church and North Market Streets; also, Section 29-206.b., providing that carriages are to load/off-load carriage passengers in the "Market District". Also, in further light of the unavailability of property in the Market District, as set forth in Affidavits of Robert and Richard Knoth. (See Exhibit "B", tabs 6 and 7);

(3) For the reasons argued in Petitioners' memo to the BZA. (Exhibit "B", tab 3);

(4) For the reasons verbally argued to the BZA (to be provided with the transcript of record from the BZA).

b. The BZA further erred in its holding that the 100 foot measurement should include the access easement that passes from Pinckney Street through Unit A and into Unit B; the error being that the access easement is no more than that, a driveway, alley, or in this case easement, but is not in any way a "place where the animals are kept", which is the statutory definition of "stable" as the term is used in the Tourism Ordinance, but not in the Zoning Ordinance. The access easement is no more "a place where the animals are kept", than are the office spaces within Unit "B".

c. The BZA further erred by failing to view the clear legislative intent of the ordinance: that is to say, to keep the spaces involving stables and stalls where animals are "kept" at least 100 feet distant from a residential zoned district. Because the stables and stalls where animals are "kept", here, are greater than 100 feet from the nearest Residential Zoned District, the BZA committed error in denying the application.

d. The BZA further erred by failing to accept, and by overruling, the Zoning Official's construction of Section 54-206.p., more specifically the Zoning Official's conclusion and opinion that "stable" as used in the Statute defines a "use", and that it is appropriate to measure from that "use" as a stable to the

nearest Residential Zoning District; it being clear that no animals would be "kept" in the offices of Unit B fronting on Pinckney Street.

WHEREFORE, based upon the grounds stated herein, and for the reasons argued herein and to be argued and briefed at hearing, the decision of the Board of Zoning Appeals should be reversed by the Circuit Court; a Special Exception Use permit should be ordered; together with such further relief as the Court deems just and proper in the circumstances.

BARR UNGER & McINTOSH

Adam E. Barr
For Capers G. Barr, III

Capers G. Barr, III

S. C. Bar ID: 542

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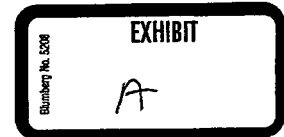
Charleston, South Carolina
July 1, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CITY OF CHARLESTON
BOARD OF ZONING APPEALS

IN RE:)
)
)
45 Pinckney Street)
)
)
_____)

ORDER



The matter before the Board is an application by Arkay, LLC (herein "Applicant") for a special exception to locate a horse stable at 45 Pinckney Street. A hearing was held on April 16, 2013. After having heard the testimony, reviewed the exhibits and other evidentiary matter and the applicable law, the Board denies the application.

FACTS

Forty-five Pinckney Street is located in downtown Charleston. A building occupies the entire site. There is only one entrance to the building, that being on Pinckney Street.

The site is abutted on the west by the Andrew Pinckney Inn, on the east by a multi-story parking garage and on the south by Nos. 14 and 16 Hayne Street. Across Pinckney Street to the north of the site are single family homes.

Forty-five Pinckney Street is zoned General Business (GB), as are the properties to its east, west and south. Across Pinckney Street to the north, the properties upon which single family homes are constructed are zoned Commercial Transitional (CT). The zoning district changes to Single, Two Family Residential (STR) immediately beyond the single family homes that are directly across the street from the site. A survey demonstrated the distance from 45 Pinckney Street to the nearest property zoned for residential use is 93.5 feet.

Forty-five Pinckney Street has been used as a stable in the past. In fact, the Applicant operated its horse carriage businesses from the site for some 8 years, from 1990 to 1998. It was thereafter operated as a stable until 2009.

Testimony revealed that the Applicant has lost its month-to-month lease at 16 Hayne Street, the current site of its horse carriage business. It must vacate the Hayne Street location by May 31, 2013. The Applicant has attempted to find other sites for a stable that are appropriately zoned

and which are within the "Market area" defined in the tourism ordinance as the area of the peninsula lying between and including Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east, and Meeting Street to the west. These efforts have proven unsuccessful.

The Applicant owns 45 Pinckney Street and intends to subject it to a horizontal property regime (herein "HPR"). The HPR will consist of 2 units. The first 11.5 feet of the building, measured from Pinckney Street, will become Unit B. This unit will contain 435 square feet, and will house the offices of the Applicant's horse carriage business and another business that sanitizes streets where carriage tours are conducted. Unit B will be restricted to prevent it from being used as a stable. Unit B will be subjected to an easement or common area to allow ingress and egress from Pinckney Street to the remainder of the HPR.

The rear 69.51 feet of the building will become Unit A. This unit will contain 1639 square feet and will be where stable operations occur. This unit will have 6 stalls, and this is the unit in which horses will be fed, groomed and stored.

Units A and B will be separated by 14 linear feet of General Common and Limited Common areas. The General Common area will contain 137 square feet and will contain restroom facilities. The Limited Common area will contain 360 square feet and will be limited for the use of Unit B. The Limited Common Area will be used as a waiting area for carriage business patrons. The only access from Unit A (where stable operations will occur) to Pinckney Street is across the Limited Common area and across Unit B, by way of easement.

The Applicant has designed a modern stable facility that includes stalls sized to meet the requirements of the tourism ordinance and a state-of-the-art ventilation system. To address the 300 pounds per day of waste that will be produced by its horses, the Applicant has contracted with a company to remove the waste daily, except on Sundays. The tourism commission has issued Certificates of Appropriateness for the carriages used by the Applicant in its carriage business.

Property owners to the west (owner of Andrew Pinckney Inn) and north (owner and/or personal representative of owner of single family homes) appeared at the hearing in opposition to the application. These owners, who had experienced the operation of prior stables at this location, voiced concern about the noise, rodents and odor attendant to a stable. There was a particular concern raised by the owner of the inn regarding the potential for odor wafting through its cinder block wall, the only wall separating it from the site. Issues were also raised regarding the legality of the proposed HPR. Most significantly, it was contended the stable was within 100 feet of a residentially zoned district and therefore could not, as a matter of law, meet the requirements for a special exception.

The Preservation Society of Charleston and the Historic Ansonborough Neighborhood Association opposed the application, and other interested persons submitted letters in opposition as well.

DISCUSSION

Forty-five Pinckney Street is zoned General Business. In this zoning district, stables are permitted, if granted a special exception by this Board. The criteria for the special exception are set out in Sec. 54 – 206 (p) of the Zoning Ordinance and require this Board to find:

1. The stable is not located within 100 feet of any residential zone district;
2. The City Tourism Commission has issued a Certificate of Appropriateness for the stable;
3. The stable complies with all city, county and state regulations for stables;
4. A site plan demonstrates that cleaning/loading and tacking area will not impede traffic flow in the public right-of-way;
5. A written explanation of how refuse will be handled in accordance with city, county, state and federal regulations has been reviewed by the Department of Public Service;
6. A plan showing how drainage is to be collected in accordance with city, county, state and federal regulations has been reviewed by the Commissioners of Public and the Department of Public Service; and
7. Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted.

The evidence demonstrated and the Board is satisfied that the proposed stable complies with county and state regulations, that the loading and tacking area will not impede the flow of traffic, that adequate plans for handling waste, refuse and drainage are, or will be, in place, and these plans have been reviewed by the applicable agencies and city departments as required by the ordinance. As to odor, the evidence demonstrated the use by the Applicant of a product new to the market that substantially absorbs odor from animal waste. The stable will be equipped with a ventilation system designed to circulate air and release it from the roof of the building at a location farthest from the inn adjoining the site. And with respect to the cinder block wall, the Applicant proffered that the potential for odor seeping through could be addressed by its constructing an interior wall at the site, and it would do so as a condition of receiving the special exception. As to the Certificates of Appropriateness, as defined by the tourism ordinance, these certificates are issued for horse drawn vehicles, not stables; however to the extent there is a disconnect between the zoning and tourism ordinances regarding the Certificates of Appropriateness, the Board does not find this issue dispositive of the question before it, as any approval of this Board would be conditioned on compliance with the requirements of the tourism commission.

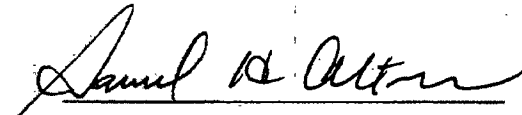
The remaining criterion is the distance of the stable from a residential zone district. As an initial matter, the Board rejects the contention that residential zone district means something other than a residential zoning district designation. The fact that Pinckney Street and Maiden Lane are in a residential parking district is not germane to the question of a residential zoning district. The Board finds that the criterion of the ordinance requiring a stable to be beyond 100 feet of a residential zone district means a residentially zoned district under the zoning ordinance. As applied here, a residentially zoned district is in place at No. 4 Maiden Lane and No. 57 Hasell Street. A survey submitted with the application reveals, measured from the building at 45 Pinckney to lots lines of these properties, that No. 4 Maiden Lane is 95.1 feet from the building at 45 Pinckney Street and No. 57 Hasell Street is 93.5 feet from the building at 45 Pinckney.

The Applicant contends the special exception applies to a stable as a use. Citing a definition from the tourism ordinance that defines a stable as the barn where animals are kept, it contends that here, the animals will be kept in Unit A of the HPR, more than 100 feet from a residentially zoned property. The applicant contends that the barn or stable use within the building at 45 Pinckney is more than 100 feet from a residentially zoned district. The Board does not agree.

Forty-five Pinckney Street is occupied by one building. The HPR does not alter this circumstance. There is no dispute as to the fact that the building is within 100 feet of a residentially zoned district. While Unit A within the building is where the animals will be stored, to access that area, it is necessary to pass through Unit B, an area within 100 feet of a residentially zoned district. This Board cannot discern intent to separate the use from its access when there is but one access to the building, and the law requires an apartment in a HPR to have either direct access to a public street or a common area leading to a public street. The common area or easement to Pinckney Street from Unit A is appurtenant to, or a part of, the Unit, rendering it within the 100 foot limitation. Thus, 45 Pinckney Street does not qualify as the site of a stable because it is located within 100 feet of a residential zone district.

NOW, THEREFORE, in light of the foregoing, the application for a special exception to establish a stable at 45 Pinckney Street is denied.

Charleston, South Carolina
6/4/13, 2013


Acting Chairman

BZA TABLE OF CONTENTS

45 Pinckney Street

April 16, 2013



1. Ordinance Section 54-206, p: Special Exception Use
2. City Code ²⁹~~54~~-212: General Health Care and Management Requirements
3. Memorandum to BZA
4. Plot Plan (Exhibit "1" to Memorandum)
5. Plat (Exhibit "2" to Memorandum)
6. Affidavit of Robert R. Knoth
7. Affidavit of Richard Knoth
8. Statements of Support
9. Zoning Map
10. Revised Ventilation Plan

EXHIBIT B-1

Sec. 54-206. - Special exception uses.

Uses designated in the Table of Permitted Uses and listed below, may be permitted in certain districts where the Board of Zoning Appeals—Zoning after review, finds that requirements listed below for such uses are met.

- a. Additional dwelling units in the SR zoning districts. Additional dwelling units shall be permitted as an exception within all single-family residential, SR zoning districts, in dwellings constructed prior to August 17, 1966, where the Board, after review, finds that such existing dwelling contains such an amount of space available and suitable for residential purposes that it is unreasonable to require its use as single family dwelling.
- b. Cemeteries. Cemeteries shall be permitted within the Conservation and all residential zones only as an exception where the Board, after review, finds that no building or parking lot thereof will be closer than one hundred (100) feet to an adjoining lot, and that all facilities will be adequately screened and landscaped in a manner appropriate to the character of the district.
- c. Church. A church shall be permitted only as an exception within the Conservation and all residential zones where the Board, after review, finds that it will not be closer than twenty-five (25) feet to an adjoining property line and that the required off-street parking spaces, separated from property lines by an appropriate buffer strip, will be provided.
- d. Dairy farms & dairy products manufacture shall be permitted only as an exception within the Conservation Zone where the Board, after review, determines that such uses are in accordance with the City's comprehensive land use plan.
- e. Day care centers. A day care center, which is an accessory use to a church, school, park or other institution, shall be permitted as an exception within the Conservation District, all residential districts, and the CT District, where the Board, after review, determines that an application for such a use satisfies the following requirements:
 1. proof of the application for the facility's licensing by the Department of Social Services is provided; and
 2. the proposed facility satisfies the definition of a day care center; and
 3. all signage is in conformity with that allowed for home occupations; and
 4. outdoor play is allowed only between the hours of 8 a.m. and 6 p.m.; and
 5. if a play area is within fifty feet (50') of a residential structure, it is appropriately buffered; and
 6. there exist at least two (2) parking spaces per employee; and
 7. plans for ingress/egress, loading/unloading and the location of the parking and play areas are approved for safety by the appropriate city department(s); and
 8. the facility is compatible with the surrounding neighborhood based upon consideration of the number of persons cared for, potential traffic and noise impacts, location of the play, parking, loading and circulation areas and relation to other noise or traffic generating institutions (particularly if another non-residential facility is facing or abutting the same block face or is within three hundred feet (300') of the proposed site); and
 - 9.

the proposed outdoor lighting of the facility does not unduly impact neighboring properties.

- f. Reserved.
- g. Drive-thru or automated teller facilities for depository institutions, banks, savings and loans, credit unions or similar depository institutions shall be permitted within the GO district only as an exception where the Board, after review, finds that the proposed teller facility satisfies the following requirements:
 - 1. adequate off-street parking and traffic circulation is provided.
 - 2. the vehicular access will not create a traffic hazard.
- h. Reserved.
- i. Reserved.
- j. Reserved.
- k. Gasoline service stations may be permitted within the LB, GB, UC, BP, LI, or HI districts as an exception where the Board, after review, finds that:
 - 1. Buildings or equipment will not be within one hundred (100) feet of any existing day care, school, church, hospital, or public library.
 - 2. Buildings or equipment will not be within fifty (50) feet of any residential zone district or existing dwellings.
 - 3. Buildings or functionary facilities other than signs relating to the principal use will not be closer than twenty (20) feet to street abutting lot lines.
 - 4. Any portion of an entrance or exit driveway leading to a public street will not be closer than three (3) feet to a fire hydrant.
 - 5. Entrance and/or exit driveways will not be in excess of forty (40) feet wide or closer than fifteen (15) feet to the intersection of streets.
 - 6. Stations within LB will restrict hours of operation to between 7 a.m. and 11 p.m.
- l. Homes for the elderly which care for no more than twenty (20) persons shall be permitted within the DR-1, DR-1F, DR-2, DR-2F, DR-3, CT, LB, GB or UC zones as an exception where the Board, after review, finds that the proposed facility will be compatible with the character of the neighborhood, its population density, traffic patterns and parking facilities and not adversely impact the immediate neighborhood. The Board may, after review, permit larger facilities when it finds that the public interest will be served thereby.
- m. Logging camps and forestry activities shall be permitted as an exception within the Conservation Zone where the Board determines that such uses are in accordance with the City's comprehensive land use plan.
- n. Museums shall be permitted within the SR-3, SR-4, SR-5, SR-6, STR, and all diverse residential, DR districts where the Board, after review, finds the following:
 - 1. That such museum is organized, that is, is a duly constituted body with expressed responsibilities.
 - 2. That such museum is permanent, that is, expected to continue in perpetuity.
 - 3. That such museum is a non-profit institution, that is, has documentary evidence of its tax-exempt status under the regulations of the U.S. Internal Revenue Service.
 - 4. That such museum is essentially educational or aesthetic, that is, manifests its expressed responsibilities by knowledgeable utilization of its objects and exhibits them for elucidation and enjoyment.

5. That such a museum maintains a professional staff, that is, has at least one paid employee who commands an appropriate body of special knowledge and the ability to reach museological decisions consonant with the experience of his or her peers, and who has access to and acquaintance with the literature of the field. The continuity of employment of at least one professional staff member, who must work sufficient hours to meet adequately the current demand of the institution for administration, record keeping and care of collections is essential.
 6. That the tangible objects, animate and inanimate, forming the museum's collections must have intrinsic value to science, history, art or culture.
 7. That such museum maintain regular and predictable hours which constitute substantially more than token opening, so that access is reasonably convenient to the public.
 8. That such museum operate during normal business hours and does not inherently exhibit noise, light or traffic conditions clearly debilitating to neighboring residents.
- o. Sewage disposal facilities shall be permitted as an exception within the Conservation Zone where the Board, after review, determines that such uses are in accordance with the City's comprehensive land use plan.
- p. Stables shall be permitted within the GB and UC district as an exception where the Board, after review, finds that:
1. The stable is not located within 100 feet of any residential zone district.
 2. The City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable.
 3. The stable complies with all city, county, and state regulations for stables.
 4. A site plan is provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right-of-way.
 5. A written explanation is submitted detailing how refuse will be handled in accordance with city, county, state, and federal regulations. This shall be reviewed by the Department of Public Service.
 6. A plan is submitted showing how drainage on the property is to be collected in accordance with city, county, state, and federal regulations. This shall be reviewed by the Commissioners of Public Works and the Department of Public Service.
 7. Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted.
- q. Electric substation or gas regulator station. Such station shall be permitted within the Conservation District, all residential districts, the CT district, and the RO district only as an exception where the Board, after review, finds that such station is essential for service of the immediate area, will be enclosed within an appropriate woven wire or solid fence, will be suitably landscaped and no storage of vehicles or equipment will occur.
- r. Storage yards, junk yards, scrap yards or auto salvage yards.
1. Outdoor storage yards, which are used for storage of materials and equipment, other than vehicles, boats or shipping containers, are permitted within the LI (Light Industrial) and HI (Heavy Industrial) districts as an exception where the Board, after review, finds that adequate provision and maintenance of visual

screening by fences, planting or other means, from public streets, roads, residences and adjacent residential zone districts will be provided.

2. Junk yards, scrap yards, or auto salvage yards are prohibited within the LI district but permitted within the HI district as an exception where the board, after review, finds that the same standards for visual screening listed in 54-206.r.1. are met.
- s. Reserved.
- t. Golf courses and membership sports and recreation clubs, private or for profit, or changes thereto, shall be permitted within the Conservation district as an exception where the Board, after review, finds that the location, lighting, hours of operation, type and size of the facility, or changes thereto, will not adversely affect any neighboring residentially zoned areas.
- u. Dwellings within the HI district shall be permitted as an exception where the Board, after review, finds that there shall not be created any unsafe living conditions given the existing uses in the area.
- v. Mining for the purpose of extracting materials from a property shall be permitted as an exception in all districts if the total size of the area to be mined does not exceed two (2) acres. For larger operations, Dirt Mining/Resource Extraction shall be permitted as an exception only in the Light Industrial (LI) and Heavy Industrial (HI) zone districts.
 1. Mining operations not exceeding two (2) acres in total mining area and meeting all of the following conditions shall be permitted in any zone district as an exception where the Board, after review of documentation submitted by the applicant, finds that:
 - a. The total mining area, work zone and construction access road is shown on a scaled site plan of the property, and is intended as preparation for residential use, recreational use or agricultural use.
 - b. The mining use will not last more than one (1) year from the date of approval.
 - c. The mining work zone, as shown on the scaled site plan, will be located at least fifty (50) feet from any property boundary and at least one hundred (100) feet from any dwelling.
 - d. A mining operation has not occurred on the subject property within three (3) years prior to the date of the application.
 - e. Variances and/or special exceptions from Article 3, Part 6: Tree Protection Requirements, if required, have been approved.
 - f. Existing vegetation will be maintained and adequately protected as a natural buffer between adjacent dwellings, existing water bodies or wetlands and the mining work zone.
 - g. The applicant agrees in writing to restrict the hours of operation for mining operations to between 8:00 a.m. and 7:00 p.m., Monday through Saturday.
 - h. The applicant will not use any office facilities at the mining location except in the LI and HI zone districts.
 - i. A stabilized access road for mining vehicles will be constructed and maintained to the specifications of the City Engineer and to a minimum depth of 50 feet from the public right-of-way.

2.

Mining operations exceeding two (2) acres in area shall be allowed in the Light Industrial (LI) and Heavy Industrial (HI) zone districts as an exception where the Board, after review, finds that:

- a. The applicant agrees in writing to restrict the hours of operation for mining operations to between 7 a.m. and 7 p.m., Monday through Saturday.
- b. Variances and/or special exceptions from Article 3, Part 6: Tree Protection Requirements, if required, have been approved.
- c. The size, shape and location of the area to be mined are such that it will allow for the conversion of the mining area into an amenity for the eventual use of the property. Evidence for this finding shall require the submittal of a plat of the property which 1) complies with the preliminary plat requirements of Section 54-810; 2) indicates the limits of clearing and excavation for the mining operation; 3) indicates the intended post-mining use of the mining area and other areas of the tract in conjunction with the Zoning Ordinance; and 4) indicates the depth of the mined area and the final slopes of the sides.
- d. Vehicle access from a public road for the mining operations is shown on a plat of the tract where the mining will occur, will be located in a manner that minimizes or removes any adverse impacts on adjoining parcels, and will not be through any residential areas. The applicant shall:
 - i. Submit a copy of the approved SCDOT or City encroachment permit for the proposed access road;
 - ii. Construct and maintain a paved roadway from the access point on a public right of way prior to commencing mining operations. The paving shall extend a minimum of fifty (50) feet into the property from the right-of-way. When the vehicle access to the mining area is less than two-hundred and fifty (250) feet from a residential area, the Board may increase the distance the road must be paved or may require a maintenance plan for an unpaved road to eliminate dust and noise issues.
- e. The mining work zone will have adequate separation from adjoining properties and all wetland areas or areas below the critical line. The minimum separation from adjoining non-residential property, which is not part of the proposed development the amenity is intended to serve, shall be one-hundred (100) feet. The minimum separation from an existing water body, wetland, area below the critical line, or adjoining property with a residential zoning or residential use, shall be two hundred fifty (250) feet. The Board may increase the required distance between the mining work zone and an existing water body, wetland, area below the critical line, or adjoining property to mitigate potential adverse impacts due to an insufficient existing vegetative buffer, an environmentally sensitive area, or an existing residential use.
- f. Where vegetation exists along a property boundary, natural water body or wetland, the operator shall maintain sufficient existing vegetation to provide a buffer between the mining operation and property boundary, natural water body or wetland.

w.

Membership sports and recreation clubs and civic, social and fraternal clubs shall be permitted within the SR-3, SR-4, SR-5, SR-6, STR, DR-6, DR-9, DR-12, DR-1F, DR-1, DR-2F, DR-2 and DR-3 districts where the Board, after review, finds the following:

1. Required off-street parking spaces, separated from property lines by an appropriate buffer strip, will be provided.
2. The location of the facility will not significantly increase pedestrian traffic or automobile traffic and parking on minor and local streets within existing residential neighborhoods.
3. That such organization is a non-profit organization and has documentary evidence of its tax-exempt status under the regulations of the U.S. Internal Revenue Service.

x. Sidewalk cafés for licensed businesses not meeting the requirements of Section 54-213 subsection k. paragraph 2. and/or subsection k. paragraph 3. shall be permitted within residential areas as an exception where the Board, after review, finds the following:

1. A completed application for a sidewalk café permit has been submitted for review by the Zoning Administrator;
2. The applicant meets the requirements of section 54-213 with the sole exception of subsection k. paragraph 2. and/or subsection k. paragraph 3.
3. The sidewalk café can be operated in the proposed location without compromising public safety or the use of sidewalks for pedestrian travel and access.
4. The sidewalk café hours of operation will be restricted and be compatible with the surrounding area.
5. The business applying for the sidewalk café permit is not licensed to permit on premises consumption of alcoholic beverages and will not permit the consumption of alcoholic beverages in the sidewalk café.
6. The applicant has submitted a petition signed by twenty-five (25) or more residents of the neighborhood in which the sidewalk café is to be located and, if the location is within a neighborhood with a neighborhood association recognized by the City of Charleston, the applicant must provide proof of having presented the proposal for said sidewalk café to that neighborhood association.

(Ord. No. 1996-227, §§ 3—6, 11-26-96; Ord. No. 1997-279, § 1, 7-15-97; Ord. No. 1997-280, § 2, 7-15-97; Ord. No. 1998-147, § 3, 8-18-98; Ord. No. 1998-203, § 5, 11-24-98; Ord. No. 1999-01, § 3, 1-12-99; Ord. No. 1999-54, § 4, 4-27-99; Ord. No. 1999-137, § 4, 9-28-99; Ord. No. 2001-31, § 1, 3-14-01; Ord. No. 2002-92, § 2, 8-13-02; Ord. No. 2003-44, § 4, 4-22-03; Ord. No. 2004-68, § 1, 7-20-04; Ord. No. 2006-489, § 2, 10-24-06; Ord. No. 2007-59, § 7, 3-6-07; Ord. No. 2008-146, § 5, 11-25-08; Ord. No. 2009-55, § 2, 4-14-09; Ord. No. 2009-207, § 2, 10-13-09; Ord. No. 2009-208, § 1, 10-13-09; 2011-121, § 1, 9-13-11)

EXHIBIT B-2

Charleston, South Carolina, Code of Ordinances >> - CITY CODE >> Chapter 29 - TOURISM >>
ARTICLE V. - TRANSPORTATION BY ANIMAL-DRAWN VEHICLES FOR PURPOSES OF TOURING >>
DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

- Sec. 29-201. - Restricted.
- Sec. 29-202. - Franchise agreement required; restrictions.
- Sec. 29-203. - Route limitations.
- Sec. 29-204. - Drivers.
- Sec. 29-205. - Tour guide required.
- Sec. 29-206. - Gatekeeper loading and medallion issuance procedure.
- Sec. 29-207. - Design standards.
- Sec. 29-208. - Zones of operation.
- Sec. 29-209. - Diapering apparatus and sanitation communication required.
- Sec. 29-210. - Number of medallions to be issued.
- Sec. 29-211. - Fees.
- Sec. 29-212. - General health care and management requirements.
- Secs. 29-213—29-218. - Reserved.

Sec. 29-201. - Restricted.

No person shall operate or cause to be operate for hire any vehicle, of whatever nature, drawn by animals for the purpose of conducting tours within the old city district or the old and historic district, except animal-drawn vehicles as provided in this chapter.

(Ord. No. 1983-22, § 56, 5-10-83)

Editor's note—

Formerly numbered as section 29-202

Sec. 29-202. - Franchise agreement required; restrictions.

(a) *Findings of fact:*

- (1) City council finds that certain of the operators of animal drawn vehicles in the old and historic district of the city have begun to utilize aggressive solicitation practices, adjacent to or upon the streets, sidewalks and public properties, urging upon citizens and visitors the use of their services; have abruptly approached citizens and visitors and thrust brochures in their hands, which are often unwanted and end up on the streets and sidewalks; have utilized solicitors, pamphleteers, persons holding signs, hawkers and pullers-in and have even placed fixed structures upon or adjacent to the streets, sidewalks and public properties to solicit business and/or distribute materials urging the use of their services.
- (2) City council further finds that the success of such commercial practices requires that persons congregate and respond to such solicitation, thereby impeding pedestrian and vehicle travel.
- (3)

City council further finds that such practices have an adverse impact on the ambiance of the city and its old and historic district; tend to create confrontations with citizens and visitors; adversely impact pedestrian and vehicle traffic flow; create litter; tend to create nuisances; adversely impact the health, safety and well being of the public; and otherwise have a negative impact on the tourism industry and economy of the city.

- (4) City council further finds that it is appropriate that, as a condition of operating animal-drawn vehicles in the old and historic district, all persons must obtain a franchise, and must agree to desist from the aforesaid business practices, which agreement shall be a condition of the franchise.
 - (5) City council further finds that the operation of animal drawn vehicles on the public streets is a privilege and not a right and such operation is for the benefit of the public.
 - (6) City council further finds in the adoption of this section, that this is part of an ongoing effort to reasonably regulate the conduct of business upon the streets and sidewalks of the central business district and the market area for the benefit of the general public.
- (b) *Franchise required:* No person shall operate or cause to be operated upon the streets or sidewalks of the old and historic district of the city any animal-drawn vehicle, without first entering into a franchise agreement with the city. Such franchise agreement shall be granted for a period of one (1) year and shall expire on the anniversary of the date of execution; provided, however, upon compliance with the provisions of the franchise agreement and Chapter 29, Articles V and VI, the agreement shall be automatically renewed. The franchise agreement shall contain the following provisions, which provisions are material and go to the essence of the franchise agreement:
- (1) The franchisee shall maintain a current business license.
 - (2) The franchisee shall agree to operate its business strictly in accordance with the ordinances of the city, applicable thereto; as from time to time amended.
 - (3) The franchisee shall agree that it will not carry out the following business practices, or suffer them to be carried out on its behalf, upon the sidewalks, streets and public properties in the old and historic district, or upon private property adjacent to such streets, sidewalks and public properties, but directed at persons upon such streets, sidewalks and public properties:
 - a. The distribution of pamphlets or other printed materials to solicit or advertise for business.
 - b. The use of hawkers, pullers-in, pamphleteers, or persons holding signs to solicit or advertise the business or inviting the public to make inquiries to such persons.
 - c. The placement of fixed structures for the purpose of sales, solicitation, hawking, pullers-in, pamphleteering or the support of signage or advertising.
 - d. The parking or storage of animals or equipment on the public streets and sidewalks, except to load or unload passengers in approved loading zones. Nothing herein shall regulate the parking or storage of animals or equipment on private property.
 - (4) Nothing herein shall prohibit the solicitation of business immediately alongside an animal-drawn vehicle in an approved loading zone so long as such solicitation is not done in a raucous manner.
 - (5) The franchise shall be nonexclusive.
 - (6)

The franchisee shall agree that, upon the violation of the provisions of this section by the franchisee, its agents, employees, or persons acting on its behalf, the right to operate animal-drawn vehicles in the old and historic district shall be suspended as follows:

- a. Upon two (2) violations within a six-month period, the franchise shall be suspended for a period not to exceed seven (7) days.
- b. Upon three (3) violations within a one-year period, the franchise shall be suspended for a period not to exceed thirty (30) days.
- c. Upon four (4) violations within a one-year period, the franchise shall be suspended for a period not to exceed one hundred eighty (180) days.
- (c) *Administration and appeals.* This section shall be administered by the director of tourism. All appeals from an interpretation or determination by the director of tourism shall be made to the tourism commission, within fifteen (15) days of notice of such interpretation or determination. All appeals from an adverse decision by the tourism commission shall be made to the Court of Common Pleas within thirty (30) days of such decision.
- (d) *Execution of agreement.* City council, by the adoption of this section, authorizes the mayor to enter into a franchise agreement with any and all persons who desire to operate animal-drawn vehicles in the old and historic district. Unless otherwise stated, each franchise agreement shall automatically renew on January 1 of every year so long as the franchisee is in good standing.

(Ord. No. 1995-110, § 1, 3-28-95; Ord. No. 1998-174, § 23, 9-22-98; Ord. No. 2001-133, § 1, 12-18-01; Ord. No. 2002-99, § 1, 8-13-02; Ord. No. 2006-200, § 1, 5-23-06)

Editor's note—

Ord. No. 1995-110, § 1, adopted March 28, 1995, enacted provisions designated as following former § 29-201. In order to accommodate the provisions of said ordinance, the editor renumbered former § 29-202 as § 29-201 and added the provisions of Ord. No. 1995-110 as § 29-202

Sec. 29-203. - Route limitations.

Animal-drawn vehicles may operate on all streets or public ways in the district except the following:

- (a) The bricked portion of Church Street, from Water Street to South Battery, and all cobblestone and Belgium block streets;
- (b) Any public way designated as an alley, land or court (excluding St. Michael's Alley which may be used through Friday from 4:00 to 6:00 p.m., excepting legal holidays and Horlbeck Alley which may be used Monday through Friday from 9:00 a.m. to 4:00 p.m. and during regular touring hours on weekends and on legal holidays);
- (c) The following streets:
 - (1) Atlantic Street;
 - (2) Price's Alley;
 - (3) Rope Maker's Lane;
 - (4) Bedons Alley;
 - (5) Ladson Street;
 - (6) Big Lamboll Street;
 - (7) Water Street (from Church to Meeting Streets);
 - (8) Church Street (from Tradd to Water Street);

- (9) Broad Street (West of State Street) from 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m., Monday through Friday, excepting legal holidays;
- (10) Meeting Street (North of Broad Street) from 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m., Monday through Friday, excepting legal holidays;
- (d) On such streets or at such times as are restricted for such use by the department of traffic and transportation with the approval of the city council committee on traffic and transportation and so designated in the office of the commission.
- (e) There shall be an amended commercial route that can be used during eastern standard time between the hours of 4:30 p.m. to 6:00 p.m. The commercial route approved is as follows: Market Street to Concord Street to Vendue Range to Prioleau Street to Elliot Street to E. Bay Street to Exchange Street to Prioleau Street to Concord Street to Market Street.

(Ord. No. 1983-22, § 59, 5-10-83; Ord. No. 1986-88, § 1, 8-19-86; Ord. No. 1993-58, § 9, 4-27-93; Ord. No. 2013-10, § 1, 1-22-13)

Sec. 29-204. - Drivers.

All drivers of animal-drawn vehicles shall have a current automotive vehicle drivers license and demonstrate competence in handling animal-drawn vehicles. All drivers of animal-drawn vehicles shall be required to pass an animal-drawn vehicle competency examination which will satisfy the city that the driver is knowledgeable and capable of handling horses and animal-drawn vehicles in emergency situations.

(Ord. No. 1983-22, § 60, 5-10-83; Ord. No. 1993-58, § 7, 4-27-93)

Sec. 29-205. - Tour guide required.

All tours on animal-drawn vehicles must be conducted by a registered or temporary tour guide.

(Ord. No. 1983-22, § 61, 5-10-83)

Sec. 29-206. - Gatekeeper loading and medallion issuance procedure.

- (a) The city shall establish a central location at the corner of North Market and Church Streets for the distribution of medallions to be issued in the conduct of tours in the zones of operation as established pursuant to section 29-208 of the Code of the City of Charleston. The central location point shall be designated as the "gate" which will consist of a structure to be occupied by a city employee authorized to issue medallions for touring as provided herein, said employee to be more commonly referred to as the "gatekeeper." The gate loading procedure shall require an animal-drawn vehicle to load and discharge passengers as herein provided and to pass through the gate to receive a medallion. This medallion shall indicate the zone in which the animal-drawn vehicle shall conduct its tour. The zone designation shall be obtained by random selection by the gatekeeper as hereinafter provided. The medallion shall be issued by the gatekeeper and affixed to the back of the animal-drawn vehicle. Upon completion of the tour, the medallion shall be returned to the gatekeeper by the driver or company representative of the animal-drawn vehicle having been issued the medallion. A medallion shall be returned to the gatekeeper no later than seventy-five (75) minutes after its issuance.
- (b)

Animal-drawn vehicles shall load and discharge passengers at the city's one (1) central loading zone, located on Anson Street south of Pinckney Street and on North Market Street between Anson Street and Church Street, provided that an animal-drawn vehicle shall be able to load and discharge passengers on private property that is owned or operated by its company and provided that the said private loading zone is within the Market zone which is described as the area lying between and including Pinckney Street to the north; Cumberland Street to the south; East Bay Street to the east, and Meeting Street to the west.

- (c) The gate shall operate between the hours of 9:00 a.m. through 5:30 p.m. during Eastern Standard Time and from 9:00 a.m. and 6:30 p.m. during daylight savings time. During Eastern Standard Time, medallions shall be issued until 4:30 p.m. and shall be returned by 5:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 5:00 p.m. During daylight savings time, medallions shall be issued until 5:30 p.m. and shall be returned by 6:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 6:00 p.m. Notwithstanding the foregoing, during the month of April 2011 only, the gate shall operate between the hours of 9:00 a.m. and 7:30 p.m. Furthermore, during the month of April 2011, medallions shall be issued until 6:30 p.m. and shall be returned by 7:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 7:00 p.m.
- (d) Animal-drawn vehicles shall be permitted to remain in a loading zone no longer than fifteen (15) minutes prior to entering the gate to receive a medallion. If a medallion is not issued to a vehicle which has been in the loading zone for fifteen (15) minutes, the said vehicle shall move to the rear of the loading zone and wait in line to enter the gate and receive a medallion.
- (e) A special tour, which is defined as a tour that has been scheduled in advance by the director of tourism, shall require a medallion before the said special tour can be conducted. A special tour must also utilize the city's loading zone or private property for loading and discharging passengers as provided herein.
- (f) A commercial tour, shall be defined as a tour that is conducted in the commercial district only and after 4:30 p.m. There shall be no more than be five (5) commercial tours permitted to begin between 4:30 p.m. and 5:00 p.m. industry wide, and there shall be no more than five (5) commercial tours permitted to begin between 5:00 p.m. and 5:30 p.m. industry wide. The carriage company owners will determine among themselves how the five (5) commercial tours permitted to begin between 4:30 p.m. and 5:00 p.m. and the five (5) commercial tours permitted to begin between 5:00 p.m. and 5:30 p.m. will be divided up among the carriage companies. Commercial tours conducted after 5:30 p.m. shall not be restricted in the number of tours permitted and shall not require a medallion.

(Ord. No. 1983-22, § 62, 5-10-83; Ord. No. 1993-58, § 1, 4-27-93; Ord. No. 2002-73, § 1, 5-28-02; Ord. No. 2006-495, § 1, 11-14-06; Ord. No. 2010-85, § 2, 5-11-10)

Sec. 29-207. - Design standards.

Animal-drawn vehicles shall be authentically styled passenger carriages. Wagons which patently were designed for cargo instead of passengers will not be approved. Carriages must not exceed twelve (12) feet in length or six (6) feet in width. Carriages will be measured from end to end, excluding the steps and shafts; and, from axle tip to axle tip. No part of the carriage may be over six (6) feet in width; provided, however, any certificated carriage which was in use as of January 1, 1982, and no longer than thirteen (13) feet may continue in use.

(Ord. No. 1983-22, § 63, 5-10-83; Ord. No. 1998-174, § 24, 9-22-98)

Sec. 29-208. - Zones of operation.

- (a) The peninsula city shall be divided into zones of operation as may be recommended from time to time by the commission and approved by city council. A map outlining such zones shall be maintained in the office of the director of tourism.
- (b) Based upon traffic studies, industry input and observations and experience of the commission, the maximum number of animal drawn vehicles to be allowed to operate in a given zone may be restricted, all as may be recommended by the commission and approved by city council.
- (c) The right to operate in Zones 1, 2 and 3 shall be made available to touring entities having animal drawn vehicles for which certificates of appropriateness have been issued as follows:
 - (1) Through the use of the gate and gatekeeper procedure as hereinabove defined, the gatekeeper shall utilize a bingo machine and twenty (20) pingpong balls, six (6) of which shall be designated for Zone 1, six (6) of which shall be designated for Zone 2, and eight (8) of which shall be designated for Zone 3, to randomly select a ball with a designated zone destination marked thereon, and that upon selection, the ball shall be removed from the bingo machine and replaced when the medallion is returned.
 - (2) When a medallion is issued, the gatekeeper shall record the company's name, the animal-drawn vehicle drivers' name, medallion number and the time that it is issued. No animal-drawn vehicle shall be issued more than one (1) medallion within forty-five (45) minutes from the time of issuance of the first medallion. When the medallion is returned, the check-in time shall be recorded by the gatekeeper. The gatekeeper shall verify that the maximum check-out time has not been exceeded.
 - (3) A medallion shall be returned to the gatekeeper no later than seventy-five (75) minutes from the time of its issuance.

(Ord. No. 1985-148, § 5, 12-17-85; Ord. No. 1986-49, § 2, 5-27-86; Ord. No. 1993-58, § 4, 4-27-93)

Sec. 29-209. - Diapering apparatus and sanitation communication required.

It shall be unlawful for any person, firm, corporation or other entity to utilize any animal for the purpose of pulling any vehicle on city streets unless such animal is equipped with diapering apparatus that prevents the droppings of such animal from being deposited or otherwise left on city streets. It shall be the responsibility of the person, firm, corporation or other entity utilizing any animal-drawn vehicle to see that the diapering apparatus is maintained in working order. Further, every animal-drawn vehicle shall be equipped with a two-way communication system and flags to identify areas in need of sanitation. It shall be the responsibility of the person, firm, corporation or other entity utilizing any animal-drawn vehicle to drop a sanitation flag marking areas where animals deposit or otherwise leave excreta on city streets and to utilize two-way communications to provide notice of areas in need of equine sanitation.

(Ord. No. 1987-82, § 1, 7-21-87; Ord. No. 1998-174, § 25, 9-22-98; Ord. No. 2007-223, § 1, 11-27-07)

Sec. 29-210. - Number of medallions to be issued.

- (a) The city shall authorize a total of twenty (20) medallions to be distributed as follows:
 - Zone 1 6
 - Zone 2 6
 - Zone 3 8
- (b) The medallions shall be labeled with a serial number as follows:

Zone 1 Serial Nos. 1—15

Zone 2 Serial Nos. 16—30

Zone 3 Serial Nos. 31—45

(Ord. No. 1993-58, § 3, 4-27-93)

Sec. 29-211. - Fees.

- (a) Each animal-drawn vehicle company authorized to do business within the City of Charleston shall be assessed an annual fee of seventeen thousand five hundred dollars (\$17,500.00) to operate a carriage business in the City of Charleston. This fee will allow a company to have one (1) animal-drawn vehicle in the central loading zone at any given time.
- (b) Each animal-drawn vehicle company shall be assessed a fee of three dollars (\$3.00) each time one of its animal-drawn vehicles receives a medallion at the gate. The company shall be billed on a monthly basis.
- (c) A company which operates an animal-drawn vehicle business in the City of Charleston shall be assessed a monthly sanitation fee in a sum to be assessed by the director of tourism, which fee shall be paid before the company shall be allowed to participate in the gatekeeper system, said fee to be billed to the company on a monthly basis.

(Ord. No. 1993-58, § 5, 4-27-93)

Editor's note—

Ord. No. 1993-58, § 5, adopted April 27, 1993, enacted a new section 29-212. In order to better conform to the organization of the Code, the editor has redesignated the provisions of § 5 of Ord. No. 1993-58 as § 29-211

Sec. 29-212. - General health care and management requirements.

- (a) *Findings of fact.* City council hereby makes the following findings of fact:
 - (1) The City of Charleston, carriage company operators, residents, and visitors to the City of Charleston have sought to take a proactive approach to protect and ensure the health, safety and welfare of animals used in the tourism industry;
 - (2) A study was conducted to develop and recommend animal welfare policies to the tourism commission. In response to the study, the tourism commission formed the ad hoc committee on animal-drawn carriages which committee was comprised of representatives from the tourism commission, animal control, the carriage industry, the Society for the Prevention of Cruelty to Animals ("SPCA"), and an independent veterinarian;
 - (3) The ad hoc committee on animal-drawn carriages has now reviewed and updated the previously recommended policies after much deliberation and with input from the general public, Carriage Operators of North America ("CONA"), and the veterinarian community; and
 - (4) The codification of the ad hoc committee on animal-drawn carriages recommended regulations is in the best interest of protecting the health, safety, and welfare of the animals used in the tourism industry and protects the health, safety, and welfare of motorists and pedestrians using the public right-of-ways along with the residents and tourists of the City of Charleston.
- (b) *Definitions.* Except where the context clearly indicates otherwise, the following terms and phrases as used in this section shall have the following meanings:
 - (1)

Animal shall mean any horse or mule used for touring purposes and operated under a franchise agreement as outlined in section 29-202

- (2) *Contamination* shall mean the introduction of unwholesome or undesirable elements, including but not limited to, bedding, mold, bugs, and rodent droppings.
- (3) *Director of tourism* shall mean the director of tourism or his or her designee.
- (4) *Equine sanitation flag* shall mean the marker used to identify animal excreta and is generally recognized as a two and one-half-inch rubber ball cut in half with an eight-inch surveyor's flag attached.
- (5) *Farrier* shall mean a specialist in horse care who addresses the hooves, feet and legs of the animal.
- (7) *Inspection* shall mean to permit the director of tourism, the police department, or a city contracted veterinarian to enter upon the premises of any carriage company subject to this ordinance to make inspections and to examine and audit required records.
- (8) *Old and Historic District* shall mean that portion of the city that is so designated from time to time on the official zoning map of the city.
- (9) *Out of service* shall mean when the animal is unhitched from a carriage and out of its harness.
- (10) *Police department* shall mean the chief of police or his or her designee.
- (11) *Rest* shall mean the time when the animal is in service but not performing work as defined herein.
- (12) *Stable* shall mean the barn where the animals are kept.
- (13) *Stall* shall mean individual space within the barn where each animal is kept.
- (14) *Tour* or *touring* shall mean the conducting of or the participation in sightseeing in the districts for hire or in exchange for a donation.
- (15) *Touring stock* shall mean all animals used for touring pursuant to this section.
- (16) *Vintage carriage* shall mean any carriage built before 1900.
- (17) *Work* and *working* shall mean the act of pulling a carriage.
- (18) Reserved.
- (19) Reserved.
- (20) *Free choice* shall mean that water shall be ready and in front of a horse for 15 minutes after a tour is conducted so that a horse is free to choose to drink or not to drink water.

(c) *Equipment.*

- (1) Every carriage used for touring purposes and operated under a franchise agreement as outlined in section 29-202 shall be equipped with the following:
 - a. Head lights or lanterns and tail lights or lanterns which are visible for a distance of (500) feet when the carriage is operated from a half hour after sunset to a half hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred feet ahead;
 - b. A slow moving vehicle emblem attached to the rear of the carriage;
 - c. A diapering apparatus that prevents the droppings of the animal used to pull the carriage from being deposited on the ground or the right-of-way;
 - d. A fifth wheel or cut under turning mechanism on the front axle with the exception of vintage carriages;

- e. Reflective ankle cuffs or another reflective device approved by the tourism committee shall be used on at least two (2) of the animal's legs if one (1) animal is pulling a carriage, or if two (2) animals are pulling a carriage reflective ankle cuffs or another reflective device approved by the tourism committee shall be used on at least one (1) of the outside legs of each animal when the carriage is operated from a half (½) hour after sunset to a half (½) hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred (500) feet ahead;
 - f. A two-way electronic communication system; and
 - g. A minimum of two (2) equine sanitation flags to mark animal excreta droppings.
- (2) Carriages must be properly lubricated and the carriage wheels shall spin freely.
 - (3) Each carriage shall be maintained in a safe condition so as to not endanger any person or property.
 - (4) Each carriage shall be maintained in a clean and sanitary condition, free of litter and debris and at all times suitable for public transportation of passengers.
 - (5) No carriage shall be operated having more passengers than what is permitted by its certificate of appropriateness or having a combined weight of carriage, passengers, and drivers that is more than three (3) times the weight of the animal(s) pulling the vehicle.
- (d) *Carriage stands, client pick-up locations, staging areas, and barns.*
- (1) Carriages queuing in the medallion booth line shall move and circle the block during equine sanitation cleaning.
 - (2) Each carriage company shall ensure that their animals in the queue line at the medallion booth shall have a fresh water source every hour.
 - (3) Each carriage company shall post at their barns in a conspicuous place signage as required under applicable federal, state, and local laws, including but not limited to, the Equine Activity Liability Act (S.C. Code 47-9-730), along with providing brochures outlining the City's ordinances governing the general health and welfare of the animals used in the tourism industry of Charleston.
- (e) *Care and shelter of animals.*
- (1) No animal shall be used to draw a carriage unless the animal is in good health and the following standards are met:
 - a. The animal shall not have open sores, open wounds, diarrhea, nor shall the animal be lame or have any other ailments unless the city tourism office as well as the individual company's stable has a current written statement by a veterinarian on file that the animal is fit for such work notwithstanding such condition. Further, the written statement by the veterinarian must have a required expiration date;
 - b. The hooves of all animals while engaged in work on pavement, brick, concrete or other like hard surfaces shall have rubber or elastomer shoes, boots or pads to prevent slipping and shall be evenly trimmed and shod. However, steel shoes can be used upon introduction to the touring stock during an initial two-week trial period. Also, if a farrier determines that the horse's hooves will not accommodate the use of rubber pads, metal shoes can be used on the rear legs of the animal;

- c. The animal shall be properly and appropriately groomed;
 - d. The animal shall have adequate flesh and muscle tone as determined by the Body Condition Scale of the Henneke Chart and shall average between 4 and 7;
 - e. The animal is kept in good working condition;
 - f. At introduction into the touring stock then bi-annually thereafter, the animal shall have had a physical inspection completed by and a certificate of serviceability for carriage work signed by a licensed veterinarian, with the results thereof provided to the City of Charleston Tourism Director and made available for inspection on site;
 - g. All animals upon reasonable notice by the tourism director or police department shall be made available for an annual physical inspection to be conducted by the tourism director or police department's veterinarian with the results thereof being maintained by the office of tourism with a copy being provided to the carriage company operator;
 - h. At introduction into the touring stock then quarterly thereafter, the animal shall have been de-wormed; and
 - i. At introduction into the touring stock, the animal has been vaccinated under the direction of a veterinarian for appropriate diseases and risk factors of the area, as outlined on the certificate of serviceability.
- (2) Free choice water shall be provided to each animal immediately after completing a tour for a minimum of fifteen (15) minutes.
 - (3) Animals shall be provided electrolyte supplements at each feeding.
 - (4) Animals shall have at least fifteen (15) minutes rest between back to back tours.
 - (5) In a twenty-four-hour period, animals shall not engage in Work more than eight (8) consecutive hours or ten hours with out a one and one-half (1½) hour break being disconnected from the carriage, in a twenty-four-hour period.
 - (6) Animals shall not engage in work more than six (6) days in a seven-day period.
 - (7) Animals shall not engage in work with equipment causing an impairment of vision, other than normal blinders.
 - (8) Animals shall not be driven at a speed faster than a slow trot.
 - (9) Animals shall not be subject to any cruel or harassing treatment or equipment.
 - (10) Animals shall not be sold or disposed of except in a humane manner in accordance with American Association of Equine Practitioners' guidelines.
 - (11) Animals shall be at least three and one-half (3½) years of age and shall not weigh less than nine hundred fifty (950) pounds in fit condition.
- (f) *Harnesses.*
- (1) Animals shall not engage in work with harnesses or bits that harm or are unsafe to the animal.
 - (2) Harnesses, bridles, bits and padding shall be properly fitted and kept in clean and good repair.
 - (3) Harnesses shall be kept free of makeshifts like wire, rope, and rusty chain.
 - (4) Trace chains shall not put pressure on the collar and shoulders of the animal when it starts pulling the carriage resulting in a jolting start versus a smooth start with a snug collar already in place.
 - (5) Breeching shall fit so that it will not rub or hinder the hind leg movement of the animal.

(g) *Weather conditions.*

- (1) Carriage company operators and drivers shall use caution when Working animals in adverse weather conditions such as high heat and humidity, snow, ice, heavy rain, and other slippery or reduced visibility situations.
- (2) When the ambient temperature reaches or exceeds eighty-five (85) degrees Fahrenheit at any point during the carriage company's hours of operation, the carriage company operators shall implement a mandatory system of taking the rectal temperature of each working animal immediately after completing a tour. In the event an animal's temperature reaches one hundred three (103) degrees Fahrenheit or above, the animal's temperature shall be taken every fifteen (15) minutes until the animal's temperature falls below one hundred three (103) degrees Fahrenheit before the animal is allowed to return to work.
- (3) When the rectal temperature of an animal reaches between 103—103.9 degrees Fahrenheit, the carriage company operator shall require the animal to be removed from service and be cooled down to a temperature of 101.5 degrees Fahrenheit before returning them to engage in Work.
- (4) In the event that an animal's rectal temperature reaches 104 degrees Fahrenheit or above the animal shall be taken out of service for the day and cooled down.
- (5) In the event an animal can not be cooled down to a rectal temperature of 101.5 degrees Fahrenheit within two (2) hours of the first 103 degree Fahrenheit or above rectal temperature recording, a veterinarian shall be immediately contacted to inspect the animal.
- (6) At any time when an animal's rectal temperature reaches 105.0 or above, or if any animal shows signs of distress such as panting motions, thumping of the chest (synchronous diaphragmatic flutter), tying up, or stiffening of legs or back, muscle trembling, or colic, a veterinarian shall be immediately contacted to inspect the animal.
- (7) When either the ambient temperature reaches ninety-eight (98) degrees Fahrenheit or the Heat Index reaches one hundred twenty-five (125) degrees Fahrenheit, as determined by the director of tourism or the police department, the carriage company operators shall discontinue working their animals and pull them off the street until the temperature decreases below the above stated temperatures as authorized by the director of tourism or the police department.
- (8) The official thermometer used for determining the temperature and the heat index shall be located at 113 Calhoun Street, in the City and County of Charleston, South Carolina. In the event this thermometer is out of service, as determined by the director of tourism or the police department, the back-up thermometer shall be the thermometer located at 180 Lockwood Drive, in the City and County of Charleston, South Carolina.

(h) *Feeding.*

- (1) Animals shall receive an adequate amount of equine feed daily, which is free from contamination, sufficient in quantity, having nutritional value, and be provided frequently enough to meet normal daily requirements for the animal's condition, special needs, environmental factors and size of the animal so as to maintain a healthy flesh.
- (2) Clean drinking water free from contamination shall be available to an out of service animal at all times.
- (3) Out of service animals shall at all times have access to salt in a block or loose form.

(i) *Stables and stalls.*

- (1) Stables shall be safe, well lighted, ventilated, and provide protection from the weather as described herein;
 - a. Stables and stalls shall be kept clean and in good repair and excreta shall be removed daily;
 - b. The floors of the stalls shall be graded and raked to keep their surface dry; each stall shall have rubber mats under the shavings or shavings with a minimum depth of four (4) inches;
 - c. Fans shall be used to increase ventilation when the ambient temperature reaches eighty (80) degrees Fahrenheit;
 - d. Sharp surfaces and any other hazards shall not be permitted in any stable or stall where they can come in contact with the animals;
 - e. Stables and stalls shall be kept free of leaks, including but not limited to, leaks from roofs or from plumbing;
 - f. Stalls sizes shall be no less than five (5) feet nine (9) inches × eleven (11) feet unless a carriage company undertakes any remodeling or refurbishing of any sorts to their stable that equals fifty (50) percent of the market value of the stable or moves their stable. In the event a carriage company does remodel or refurbish their stable as stated in the previous sentence then they must implement a minimum stall size of twelve (12) feet × twelve (12) feet for every stall;
 - g. The practice of tethering the animal in a stall is permitted so long as the animal can lie down without the risk of entanglement or injury;
 - h. Occupied stalls shall have a minimum of three (3) inches of bedding or have a specialized surface so as to keep animals clean, dry and free of concussion, abrasion or pressure points;
 - i. Interior and exterior areas of the stable shall be kept clean, properly drained and free of nuisances including, but not limited to, unreasonable and excessive odors and unreasonable accumulation of refuse and excreta;
 - j. There shall be no smoking at any time in stables; and
 - k. Unless otherwise directed by a veterinarian, animals shall be given a pasture turn-out time of a minimum of four (4) consecutive days to total fourteen (14) days within four (4) months;
 - (2) Stables shall be located within walking distance the medallion gate located at the corner of Church and North Market.
 - (3) All stables shall have a yearly inspection by the fire department. Fire extinguishers must be kept in obvious places in every stable as required by law and as recommended by the fire department.
- (j) *Recordkeeping.*
- (1) Feeding, shoeing, medication, and treatment logs, bi-annual inspection records, certificate of serviceability, quarterly de-worming records, rectal temperature logs, work schedules, disposal documentation, and such other records as requested by the tourism director and police department shall be maintained for a three year period by each carriage company operator for every animal used in the touring stock.
 - (2) These records shall be made available for inspection by the city and its designee.
- (k) *Inspections.* In addition to the annual inspection provided for herein, animals, facilities and records shall be subject to random or unannounced inspections at the discretion of the tourism director, police department, and/or the city designated veterinarian. The inspector is

permitted to take notes, pictures and video if they deem appropriate. These inspections shall be brief in order to not interfere with the work flow of the business. The inspector should be allowed to enter the premises no longer than fifteen (15) minutes after arrival at the facility during business hours.

(Ord. No. 2007-90, § 1, 4-24-07; Ord. No. 2011-58, §§ 1—10, 8-16-11; Ord. No. 2011-59, § 1, 8-16-11; Ord. No. 2011-60, § 1, 8-16-11)

Secs. 29-213—29-218. - Reserved.

**Charleston, South Carolina, Code of Ordinances >> - CITY CODE >> Chapter 29 - TOURISM >>
ARTICLE V. - TRANSPORTATION BY ANIMAL-DRAWN VEHICLES FOR PURPOSES OF TOURING >>
DIVISION 2. - CERTIFICATE OF APPROPRIATENESS >>**

DIVISION 2. - CERTIFICATE OF APPROPRIATENESS

Sec. 29-219. - Required.

Sec. 29-220. - Application; inspection.

Sec. 29-221. - Transferability.

Sec. 29-222. - Suspension or revocation.

Sec. 29-223. - Expiration.

Secs. 29-224—29-234. - Reserved.

Sec. 29-219. - Required.

No animal drawn vehicle shall operate without a duly issued certificate of appropriateness and without having paid such fee therefor as city council may, from time to time, establish. The certificate of appropriateness must be permanently affixed to the vehicle in a location approved by the commission.

(Ord. No. 1983-22, § 58, 5-10-83; Ord. No. 1985-148, § 5, 12-17-85)

Sec. 29-220. - Application; inspection.

- (a) An applicant for a certificate of appropriateness shall provide the tourism director with the following:
 - (1) Adequate identification of the applicant and animal-drawn vehicle and proof of ownership;
 - (2) Material setting forth the characteristics of the vehicle including its dimensions, weight, passenger capacity, maker, year built;
 - (3) Color photographs not less than eight (8) inches by ten (10) inches of all four (4) sides of the vehicle or, in the discretion of the tourism director, sketches of a similar make and model and samples of colors proposed for use on the vehicle;
 - (4) Adequate proof of liability insurance with PIP coverage in an amount determined by the tourism commission;
 - (5) A fee as set forth by city council;
 - (6) After approval but prior to the issuance, a current city business license.
- (b) Upon receipt of the information set forth in subsection (a)(1)—(4) and (6), the tourism director shall submit the application to the tourism commission for the commission's determination as to whether the application should be approved. In acting upon and evaluating any application, the tourism commission shall consider the design standards as set forth in section 29-207 of this chapter as well as the proposed color of the vehicle.
- (c) Nothing herein shall be construed so as to prohibit the tourism director or the commission from requiring visual inspection of the vehicle.

(Ord. No. 1983-22, § 64, 5-10-83; Ord. No. 1987-83, § 2, 7-21-87; Ord. No. 2007-202, § 1, 10-23-07)

Sec. 29-221. - Transferability.

A certificate of appropriateness required by this division shall be issued on a specific vehicle and for a specific owner and is not transferable. The certificate remains the property of the city and must be surrendered upon expiration or revocation.

(Ord. No. 1983-22, § 65, 5-10-83)

Sec. 29-222. - Suspension or revocation.

- (a) Failure to abide by the provisions of this chapter or any of the ordinances of the city or laws of the state in any manner affecting or regulating the operation of the vehicle for which the certificate is issued, or the failure to maintain the required insurance shall be grounds for suspension for a reasonable time or the revocation of a certificate of appropriateness issued under this division.
- (b) If, in the opinion of the tourism director, a certificate of appropriateness should be suspended or revoked, he shall give written notice to the holder thereof, by certified mail of the right to appear before the commission and show cause why the certificate should not be suspended or revoked.

(Ord. No. 1983-22, § 67, 5-10-83; Ord. No. 2007-202, § 2, 10-23-07)

Sec. 29-223. - Expiration.

All certificates of appropriateness shall be granted for a period of one year and shall expire on the anniversary of the date of issuance; provided, however, upon compliance with the provisions of section 29220(1), (4), (5), and (6) the certificate shall be renewed.

(Ord. No. 1983-22, § 66, 5-10-83; Ord. No. 2007-202, § 3, 10-23-07)

Secs. 29-224—29-234. - Reserved.

EXHIBIT B-3

BARR, UNGER AND McINTOSH, L.L.C.

ATTORNEYS AT LAW

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MEMORANDUM

To: City of Charleston Board of Zoning Appeals

From: Capers G. Barr, III and Adam E. Barr

Re: 45 Pinckney Street Use as a "Stable"; Condominium Unit

Date: April 16, 2013

Arkay, LLC seeks to resume the use of 45 Pinckney Street as a "Stable". It is creating a horizontal property regime, assigning two separate and distinct uses for the property that will clearly separate the "Stable" use from other uses. The area of the building extending 11.5 feet from the Pinckney Street facade will not permit stable use, and will be designated Unit "B". Its use will be for offices.

Attached as Exhibit "1" is a Plot Plan by surveyor Alexander Peabody, depicting the configuration of the horizontal property regime. Exhibit "2" is a plat of survey by Mr. Peabody showing the measured distance from the front of the building to the nearest residential zone district.

Unit "A", to be used as a stable, comprises the rearmost 44.01 feet of the building. The limited common area of Unit "A" and the General Common Area for both units, shown as the 14 foot wide area in shading on the Plot Plan, will be used for restrooms, customer waiting, loading and offloading, and will not be used for a stable.

By the configuration as described, the Stable use will be 119 feet distant from the nearest residential zone district, and thereby will comply with the setback requirement of the Special Exception Use as a Stable, as set forth in City Code Section 54-206(p).

The central position addressed in this memorandum is that the statutory 100 foot setback from a residential zone district must be measured from the Stable "use"; rather than measured from the outside of the building within which the "use" is contained. The configuration of 45 Pinckney Street as proposed in this memorandum, and the measurement of the 100 foot setback from the use within the building, will comport with the setback requirements of the City Code, according to the statutory syllogism discussed below.

1. First, the intent of Council in enacting the Special Use Exception for stables should be viewed from its broad context: The Special Exception Use as a "Stable" was intended to apply only to stables in the tourism carriage industry. This is evident because of the language of Subsections 54-206, p, subparagraphs 2 and 4, requiring a "Certificate of Appropriateness" from the City Tourism Commission, and also requiring that the cleaning/loading/tacking area shall not "impede traffic flow in the public right of way." These circumstances could only apply to activities unique to the tourism carriage industry and would not apply, for example, to a horse stable on John's Island.

2. Secondly, the zone of the City in which a "Stable" may be located is limited under the Tourism provisions of the Code. Chapter 29, Article V, Sections 29-201, *et. seq.*, provides for city franchises for carriage companies, and more specifically provides that "Stables shall be located within walking distance (from) the Medallion Gate located at the corner of Church and North Market." Although the phrase "walking distance" is not further defined in the Code, another section strongly suggests that "walking distance" means the area called the "Market Zone", bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and Meeting Street to the west. The Tourism provisions of Chapter 29 are incorporated into the Zoning provisions of Chapter 54 by Section 54-206. p. 3: "The stable complies with all city, county, and state regulations for stables."

This is because Code section 29-206(b) provides that carriages shall load and discharge passengers at the "Gate", or they may load and discharge on private property within the "Market Zone". The "Market Zone" is there defined as the area bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and by Meeting Street to the west. It appears, therefore that the intent of Council in providing for "walking distance" to the Gate, was to mean that the Stable be within the "Market Zone".

If the central point of carriage tours was intended to be the Gate, and if tourists are nevertheless permitted to mount and dismount away from the Gate, provided that the mount/dismount area must be in the "Market Zone", it stands to reason that "Market Zone" and "walking distance" were intended to be synonymous. This is also logical from a City monitoring standpoint, so that City enforcement personnel are enabled to monitor carriage operations within a "walking distance" range of the Gate.

3. Thirdly, therefore, if it is correct that "walking distance" is intended to be within the "Market Zone", a review of the properties within the Market Zone suggests very few properties were suitable for Stable use, either presently or at the time of enactment of the provisions of the Tourism Ordinance.

First of all, the central, east-west axis of the Market Zone is the City Market itself, as well as the adjacent restaurants and shops on the south side of North Market Street and on the north side of South Market Street. It is obvious that none of the

properties on the east-west axis of the Market Zone could be used as a "Stable", as a practical matter.

Neither could there be any reasonable expectation that a property on the western boundary, fronting on Meeting Street could be used as a stable; or, likewise, that properties on the eastern boundary fronting on East Bay Street, could be used, either.

On the southern boundary of the Market Zone there may be one potential property, although there is no suggestion that it would be available for use, much less as a Stable. That is the property currently used as a convenience store at the northeast corner of State and Cumberland Streets. Otherwise, the properties on the southern boundary of the Market Zone which front on Cumberland Street are either within 100 feet of a residential district, or are properties used as city parking garages or as established office buildings.

On the northern boundary of the Market Zone, viewed from west to east, the Bank of America building consumes most of the first block extending eastward from Meeting Street; and immediately to the east is the property at issue, 45 Pinckney Street. To the east of 45 Pinckney is the Andrew Pinckney Inn. Proceeding easterly across Church Street is the First Baptist Church School Gymnasium, and across Anson Street to the east is the stable of Palmetto Carriage Company, then a small Inn, a veterinary clinic, a surface parking lot, an office building and "Big John's" Café.

Between North Market and Pinckney Streets there are several open automobile parking lots that could theoretically be converted to stable use. Several are on the north side of Hayne Street, and another is east of Anson Street, between North Market and Pinckney Streets. However none of the surface lot properties are known to be available, and it is unlikely that automobile parking would become secondary to Stable use, as a practical matter.

Therefore, the properties theoretically or practically available for use as a Stable in the Market Zone are at 16 Hayne Street, the current location of Carolina Polo & Carriage Company, 45 Pinckney Street, the location at issue in this Memorandum, or one of the surface automobile parking lots as described.

The point to be made is that, in construing the intent of City Council in providing for "Stable" use as a Special Exception, the properties for which that intended use would be eligible were limited. Accordingly, the construction and use of the term "Stable" in the City Code must be framed within this practical context.

4. "Stables" are permitted in general business and urban commercial districts as a Special Exception Use. Code Sections 54-201(l); 54-206(p).

5. "Stable" is not defined in the city's Zoning Ordinance. It is noteworthy that the ordinance provides only for stables as a Special Exception "Use". Emphasis, here, is on the term "Use".

6. Although not defined in the Zoning Ordinance, "Stable" is defined in the Franchise Ordinance, which authorizes by franchise the operation of animal drawn vehicles for the purposes of tourism, as follows: "*Stable* shall mean the barn where the animals are kept." Section 29-212(b)(12). "*Stall*" is also defined: "Stall shall mean individual space within the barn where each animal is kept." Section 29-212(13).

7. The question of statutory construction therefore presented is this: Where the Special Exception Use provides in Section 54-206(p)(1) that "the stable (shall not be) located within 100 feet of any residential zone district", is the 100 feet to be measured from the outside of the building within which the stable is located, or may the 100 foot measurement be made from the area of the building within which the stable is located, if the building includes more than one use?

A review of Section 54-206(p), the zoning ordinance, suggests that "Stable" is used in that section to describe a "Use", and not a "Structure".

a. In the first place Section 54-206 itself deals with "Special Exception Uses."

b. Secondly, in 54-206(p)(2) a requirement of the special exception is that the Tourism Commission issue a Certificate of Appropriateness "for the stable". The requirement for issuing a Certificate of Appropriateness is found in the Tourism Chapter of the Code, Sections 29-219, *et. seq.* However, the Tourism Commission's Certificate of Appropriateness is not issued for a "Stable", at all. Instead, it is issued for an animal drawn vehicle. The Section requires that horse drawn carriages comply with certain proof of ownership, that they adhere to certain manufacturing specifications; that color photographs of carriages be maintained in the tourism office; that proof of liability insurance be filed; that a fee be paid; and that the carriage company obtain a current city business license. All of these things are the standards by which a "Certificate of Appropriateness" is issued by the Tourism Commission. Therefore, as used in Section 54-206(p)(2), the term "Stable" does not refer to a physical structure, at all. Rather, it refers to "Stable" as a form of use.

c. Likewise, Section 54-206(p)(4) contains the requirement that a site plan be provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right of way. This requirement has nothing to do with the existence of any building that could be called a "Stable", but rather relates to an operational or "use" function. Likewise, Sections 5 and 6 deal with "uses" as a stable, requiring proof of how refuse is to be handled and how drainage is to be collected.

d. However, subsection (7) of Section 54-206(p) uses an altogether different term. The Section provides that "Buildings" shall be designed, utilizing appropriate ventilation to prevent objectionable odors from being emitted." It is noteworthy that City Council used the term "Buildings" in subsection 7, rather than "Stables". The use of this different term supports the inference that "Stable" was not used

in the other subsections to describe a building or structure, at all. Rather "Stable" is used to describe a form of use; and use as a "Stable" may be part of a larger "Building", which can include other uses.

8. Arkay is creating a Horizontal Property Regime at 45 Pinckney Street, consisting of two "units" or "apartments". The northernmost unit, measured 11.5 feet in a southerly direction from the front of the building on Pinckney Street consists of office use. This unit, referred to as Unit "B", is restricted against use as a stable.

To the south of the Unit B offices is a 14 foot deep Limited Common Area for Unit A, and General Common Area for both units, but which is not a part of Unit A. It will be used for restrooms, customer waiting, customer loading and unloading, and tacking.

The remainder of the building, Unit "B", will be the area beginning 25.5 feet from the front of the building, to the rear wall of the building, a space 37.8 feet wide and 44.01 feet deep. Unit "B" will be used as a stable; that is to say, as a space "where the animals are kept", and for cleaning and tacking. It will include 6 stalls and 2 tack rooms.

The entryway though the existing arched doorway shall be an access easement for ingress and egress to Units "A" and "B".

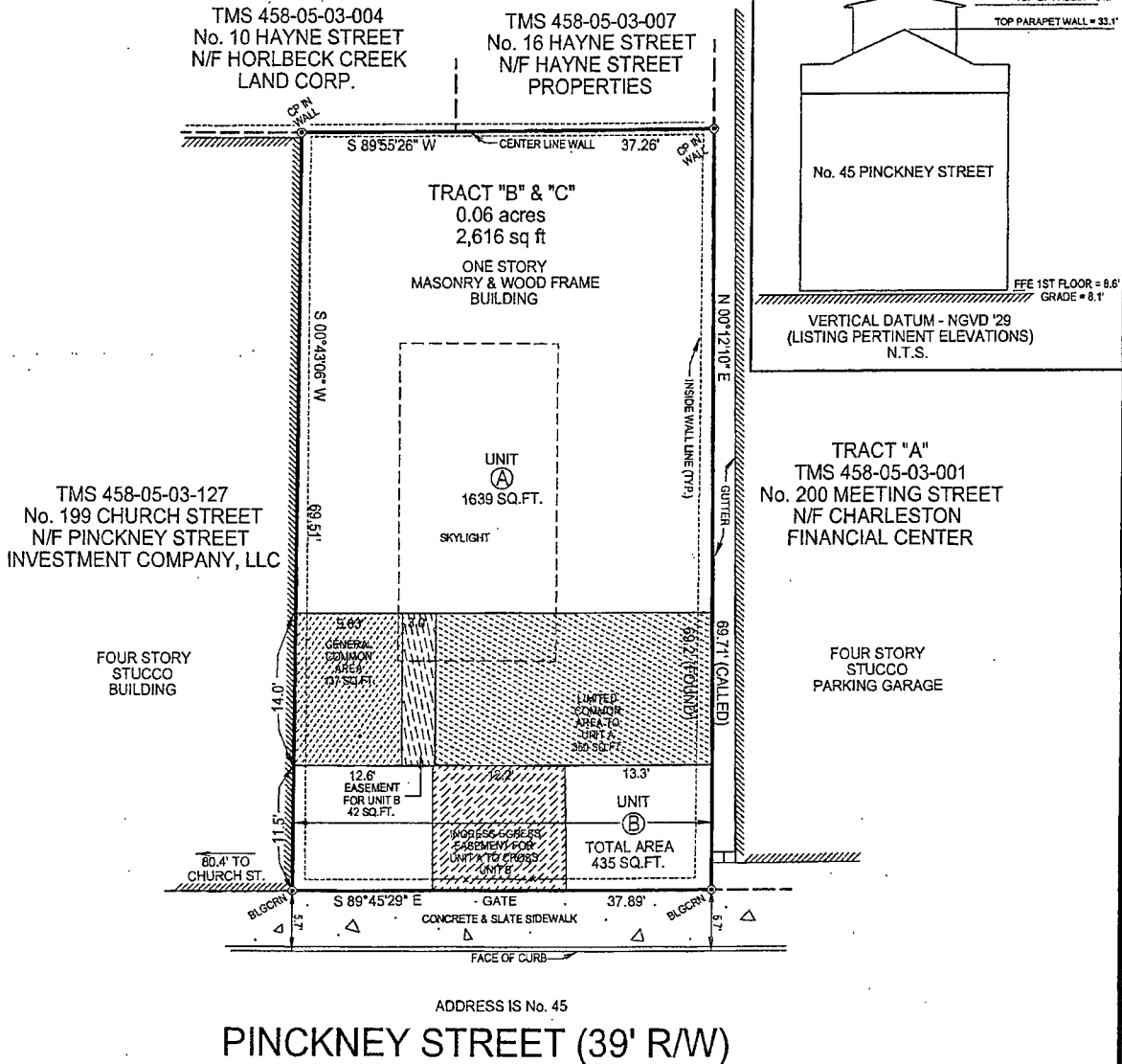
9. To the extent that "Stable" describes the space where animals are "kept" [29-212(b)(12)], the intent of Council was to provide for a separation of the space within which animals sleep, eat and defecate of 100 feet from a residential district. By creating an area 25.1 feet deep that will not be used as a stable, that will be used only for human purposes, and that will be restricted against use as a Stable, the Applicant is assuring the City and neighbors that no animal will be "kept" within 100 feet of the residential district.

EXHIBIT B-4

I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCRoACHMENTS OR PROJECTIONS UNLESS SHOWN.

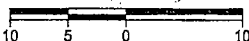
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.

PROPERTY APPEARS IN FLOOD ZONE AE, EL 13'
ON FIRM COMMUNITY-PANEL NUMBER
45019CQ516J. MAP REVISED
NOVEMBER 17, 2004.



PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.



SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: MARCH 29, 2013

REF: PLAT Z60, Pg. 088

TMS: 458-05-03-002

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
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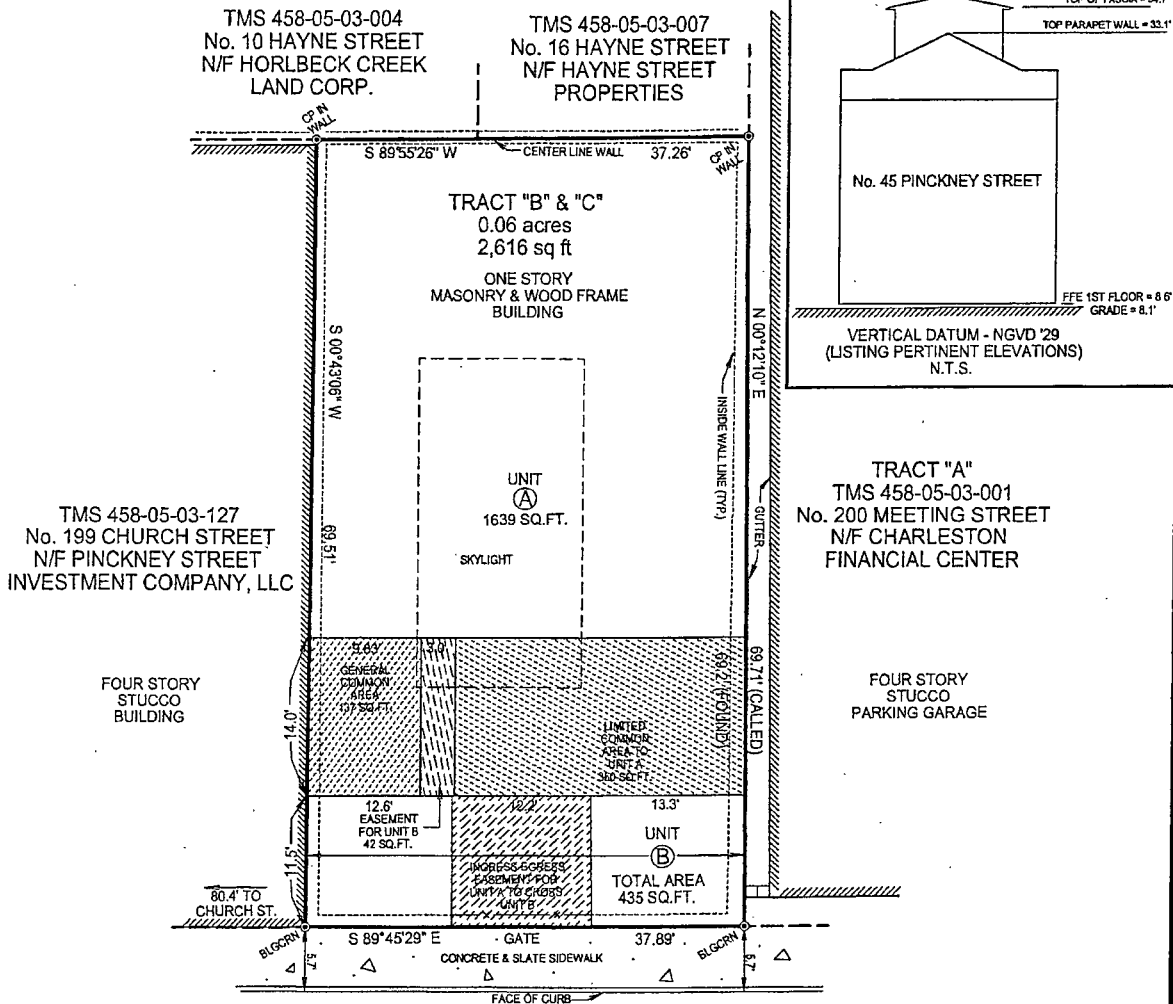


CHARLESTON COUNTY
SOUTH CAROLINA

I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.

I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.

PROPERTY APPEARS IN FLOOD ZONE AE, EL 13'
ON FIRM COMMUNITY-PANEL NUMBER
45019C0516J. MAP REVISED
NOVEMBER 17, 2004.

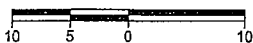


ADDRESS IS No. 45

PINCKNEY STREET (39' R/W)

PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.



SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: MARCH 29, 2013

REF: PLAT Z60, Pg. 088

TMS: 458-05-03-002

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

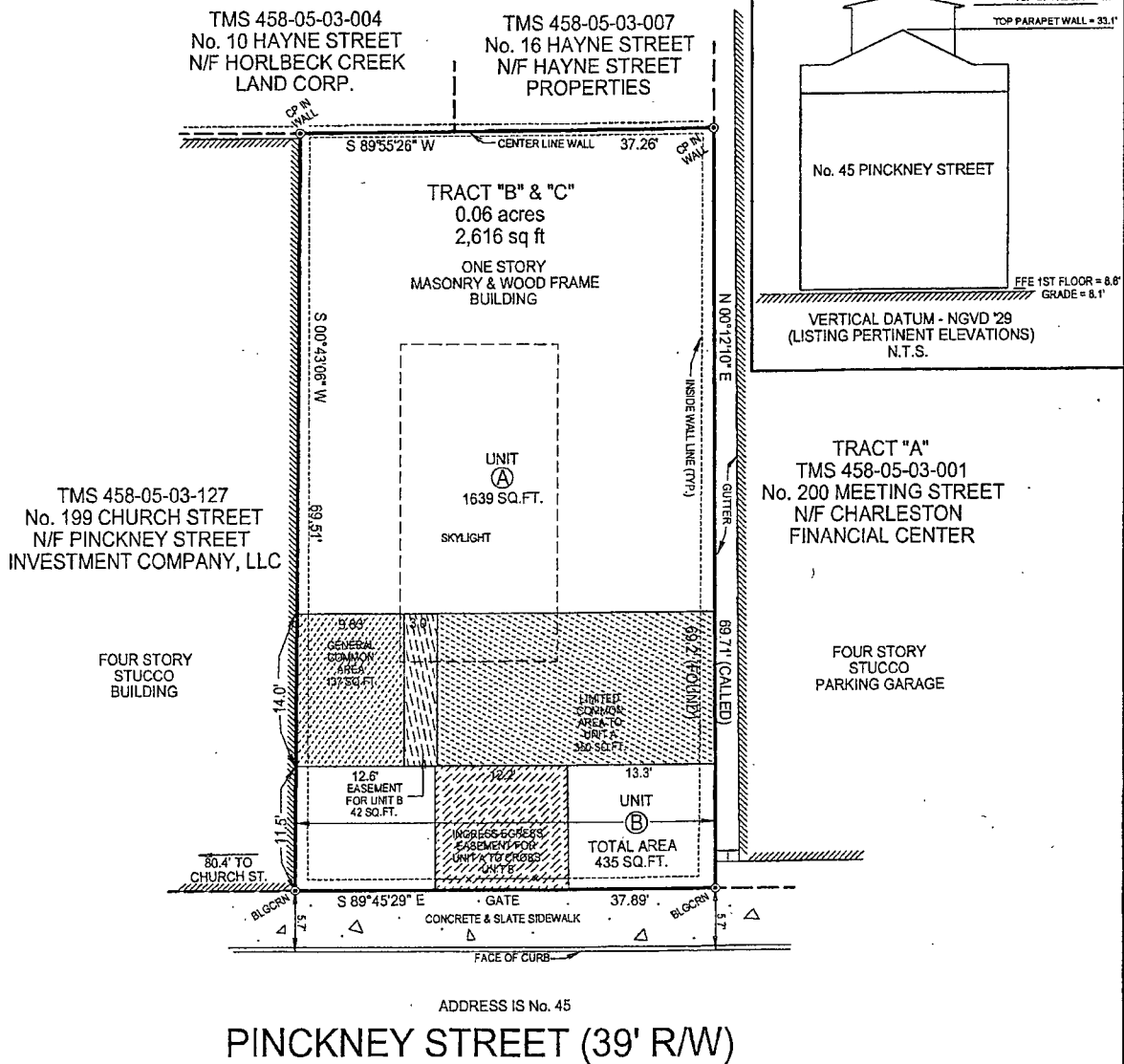


CHARLESTON COUNTY
SOUTH CAROLINA

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CHARLESTON COUNTY
SOUTH CAROLINA

EXHIBIT B-5

I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.

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Blumbing No. 5208

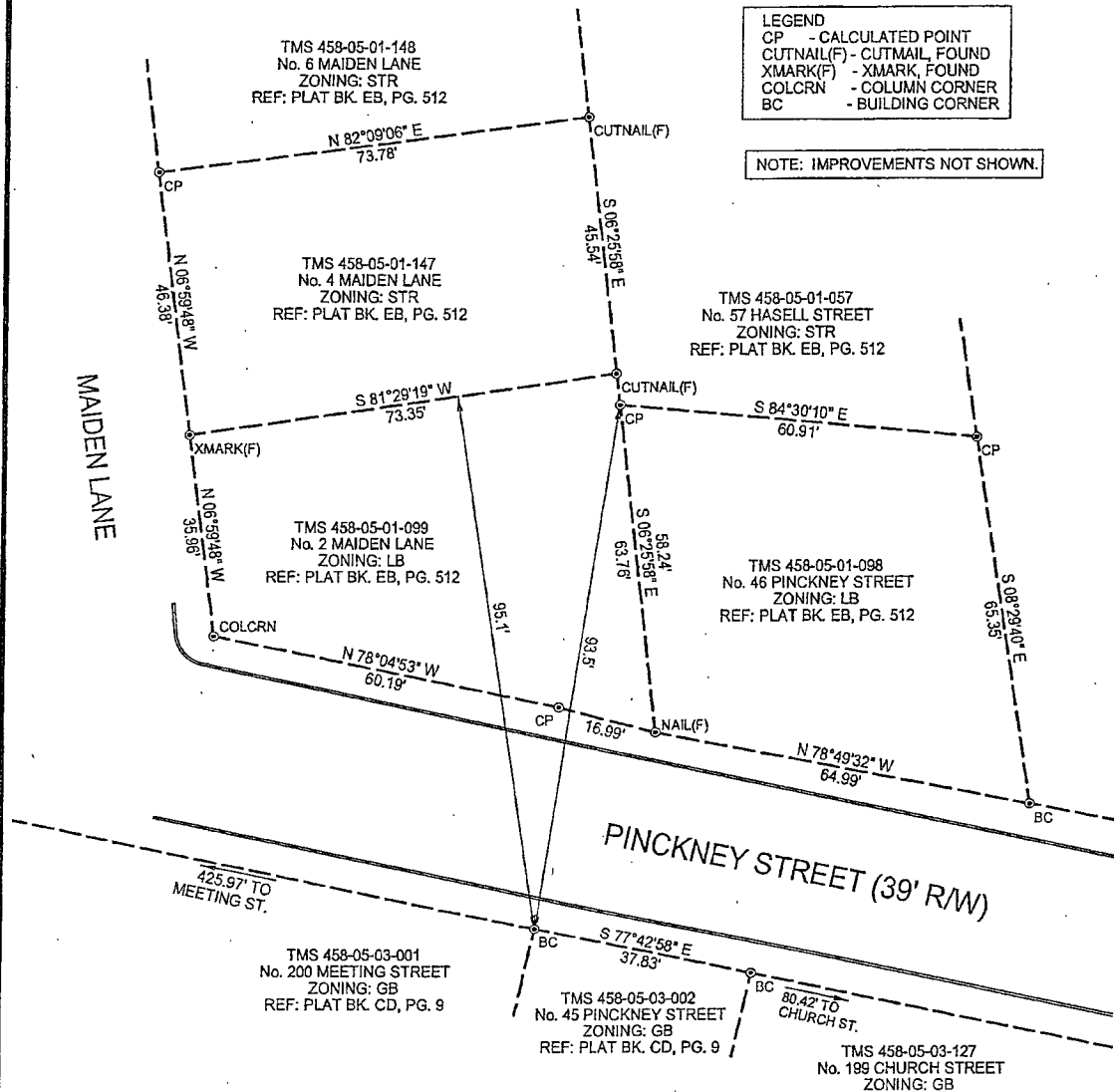
EXHIBIT

2



LEGEND
 CP - CALCULATED POINT
 CUTNAIL(F) - CUTNAIL, FOUND
 XMARK(F) - XMARK, FOUND
 COLCRN - COLUMN CORNER
 BC - BUILDING CORNER

NOTE: IMPROVEMENTS NOT SHOWN.



PLAT

OF A PORTION OF No. 45 PINCKNEY STREET,
 No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE,
 CITY OF CHARLESTON, CHARLESTON COUNTY,
 PREPARED FOR BARR, UNGER, & McINTOSH.



SCALE: 1" = 20'

DATE: MAY 29TH, 2012

REF: AS SHOWN

TMS: AS SHOWN

ALEXANDER C. PEABODY, PLS
 PEABODY & ASSOCIATES, INC.
 PROFESSIONAL LAND SURVEYING
 P.O. BOX 22646, CHARLESTON, SC 29413
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CHARLESTON COUNTY
 SOUTH CAROLINA

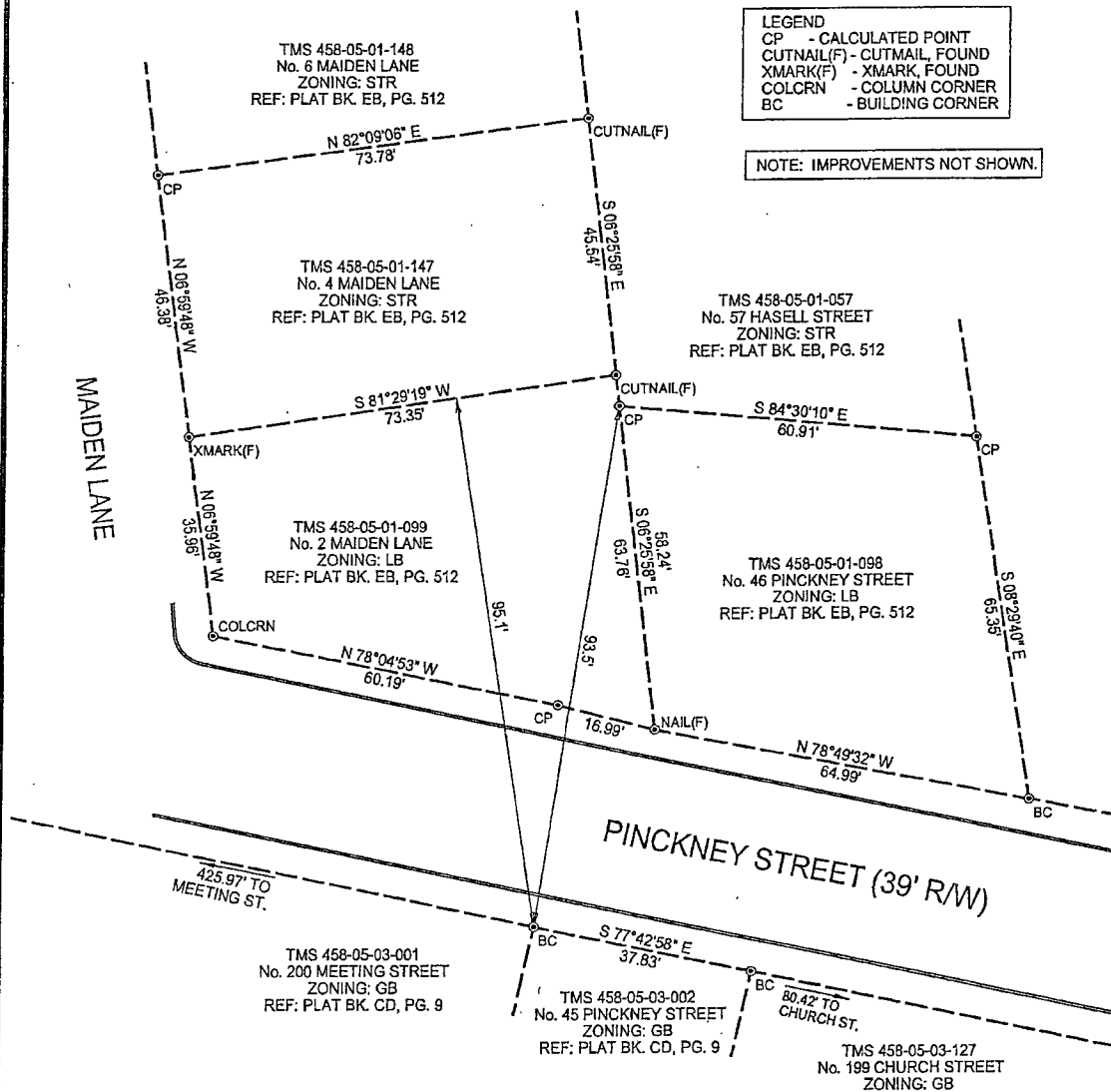
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 XMARK(F) - XMARK, FOUND
 COLCRN - COLUMN CORNER
 BC - BUILDING CORNER

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 CITY OF CHARLESTON, CHARLESTON COUNTY,
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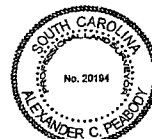
SCALE: 1" = 20'

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CHARLESTON COUNTY
 SOUTH CAROLINA

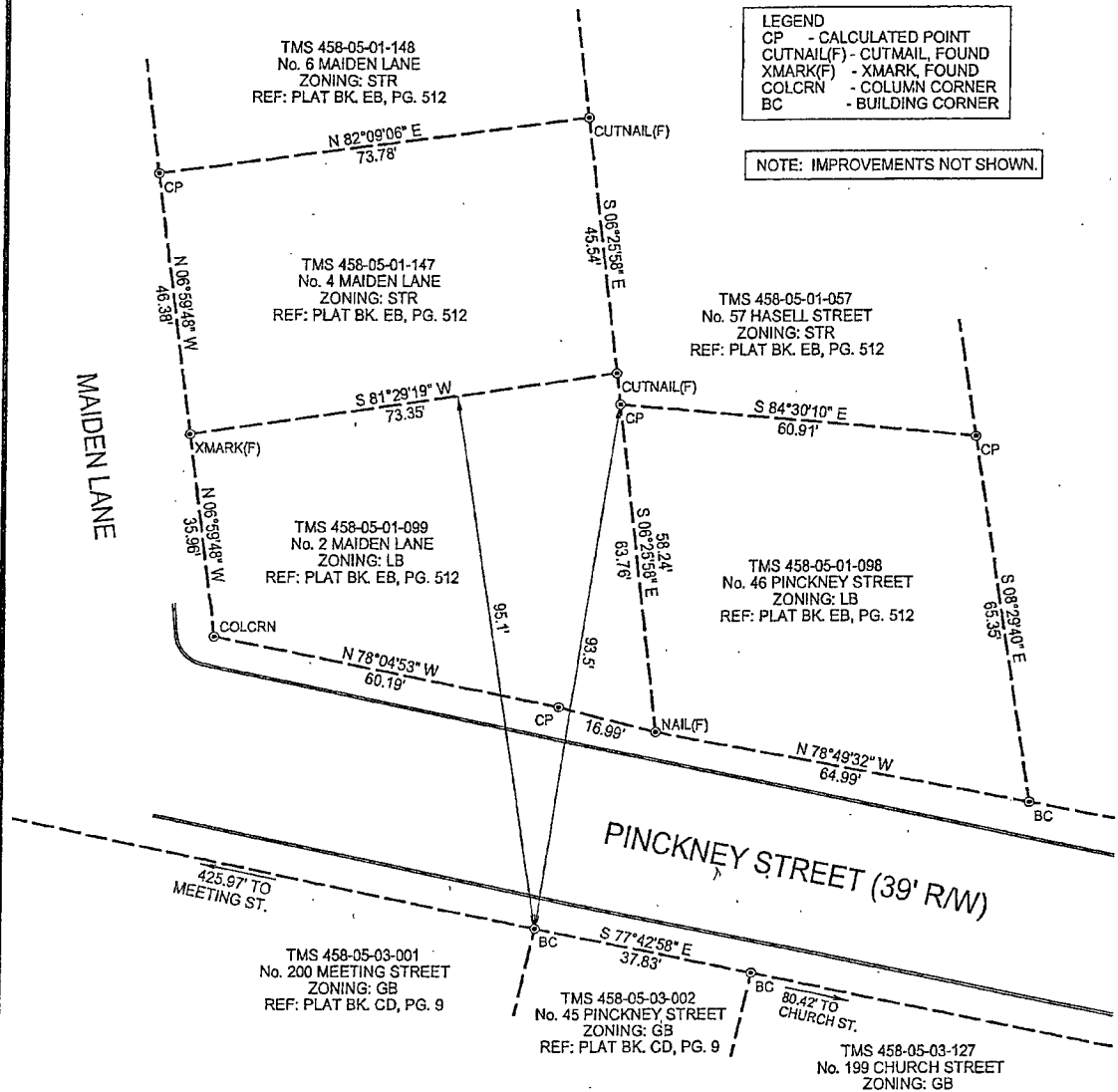
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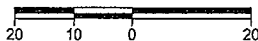
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CHARLESTON COUNTY
 SOUTH CAROLINA

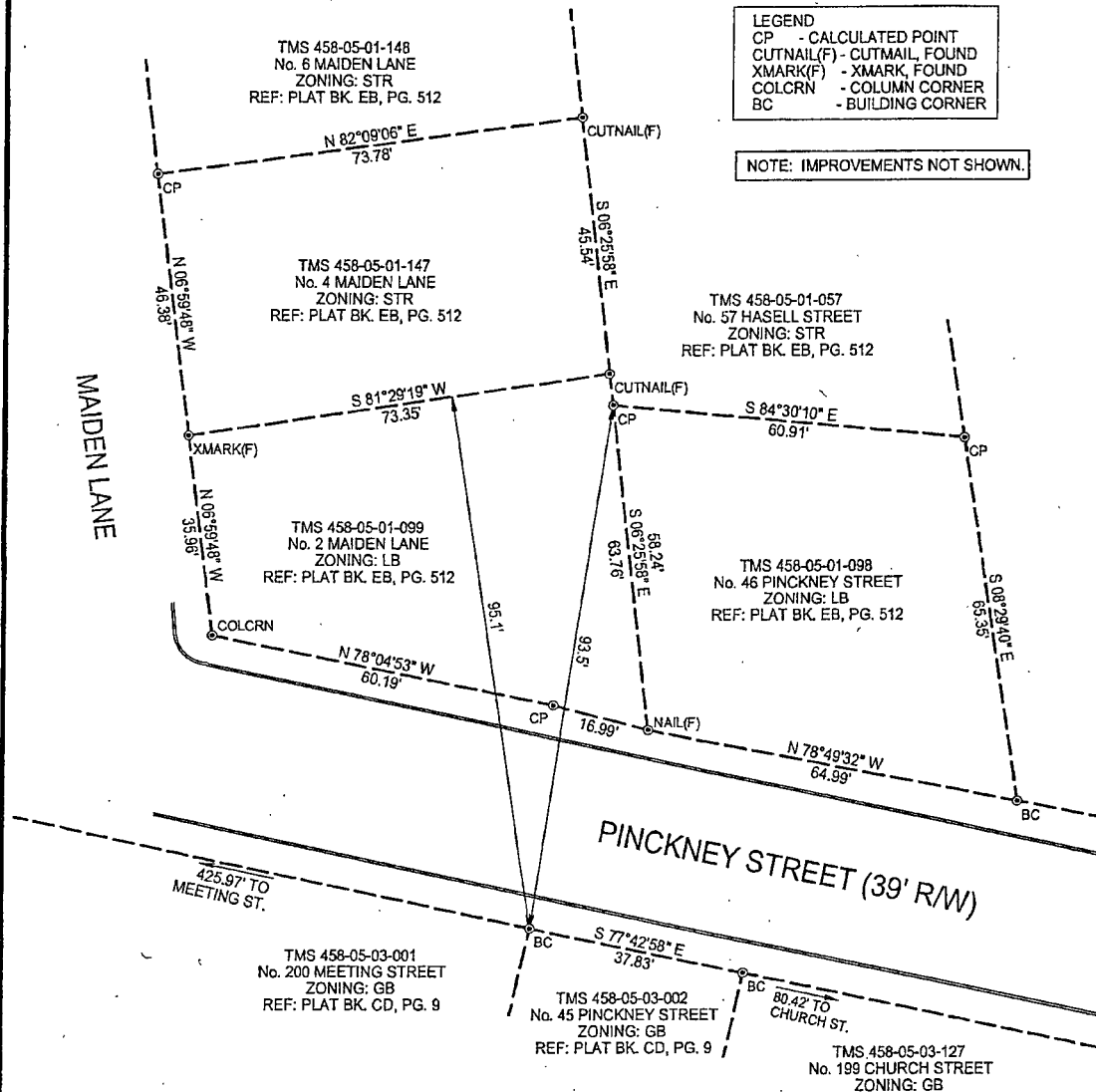
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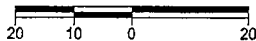
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 CITY OF CHARLESTON, CHARLESTON COUNTY,
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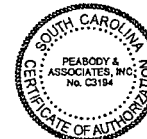
SCALE: 1" = 20'

DATE: MAY 29TH, 2012

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TMS: AS SHOWN

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 PEABODY & ASSOCIATES, INC.
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CHARLESTON COUNTY
 SOUTH CAROLINA

EXHIBIT B-6

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

Personally appears before me Robert R. Knoth, who being duly sworn states as follows:

1. Affiant is 68 years of age and is married to Elender "Sally" Campbell Knoth.

Affiant and Sally have three children, Bobby, Jr., Richard, and a daughter, Rhett.

2. Affiant and his family own and operate Carolina Polo & Carriage Company, a horse carriage tour business presently located at 16 Hayne Street in the City of Charleston. Affiant seeks to relocate Carolina Polo to 45 Pinckney Street. The operation of Carolina Polo provides to affiant and his wife their only source of income.

3. Affiant's son Richard also works with him in the company. Richard is married and has three children. Richard was recently awarded the contract by the City of Charleston to provide equine sanitation cleanup services on all horse carriage routes in the city, effective January, 2013. Richard does business in that capacity as Green Horse Equine Sanitation, LLC. The only source of income for Richard and his family is Carolina Polo and Green Horse Equine Sanitation.

4. In addition to affiant and Richard, the company employs approximately 16-20 employees, depending on the time of year, who work as tour guides, stable hands, and clerical personnel.

5. Affiant has been in the carriage tour business for 23 years. He formed Carolina Carriage Company in 1990, which began its operation at 45 Pinckney Street, the location at issue in this matter.

6. At the time of forming Carolina Carriage Company, affiant had other business interests. However, in 1995/1996 he was forced into bankruptcy and lost all of his holdings. Following bankruptcy, he reformed Carolina Carriage Company into Carolina Polo & Carriage Company, and ultimately resumed operations at 45 Pinckney Street.

7. Carolina Polo operated 45 Pinckney Street until 1996, when a competitor, Confederate Carriage Company, obtained the lease for that location, forcing Carolina Polo to move. Notably Affiant's last use of 45 Pinckney Street was 17 years ago.

8. Carolina Polo relocated to 16 Hayne Street at that time, in 1996.

9. 45 Pinckney continued to be used as a carriage stable by Confederate Carriage, and then by Old Towne Carriage Company, until 2009.

10. Affiant's current location at 16 Hayne Street, which is leased, has recently been sold. The new owner requires Carolina Polo to vacate 16 Hayne Street by May 31, 2013.

11. When the opportunity arose for affiant to purchase 45 Pinckney Street in the summer of 2012, he applied to this Board for a Special Exception. However, the application was withdrawn, primarily because of the position of the Malony family who reside nearby.

12. The City Tourism Ordinance requires in Section 29-212(i)(2) that tour carriage stables be located within walking distance of the "Gate", from which Tour Medallions are issued by the City. The Gate is located at the northeast corner of Church and North Market Streets.

13. After withdrawing his application last fall, affiant and others assisting him sought alternative properties to use as a stable within the "walking distance" parameters required by the tourism ordinance. However, there is no other site available within a GB or UC district that is within walking distance of the Gate.

14. Affiant will be forced to lose his business if his stable cannot be relocated to 45 Pinckney Street.

15. There are currently five horse carriage tour companies in operation in the city: Carolina Polo, now at 16 Hayne seeking relocation to 45 Pinckney; Palmetto at 8 Guignard Street; Old South at 14 Anson Street; Old Towne at 20 Anson Street; and Classic at 10 Guignard Street.

16. In 2007, City Council substantially amended the horse carriage tour ordinance to add Section 29-212, which provides for the healthcare and management of horses.

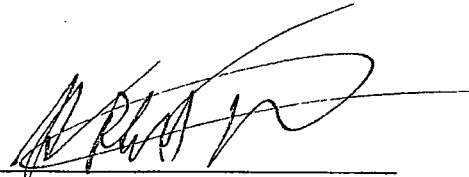
17. In 2007, the existing carriage companies were all non-conforming uses, so that no company has yet been required to meet the current code standards. Carolina Polo will be the first company to provide a "state-of-the-art" stable at 45 Pinckney. Perhaps most significantly, the stalls at 45 Pinckney will be constructed to a 12x12 standard, to which no other company currently conforms.

18. Architect Sandy Logan has designed a ventilation system for 45 Pinkney Street that is also state-of-the-art. Odors within the building, and air discharged from the building, will be treated at two stages. First, at the collection stage, affluent is treated with "Odalock", a product currently used by the company, and also used by Richard Knoth with Green Horse Equine Sanitation. The producer of Odalock, Darren Akherst will present an explanation of its product to the Board. Secondly, before air is evacuated from the building, it would pass through a charcoal filtration system to ensure that the air entering the atmosphere will be odor controlled.

19. Architect Sandy Logan has also depicted a site plan showing the location of stalls within the stable, showing the ventilation system, and showing the drainage system. As shown on Mr. Logan's drawings, that the corridor area between the stalls of the stable, as well as the

"public area", where customers will be waiting, will be used for the purposes of cleaning, and tacking of horses and carriages, and for on-loading and off-loading customers, thus avoiding that activity in any public right of way.

20. I pledge to be a good neighbor to the nearby residents of Ansonborough and to the staff, guests and general operations of the Andrew Pinckney Inn, my neighbor to the east; and to Bank of America, my neighbor to the west.



Robert R. Knoth

Subscribed and sworn to before me
this 16th day of April, 2013



NOTARY PUBLIC for South Carolina

My Commission Expires: 02/11/2021

EXHIBIT B-7

AFFIDAVIT

7. Odalock provides no such reaction with animal effluent. Affiant and Mr. Akhurst have presented Odalock as a product to several organizations, including the Tourism Commission and The French Quarter Neighborhood Association for their information. The product is environmentally friendly and biodegradable.

8. Affiant also uses the Odalock Product in the operation of Green Horse Equine Sanitation, to use as spray on the streets of Charleston for horse urine and feces cleanup and odor control.

9. In the fall of 2012, Affiant undertook an investigation of potentially available properties for use as a stable within "walking distance" of the horse carriage gate at the northeast corner of North Market and Church Streets. There are no available properties, except for 45 Pinckney Street, which is the property currently pending a Special Exception status by the City of Charleston Board of Zoning Appeals.


Richard Knoth

Subscribed and sworn to before me
this 16th day of April, 2013

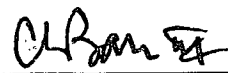

NOTARY PUBLIC for South Carolina
My Commission Expires: 02/11/2021

EXHIBIT B-8

**LANIER PARKING SOLUTIONS**

200 Meeting Street "Bank of America Place Garage" Charleston, SC 29401

June 21, 2012

Dear Sir or Madam:

I am writing this letter in regards to the proposal for Carolina Polo and Carriage Company relocating to Pinckney Street. I have been the Facility Manager for LPS holdings at 200 Meeting Street since February of 2011 and at no time have we had any traffic problem coming from Carolina Polo or Carriage. There have been multiple times when I have been in at odd hours between midnight and six am and have never once heard any noise coming from the barn in regards to the horses also we have never received any complaints from tenants or visitors in regards to animal noise or smell. If you have any questions that you would like to ask me please feel free to contact me.

Sincerely,

Christopher Porter
Lanier Parking Solutions
cporter@lanierparking.com
843-805-7774

Marcella Giannasio
19 Anson Street
Charleston, SC 29401

July, 10 2012

To Whom It May Concern:

I am the owner of the house at 19 Anson Street and would like to formally express that I have no objection to having a horse stable reside at 45 Pinckney Street.

Thank you,



Marcella Giannasio

July 12, 2012

Suzanna Bryant

13 Anson Street

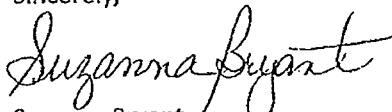
Charleston, South Carolina

29401

To Whom It May Concern,

I am the resident at 13 Anson Street and I do not have any objection with 45 Pinckney Street being a horse barn.

Sincerely,

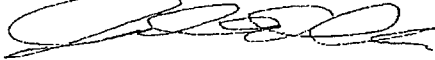

Suzanna Bryant

330-284-2723

To Whom It May Concern:

As the owners of 15 Anson Street we are in full support of Carolina Polo Carriage Company relocating from 16 Hayne Street to 45 Pinckney Street. We feel that they will not only be a welcomed addition to our neighborhood but also an asset. If you have any further questions please feel free to contact me.

Sincerely,
Joshua & Heather Keeler



15 Anson St.
Josh@twoboroughslarder.com
Heather@twoboroughslarder.com
215.514.9752

July 10, 2012

To Whom It May Concern:

As residents of 28 Anson Street, my husband and I support the Carolina Polo Company moving to 45 Pinckney Street. As property owners, we support any opportunity for local businesses to grow and their improvement to surrounding properties is welcomed.

Sincerely,

Angela and Lucas Drake

28 Anson Street
Charleston, SC 29401

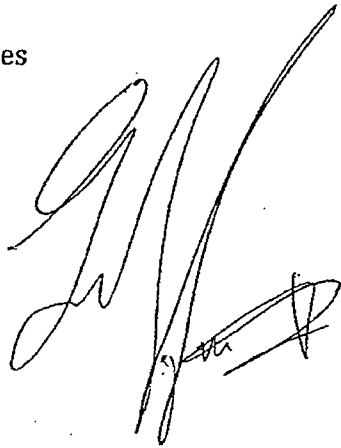
To whom it may concern,

I hope your week is going well. I live at 43 ½ Hassel Street and I wanted to write a letter to state that I don't have any issues with The Carolina Polo and Carriage Company (currently located at 16 Hayne Street) moving to the location on Pinckney Street. I think this is a wonderful idea and it has my full support.

Thank you for your time.

Sincerely

George Hayes

A handwritten signature in black ink, appearing to be 'G. Hayes', written in a cursive style.

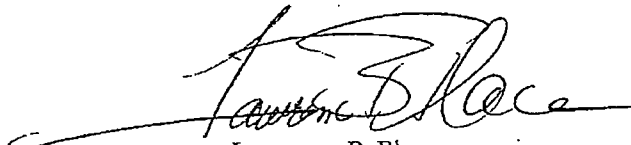
Lawrence B. Place, Pharm.D., M.D.
90 Lake Purnoch Drive
Pinehurst, NC 28374

June 23, 2012

To Whom it May Concern:

As a part time resident, and owner of the residence at 17 Anson Street, I would like to endorse the purchase and conversion to a stable of the property at 45 Pinckney Street by Carolina Polo and Carriage..

Please feel free to contact me at the above address should questions arise.



Lawrence B. Place

July 10, 2012

To Whom it May Concern:

We are not opposed to having
45 Pinckney Street used for sheltering
Horses.

Our home is 3 Motley Lane.

Phil & Jean Doherty

TO WHOM IT MAY CONCERN:

I AM A RESIDENT AT 21 ANSON ST,
CHARLESTON, SC. I AM IN FULL SUPPORT
FOR CAROLINA POLO AND CARRIAGE
CO, USING 45 PICKNEY ST. AS A BARN
TO STABLE THEIR CARRIAGE HORSES.
THANK YOU FOR YOUR TIME

MATT RUTKOWSKI



EXHIBIT B-9

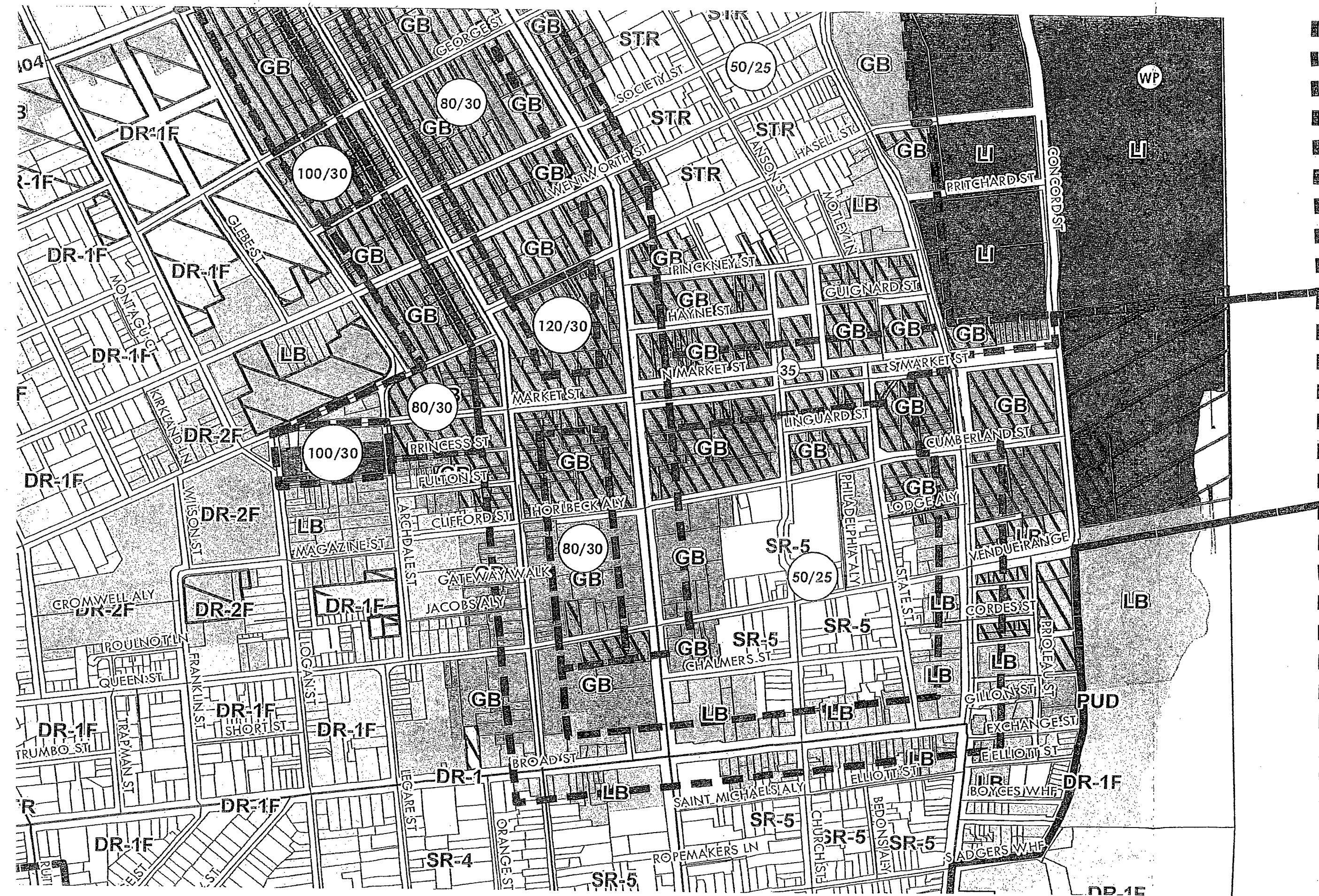
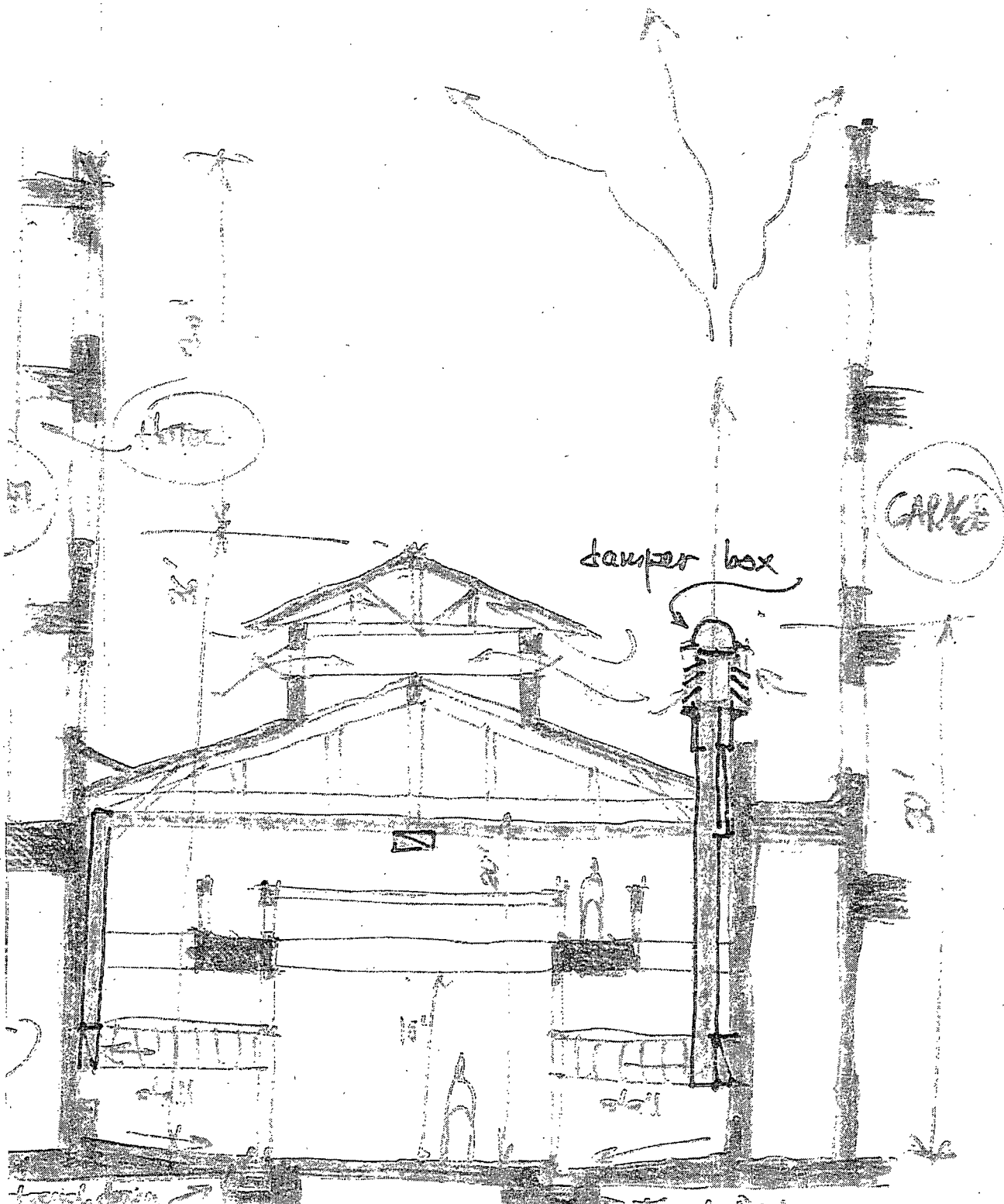
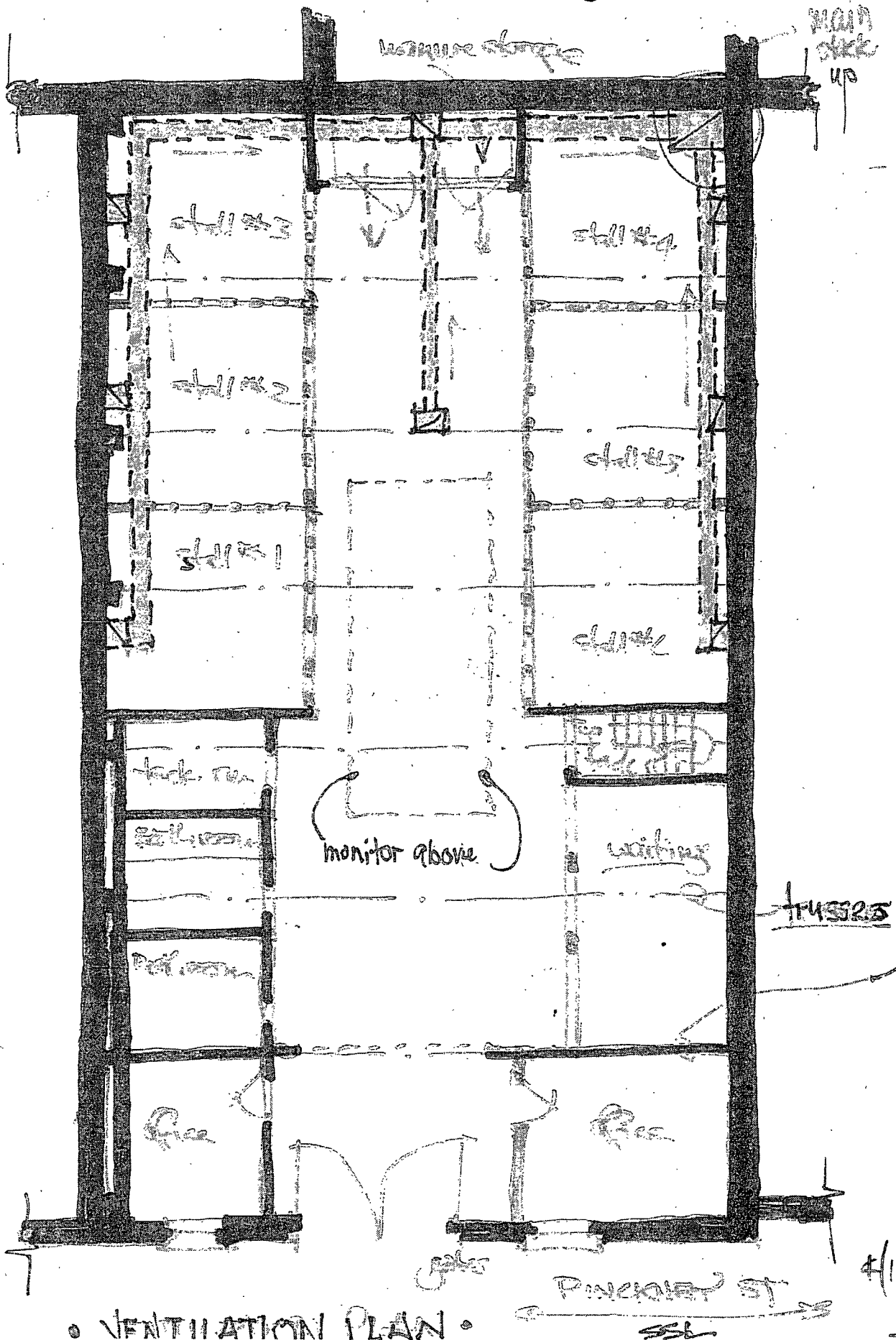


EXHIBIT B-10



CONCEPTUAL SECTION
SHOWING
VENTILATION SYSTEM

GSL 4/14/13



• VENTILATION PLAN •

BARR, UNGER AND MCINTOSH, L.L.C.

ATTORNEYS AT LAW

11 BROAD STREET

P. O. BOX 1037

CHARLESTON, SOUTH CAROLINA 29402-1037

CAPERS G. BARR, III
H. WAYNE UNGER, JR.
WILLIAM S. BARR
H. THOMAS MCINTOSH, JR.
ADAM E. BARR
CAPERS G. BARR, IV
W. SIAU BARR, JR.

TELEPHONE 843-577-5083

FAX 843-723-9039

www.barrungermcintosh.com

EDISTO ISLAND OFFICE

806 OYSTER PARK

EDISTO ISLAND, SC 29438

TELEPHONE 843-866-2889

FAX 843-866-0110

MEMORANDUM

To: Lee Batchelder and Frances Cantwell

From: CGB III and AEB

Re: 45 Pinckney Street Use as a "Stable"; Condominium Unit

Date: September 4, 2012



45 Pinckney Street, LLC seeks to resume the use of 45 Pinckney Street as a "Stable". It is creating a horizontal property regime, assigning two separate and distinct uses for the property that will clearly separate the "Stable" use from other uses. The area of the building extending 25 feet from the Pinckney Street facade will not permit stable use, and will be designated Unit "A". Its use will be for offices, restrooms, and a meeting area.

Unit "B" will be located immediately to the south of Unit "A", extending for a distance of 44.71 feet to the back wall of the building. Unit "B" will be used as a Stable.

By the configuration as described, the Stable use will be 118.5 feet distant from the nearest residential zone district, and thereby will comply with the setback requirement of the Special Exception Use as a Stable, as set forth in City Code Section 54-206(p).

The central question addressed here is whether the statutory 100 foot setback from a residential district may be measured from the Stable "use"; or whether it must be measured from the outside of the building within which the "use" is contained. The configuration of 45 Pinckney Street as proposed in this memorandum, and the measurement of the 100 foot setback from the use within the building, will comport with the setback requirements of the City Code, according to the statutory syllogism discussed below.

1. First, the intent of Council in enacting the Special Use Exception for stables should be viewed from its broad context: The Special Exception Use as a "Stable" was intended to apply only to stables in the tourism carriage industry. This is evident because of the language of Subsections 54-206, p, subparagraphs 2 and 4, requiring a "Certificate of Appropriateness" from the City Tourism Commission, and also requiring

that the cleaning/loading/tacking area shall not "impede traffic flow in the public right of way." These circumstances could only apply to activities unique to the tourism carriage industry and would not apply, for example, to a horse stable on John's Island.

2. Secondly, the zone of the City in which a "Stable" may be located is limited under the Tourism provisions of the Code. Chapter 29, Article V, Sections 29-201, *et. seq.*, provides for city franchises for carriage companies, and more specifically provides that "Stables shall be located within walking distance (from) the Medallion Gate located at the corner of Church and North Market." Although the phrase "walking distance" is not further defined in the Code, another section strongly suggests that "walking distance" means the area called the "Market Zone", bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and Meeting Street to the west.

This is because Code section 29-206(b) provides that carriages shall load and discharge passengers at the "Gate", or they may load and discharge on private property within the "Market Zone". The "Market Zone" is there defined as the area bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and by Meeting Street to the west. It appears, therefore that the intent of Council in providing for "walking distance" to the Gate, was to mean that the Stable be within the "Market Zone".

If the central point of carriage tours was intended to be the Gate, and if tourists are nevertheless permitted to mount and dismount away from the Gate, provided that the mount/dismount area must be in the "Market Zone", it stands to reason that "Market Zone" and "walking distance" were intended to be synonymous. This is also logical from a City monitoring standpoint, so that City enforcement personnel are enabled to monitor carriage operations within a "walking distance" range of the Gate.

3. Thirdly, therefore, if it is correct that "walking distance" is intended to be within the "Market Zone", a review of the properties within the Market Zone suggests very few properties were suitable for Stable use, either presently or at the time of enactment of the provisions of the Tourism Ordinance.

First of all, the central, east-west axis of the Market Zone is the City Market itself, as well as the adjacent restaurants and shops on the south side of North Market Street and on the north side of South Market Street. It is obvious that none of the properties on the east-west axis of the Market Zone could be used as a "Stable", as a practical matter.

Neither could there be any reasonable expectation that a property on the western boundary, fronting on Meeting Street could be used as a stable; or, likewise, that properties on the eastern boundary fronting on East Bay Street, could be used, either.

On the southern boundary of the Market Zone there may be one potential property, although there is no suggestion that it would be available for use, much less as a

Stable. That is the property currently used as a convenience store at the northeast corner of State and Cumberland Streets. Otherwise, the properties on the southern boundary of the Market Zone which front on Cumberland Street are either within 100 feet of a residential district, or are properties used as city parking garages or as established office buildings.

On the northern boundary of the Market Zone, viewed from west to east, the Bank of America building consumes most of the first block extending eastward from Meeting Street; and immediately to the east is the property at issue, 45 Pinckney Street. To the east of 45 Pinckney is the Andrew Pinckney Inn. Proceeding easterly across Church Street is the First Baptist Church School Gymnasium, and across Anson Street to the east is the stable of Palmetto Carriage Company, then a small Inn, a veterinary clinic, a surface parking lot, an office building and "Big John's" Café.

Between North Market and Pinckney Streets there are several open automobile parking lots that could theoretically be converted to stable use. Several are on the north side of Hayne Street, and another is east of Anson Street, between North Market and Pinckney Streets. However none of the surface lot properties are known to be available, and it is unlikely that automobile parking would become secondary to Stable use, as a practical matter.

Therefore, the properties theoretically or practically available for use as a Stable in the Market Zone are at 16 Hayne Street, the current location of Carolina Polo & Carriage Company, 45 Pinckney Street, the location at issue in this Memorandum, or one of the surface automobile parking lots as described.

The point to be made is that, in construing the intent of City Council in providing for "Stable" use as a Special Exception, the properties for which that intended use would be eligible were limited. Accordingly, the construction and use of the term "Stable" in the City Code must be framed within this practical context.

4. "Stables" are permitted in general business and urban commercial districts as a Special Exception Use. Code Sections 54-201(l); 54-206(p).

5. "Stable" is not defined in the city's Zoning Ordinance. It is noteworthy that the ordinance provides only for stables as a Special Exception "Use". Emphasis, here, is on the term "Use".

6. Although not defined in the Zoning Ordinance, "Stable" is defined in the Franchise Ordinance, which authorizes by franchise the operation of animal drawn vehicles for the purposes of tourism, as follows: "*Stable* shall mean the barn where the animals are kept." Section 29-212(b)(12). "*Stall*" is also defined: "Stall shall mean individual space within the barn where each animal is kept." Section 29-212(13).

7. The question of statutory construction therefore presented is this: Where the Special Exception Use provides in Section 54-206(p)(1) that "the stable (shall not be)

located within 100 feet of any residential zone district", is the 100 feet to be measured from the outside of the building within which the stable is located, or may the 100 foot measurement be made from the area of the building within which the stable is located, if the building includes more than one use?

A review of Section 54-206(p), the zoning ordinance, suggests that "Stable" is used in that section to describe a "Use", and not a "Structure".

a. In the first place Section 54-206 itself deals with "Special Exception Uses."

b. Secondly, in 54-206(p)(2) a requirement of the special exception is that the Tourism Commission issue a Certificate of Appropriateness "for the stable". The requirement for issuing a Certificate of Appropriateness is found in the Tourism Chapter of the Code, Sections 29-219, *et. seq.* However, the Tourism Commission's Certificate of Appropriateness is not issued for a "Stable", at all. Instead, it is issued for an animal drawn vehicle. The Section requires that horse drawn carriages comply with certain proof of ownership, that they adhere to certain manufacturing specifications; that color photographs of carriages be maintained in the tourism office; that proof of liability insurance be filed; that a fee be paid; and that the carriage company obtain a current city business license. All of these things are the standards by which a "Certificate of Appropriateness" is issued by the Tourism Commission. Therefore, as used in Section 54-206(p)(2), the term "Stable" does not refer to a physical structure, at all. Rather, it refers to "Stable" as a form of use.

c. Likewise, Section 54-206(p)(4) contains the requirement that a site plan be provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right of way. This requirement has nothing to do with the existence of any building that could be called a "Stable", but rather relates to an operational or "use" function. Likewise, Sections 5 and 6 deal with "uses" as a stable, requiring proof of how refuse is to be handled and how drainage is to be collected.

d. However, subsection (7) of Section 54-206(p) uses an altogether different term. The Section provides that "Buildings" shall be designed, utilizing appropriate ventilation to prevent objectionable odors from being emitted." It is noteworthy that City Council used the term "Buildings" in subsection 7, rather than "Stables". The use of this different term supports the inference that "Stable" was not used in the other subsections to describe a building or structure, at all. Rather "Stable" is used to describe a form of use; and use as a "Stable" may be part of a larger "Building", which can include other uses.

8. Applicant seeks to create a Horizontal Property Regime at 45 Pinckney Street, consisting of two "units" or "apartments". The northernmost unit, measured 25 feet in a southerly direction from the front of the building on Pinckney Street shall consist of office use, an assembly area, and restrooms. This unit, referred to as Unit "A", shall be restricted against use as a stable.

The remainder of the building, Unit "B", will be the area beginning 25 feet from the front of the building, to the rear wall of the building, a space 37.8 feet wide and 44.7 feet deep, Unit "B" will be used as a stable; that is to say, as a space "where the animals are kept."

The entryway through the existing arched doorway shall be a "common area" for ingress and egress to Units "A" and "B".

9. To the extent that "Stable" describes the space where animals are "kept" [29-212(b)(12)], the intent of Council was to provide for a separation of the space within which animals sleep, eat and defecate of 100 feet from a residential district. By creating a 25 foot deep Unit "A" on the front of 45 Pinckney Street, that will be used only for human purposes, and that will be restricted against use as a Stable, the Applicant is assuring the City and neighbors that no animal will be "kept" within 100 feet of the residential district.



Application for Variance, Special Exception, Reconsideration, or Extension Page 1 of 2
to the Board of Zoning Appeals – Zoning (BZA-Z)

City of Charleston



Instructions – Submit this application, along with the required information and fee, to the Zoning Division office at 75 Calhoun Street. **Applications are due by 12 Noon on the deadline date and must be complete to be accepted and placed on an agenda.** A sign will be posted on the property, and a public hearing will be conducted by the Board of Zoning Appeals – Zoning. **Permits authorized by the Board cannot be issued during a five (5) business day appeal period following the decision of the Board, except for use variances, the appeal period shall be fifteen (15) calendar days.** An appeal to the Board during this appeal period stays all further action on the application.

THE APPLICANT HEREBY REQUESTS:

- ☒ A Variance and/or Special Exception as indicated on page 2 of this application.
☐ Reconsideration of a decision of the Board or action of a zoning official (attach Appeal form).
☐ Extension of an unexpired Variance and/or Special Exception approval.

MEETING DATE REQUESTED: 4/16/2013

Property Address 45 Pinckney St. TMS # 458-05-03-002

Property Owner ARKAY, LLC Daytime Phone 577-5083

Applicant Robert R. Knoth, by attorney Capers G. Barr, III Daytime Phone 577-5083

Applicant's Mailing Address 16 Hayne Street, Charleston 29401

E-mail Address carolnapolo@aol.com

Relationship of applicant to owner (same, representative, prospective buyer, other) same

Zoning of property

Information required with application: (check information submitted)

- ☒ Scaled plans or plats, including elevations, showing the variance(s) or special exception(s) being requested (3 sets)
☐ For new construction or additions within a flood zone, show HVAC units and platform on scaled plans
☒ Scaled floor plans with rooms labeled and the total floor area for each dwelling unit noted are required for all density variances and building additions, unless exempted by the Zoning staff (3 sets)
☒ Plans or documents necessary to show compliance with special exception requirements (3 sets)
☒ Check, credit card or cash (make checks payable to the City of Charleston)
☒ Pursuant to Section 6-29-1145 of the South Carolina Code of Laws, is this Property, which is the subject of this Application, restricted by any recorded covenant, restriction, easement or other document that is contrary to, conflicts with or prohibits the proposed land use encompassed in this permit application? YES NO ☒

Optional but very helpful information:

- ☐ Photographs
☐ Letters or petitions from neighbors or organizations directly affected by your request

I certify that the information on this application and any attachments is correct, that the proposed improvement(s) comply with private neighborhood covenants, if there are any, and that I am the owner of the subject property or the authorized representative of the owner. I authorize the subject property to be posted with a notice of the Board hearing and inspected.

Applicant Capers G. Barr, III Date 3-18-2013

For office use only

Date application received

Staffperson

Fee

\$ 150.00

Time application received

Receipt #

12 Noon
177954

For **Variance** requests, applicants should list the specific variance(s) being requested and, if possible, explain how the variance test that follows is met (add as an attachment if necessary):

Variance Test: The Board of Zoning Appeals-Zoning is authorized to approve a variance from the requirements of the Zoning Ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. The authorization of the 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.

In granting a variance, the Board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare. (SC Code of Laws Section 6-29-800)

For **Special Exception** requests, applicants should list the specific approval(s) being requested and include documentation to demonstrate compliance with the relevant special exception requirements of the Zoning Ordinance, such as Sec. 54-110, Sec. 54-206, or sections in Article 5 (add as an attachment if necessary):

(See Attached)

All approvals of the Board shall remain valid for two (2) years from the approval date, unless extended in accordance with the provisions of Article 9, Part 5 of the zoning ordinance. Applicants may not apply for the same request that has been denied by the Board until a period of six (6) months has lapsed.

Department of Planning, Preservation & Sustainability 75 Calhoun Street, Third Floor Charleston, South Carolina 29401
(843) 724-3781 FAX (843) 724-3772 www.charleston-sc.gov

SPECIAL EXCEPTION APPLICATION

45 PINCKNEY STREET; USE AS A STABLE (City Code Section 54-206p.)

By this application, ARKAY, LLC, owner of 45 Pinckney Street (the "Property") seeks to use a portion of the Property as a stable for the operation of a horse drawn carriage touring business known as Carolina Polo and Carriage Company, Inc.

The Property has been subjected to a Horizontal Property Regime, more commonly known as a condominium, whereby the front or northern portion of the building will house two offices: one the business office of ~~GREEN HORSE EQUINE SANITATION~~ which currently holds the contract with the City of Charleston for the street sanitation of animal-drawn carriages; the other office will contain the business office of Carolina Polo and Carriage Company. The offices will comprise, together, one of the units or "apartments" of the Horizontal Property Regime and are restricted against any use as a stable. The space is shown as "UNIT 'B'" on the attached Plot Plan by Alexander Peabody.

The second apartment of the Horizontal Property Regime is located within the building, twenty five (25') feet to the south of the building façade on Pinckney Street, and will be used as the stable. The space is shown as "UNIT 'A'" on the attached Plot Plan.

Special Exception criteria, pursuant to Code Section 54-206p, are met as follows:

- MB
1. Location: The stable is located greater than one hundred feet from the nearest residential zone district. Attached as Exhibit "A" are the following:
 - a. Plot Plan by Alexander Peabody;
 - b. Architectural drawing by Logan Architecture of the building floor plan of the Property, depicting the location, size and dimensions of the stalls;
 - c. Architectural drawing depicting the ventilation and drainage systems;
 - d. Survey showing measured distance from front of building to nearest residential district. The stable use of UNIT "A", within the building, located twenty five and a half (25.5) feet south of the Pinckney St. façade, is greater than one hundred feet from the nearest residential zone district.
 - e. Color photos of building interior.
 2. Certificate of Appropriateness: Because Carolina Polo and Carriage Company is an existing franchisee, the City of Charleston has previously issued a Certificate of Appropriateness for the stable. Please note the additional comments in the narrative below.

3. Code compliance: The stable complies with all city, county and state regulations for stables. Please note additional comments below.
4. Site plan: A site plan is attached, depicting the area for cleaning/loading/tacking within the building.
5. Refuse: Attached is Applicant's contract with Carolina Waste Disposal for refuse disposal. Carolina Waste picks up refuse daily, except Sundays.
6. Drainage: See the attached plan from Logan Architecture. Drainage will utilize existing lines that have served previous carriage stable operations in the Property in the past.
7. Ventilation: See Logan Architecture plans attached. Exhaust headers will be located centrally above each stall, with a manifold duct leading to a central exhaust tube that vents through the existing skylight of the building to the outside.

Animal drawn touring vehicles are highly regulated by the City pursuant to Chapter 29 of the City Code. There are presently only five franchises issued, of which Carolina Polo and Carriage Company is one. Among other things the Code requires carriage stables to be within "walking distance" of the medallion gate located at the corner of Church and North Market Streets.

Carolina Polo is currently located at 16 Hayne Street on a month to month tenancy, and the current owner of the property is requiring that the property be vacated by Carolina Polo by May 31, 2013. Accordingly, the ability of Carolina Polo to relocate to 45 Pinckney is necessary for its survival as a carriage tour business.

Robert Knoth, the individual applicant, has been in the carriage business since 1990. His current entity, Carolina Polo and Carriage Company, Inc., has been a franchised carriage tour operator since 1996. The City of Charleston Tourism Commission has issued Certificates of Appropriateness for its vehicles employed in the business, which are numbered as follows: 100, 101, 102, 103, 104, 105, 219, 251 and 290. Carolina Polo and Carriage, Inc. is in compliance with all city, county, and state regulations for stables. The City recently upgraded its requirements for stables and stalls that did not require existing companies to come into compliance, recognizing them as non-conforming. Accordingly the stable at 45 Pinckney Street will become the first "state of the art" stable in the City. The interior of 45 Pinckney Street, being much larger than the applicant's current location at 16 Hayne Street, will allow for all loading, unloading, tacking and cleaning to occur comfortably within the interior of the building.

Mr. Knoth operated his carriage business, then Carolina Carriage Company from this same Property location at 45 Pinckney St. from 1990 to 1996, then reformed as Carolina Polo and Carriage Company and continued to operate from 45 Pinckney until 1998, when it moved to its current location at 16 Hayne. Thereafter another carriage company operated from 45 Pinckney from 1998 until approximately 2009. See for example, Exhibit "B", a plat from 2009 showing the Property's use as a carriage

company. Among the Property's uses before 1990 was that of an automobile service garage, known as "Gatch's".

Because the Special Exception Use criteria have been met, and particularly in light of the history of use of the Property as a stable we respectfully suggest the Board of Zoning Appeals must issue its Certificate of approval.

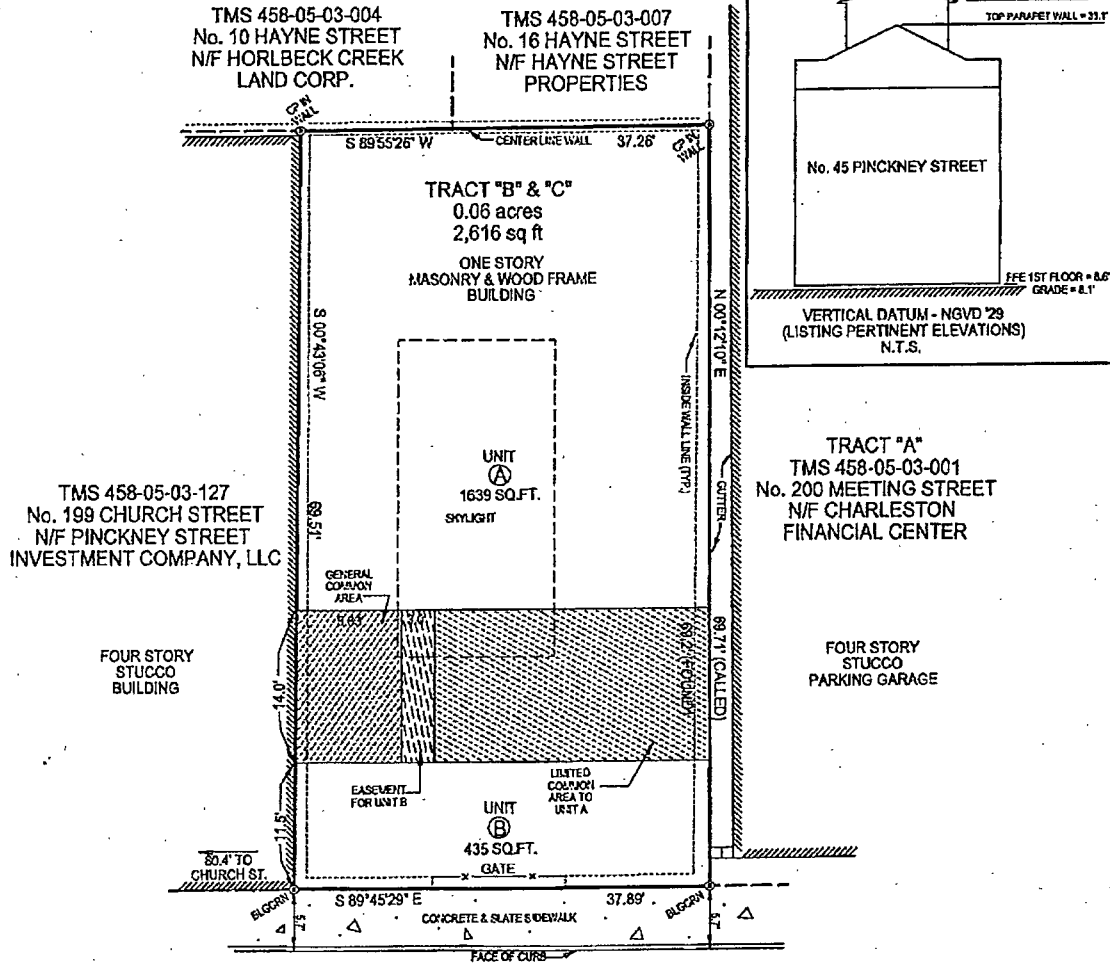
CB

Ex Aa

I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.

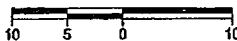
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.

PROPERTY APPEARS IN FLOOD ZONE AE, EL 13'
ON FIRM COMMUNITY-PANEL NUMBER
4501SC0516J, MAP REVISED
NOVEMBER 17, 2004.



PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.



SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: DECEMBER 11, 2012

REF: PLAT Z60, Pg. 088

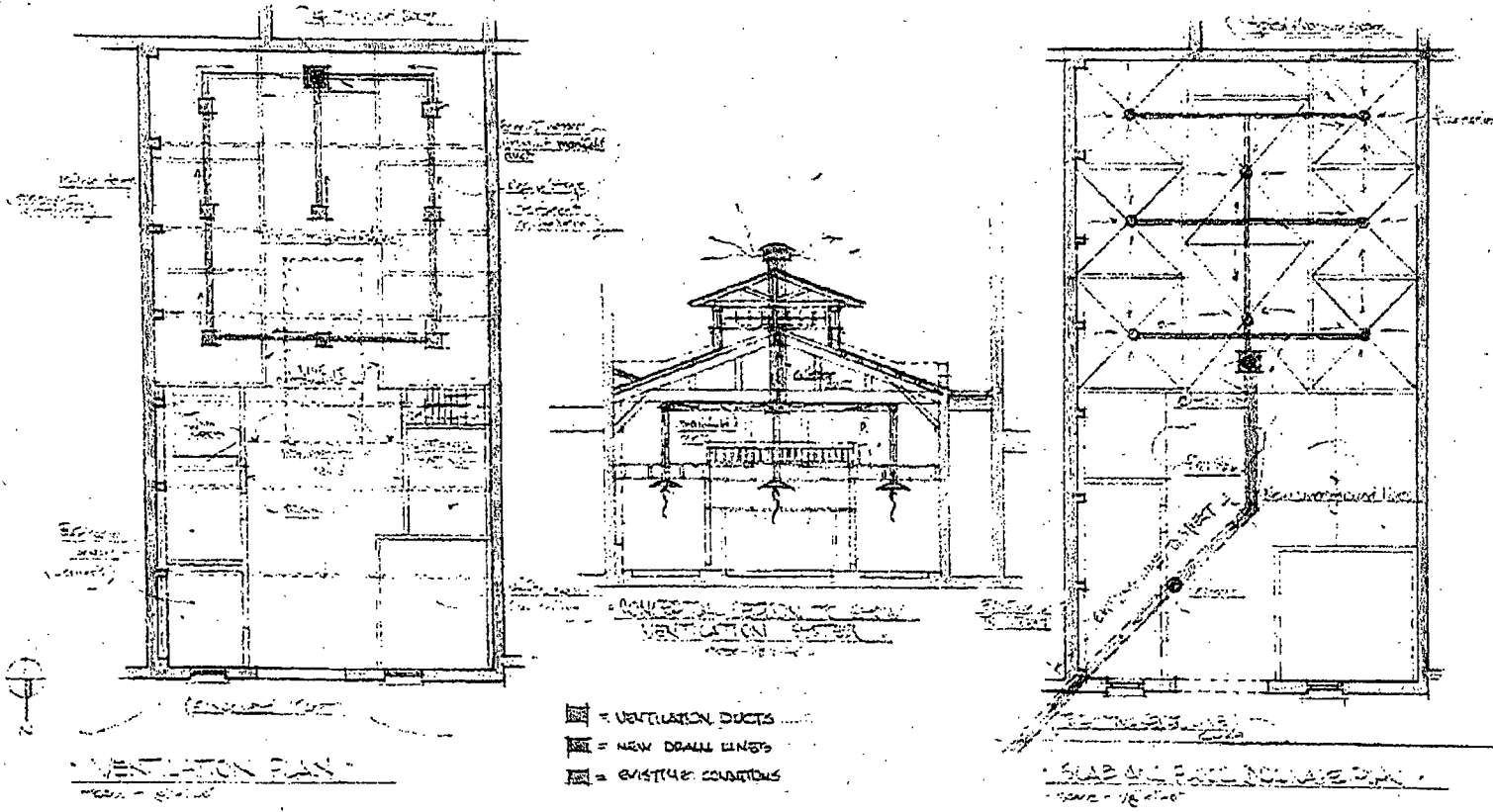
TMS: 458-05-03-002

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22640, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847



CHARLESTON COUNTY
SOUTH CAROLINA





LOCAL ALL VENTILATION - PAN CHECKED BY AC. C. C. C. C. 100 P. 100 P. 100 P. CARRON & CO.	3. 100 P. 100 P. 100 P. 100 P. 100 P. 100 P. 100 P. 100 P. 100 P.		100 P. 100 P. 100 P. 100 P. 100 P. 100 P. 100 P. 100 P. 100 P.	100 P. 100 P. 100 P. 100 P. 100 P. 100 P. 100 P. 100 P. 100 P.
	100 P. 100 P. 100 P.	100 P. 100 P. 100 P.	100 P. 100 P. 100 P.	100 P. 100 P. 100 P.

EX. A. C.

EX A d

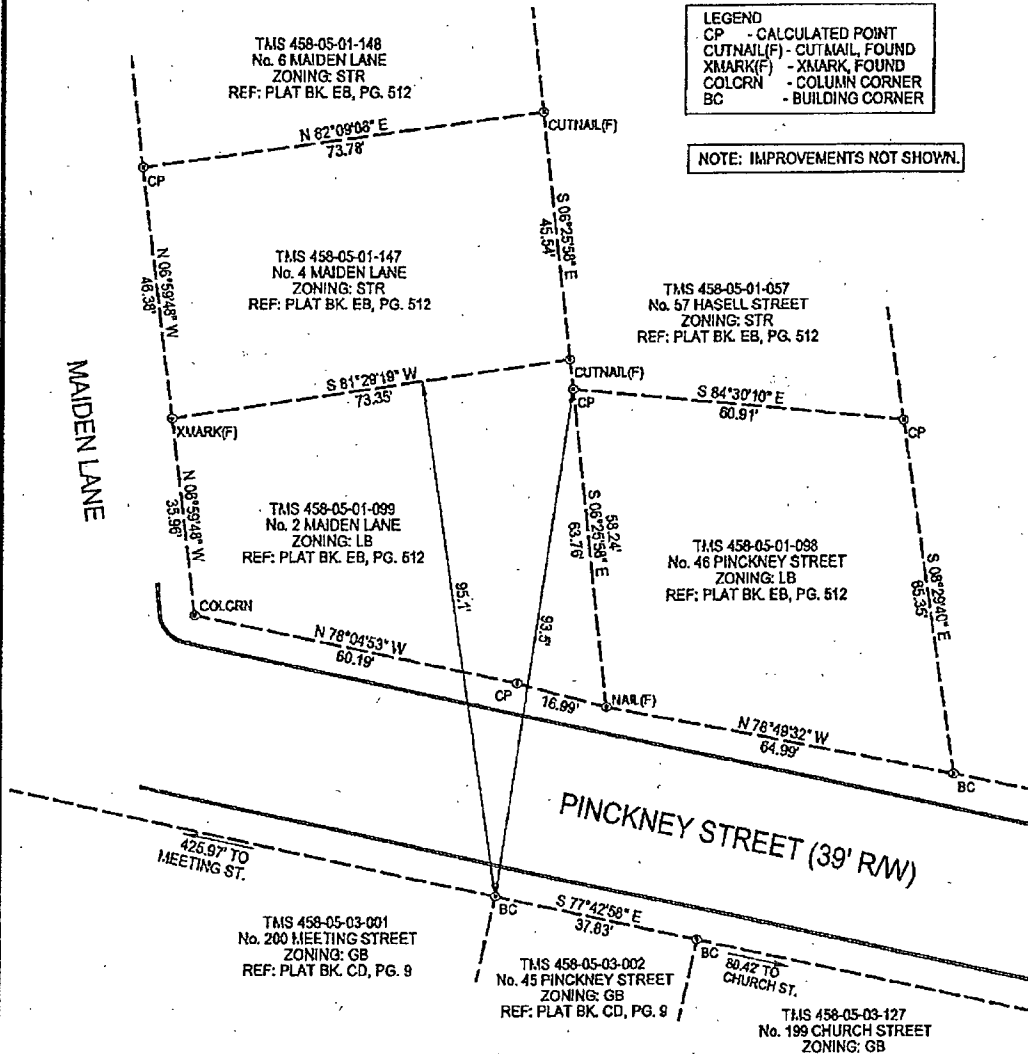
I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.

I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.



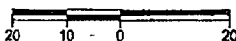
LEGEND
 CP - CALCULATED POINT
 CUTNAIL(F) - CUTNAIL, FOUND
 XMARK(F) - XMARK, FOUND
 COLCRN - COLUMN CORNER
 BC - BUILDING CORNER

NOTE: IMPROVEMENTS NOT SHOWN.



PLAT

OF A PORTION OF No. 45 PINCKNEY STREET,
 No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE,
 CITY OF CHARLESTON, CHARLESTON COUNTY,
 PREPARED FOR BARR, UNGER, & MCINTOSH.



SCALE: 1" = 20'

DATE: MAY 29TH, 2012

REF: AS SHOWN

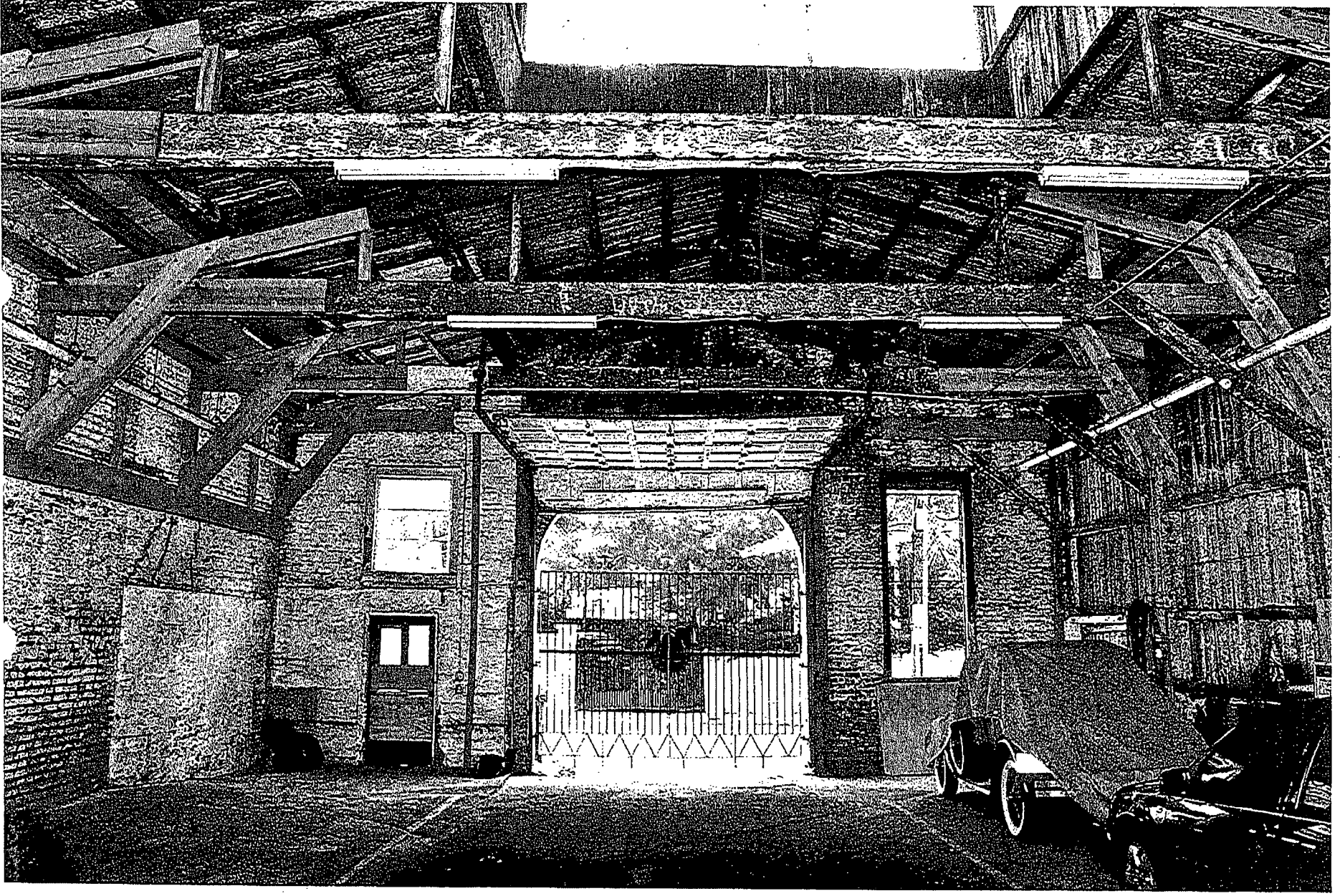
TMS: AS SHOWN

ALEXANDER C. PEABODY, PLS
 PEABODY & ASSOCIATES, INC.
 PROFESSIONAL LAND SURVEYING
 P.O. BOX 22646, CHARLESTON, SC 29413
 OFFICE 843-723-5225 MOBILE 843-270-4847

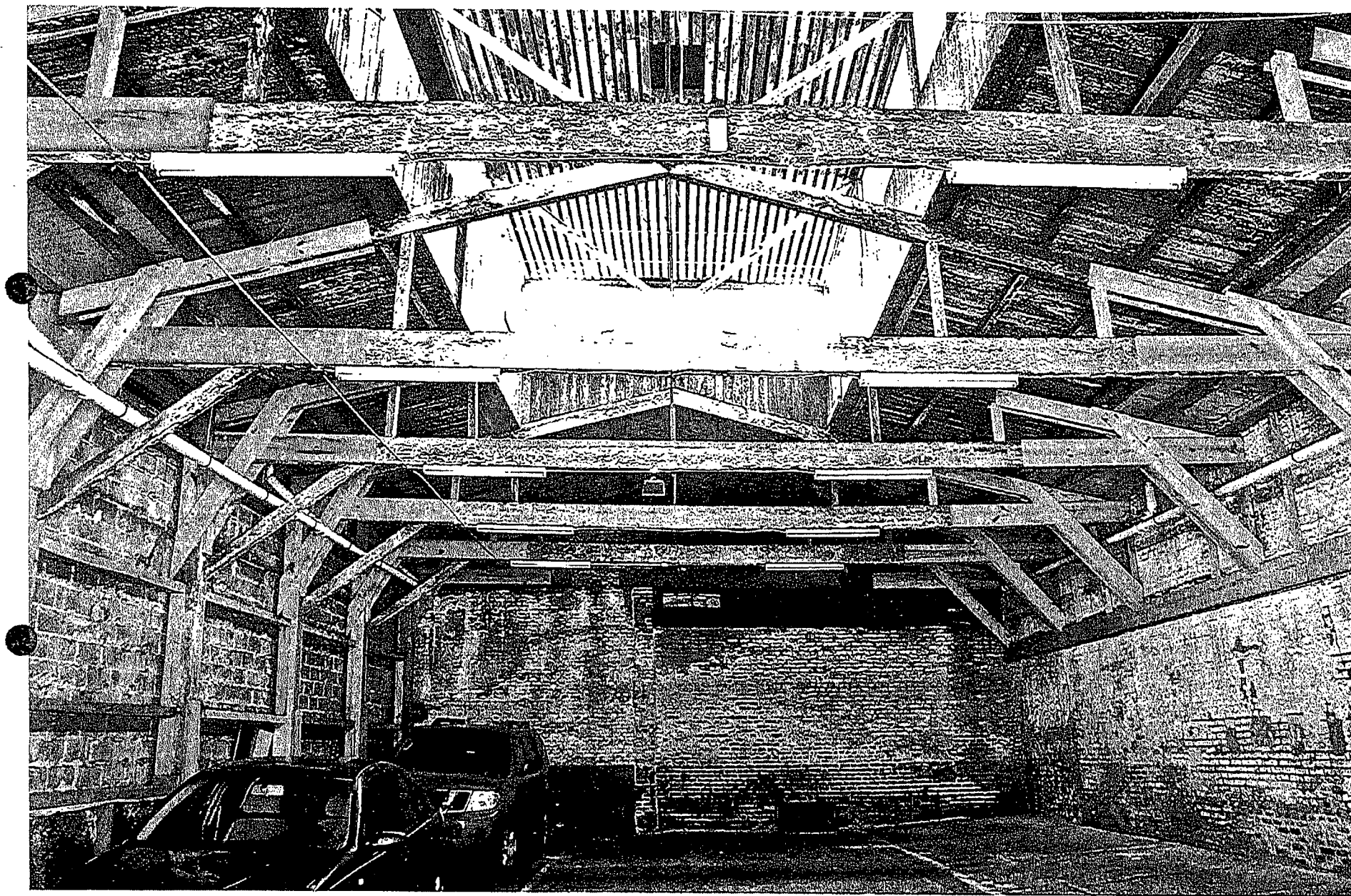


CHARLESTON COUNTY
 SOUTH CAROLINA

64e



EXA



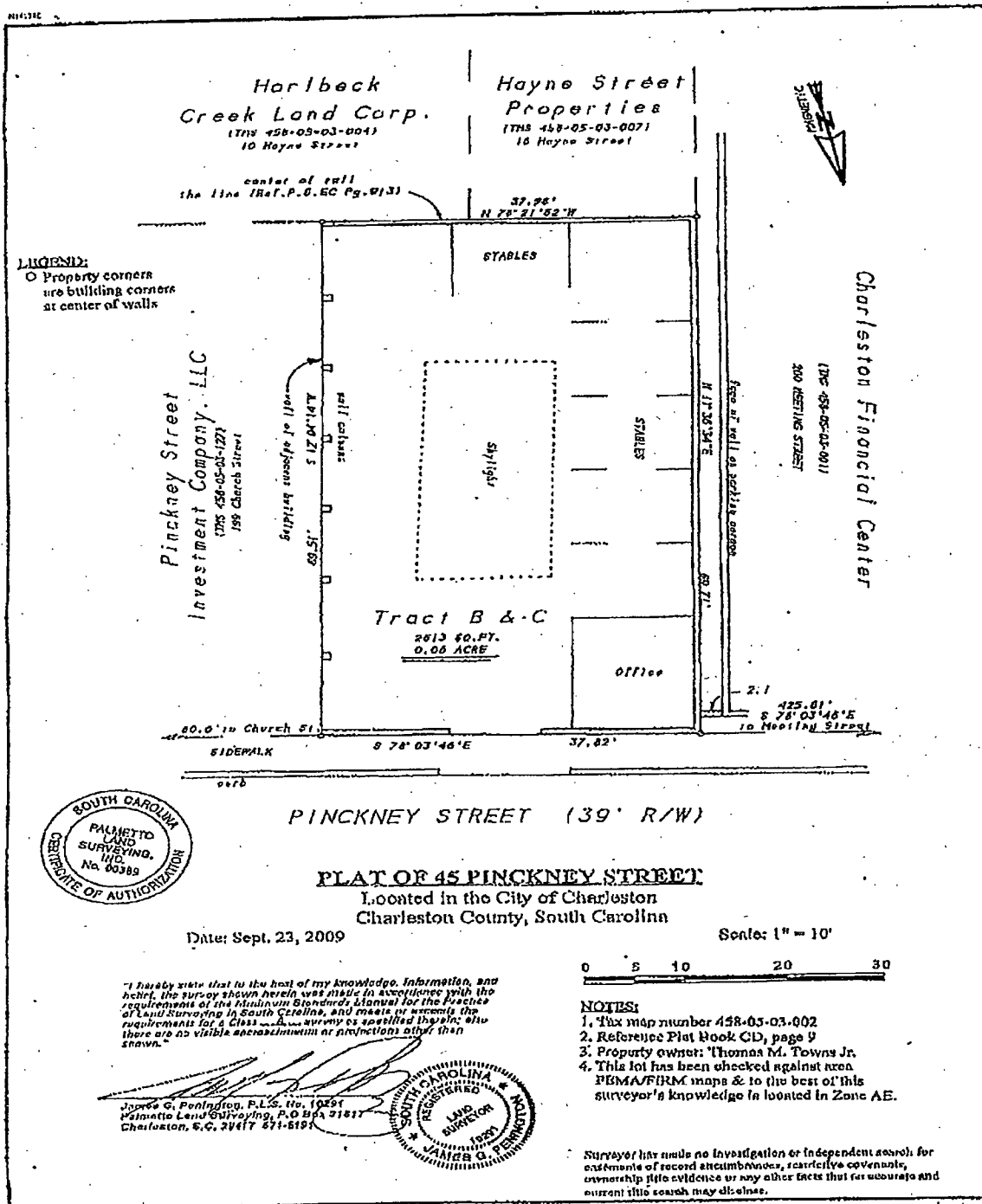
Ex B

FROM : PALMETTO

FAX NO. 18435717447

Apr. 19 2012 11:07AM P1

NH4310





Carolina Waste Services, LLC

P.O. Box 22767, Charleston, SC 29413. 843-576-1100

Waste Service Agreement

This Agreement is made and entered into by and between Carolina Waste Services, LLC, a South Carolina limited liability company

("Contractor") and Caroline Police Garage ☐ Inc. ☐ LLC ☐ Partnership/Proprietorship.

Service Location: 161 Hayes Street Service Commencement Date: Aug 1, 2007

☐ New Site ☐ New Svc. ☐ Change of Address ☐ Inc. Svc. ☐ Dec. Svc. Previous size & rate _____ Existing Customer# _____

Customer Billing Address: ☐ Change of Ownership/Name Site Address: _____

PO Box 633 161 Hayes Street

City: Charleston State: SC Zip: 29402 City: Charleston State: SC Zip: 29401

Fed. ID / SS #: _____ PO #: _____ County: Charleston C.C. \$ Up Front _____

Billing Contact: Robert Smith Contact & Phone #: _____

Phone #: 771-1616 Fax #: _____ CC#: _____ Ex Date: _____

DL #: _____ Name on Card: _____

☒ T ☐ P ☐ C

Front End Container Service

Quantity	Size & Type	Frequency of Service	Monthly Charge	Cost per Extra Collection	Delivery Fee	Disposal Fee	Type of Waste	Max. Weight Allotment
<u>One</u>	<u>2yd</u>	<u>bi-weekly</u>	<u>\$200</u>	<u>\$36.00</u>	<u>NC</u>	<u>11000</u>	<u>MISC</u>	<u>7500 lbs</u>

☐ T ☐ P ☐ C

Roll Off Service overage \$66.00 per year

Quantity	Size & Type	Frequency of Service	Monthly Charge	Cost per Haul	Delivery Fee	Disposal Fee	Type of Waste	Max. Weight Allotment

☐ T ☐ P ☐ C

Recycling Service

Quantity	Size & Type	Frequency of Service	Monthly Charge	Cost per Extra Collection	Delivery Fee	Disposal Fee	Type of Product

Special Instructions: * if Charleston city agrees to use 161 Hayes Street for recycling
* 4000 lbs per month contract

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 1 day of Aug, 2007

THIS AGREEMENT IS SUBJECT TO ALL TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE

CONTRACTOR
 By: [Signature]
 Signature
 Print Name: Robert Smith
 Title: Owner

CUSTOMER
 By: [Signature]
 Signature
 Print Name: Robert Smith
 Title: Owner

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
))
))
ARKAY, LLC and)
ROBERT R. KNOTH, its member,)
Petitioners,)
))
v.)
))
))
CITY OF CHARLESTON,)
CITY OF CHARLESTON BOARD)
OF ZONING APPEALS, ANDREW)
PINCKNEY INN and MICHAEL A.)
MOLONY,)
Respondents.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2013-CP-10- 3864

RETURN

(CITY OF CHARLESTON and
CITY OF CHARLESTON BOARD
OF ZONING APPEALS)

2013 AUG 27 PM 12:00
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Respondents City of Charleston and City of Charleston Board of Zoning Appeals (herein "City Respondents"), in Return to the Petition and Appeal, allege and say:

FOR A FIRST DEFENSE

1. All matters and allegations of the Petition and Appeal not herein specifically admitted, modified or explained are denied and strict proof thereof is demanded.
2. The allegations of Paragraph 1 of the Petition and Appeal are admitted, upon information and belief.
3. Paragraphs 2, 3, 4 and 5 of the Petition and Appeal are admitted, except as to whether the City of Charleston is a necessary party to this appeal. As to this allegation, the same sets

forth a legal supposition to which no response is required, or if one is, strict proof thereof is demanded.

4. Paragraph 6 of the Petition and Appeal sets forth no allegations against the City Respondents, but in response thereto, City Respondents say the documents referenced therein speak for themselves.
5. Paragraph 7 of the Petition and Appeal is admitted.
6. Answering Paragraph 8 of the Petition and Appeal, City Respondents admit so much thereof that alleges a stable in an area of the City zoned General Business cannot be located within 100 feet of any residential zone district. Strict proof is demanded of all other allegations of said Paragraph.
7. Paragraphs 9 and 10 of the Petition and Appeal are admitted.
8. Answering Paragraph 11 of the Petition and Appeal, it is admitted that a survey produced by Petitioners revealed the façade of the building at 45 Pinckney Street was 93.5 feet from a residential zone district, measured from the point shown thereon. To the extent the allegations of Paragraph 11 are inconsistent with this assertion, strict proof thereof is demanded.
9. Answering Paragraph 12 of the Petition and Appeal, it is admitted that a memorandum was prepared on behalf of Petitioners and given to the zoning administrator and assistant city attorney. As to that memorandum, the City Respondents aver that it was received as information, its contents and conclusions constitute Petitioners' characterization of the

ordinance at issue and speak for themselves, and in no way was the memorandum binding on the City Respondents.

10. Answering Paragraph 13 of the Petition and Appeal, referenced is craved to the proceedings before the Board of Zoning Appeals as to the presentation and argument made there.

11. City Respondents lack sufficient information to form an opinion or belief as to the allegations of Paragraph 14 of the Petition and Appeal, and therefore demand strict proof thereof.

12. Answering Paragraph 15 of the Petition and Appeal, City Respondents crave reference to Exhibit C for its content and concept. In further answer to said Paragraph, the same sets forth Petitioners' characterization of, and legal conclusion for, an issue before the Board of Zoning Appeals, which was rejected by the Board of Zoning Appeals. Strict proof is demanded of all factual allegations of said Paragraph. The legal conclusions set out in said Paragraph are denied.

13. Strict proof is demanded of the allegations of Paragraph 16 of the Petition and Appeal.

14. City Respondents lack sufficient information to form an opinion or belief as to the allegations of Paragraph 17 of the Petition and Appeal, and therefore demand strict proof thereof.

15. Answering Paragraph 18 of the Petition and Appeal, so much thereof that alleges Petitioner applied to the Board of Zoning Appeals for a special exception to use 45

Pinckney Street as a stable is admitted. Strict proof is demanded of all other allegations inconsistent with or that elaborate on this admission.

16. Answering Paragraph 19 of the Petition and Appeal, reference is craved to the proceedings of the Board of Zoning Appeals as to what the zoning administrator reported, recommended or opined. All allegations of Paragraph 19 inconsistent with the proceedings are denied, and reference is craved to the Order of the Board of Zoning Appeals for its reasoning and conclusion.

17. Answering Paragraph 20 of the Petition and Appeal, it is admitted that the Board of Zoning Appeals denied the application for a special exception. Reference is craved to the Order of the Board of Zoning Appeals for its reasoning and conclusions. Strict proof is demanded of all other allegations of said Paragraph.

18. Paragraph 21 of the Petition and Appeal is denied.

FOR A SECOND DEFENSE

19. All matters and allegations of the First Defense are incorporated as it specifically repeated.

20. To the extent it is contended that either the propriety of the Zoning Administrator's construction of applicable ordinances or that his construction was in any way binding on the Board of Zoning Appeals, the same are denied, as the matter before the Board was whether the applicant met the criteria for securing a special exception to establish a stable at 45 Pinckney Street.

WHEREFORE, having set forth their Return, City Respondents pray for an Order dismissing this Appeal, for entry of judgment on their behalf and such other and further relief as the Court may deem appropriate.

Charleston, South Carolina
August 26, 2013


Charlton deSaussure, Jr.
Corporation Counsel

Frances I. Cantwell
Assistant Corporation Counsel
50 Broad Street
Charleston, South Carolina 29401
Tel. 843-724-2730
Fax. 843-724-3706

Attorneys for Respondents
City of Charleston and
City of Charleston Board of Zoning Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
ARKAY, LLC AND ROBERT R.	)	CASE NO. 2013-CP-10-3864
KNOTH, ITS MEMBER,	)	
	)	
PETITIONERS,	)	
	)	
vs.	)	RESPONDENT, ANDREW PINCKNEY
	)	INN'S, ANSWER TO PETITION AND
	)	APPEAL (SPECIAL EXCEPTION ORDER)
CITY OF CHARLESTON, CITY OF	)	
CHARLESTON BOARD OF ZONING	)	
APPEALS, ANDREW PINCKNEY INN	)	
AND MICHAEL A. MOLONY,	)	
	)	
RESPONDENTS.	)	

Respondent, Andrew Pinckney Inn, responding to the Petition and Appeal from the Board of Zoning Appeals Special Exception Order filed by Petitioners herein, answers the Petition and Appeal by denying each and every allegation of that pleading not hereinafter specifically admitted, modified or explained. Respondent further alleges and states as follows:

1. The allegations contained in Paragraph One of the Petition and Appeal are admitted, upon information and belief.
2. The allegations contained in Paragraph Two of the Petition and Appeal are admitted.
3. The allegations contained in Paragraph Three of the Petition and Appeal are admitted.
4. Respondent admits so much of the allegations contained in Paragraph Four of the Petition and Appeal as allege that Respondent owns property near 45 Pinckney Street and has an interest in the City of Charleston's enforcement of ordinances affecting the use of the property at 45 Pinckney Street. On information and belief, Respondent Michael A. Molony also owns

property near 45 Pinckney Street and has an interest in the City of Charleston's enforcement of ordinances affecting the use of property at 45 Pinckney Street.

5. The allegations contained in Paragraph Five of the Petition and Appeal are admitted, upon information and belief.

6. The allegations contained in Paragraph Six of the Petition and Appeal, including all sub-parts, requires neither an admission nor a denial by Respondent.

7. Respondent responds to the allegations contained in Paragraph Seven of the Petition and Appeal by stating that the provisions of the Zoning Ordinance for the City of Charleston speak for themselves.

8. Respondent responds to the allegations contained in Paragraph Eight of the Petition and Appeal by stating that the provisions of the Zoning Ordinance for the City of Charleston speak for themselves.

9. Respondent does not have sufficient information upon which to admit or deny the allegations contained in Paragraph Nine of the Petition and Appeal.

10. The allegations contained in Paragraph Ten of the Petition and Appeal are admitted, upon information and belief.

11. The allegations contained in Paragraph Eleven of the Petition and Appeal are admitted, upon information and belief.

12. Respondent responds to so much of the allegations contained in Paragraph Twelve of the Petition and Appeal as refer to a memorandum submitted to the Zoning Official for the City of Charleston and to the attorney for the City of Charleston by stating that the contents of the memorandum speak for themselves. Respondent denies so much of the allegations contained in Paragraph Twelve as allege that the applicable provisions of the City of

Charleston's Zoning Ordinance requires measurement conditioned upon the use of the property at 45 Pinckney Street.

13. Respondent responds to the allegations contained in Paragraph Thirteen of the Petition and Appeal by stating that the contents of the memorandum submitted on behalf of Petitioners speak for themselves.

14. Respondent does not have sufficient information upon which to admit or deny the allegations contained in Paragraph Fourteen of the Petition and Appeal.

15. The allegations contained in Paragraph Fifteen of the Petition and Appeal, including all sub-parts, requires neither an admission nor denial by Respondent. Respondent further responds that said allegations are irrelevant in that such facts as were considered and found by the Board of Zoning Appeals will be and are contained in the transcript of record of the proceedings before the Board of Zoning Appeals.

16. Respondent does not have sufficient information to admit or deny the allegations contained in Paragraph Sixteen of the Petition and Appeal.

17. Respondent does not have sufficient information upon which to admit or deny the allegations contained in Paragraph Seventeen of the Petition and Appeal.

18. The allegations contained in Paragraph Eighteen of the Petition and Appeal are admitted, upon information and belief.

19. Respondent admits only so much of the allegations contained in Paragraph Nineteen as allege that Zoning Official Batchelder recommended approval of Petitioners' application for a special exception.

20. The allegations contained in Paragraph Twenty of the Petition and Appeal are admitted.

21. The allegations contained in Paragraph Twenty-One of the Petition and Appeal, including all sub-parts, are denied.

FURTHER ANSWERING THE PETITION AND APPEAL
AND AS A FURTHER DEFENSE THERETO:

22. Pursuant to the provisions of § 6-29-840, 1976 South Carolina Code of Laws, Ann., the findings of fact made and adopted by the City of Charleston Board of Zoning Appeals, and as set forth in the transcript of the proceedings before the Board, are binding. As a result, the allegations set forth in Paragraphs Six through Twenty of the Petition and Appeal are irrelevant to the disposition of the Petitioners' appeal.

FURTHER ANSWERING THE PETITION AND APPEAL
AND AS A FURTHER DEFENSE THERETO:

23. Pursuant to the provisions of § 6-29-840, 1976 South Carolina Code of Laws, Ann., the decision made by the Board is subject to reversal only if the decision is incorrect, as a matter of law.

FURTHER ANSWERING THE PETITION AND APPEAL
AND AS A FURTHER DEFENSE THERETO:

24. The Petitioners' challenge of the decision made by the Board is based, solely, upon the Petitioners' belief in the correctness of their interpretation that the City ordinances intended to define a "stable" as a "use," rather than a structure. However, in the proceedings before the Board, and as is reflected in the transcript, the Petitioners presented no evidence; such as legislative history, affidavit of a council person, or common law, that would support the interpretation they advanced. Instead, and as is set forth, most clearly, in Paragraph 21(a)(2) of their Petition and Appeal, the Petitioners rely upon their strained extrapolations of other City ordinances. The futility of the Petitioners' position is demonstrated by their argument that their arguments should be accepted because of the "unavailability of property in the Market District."

The Petitioners' reference to the unavailability of property lends no weight whatsoever to their legal argument. In effect, the argument constitutes a request that the Petitioners be rescued from the consequences of a poor business decision.

FURTHER ANSWERING THE PETITION AND APPEAL
AND AS A FURTHER DEFENSE THERETO:

25. In its Order denying the Petitioners' request for a special exception, the Board made clear that it saw no merit in the Petitioners' argument that, in applying the measurement criteria, a stable should be defined as a use rather than a structure. The Board reasoned as follows:

"Forty-five Pinckney Street is occupied by one building. The HPR does not alter this circumstance. There is no dispute as to the fact that the building is within 100 feet of a residentially zoned district. While Unit A within the building is where the animals will be stored, to access that area, it is necessary to pass through Unit B, an area within 100 feet of a residentially zoned district. This Board cannot discern intent to separate the use from its access when there is but one access to the building, and the law requires an apartment in a HPR to have either direct access to a public street or a common area leading to a public street. The common area or easement to Pinckney Street from Unit A is appurtenant to, or a part of, the Unit, rendering it within the 100 foot limitation. Thus, 45 Pinckney Street does not qualify as the site of a stable because it is located within 100 feet of a residential zone district." (emphasis added).

FURTHER ANSWERING THE PETITION AND APPEAL
AND AS A FURTHER DEFENSE THERETO:

26. Clearly, the Board reasoned that the horizontal property regime contemplated by the Petitioners was a "legal fiction" that, ultimately, was ineffective in the Petitioners' effort to escape the application of the 100 foot requirement of the ordinance.

FURTHER ANSWERING THE PETITION AND APPEAL
AND AS A FURTHER DEFENSE THERETO:

27. It is generally held that the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled

absent compelling consideration. *Brown v. South Carolina Department of Health and Environmental Control*, 348 S.C. 507, 560 S.E.2d 410 (2002). In the matter at hand, the Petition and Appeal filed on behalf of the Petitioners present no compelling reason that the construction of the City of Charleston ordinances adopted by the Board of Zoning Appeals with respect to the Petitioners' request for a special exception should, as a matter of law, be overruled.

WHEREFORE, having fully answered the Petition and Appeal herein, Respondent respectfully prays for an Order of this Court granting judgment to Respondent, affirming and upholding the Order of the Board of Zoning Appeals, dismissing the Petition and Appeal herein with prejudice, assessing all costs and fees, including attorney's fees, against the Petitioners and granting such other and further relief as the Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

By: Wilbur E. Johnson
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Attorneys for Respondent Andrew Pinckney Inn

Charleston, South Carolina

Dated: August 2, 2013

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 2nd day of August, 2013.

Loren L. Russell

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

ARKAY, LLC AND ROBERT R.
KNOTH, IT'S MEMBER,

Petitioners,

v.

CITY OF CHARLESTON, CITY OF
CHARLESTON BOARD OF
ZONING APPEALS, ANDREW
PINCKNEY INN, AND MICHAEL
A. MOLONEY

Respondents.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2013-CP-10-3864

**RETURN TO PETITION OF
MICHAEL A. MOLONY
(SPECIAL EXCEPTION ORDER)**

FILED
2013 AUG 19 AM 9:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

BACKGROUND

1. The Respondent Michael A. Molony appears herein individually, and as the Personal Representative of the Estate of Robert E. Molony, and as Trustee of the Sadie B. Molony Revocable Trust.
2. Michael A. Molony, Individually, is the owner of real property located at 46 Pinckney St. in the City of Charleston that will be diminished in value if the relief sought by the Petitioners herein is granted
3. Michael A. Molony, as Personal Representative of the Estate of Robert E. Molony, is responsible for real property located at 4 Maiden Lane in the City of Charleston that is owned by the Estate and will be diminished in value if the relief sought by the Petitioners herein is granted.

4. Michael A. Molony, as Trustee of the Revocable Trust of Sadie B. Molony, is responsible for the real property at 57 Hasell Street in the City of Charleston that is owned by the Trust and will be diminished in value if the relief sought by the Petitioners is granted.

5. Michael A. Molony, in his various capacities, is an interested and necessary party to this appeal, and he has standing to participate herein.

6. The real property for which this Respondent is responsible as described hereinabove will be unlawfully diminished in value if this appeal is granted by reversing the proper conclusions and rulings of the Board of Zoning Appeals ("BZA") of the City of Charleston because such result would allow Petitioners to bring horses to the property they own at 45 Pinckney Street for the purpose of stabling them there, and such use of the premise is a violation of law. Such use would require all things necessary to maintain the animals including feeding them, cleaning them, attending to their sanitary requirements, and doing everything necessary to provide for their daily needs. This Respondent contends that such activity, the maintenance of the horse barn at 45 Pinckney St., is an unsuitable activity in this urban neighborhood. Petitioners request for a special exception to use said premises as a horse barn was carefully considered by the BZA which concluded that Petitioners were not entitled to use the premises as a horse barn because it was an unsuitable activity for the building and neighborhood, and the BZA further correctly concluded that such use was in violation of the Ordinances of the City of Charleston (§ 54-206) that required the housing and stabling of horses to become such otherwise prohibited activity within 100 feet of a residential zoned district.

7. The BZA carefully considered and applied the ordinances of the City of Charleston, and State law in such cases made and provided to find and order that the stabling and

maintenance of horses in a building at 45 Pinckney St. was prohibited by all applicable law. Such conclusions by the BZA were reasonable, and not capricious or arbitrary, and met all the standards provided by all legal authority; and such findings and orders should be upheld by this court.

**RESPONSES TO PETITIONERS' ALLEGATIONS IN THEIR APPEAL FROM THE
BZA'S SPECIAL EXCEPTION ORDER**

8. This Respondent denies each and every allegation of the Petition not hereinafter specifically admitted.
9. This Respondent admits, on information and belief, Paragraph 1 of the Petition.
10. This Respondent admits Paragraphs 2, 3, and 4, of the Petition.
11. This respondent admits, on information and belief, Paragraph 5 of the Petition.
12. Paragraph 6 is a list of Exhibits to the Petition that requires no response.
13. Paragraphs 7 and 8 of the Petition are statements of law to which this Respondent is not required to respond.
14. Paragraphs 9 and 10 are admitted on information and belief.
15. This Respondent has no information to admit or deny Paragraph 11 of the Petition, but it is undisputed that the building proposed for the stabling of horses at 45 Pinckney St. is less than 100 feet from a residential zoned district.
16. This Respondent alleges that Paragraph 12 through 19 of the Petition contains descriptions of evidentiary assertions and conclusions of law that they contend are related to this matter, which this Respondent neither admits nor denies.

17. This Respondent believes the statements made in Paragraph 20 are true.

18. This Respondent denies the allegations and stated grounds for the relief sought herein that are contained in Paragraph 21 because Petitioners are not entitled to the relief they seek; and the actions of the BZA are fully supported by the law and facts in this matter.

ADDITIONAL REASONS FOR DENYING THIS APPEAL

19. The BZA of the City of Charleston carefully considered the facts and the law related to Petitioner's application and property applied them to the matter. The BZA did not at anytime in its consideration the issues act arbitrarily or capriciously, nor did it abuse its discretion in anything that it did.

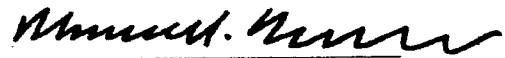
20. Petitioners reliance on the provisions of the South Carolina Horizontal Property Act is unfounded and misplaced because, among other reasons, the outside walls of any horizontal property regime are common elements owned by all users of the regime; and such principles applied to this matter do not and cannot reduce the required distance from the proposed horse stable to the nearby residential zone.

21. Petitioners' planned use of the building at 45 Pinckney St. encompasses the entire structure at that address because, among other reasons, the horses that will be stabled at the location must necessarily enter it and exit it from the public street at the point of the zero lot line and, the Structure cannot lawfully be used as a stable because it is indisputably located within 100 feet of a residentially zoned district within which a stable for horses is not allowed by law.

Wherefore, the Respondent, Michael A. Molony, prays that the appeal by Petitioners
from the Order of the BZA be denied.

Respectfully submitted,

HELLMAN YATES & TISDALE



Thomas S. Tisdale

August 19, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
ARKAY, LLC and)
ROBERT R. KNOTH, its member,)
Petitioners,)
)
v.)
)
CITY OF CHARLESTON,)
CITY OF CHARLESTON BOARD)
OF ZONING APPEALS, ANDREW)
PINCKNEY INN, and MICHAEL A.)
MOLONY,)
)
Respondents.)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 2013-CP-10-3864

BY
JULIE A. STRONG
CLERK OF COURT

2014 APR -7 PM 3:21

FILED

MEMORANDUM OF PETITIONER
ON APPEAL
(SPECIAL EXCEPTION ORDER)

Statement of Facts.

Petitioner Robert Knoth has owned and operated Carolina Polo and Carriage Company ("Carolina Polo"), a horse carriage tour business in the City of Charleston, since 1990. Carolina Polo is the sole source of income for Mr. Knoth and his wife; and it is the primary source of income for their two sons.

This appeal presents a case of statutory interpretation. Horse stables are permitted uses in the City's general business district as a "Special Exception Use". The question in this case is whether a statutorily required 100 foot distance from Carolina Polo's horse stable to a residential district should be measured from the front of Mr. Knoth's multiple use building at 45 Pinckney Street, or whether it should be measured from the area within the building that will be "used" as a stable. The City Zoning Administrator concluded the distance should be measured from the inside "use" as a stable. The Board of Zoning Appeals overruled the Zoning Administrator, holding that the distance must be measured from the

front of the building, thus denying to Mr. Knoth and his family the right to operate a stable at 45 Pinckney Street in the City of Charleston.

The building at 45 Pinckney Street is constructed on the "zero lot line", flush with the sidewalk, in the City Market area, a GB (general business) zoning district. The City Zoning Ordinance, in section 54-206p, permits a stable in a GB district as a Special Exception Use where, among other things, "the stable is not located within 100 feet of any residential zone district." The building at 45 Pinckney is used for multiple purposes, and will be subjected to a Horizontal Property Regime ("HPR"). A Plot Plan is attached as Ex. "A" (also Tab 5 of the Record on Appeal). The front 25.5 feet on Pinckney Street consists of a Unit "B" for office use only, and a common area for restrooms and a customer waiting area. Under the HPR Unit "B" and the common will be restricted against use as a stable. The stable, Unit "A", will be located beyond the customer area, 25.5 feet from the front of the building. Access to the offices of Unit "B", to the restrooms and customer waiting area and to the stable use of Unit "A" is obtained across a common, non-exclusive easement across Unit "B" as shown on the Plot Plan.

The front of the building at 45 Pinckney Street is located at variable distances from the nearest residential zone district. The closest, surveyed distance from the building front to the nearest residential distance is 93.5 feet. The farthest distance, although not measured on the survey, appears to be greater than 100 feet. See the survey at Exhibit "B", attached. (This is also found in the Record at Tab 4, page 10).

The City of Charleston Zoning Administrator concluded that, for the purposes of interpreting the zoning code, the 100 foot distance to the residential district should be measured from the area of 45 Pinckney Street that is used as a stable. (See the Zoning

Administrator's statement of opinion in the transcript at Tab 2, page 6, line 25 to page 7, line 14; and page 11, line 14 to page 12, line 24.) By that measurement, the stable use is 119 feet distant from the residential district. The Board of Zoning Appeals overruled the Zoning Administrator's decision, concluding that the 100 foot distance required by section 54-206p should be measured from the front of the building, even though the first 25.5 feet of the building is to be used for human occupancy as offices, rest rooms and customer waiting, and may not be used to "keep" horses. Although there is a common entrance through which persons and horses must pass in order to enter the building, the access easement is not part of Unit "A", the stable itself. (See Ex. "A".)

Nevertheless, the BZA's decision turned upon the existence of the easement. It ruled: "The Board cannot discern intent to separate the use from its access when there is but one access to the building and the law requires an apartment in a HPR to have direct access to a public street or a common area leading to a public street. The common area or easement to Pinckney Street from Unit A is appurtenant to, or a part of, the Unit, rendering it within the 100 foot limitation. Thus, 45 Pinckney Street does not qualify as the site of a stable because it is located within 100 feet of a residential zone district." (Record, BZA Order, Tab 1, p. 4.)

Mr. Knoth asks this Court to hold that the City of Charleston's Zoning Administrator was correct in his interpretation of the city ordinance, and to further hold that the Board of Zoning Appeals Order should be reversed.

Of factual note, Mr. Knoth had formerly operated Carolina Polo from the same property at 45 Pinckney Street, years before. However, the company lost its lease there, and moved to another leased location at 16 Hayne Street in 1996. In May 2013, the building at

16 Hayne Street was sold, and Mr. Knoth's lease was terminated. He subsequently purchased 45 Pinckney Street and applied for the Special Exception Use permit now before the Court. (Believing, based upon the verbal advice of the Zoning Administrator, that the 100 foot measurement here at issue could be taken from the inside stable "use".)

The Zoning Ordinance.

The City of Charleston Zoning Ordinance provides in Section 54-206(p) that stables are permitted in a general business district if certain criteria are met. (The full text appears in the Record at Tab13.) The issue in this case relates to only one of seven criteria set forth in the ordinance.

Section 54-206 provides in part, as follows:

"Sec. 54-206. Special exception uses. (Emphasis added)

"Uses designated in the Table of Permitted Uses and listed below, may be permitted in certain districts where the Board of Zoning Appeals-Zoning after review finds that requirements listed below for such uses are met. (emphasis added).

(p) Stables shall be permitted within the GB and UC District as an exception where the Board, after review, finds that:

- (1) The stable is not located within 100 feet of any residential zone district."

(2-7 not printed here)

The applicable law

Scope of Review:

Issues involving the construction of an ordinance are reviewed under a broader standard of review than is applied to reviewing issues of fact. *Mikell vs. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326 (S.Ct. 2009). Although great deference is

accorded the decisions of those charged with interpreting and applying local zoning ordinances, "A broader and more independent review is permitted when the issue concerns the construction of an ordinance. The determination of legislative intent is a matter of law." *Mikell, supra, citing Charleston County Parks and Recreation Commission vs. Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995).

The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. *Charleston County PRC vs. Somers, supra; City of Columbia vs. Niagara Insurance Co.*, 249 S.C. 388, 154 S.E.2d 674 (1967).

Discussion.

To begin with, the legislative purpose of the special exception criteria of City Code Section 54-206(p) seems clear. The Section provides safeguards, 1) to ensure that other state and county regulations for stables are met [54-206(p)(3)]; 2) that the cleaning/loading/tacking of horse carriages will not impede street traffic [54-206(p)(4)]; 3) that refuse and drainage needs will be met [54-206(p)(5 and 6)]; 4) and that odors will be adequately ameliorated [54-206(p)(7)]; 5) and, moreover, that these activities as a stable "use" will be at a distance no less than 100 feet from a residential district [54-206(p)(1)].

Accordingly, the purpose of the special exception criteria is to contain those aspects of a stable use, as enumerated in the conditions of Section 54-206(p), at least 100 feet away from the residential district.

The section says nothing about the "building" in which the stable is contained, except in subsection 7, to say that "(b)uildings" must be "designed utilizing appropriate ventilation...(etc.)" It is clear that City Council considered the "stable", as a use, to be

something different from the "building" in which it is contained. As later discussed in this memorandum, this is because, within the limited area in which a stable can be located, it is more likely that stables will be located in buildings that include multiple uses in addition to a stable.

Although the zoning ordinance does not define "stable", another provision of the city code does contain a definition. Sections 29-201, *et. seq.* of the City Code provides for the franchising of animal drawn vehicles for the purpose of touring. (See Petitioner's Exhibit 2 at Record on Appeal, tab 9, sub-tab 2). Under the definitions section dealing with "general health care and management requirements", a "stable" is defined as "the barn where the animals are kept". [Section 29-212(b)(12)]. The operative phrase of the definition is "where the animals are kept". "Kept" is the past participle of the word "keep". "Keep" in this context means "to preserve or maintain". (Merriam-Webster, New Collegiate Dictionary; Merriam-Webster Online Dictionary.)

Thus, a stable is a place where animals are "preserved or maintained". This construction is also consistent with another definition in the tourism ordinance. "Stall" is defined as the individual space within the barn (i.e. the stable) where each animal is kept.

The context of the enactment of the stable ordinance is also relevant to its construction, as follows:

1. First, the intent of Council in enacting the Special Exception Use for stables should be viewed from its broad context: The Special Exception Use as a "Stable" was intended to apply only to stables in the tourism carriage industry. This is evident because of the language of Subsections 54-206, p, subparagraphs 2 and 4, requiring a "Certificate of Appropriateness" from the City Tourism Commission, and also requiring

that the cleaning/loading/tacking area shall not "impede traffic flow in the public right of way." These circumstances could only apply to activities unique to the tourism carriage industry and would not apply, for example, to a horse stable on John's Island.

2. Secondly, the zone of the City in which a "Stable" may be located is limited under the Tourism provisions of the Code. Chapter 29, Article V, Sections 29-201, *et. seq.*, provides for city franchises for carriage companies, and more specifically provides that "Stables shall be located within walking distance (from) the Medallion Gate located at the corner of Church and North Market." Although the phrase "walking distance" is not further defined in the Code, another section strongly suggests that "walking distance" means the area called the "Market Zone", bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and Meeting Street to the west.

This is because Code section 29-206(b) provides that carriages shall load and discharge passengers at the "Gate", or they may load and discharge on private property within the "Market Zone". The "Market Zone" is there defined as the area bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and by Meeting Street to the west. It appears, therefore that the intent of Council in providing for "walking distance" to the Gate, was to mean that the Stable be within the "Market Zone".

If the central point of carriage tours was intended to be the Gate, and if tourists are nevertheless permitted to mount and dismount away from the Gate, provided that the mount/dismount area must be in the "Market Zone", it stands to reason that "Market Zone" and "walking distance" were intended to be synonymous. This is also

logical from a City monitoring standpoint, so that City enforcement personnel are enabled to monitor carriage operations within a "walking distance" range of the Gate.

3. Thirdly, therefore, because "walking distance" is intended to be within the "Market Zone", a review of the properties within the Market Zone suggests very few properties were suitable for Stable use, either presently or at the time of enactment of the provisions of the Tourism Ordinance. Attached as Exhibit "C" is a City zoning map that is helpful to follow the following discussion. (Also in the Record at Tab 7.)

First of all, the central, east-west axis of the Market Zone is the City Market itself, as well as the adjacent restaurants and shops on the north side of North Market Street and on the south side of South Market Street. It is obvious that none of the properties on the east-west axis of the Market Zone could be used as a "Stable", as a practical matter.

Neither could there be any reasonable expectation that a property on the western boundary, fronting on Meeting Street could be used as a stable. On the eastern boundary there are no properties on the west side of East Bay Street. On the east side of East Bay there are large warehouses belonging to the State Ports Authority that, although potential as sites, are not available.

On the southern boundary of the Market Zone there may be one potential property, although there is no suggestion that it would be available for use, much less as a Stable. That is the property currently used as a convenience store at the northeast corner of State and Cumberland Streets. Otherwise, the properties on the southern boundary of the Market Zone which front on Cumberland Street are either within 100 feet of a

residential district, or are properties used as city parking garages or as established office buildings.

On the northern boundary of the Market Zone, viewed from west to east, the Bank of America building consumes most of the first block extending along Pinckney Street eastward from Meeting Street; and immediately to the east is the property at issue, 45 Pinckney Street. To the east of 45 Pinckney is the Andrew Pinckney Inn. Proceeding easterly across Church Street is the site of the former First Baptist Church School Gymnasium, and across Anson Street to the east is the stable of Palmetto Carriage Company, then a small Inn, a veterinary clinic, a surface parking lot, an office building and "Big John's" Café.

Between North Market and Pinckney Streets there are several open automobile parking lots that could theoretically be converted to stable use. Several are on the north side of Hayne Street, and another is east of Anson Street, between North Market and Pinckney Streets. However none of the surface lot properties are known to be available, and it is unlikely that automobile parking would become secondary to Stable use, as a practical matter.

Therefore, the properties theoretically or practically available for use as a Stable in the Market Zone are the current location of Carolina Polo & Carriage Company, 45 Pinckney Street, which is the location at issue in this appeal, or one of the surface automobile parking lots as described.

The point to be made is that, in construing the intent of City Council in providing for "Stable" use as a Special Exception, the properties for which that intended

use would be eligible were limited. Accordingly, the construction and use of the term "Stable" in the City Code must be framed within this practical context.

4. A fourth point of contextual consideration is the language of Section 54-206, itself. As emphasized in the excerpt restated on page 4 of this memorandum, what is regulated by the section is the use of property. As previously discussed, it is the use as a stable that must be 100 feet from the residential district, and not the structure within which the use is contained. Suppose the same configuration existed with respect to one of the huge State Ports Authority warehouses? No one could seriously argue that a measurement should be taken from a warehouse building where the stable was one of several uses. Here, there is no difference. The front Unit "B" of 45 Pinckney Street and the common area behind it will be occupied by humans, and not by horses. Likewise, the easement through to the stables is not the area where horses are "kept". They will simply pass through.

The BZA Order incorrectly considered the easement as a part of the stable. The lynchpin of the BZA Order denying the special exception use is that, because horses must access the place where they are "kept" across a common, non-exclusive easement, the BZA could not separate the use from its access, "when there is but one access to the building, and the law requires an apartment in a HPR to have either direct access to a public street or a common area leading to a public street". Therefore, the BZA concludes, the "access" is a part of the "stable", itself.

In the first place, as shown on the Plot Plan (Exhibit "A") the access is clearly denominated an "easement". It is a fundamental principle of real property law that an easement is only "the right of one person to use the land of another for a specific

purpose". *Smith vs. CPW of Charleston*, 312 S.C.460, 441 S.E.2d 331 (Ct.App. 1994).

Although the easement in this case may be "appurtenant" to Unit "A", it is manifestly not a "place where animals are kept"; it provides a non-exclusive means of access, only.

The easement provided by the HPR in this case is no different from a covered alley way. If the building front of 45 Pinkney Street were set back 25 feet so that horses entered the stable where they are kept through an open alley, surely there could be no argument that the alley was a "stable". Here there is no difference, but the horses will enter the same stable through the existing covered area and across the easement provided by the terms of the HPR. Moreover, it is self-evident that the easement is not exclusive to the stable's use. It is also necessary for access to the adjacent offices of Unit "B", as well as to the common area comprising restrooms and customer waiting area.

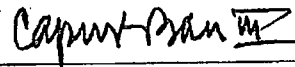
The BZA's interpretation of the ordinance in this case defies the purpose of the ordinance: to place the area where animals are "kept" at least 100 feet away from a residential district. Moreover, the very activity counted by the BZA as offensive to the ordinance, here, is not at all different from the very purpose of horse drawn tour carriages to begin with. Horse drawn tour carriages exist for the very purpose of passing by and through the residential districts of the city. They do that daily. As it relates to horses accessing stables through the easement in this case, the activity is the same. Horses are no more "kept" on the access easement than they are on the public streets.

(Nothing Follows On This Page)

Because the Board of Zoning Appeals improperly construed Section 54-206(p)(1); and because the "stable" in this case "where the horses are kept" is clearly greater than 100 feet from the nearest residential zone district, the decision of the Board of Zoning Appeals must be reversed.

Respectfully Submitted,

BARR UNGER & McINTOSH



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S. C. Bar ID: 542
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ATTORNEY FOR PETITIONERS

Charleston, South Carolina
April 7, 2014



PROPERTY APPEARS IN FLOOD ZONE AE, EL 13'
ON FIRM COMMUNITY-PANEL NUMBER
45019C0516J. MAP REVISED
NOVEMBER 17, 2004.

TMS 458-05-03-004
No. 10 HAYNE STREET
N/F HORLBECK CREEK
LAND CORP.

TMS 458-05-03-007
No. 16 HAYNE STREET
N/F HAYNE STREET
PROPERTIES

TMS 458-05-03-127
No. 199 CHURCH STREET
N/F PINCKNEY STREET
INVESTMENT COMPANY, LLC

FOUR STORY
STUCCO
BUILDING

TRACT "B" & "C"
0.06 acres
2,616 sq ft
ONE STORY
MASONRY & WOOD FRAME
BUILDING

UNIT
①
1639 SQ.FT.
SKYLIGHT

TRACT "A"
TMS 458-05-03-001
No. 200 MEETING STREET
N/F CHARLESTON
FINANCIAL CENTER

FOUR STORY
STUCCO
PARKING GARAGE

ADDRESS IS No. 45

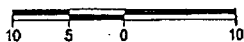
PINCKNEY STREET (39' R/W)

EXHIBIT

A

PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.



SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: DECEMBER 11, 2012

REF: PLAT Z60, Pg. 088

TMS: 458-05-03-002

**ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22648, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847**



CHARLESTON COUNTY
SOUTH CAROLINA

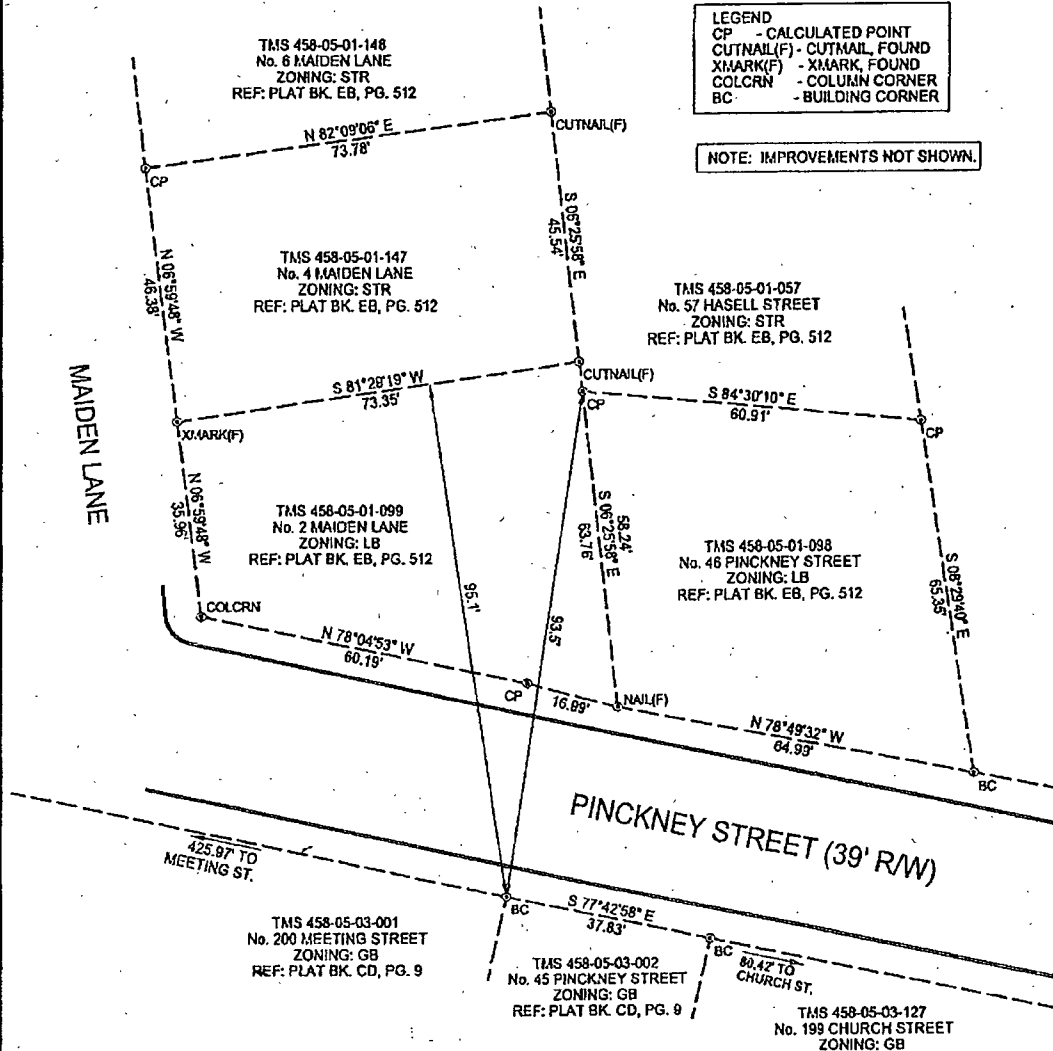
I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.

I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.



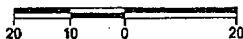
LEGEND
 CP - CALCULATED POINT
 CUTNAIL(F) - CUTNAIL, FOUND
 XMARK(F) - XMARK, FOUND
 COLCRN - COLUMN CORNER
 BC - BUILDING CORNER

NOTE: IMPROVEMENTS NOT SHOWN.



PLAT

OF A PORTION OF No. 45 PINCKNEY STREET,
 No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE,
 CITY OF CHARLESTON, CHARLESTON COUNTY,
 PREPARED FOR BARR, UNGER, & McINTOSH.



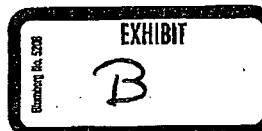
SCALE: 1" = 20'

DATE: MAY 29TH, 2012

REF: AS SHOWN

TMS: AS SHOWN

ALEXANDER C. PEABODY, PLS
 PEABODY & ASSOCIATES, INC.
 PROFESSIONAL LAND SURVEYING
 P.O. BOX 22646, CHARLESTON, SC 29413
 OFFICE 843-723-5225 MOBILE 843-270-4847



CHARLESTON COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ARKAY, LLC and)
ROBERT R. KNOTH, its member,)
Petitioners,)

v.)

CITY OF CHARLESTON,)
CITY OF CHARLESTON BOARD)
OF ZONING APPEALS, ANDREW)
PINCKNEY INN, and MICHAEL A.)
MOLONY,)

Respondents.)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 2013-CP-10-3864

CERTIFICATE OF SERVICE
(SPECIAL EXCEPTION ORDER)

BY _____
JULIE S. BARR, III
CLERK OF COURT

2014 APR -7 PM 3:21

FILED

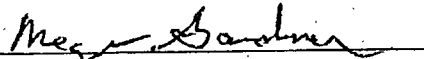
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Memorandum of Petitioner on
Appeal from the Board of Zoning Appeals (Special Exception Order) by E-Mail and
U. S. Mail this 7th day of March, 2014 to:

Ms. Frances Isaac Cantwell, Esq.
City of Charleston
50 Broad Street
Charleston, SC 29401

Mr. Wilbur E. Johnson, Esq.
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29401

Mr. Thomas S. Tisdale Jr., Esq.
Hellman, Yates & Tisdale, PA
145 King Street
Suite 102
Charleston, SC 29401


Megan E. Gardner
Paralegal to Capers G. Barr, III

Charleston, South Carolina
April 7, 2014



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

Case No.: 2013-CP-10-3904

ARKAY, LLC and)
ROBERT R. KNOTH, its member,)
Petitioners,)

v.)

CITY OF CHARLESTON,)
CITY OF CHARLESTON BOARD)
OF ZONING APPEALS, ANDREW)
PINCKNEY INN, and MICHAEL A.)
MOLONY,)

MEMORANDUM OF PETITIONER
ON APPEAL
(VARIANCE ORDER)

Respondents.)

This is a companion case to a Special Exception appeal before the court. The Charleston County Board of Zoning Appeals ("BZA") denied Petitioners' Special Exception Use application at hearing on April 16, 2013 on the ground that the property did not comply with a statutory requirement that a stable be no less than 100 feet from the nearest residential zone district. As discussed in the Special Exception appeal, the surveyed closest point of the building at 45 Pinckney Street to the nearest residential district is 93.5 feet. (See Exhibit "A"; also tab 7 of the Record).

After denial of the Special Exception Use, Petitioners applied for a Variance. Petitioner argued to the BZA that because the variance sought in this case is *de minimis*, the ordinary hardship standards required to approve a variance should be relaxed, because the impact on the public of a *de minimis* variance is minimal.

The BZA denied the variance application. This appeal follows. The question before the Court is whether the BZA committed error, as a matter of law, by not adopting a *de minimis* standard.

The Applicable Law.

It is stated in 83 Am.Jur.2d, Zoning and Planning Section 769:

"A developer that seeks a *de minimis* change from a zoning ordinance does not have to meet a heavy burden for obtaining a variance, *Bailey v. Zoning Bd. of Adjustment of City of Philadelphia*, 569 Pa. 147, 801 A.2d 492 (2002) and the requirement of showing unnecessary hardship has been modified where the requested variance is very small. *King v. Zoning Hearing Bd. of Borough of Nazareth*, 76 Pa. Commw. 318, 463 A.2d 505 (1983). Thus, a *de minimis* variance may be granted, even where the strict requirements for a variance have not been met, where the variation requested is minor, and rigid compliance is not necessary to protect the public policy concerns of the ordinance. *Lench v. Zoning Bd. of Adjustment of City of Pittsburgh*, 13 A.3d 576 (Pa. Commw. Ct. 2011). However, there is no general right to a *de minimis* zoning variance. *200 W. Montgomery Ave. Ardmore, LLC v. Zoning Hearing Bd. of Lower Merion Tp.*, 985 A.2d 996 (Pa. Commw. Ct. 2009). Unlike a traditional variance, a *de minimis* variance does not require proof that the requested variance will not adversely affect the public health, safety, and welfare. *Appeal of Ressler Mill Foundation*, 132 Pa. Commw. 569, 573 A.2d 675 (1990). Indeed, the burden on an applicant is at its lightest where the request involves a *de minimis* variance with respect to a dimensional requirement, such as height. *Lench v. Zoning Bd. of Adjustment of City of Pittsburgh*, 13 A.3d 576 (Pa. Commw. Ct. 2011).

Discussion.

Petitioners concede that no existing South Carolina legal authority recognizes a *de minimis* standard in a variance application. However, neither does Any authority reject it. The question is one of first impression.

In this appeal, Petitioners argue that this Court should formally recognize such a legal standard; and Petitioners ask that the variance application be remanded to the Board of Zoning Appeals with instructions to consider all of the evidence in light of a *de minimis* standard, as a matter of law: that is to say, that the burden for obtaining and proving a variance may be lessened in the circumstances of a *de minimis*, dimensional variance request.

Here, it must be conceded by all parties that the variance requested is at most six and a half percent. That is, because the structure at 45 Pinckney Street is 93.5 feet away from the nearest residential zoned district, shy by six and one-half feet, the variance requested is only six and a half percent.

Moreover, and this seems to be conceded by the City in its memorandum, the variance is not even six and one-half percent across the entire building front. A review of the "Kentucky Windage" exhibit introduced at BZA hearing, attached as Exhibit "B" demonstrates that for approximately one-half of the frontage of 45 Pinkney Street, a one hundred foot separation from the residential district is obtained.

Conclusion.

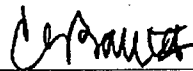
Although conceding that a variance is an extraordinary remedy, it is nevertheless true that variances are available remedies, within the authority of boards of zoning appeals; and that they are regularly granted. As reflected in the hearing in this case,

variances were granted in cases other than Petitioners' on the same agenda, amounting to a 66.6% variance from setback in one case and 22% in another, the second case also involving a special exception use.

The elements of a variance should be re-evaluated by the Board of Zoning Appeals upon remand, under a relaxed *de minimis* standard, as a matter of law.

Respectfully Submitted,

BARR UNGER & McINTOSH



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S. C. Bar ID: 542
11 Broad Street
Charleston, SC 29401
Telephone: (843) 577-5083
Facsimile: (843) 723-9039
ATTORNEY FOR PETITIONERS

Charleston, South Carolina
April 11, 2014

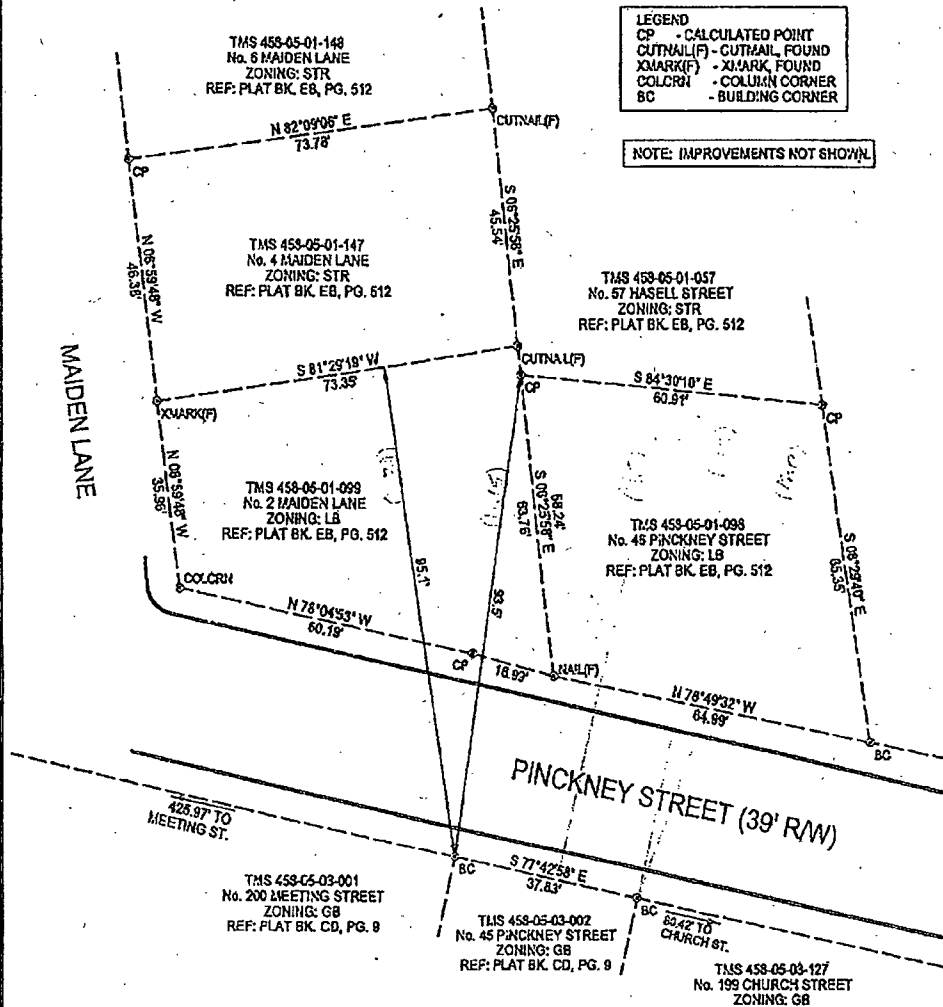
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LEGEND
 CP - CALCULATED POINT
 CUTNA(F) - CUTNAIL, FOUND
 XMARK(F) - X-MARK, FOUND
 COLCRN - COLUMN CORNER
 BC - BUILDING CORNER

NOTE: IMPROVEMENTS NOT SHOWN.



PLAT

OF A PORTION OF No. 45 PINCKNEY STREET,
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 CITY OF CHARLESTON, CHARLESTON COUNTY,
 PREPARED FOR BARR, UNGER, & McINTOSH.



SCALE: 1" = 20'

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ALEXANDER C. PEABODY, PLS
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CHARLESTON COUNTY
 SOUTH CAROLINA

EXHIBIT

B

Surveying No. 5328

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2013-CP-10-3864

ARKAY, LLC, ET AL,)
)
 PLAINTIFF,)
)
VS.)
)
CITY OF CHARLESTON, ET AL,)
)
 DEFENDANT.)
_____)

MOTIONS HEARING

held before the Honorable J.C. Nicholson, Jr.
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Friday, April 11, 2014, Commencing at 10:58 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

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Wilbur E. Johnson, Esquire
Young Clement Rivers
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Charleston, South Carolina 29402-0993

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EXHIBITS

[None]

Arkay, LLC, et al v. City of Charleston, et al
Motions Hearing
April 11, 2014

PROCEEDINGS

THE COURT: There's a motion for appeal from the board of zoning from Arkay, LLC, versus The City of Charleston.

Is that correct?

MR. BARR: Yes, sir.

THE COURT: Now, I understand there's one question about the ordinance and the use, and then the second question is about variance?

MR. BARR: That's correct, Your Honor.

THE COURT: All right. Let me just ask you a question.

If the Court determines that the use statute is different from the zoning board's determination, that would make the second portion moot; is that correct?

MR. BARR: That is correct. That would, Your Honor.

THE COURT: So I guess we've got to argue that motion or that appeal first; is that correct?

MS. CANTWELL: That's correct.

MR. BARR: That would be our preference, Judge.

THE COURT: Okay. Be glad to hear you.

MR. BARR: Thank you very much, Your Honor. May it please the Court.

THE COURT: Now, I've looked at where this is on

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Arkay, LLC, et al v. City of Charleston, et al
Motions Hearing
April 11, 2014

1 the map and --

2 MR. BARR: Well, good. I'm sure the map I gave
3 you -- I've got a clearer one here today.

4 THE COURT: If you have, I appreciate it. We
5 were looking at it on Google.

6 MR. BARR: Yes, sir.

7 THE COURT: What is it? Earth Google, or
8 whatever they call it.

9 MR. BARR: That thing is not very clear. I'm
10 sorry.

11 Do you want it now, Judge?

12 THE COURT: If you have one, I would appreciate
13 it.

14 MR. BARR: Let me just give you -- here are two
15 copies. I can hand them up to counsel. I've got a
16 stack of things. The top one is that same tax map.
17 And I can walk you through it.

18 [Whereupon, Mr. Barr proffers documents to the
19 Court]

20 THE COURT: It's 93.7 feet from -- within the
21 100; is that correct?

22 MR. BARR: I think it's 93.5.

23 THE COURT: 93.5? And the proposal was to have
24 the actual animals farther back inside the 100?

25 MR. BARR: That's correct.

MIA PERRON, CVR-CM-M

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1 MS. CANTWELL: That's correct.

2 THE COURT: Let's see. He took the position
3 that the ordinance doesn't cover that, it's the whole
4 property --

5 MS. CANTWELL: Right.

6 THE COURT: -- as far as the use of the property
7 as a whole?

8 MR. BARR: That's correct.

9 MS. CANTWELL: Correct.

10 THE COURT: Okay.

11 MR. BARR: And so if we can start at your first
12 question, Judge: under tab 1, I took that same map
13 and ran it in black and white, because those colors
14 get you confused. And you'll see highlighted in
15 orange on that is the city market district. You see
16 the number 35 in the middle of it?

17 THE COURT: Yes, sir.

18 MR. BARR: That's the location of what is called
19 the gate or where the tour carriages check in at the
20 corner of North Market --

21 THE COURT: That's the parking lot right --
22 that's the parking lot right behind 35?

23 MR. BARR: Correct. Exactly. It's the parking
24 lot. And the back, that was the old First Baptist gym
25 that's recently been torn down.

Arkay, LLC, et al v. City of Charleston, et al
Motions Hearing
April 11, 2014

1 THE COURT: And over here on the corner, Hainey
2 Street and this other street, is what, Hank's
3 Restaurant?

4 MR. BARR: Hank's is at the corner --

5 THE COURT: It's on the corner --

6 MR. BARR: -- of Hainey and Church.

7 THE COURT: So this is sort of -- almost sort of
8 behind it?

9 MR. BARR: This is behind Hank's.

10 And, in fact, it's not easy to see but you'll
11 see a red circle there on Pinckney Street.

12 THE COURT: Right.

13 MR. BARR: That building is the building that is
14 in issue, 45 Pinckney Street.

15 And then the next tab under number 2 -- I
16 apologize. Everybody has multiple copies of it -- is
17 a closer-up view. And that's going to show you 45
18 Pinckney Street.

19 And the dark lines across -- on the other side
20 of Pinckney Street there denominate the residential
21 district. In other words, the residential district is
22 behind those dark lines, just to orient you.

23 THE COURT: Well, where do they measure the
24 93.45 feet from?

25 MR. BARR: Well, let's go to tab 4. And that

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Arkay, LLC, et al v. City of Charleston, et al
Motions Hearing
April 11, 2014

1 ought to be a plat.

2 THE COURT: How many copies of this --

3 MR. BARR: Yeah. Go to -- I'm sorry that there
4 are so many.

5 THE COURT: I mean, you must have a dozen in
6 there.

7 MR. BARR: My assistant misunderstood my
8 instructions.

9 But under tab 4 --

10 THE COURT: So you've got copies -- Jesus.

11 MR. BARR: If you'll just go down to tab --

12 THE COURT: You're not helping the pine trees,
13 are you? Okay.

14 MR. BARR: Yeah --

15 THE COURT: This is -- now, this is a picture of
16 the back --

17 MR. BARR: That's a picture of the front of the
18 building.

19 THE COURT: Okay.

20 MR. BARR: That's what Pinckney -- that's what
21 45 looks like.

22 THE COURT: All right. So now we're looking at
23 4? Tab 4?

24 MR. BARR: Yeah.

25 If you'll unfold -- and you had asked the

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Arkay, LLC, et al v. City of Charleston, et al
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1 question where did they measure from.

2 THE COURT: Right.

3 MR. BARR: All right. And the surveyor measured
4 from that northwest corner where the arrows extend
5 from and to. So you see 45 Pinckney Street on the
6 south side of the street. So he measured from the
7 closest point from the building to the closest point
8 of the residential district.

9 THE COURT: okay.

10 MR. BARR: And you can see there the answer to
11 your question, the 93.5.

12 Now, the red lines represents some of my
13 doodling. Because I failed to ask the surveyor
14 this -- because it's apparent. You can see that the
15 lines of the residential district are uneven and they
16 are not parallel on the front of 45 Pinckney. So I
17 took a centimeter ruler down at the bottom and
18 concluded that code, the 2. -- I'm sorry -- a
19 millimeter ruler and 2.3 millimeters, which is just a
20 finer unit of measure, equals 20 feet. So 11-and-a-
21 half millimeters is 100 feet. And then I measured
22 that. And, again, I realize this is Kentucky windage.
23 But I measured that on the -- from the front of the
24 building. And you can see that about in the middle of
25 Pinckney Street, of 45 Pinckney Street, measured over

MIA PERRON, CVR-CM-M

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1 to that newest residential district, it is 100 feet.
2 And then as you go to the west, it's closer than the
3 100 feet.

4 So the point is that this building is not 100
5 feet within that line throughout. It's 100 feet --
6 it's within 100 feet from about the middle to going to
7 the west to the corner.

8 THE COURT: Well, I mean, let me ask you this.
9 On the 93.5, which is written on the survey, how many
10 feet is from that corner? That's the corner of the
11 property line; right?

12 MR. BARR: That's the corner of the -- well, you
13 see those -- that property line across the street?
14 Those are commercial lots.

15 THE COURT: Right.

16 MR. BARR: And so, yes. That's the -- I asked
17 him to show us the closest point of this building to
18 the residential district, and that was his answer:
19 from that point BC at 45 Pinckney, over to point CP at
20 46 Pinckney, is the closest spot. And that's 93.5.
21 And from then out, it gets larger.

22 THE COURT: I guess my question is where you've
23 talking about BC, which is on the south side of
24 Pinckney Street --

25 MR. BARR: Correct.

Arkay, LLC, et al v. City of Charleston, et al
Motions Hearing
April 11, 2014

1 THE COURT: -- is that the corner-lot position
2 or is that the corner of the building?

3 MR. BARR: That's the corner of the building.
4 The building is flush to the street, to the --

5 THE COURT: Street. Okay.

6 MR. BARR: -- to the sidewalk.

7 THE COURT: Okay. All right.

8 MR. BARR: So the property line and the building
9 are the same.

10 THE COURT: So you're saying the measurement was
11 in error?

12 MR. BARR: Beg your pardon?

13 THE COURT: You're saying the measurement was in
14 error?

15 MR. BARR: No. No.

16 All I'm saying is -- all I'm saying is it is
17 correct that that northwest corner of 45 Pinckney
18 Street is 93.5 feet from the residential district.

19 THE COURT: Okay. I got you. I got you.

20 MR. BARR: But as you go toward the west on that
21 Pinckney Street --

22 THE COURT: It's over -- it's 100 feet.

23 MR. BARR: -- it falls away at greater than 100.
24 And that's my whole point. So it's not --

25 THE COURT: I'm with you. Okay.

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Arkay, LLC, et al v. City of Charleston, et al
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April 11, 2014

1 MR. BARR: -- -- it's not throughout.

2 But the point is is that this is such a
3 diminious distance away. That's the point I'm trying
4 to emphasize here, on top of the other -- on top of
5 the other positions that we argued.

6 THE COURT: So if you measure it from the middle
7 of the lot, it would be 100 feet?

8 MR. BARR: Right. And --

9 THE COURT: Or if you measure it from the east
10 side of the lot, it would be well over 100 feet?

11 MR. BARR: And from the west it's not.

12 And as you'll see, Your Honor, when I get into
13 the discussion here, that becomes really significant
14 because if you take a look at the next tab, tab 5 --
15 that ought to be -- that ought to be called a plat.
16 plan. It's a fold-out plat. Plan.

17 THE COURT: Okay.

18 MR. BARR: All right. And if I may digress.

19 When we got that survey done, I went back and
20 read the zoning code very carefully, read the code
21 relating to stables, and I came to the conclusion
22 that what that code, 54-206(P) is describing, is not
23 a physical structure. It is describing a use. And
24 if --

25 THE COURT: What's the code number? Does

Arkay, LLC, et al v. City of Charleston, et al
Motions Hearing
April 11, 2014

1 anybody have -- have y'all provided us with a copy of
2 that --

3 MR. BARR: That's in front of you, Judge. It's
4 in the record, but I've also got a version of it in
5 front of you under tab 6.

6 THE COURT: Okay. Tab 6. Okay. Go ahead with
7 tab 5, I guess. Yeah. Go ahead with tab 5 and the
8 plat.

9 MR. BARR: So the code section is under tab 6,
10 54-206. So we concluded that really what the City is
11 saying in the zoning code -- because if you listen --
12 if you read the language -- look at that tab 5 -- 6
13 for just a minute, 54-206. It says usage designated,
14 in a table of permitted uses, and listed below.

15 THE COURT: Where are you reading from in the
16 section?

17 MR. BARR: Right at the top. 54-206.

18 THE COURT: The uses designated. Okay.

19 MR. BARR: Uses.

20 And this is not a table use, so it's uses
21 designated and listed below may be permitted where the
22 VZA finds a requirement to submit.

23 So the whole purpose of this, of the special-use
24 exception section of the zoning code, is to describe
25 permitted uses provided the conditions are met.

MIA PERRON, CVR-CM-M

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Arkay, LLC, et al v. City of Charleston, et al
Motions Hearing
April 11, 2014

1 Then you go over to the third page of that tab
2 6, Judge -- I'm sorry. Maybe -- yes, the third page.
3 And you see under section T?

4 THE COURT: Yes, sir.

5 MR. BARR: It says: stables shall be permitted.

6 THE COURT: Okay.

7 MR. BARR: All right. And then it gives seven
8 criteria. You see the seven criteria?

9 THE COURT: Right.

10 MR. BARR: The first is the one that's at issue
11 here: the stable is not located within 100 feet of
12 any residential zoned district.

13 That's what we're here to talk about. The City
14 has concluded that Mr. Knoth --

15 By the way, my clients are with me, Your Honor,
16 Robert and Richard Knoth. I should have introduced
17 them to you.

18 But the City has concluded that they comply with
19 all the other conditions, 2, 3, 4, 5, 6 and 7. The
20 question is --

21 THE COURT: Is that correct?

22 MS. CANTWELL: That's what --

23 THE COURT: The only one at issue is number 1?

24 MS. CANTWELL: Yes, sir.

25 THE COURT: Okay.

MIA PERRON, CVR-CM-M

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1 MR. BARR: So the only issue is number 1.

2 So going back to what happened after we got the
3 survey and we studied the zoning code, we concluded
4 that that zoning code describes and defines uses, not
5 physical structures. So the idea is to separate the
6 whole purpose of that 100 feet, is to separate that
7 use by 100 feet from the residential district.

8 So we concluded, well, if we subjected this
9 property to the rigid constraints of a horizontal
10 property regime, and restricted that front part of the
11 building against use as a stable, that would provide
12 the greatest assurance to the City and to the
13 community that the stable use would not be within 100
14 feet of that residential district. And that was the
15 argument we made to the VZA.

16 Your Honor, if you're looking at that plat plan,
17 the VZA said they didn't -- they didn't say all well
18 and good, but in their order they said, well, we can't
19 separate that easement.

20 If you look at the front of the building on the
21 plat plan, and the VZA --

22 THE COURT: Let me see where -- okay. Egress --
23 ingress and egress --

24 MR. BARR: Ingress, egress easement for unit A
25 across unit B. Unit A is the stable.

1 So the way that this condominium is set up,
2 Judge, is the front part of that building, the first
3 11-and-a-half feet, will be an office for Mr. Knoth
4 and an office for his son, Richard, who has an
5 ancillary business. That shaded area in the middle is
6 a common area. To the left are restrooms, not for
7 horses but for humans. And on the right of that
8 shaded area is a waiting area for customers.

9 And then behind that shaded area is where the
10 actual stable would be. In other words, the place
11 where the horses are kept would be back there. Now,
12 the distance from that stable use to the nearest
13 residential district is 119 feet.

14 So the VZA said, however, in their order -- and
15 that's in the big record. I didn't make a copy of
16 that. The VZA said, but we can't separate the access
17 over that easement from the use in the back and
18 therefore we're going to conclude that the stable
19 begins at the easement in the front.

20 Well, if you go back to that Kentucky windage
21 drawing that I shared with the red lines on it -- I
22 can't say this with certainty, but that -- from where
23 that easement exists, it may well be outside of 100
24 feet. Get back to the fine line that the City is
25 drawing. But --

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1 THE COURT: I assume the easement is to have
2 access to the stable; is that --

3 MR. BARR: Correct. To the stable and to the
4 restrooms and the customer waiting area and to the
5 office --

6 THE COURT: I guess the horses have to come in
7 on Pinckney Street through their --

8 MR. BARR: The horses will come in on Pinckney
9 Street.

10 THE COURT: -- and then straight down or off to
11 the left a little bit; is that correct?

12 MR. BARR: They'll walk straight to the back of
13 the building. And then in the back of the building --

14 [Whereupon, Mr. Barr and clients confer]

15 MR. BARR: -- there are six stalls.

16 And I might say, Judge -- this is sort of an
17 aside. There's been a recently enacted ordinance for
18 the care and keeping of animals. And this will be the
19 first state-of-the art stable in the City of
20 Charleston, provided we can build it. Up until now --
21 and even in these other -- in the other stables in the
22 city, horses are kept in stalls that are anywhere from
23 six feet by ten to smaller and larger. These stalls
24 will all be twelve by twelve and with ample
25 ventilation and provisions as required under the

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1 ordinance.

2 So the point I make -- and sort of following
3 Your Honor's questions. The point I make is what the
4 City VZA said was, well, we're going to count this
5 easement as a part of the stable and, therefore, we're
6 going to say you don't meet the 100-foot separation.

7 But my -- and so my first observation to the
8 Court about that I just made, and that is, well, that
9 easement may well be 100 feet away from that district
10 by virtue of that Kentucky windage sketch I showed
11 you.

12 But, but, the City overlooks the basic point.
13 And the basic point is this. In the city tourism
14 ordinances -- and it's a requirement of zoning. It's
15 a requirement of this subsection B, under subsection
16 P-2, it's a requirement that -- I'm sorry. P-3 --
17 that the stable requires -- with all city, county and
18 state regulations for stables. Well, there are no
19 county or state ones, but there is a city one and it's
20 in that tourism ordinance.

21 Now, in the city tourism ordinance, Judge
22 Nicholson, whereas stable is not defined in the zoning
23 ordinance, it is defined in the tourism ordinance.
24 And the definition of stable in the tourism ordinance
25 -- and there's a copy of that in the record and

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1 there's a copy of that also I think under tab 6 in
2 front of you -- or tab 7, actually.

3 Now, the definition in the tourism ordinance is
4 that a stable is the barn where animals are kept. And
5 the word kept means to preserve or maintain.

6 THE COURT: Well, was that ordinance in
7 existence when the zoning board made this decision?
8 You said it was a new ordinance.

9 MR. BARR: Beg your pardon, Your Honor?

10 THE COURT: Was that ordinance that you just
11 referred to in existence --

12 MR. BARR: Yes.

13 THE COURT: -- at the time the zoning board made
14 the decision?

15 MR. BARR: Yes. I made this same argument to
16 them.

17 THE COURT: Okay. All right.

18 MR. BARR: I made this same argument.

19 So the tourism ordinance -- now, the City tries
20 to argue in their memo that that shouldn't apply to
21 zoning. But it has to because, first of all, this
22 zoning ordinance only applies to stables for horse
23 carriages in the tour business. If you look at those
24 conditions, under P, if that's in front of you right
25 now, 54-206(b) -- look at number 2: the City of

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1 Charleston Tourism Commission has issued a certificate
2 of appropriateness for the stable.

3 Well, that only applies to tour carriages,
4 Judge. It doesn't apply to a stable on Johns Island.
5 It wouldn't apply to a stable that's not used in the
6 tour carriage business.

7 And so I think it's pretty clear that this
8 ordinance was written specifically for tour carriages.
9 And because this ordinance requires compliance with
10 the other city codes, it encompasses the city code
11 defining tourism which defines stables as the place
12 where horses are kept.

13 And the operative word there is kept. Where are
14 these horses kept? The horses are not kept -- if you
15 look back at the plat plan, they're not kept in the
16 easement. The horses are kept, that is to say they
17 are preserved or maintained, in the back of the
18 building in those six stalls, 119 feet away from the
19 residential district.

20 Now, Judge, this is really a question of the
21 law. I know you're probably familiar with the general
22 statements of the courts that the courts will defer to
23 interpretations of ordinances applied by the local
24 officials. But that's not -- this is not a question
25 of interpretation. We're asked to construe 54-

1 206(P)(1) -- throughout 206(P) in its entirety, but
2 more specifically (P)(1).

3 In other words, what does the word stable mean
4 in the special exception use statute? And it means, I
5 suggest, a use not a physical structure. So the use
6 as a stable, under (P)(1) must be at least 100 feet
7 away.

8 Now, I think there's some revealing language in
9 54-206, Judge, that helps that interpretation. If you
10 look at 54-206(P)(7) -- and I know you're making
11 notes. But if you look --

12 (P)(7). Are you there?

13 THE COURT: Yes, sir.

14 MR. BARR: All right. Up until there, the
15 statute does not mention a physical structure at all.
16 But there it says buildings are designed utilizing
17 appropriate ventilation to prevent objectionable odors
18 from being emitted.

19 So why did council there use the word building
20 and not the word stable? Is the City is now arguing
21 stable means a building? And it's because what the
22 City contemplated --

23 THE COURT: Hold on. Hold on just a second.

24 MR. BARR: All right.

25 [Off the record momentarily]

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1 THE COURT: Go ahead.

2 Do either one of you have a copy -- she's going
3 to try to find in this file the order that was issued.
4 Does anybody have a copy of it --

5 MR. BARR: Yes, sir.

6 THE COURT: -- that they could pass up quicker?

7 MR. BARR: Do you have the record? The thick
8 record.

9 MS. CANTWELL: Tab 1.

10 THE COURT: Yeah, we've got the thick record --

11 MR. BARR: It's tab -- which one?

12 MS. CANTWELL: Tab 1.

13 MR. BARR: Tab 1.

14 THE COURT: All right. That's fine. She'll
15 find it, if it's tab 1.

16 Go ahead.

17 MR. BARR: So the essence of the argument here,
18 Judge, I mean, I -- I pointed out that, physically,
19 the 100 feet from the building is diminious and it's
20 not constant. We pointed out that where these animals
21 are going to be kept is clearly going to be 119 feet,
22 clearly more than 100 feet from that residential
23 district.

24 But the essence of our argument is that stable,
25 as used here, describes a use and not a physical

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1 structure. And under subsection 7 where it says
2 buildings are designed, the reason that the City
3 Council used the words buildings there is they
4 intended to describe the physical structure and not
5 the use. So wherever this stable is going to be, we
6 want to make sure that that building in which it's
7 contained has ample ventilation.

8 Now, Judge, I think it's also important, as we
9 consider that argument, to also consider the context
10 in which the zoning code was adopted. The city
11 tourism ordinance, which is under tab 7, has numerous
12 provisions relating to the care and keeping of horses
13 -- I mean, of animals. In the tourism ordinance under
14 tab 7, section 29-206(a) --

15 THE COURT: 29-206(a)?

16 MR. BARR: A. Correct.

17 THE COURT: All right.

18 MR. BARR: -- defines and fixes the location of
19 the gate at the corner of North Market and Church.

20 THE COURT: Hold on just a second. Let me catch
21 up with you. 206(a). All right.

22 MR. BARR: 29 --

23 THE COURT: Go ahead. I'm -- gate -- issuance
24 procedure. Is that where you're talking about?

25 MR. BARR: Right.

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1 It defines and fixes that location. And if you
2 go back up to that zoning map that I gave you at the
3 outset --

4 That's where that number 35 is in the middle. I
5 think your clerk is showing it to you right now.

6 THE COURT: Okay. All right.

7 MR. BARR: So 29-206(a) fixes that location.
8 That's the gate. That's where there's a medallion
9 process where tour carriages have to pick up a
10 medallion which assigns them to a district of the city
11 in which they can take their horses so that all
12 tourists don't go into the same district at one time.

13 29 --

14 THE COURT: Just out of curiosity, your people
15 operate these buggies or the carriages?

16 MR. BARR: Yes, sir.

17 THE COURT: Just out of curiosity -- this
18 doesn't have anything to do with the lawsuit, but
19 I'm just sort of curious. Why don't they publish on
20 the -- which buggy is going where --

21 MR. BARR: They don't know --

22 THE COURT: -- I mean, just at random?

23 MR. BARR: And the answer to that is because
24 they don't know until they get to that gate and get
25 their medallion.

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1 THE COURT: Oh. Okay. All right.

2 MR. BARR: So they can't --

3 THE COURT: The City controls where they go --

4 MR. BARR: Correct.

5 THE COURT: -- for traffic purposes?

6 MR. BARR: Correct.

7 It's done on a lottery basis so that not -- so
8 that everybody -- every company. There are five
9 companies.

10 THE COURT: Okay.

11 MR. BARR: So that every company gets to get
12 into the heart of the historic district at least once
13 a day. But if they don't get the right tag, they're
14 going to go over where I live on the west side.

15 THE COURT: So the paying customer can't pick
16 and choose where he wants to go?

17 MR. BARR: I think that's correct.

18 THE COURT: The City does the --

19 MR. BARR: That's right. They take the luck of
20 the --

21 THE COURT: So I could go take five carriage
22 rides and maybe still not get to go where I want to
23 go?

24 UNIDENTIFIED: You might go in the same zone
25 every time.

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1 THE COURT: All right. That answered my
2 question. And that doesn't have anything to do with
3 this.

4 MR. BARR: Well, no, it's a good question.

5 [Off the record momentarily]

6 MR. BARR: And then, Judge, back on the tourism
7 ordinance: 29-212 --

8 THE COURT: 29-121?

9 MR. BARR: Correct. That's in the tourism
10 ordinance.

11 THE COURT: Okay.

12 MR. BARR: Under subsection I. And that's about
13 on page 7, I think, of what you have. Maybe 212 --
14 no. That's going to be deeper than that.

15 THE COURT: All right. 212, general healthcare
16 and maintenance requirements?

17 MR. BARR: Right.

18 But 212(I) is back over on page -- it ought to
19 be about page 11. If you look at the top right.

20 THE COURT: Page 11? Okay.

21 MR. BARR: And it says --

22 THE COURT: Stable and stalls?

23 MR. BARR: Right.

24 And then, more specifically, 212(I) --

25 THE COURT: 1 what?

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1 MR. BARR: 2.

2 THE COURT: 2.

3 MR. BARR: Go down to page -- on page 12 -- page
4 12, go down to the subparagraph 2.

5 THE COURT: Okay.

6 MR. BARR: It says: stables shall be located
7 within walking distance -- they dropped out of -- of
8 the medallion gate located and the corner of Church
9 and North market.

10 Now, the ordinance does not define walking
11 distance, so we don't know, although we have some
12 opinions -- but we don't know whether they're talking
13 about horse-walking distance or person-walking
14 distance or what.

15 But the point is that the ordinance requires --
16 if you go back to the zoning code, which requires
17 compliance with the code, says these stables have to
18 be within walking distance of that gate. Now, I think
19 that the walking distance that was intended by council
20 is in that orange block that I gave you on the map.

21 Now, if you take a look at that orange block, if
22 you go start at the top left at the northwest corner
23 and just take a tour of that historic -- of that
24 market district, that's the Bank of America at the top
25 left. You come over to the right and you see the red

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1 circle? That's our property. The next building on
2 the corner is an inn. Across the street is where the
3 Baptist -- First Baptist gymnasium recently was torn
4 down. Keep going west. Of course, that way there is
5 a horse-carriage stable there. And then you keep
6 going west and there's an inn, a veterinary office.
7 And then on the corner of East Bay is Big John's. So
8 that's what the north border looks like.

9 If you go down to the south border, on the
10 bottom left, the southwest corner, there's an office
11 building there, behind which is a big parking garage
12 in that block between Meeting and Church. And then
13 keep going to the east on the south border. All of
14 that is taken up by small properties. If you keep
15 going west, there's a convenience store there on the
16 corner of Cumberland and State, and then there are
17 restaurants. And you certainly can't put a stable on
18 East Bay. You certainly can't put a stable on Meeting
19 Street.

20 Now, Judge, the reason I'm mentioning this is
21 because this was what was in front of council when
22 they said, okay, this is what a stable is, it's a barn
23 where horses are kept, this is where it has to be, and
24 then in the zoning context, these are the conditions
25 within which it must comply.

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1 So what I'm suggesting is that when City Council
2 enacted this ordinance, they contemplated, in all
3 likelihood, the stable where the horses are kept would
4 not -- would be a part of a larger building. For
5 example, if you look back at my orange diagram -- back
6 at my orange diagram. Look at the northeast corner up
7 at the top right where Big John's is. Judge, right
8 across the street from that --

9 THE COURT: Have they reopened Big John's yet?

10 MR. BARR: I don't know.

11 [Off the record momentarily]

12 MR. BARR: To the east across East Bay Street,
13 where it says L-I, that's one of those huge Ports
14 Authority warehouses.

15 Now, let's assume that we could have put a --
16 that we could put a stable in the corner of that
17 warehouse. And our stable use, as you see, is 35 feet
18 wide by 20 feet deep, or whatever it is. It's very
19 small. Would that mean that that entire warehouse
20 building would be a stable? Well, by the City's
21 rationale, it would be.

22 If we had to -- if we had to march our carriage
23 all the way through that warehouse to get to our
24 stable over on the far east side of that warehouse,
25 that would mean by the courts' construction of this

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1 ordinance, the VZA's construction, that that whole
2 building would be a stable. Well, that just is
3 nonsensical.

4 And if you go back again to the zoning ordinance
5 itself, under 54-206(P), where they use the term
6 building in a discreet way, separately from the word
7 stables, they said that building better be ventilated,
8 if you have a stable in that building, it better be
9 ventilated. And our building is well-ventilated.

10 THE COURT: Okay.

11 MR. BARR: So I somewhat danced over my -- the
12 entirety of my presentation, but I wanted to follow
13 Your Honor's lead in terms of the questions that you
14 had coming in. And I hope at least I've addressed my
15 clients' position about this.

16 THE COURT: Can you -- are you familiar with the
17 order that the zoning board handed down?

18 MR. BARR: I am, Your Honor.

19 THE COURT: Can you point me to where they talk
20 about the easement in that order?

21 MR. BARR: I can, Your Honor. In the last
22 paragraph --

23 THE COURT: The last paragraph?

24 MR. BARR: -- on the last page.

25 THE COURT: Okay. Thank you, sir.

1 MR. BARR: It says while -- well, in the third
2 sentence: while Unit A within the building is where
3 the animals will be stored -- I notice they didn't
4 like to use the word kept -- to access that area, it
5 is necessary to pass through Unit B, an area within
6 100 feet. This board cannot discern intent to
7 separate the use from its access when there is but one
8 access to the building, and the law requires an
9 apartment and an HPR to have either direct access to a
10 public street or a common area. The common area or
11 easement to Pinckney Street from Unit A is apertnent
12 to or part of the unit, rendering it within the 100-
13 foot limitation. Thus, 45 Pinckney Street does not
14 qualify.

15 And so going back to what we say and contend and
16 believe firmly was the intent of Council, it is to
17 make sure that the elements described in the zoning
18 code -- and that is to say, the -- under 54-206(P) is
19 to make sure that all those activities, the cleaning,
20 loading and tacking, the handling of refuse, the
21 drainage, and the odors, and the place where the
22 animals are kept -- that is where they are maintained
23 -- is at least 100 feet away. It was not intended to
24 regulate simply a place where they pass through.

25 As Your Honor knows, having taken a couple of

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1 those rides and not gotten to where you wanted to get,
2 that's what carriages do on the street.

3 THE COURT: It wasn't me, it was my aunt. Okay?
4 I didn't care.

5 MR. BARR: But my point is that's what the horse
6 -- that's what the horse carriages do every day. They
7 pass by these residences every day. They pass by
8 these residences, right across the street from where
9 we are, every day. The zoning code is not intended,
10 the stable provision is not intended, to regulate
11 areas that they pass through but it's intended to
12 regulate areas where they are kept. And that's the
13 definition of stable in the tourism ordinance. And
14 that's why we contend that the board of zoning appeals
15 erred.

16 Now, Judge, I respect the City of Charleston
17 Board of Zoning Appeals immensely. They are persons
18 of integrity. But they're part-time volunteers on a
19 board that's thankless, quite frankly, because they
20 get into some real battles.

21 But what happened here was the city zoning
22 administrator, Mr. Batchelder, who is a true
23 professional, studied this issue carefully and very
24 thoughtfully. And this is what Mr. Batchelder told --
25 let me find that, if I may.

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1 [Whereupon, Mr. Barr reviews documents]

2 MR. BARR: The transcript of the hearing, Judge,
3 is under tab 2 in the record. And I think I can get
4 right to it.

5 [Off the record momentarily]

6 MR. BARR: Mr. Batchelder said -- this is under
7 tab 2, which is the transcript, on page 6. And he's
8 addressing all of these criteria. On page 6 of tab 2,
9 beginning at line 20, Mr. Batchelder said: now, the
10 wording of the ordinance in this particular instance
11 refers to a use, a special exception use. On the
12 table of permitted uses, a stable use is listed as a
13 special exception use within the general business
14 zoning district. And under this provision in the
15 special exception section, 54-206 of the zoning
16 ordinance, the wording refers to the stable, which I
17 interpret to mean the use. And that means the use --
18 a stable use cannot be located within 100 feet of any
19 residential zone district.

20 THE COURT: Aren't they saying the ingress and
21 egress of the horses is part of this table?

22 MR. BARR: That's what the board of zoning --

23 THE COURT: I mean, that's what they're
24 basically saying.

25 MR. BARR: -- appeals ultimately concluded.

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1 THE COURT: Right.

2 MR. BARR: But my point is that Mr. Batchelder
3 concluded differently. And, again, I don't denigrate
4 that board of zoning appeals. But Mr. Batchelder had
5 stated -- and what he later says is that there are
6 other parts of the zoning code that are interpreted
7 according to measurements to use rather than to a
8 physical place.

9 And so he carefully stated that he recommended
10 approval --

11 THE COURT: Well, let me ask you this. Ms.
12 Cantwell, you can chime in on this. As you said, your
13 Kentucky windage --

14 MR. BARR: Yes, sir.

15 THE COURT: And looking at your plat that shows
16 the private working areas and the egress area, I
17 assume that this -- I guess the north -- I guess the
18 northwest edge of that easement -- not the corner
19 position, but the northwest edge of that easement to
20 CP on the corner of number 7, Hasell Street, would be
21 100 feet. Or is that less than 100 feet or more than
22 100 feet?

23 MR. BARR: Well, if you're looking --

24 THE COURT: I mean, does anybody know?

25 MR. BARR: We don't know.

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1 THE COURT: I mean, is it -- I'm not trying to
2 split hairs. But it is appropriate, if the City's
3 position is the easement is part of the stable, to see
4 if that point where the easement comes out of the
5 building is within the 100 feet.

6 MS. CANTWELL: Your Honor, our position is that
7 the stable is the building. There's one building.

8 THE COURT: So your position: regardless of
9 where the easement is, it's immaterial? it's the
10 corner of the building?

11 MS. CANTWELL: That's correct.

12 THE COURT: Okay. All right. Go ahead.

13 MR. BARR: Judge, that's not what the order says
14 but --

15 THE COURT: I know. I understand that. That's
16 why I asked the question. The order doesn't say that.

17 MR. BARR: That is correct. That's correct.
18 That's correct.

19 So Mr. Batchelder was later asked by the
20 chairman --

21 THE COURT: What line are we talking about?

22 MR. BARR: Well, I can find out. Let me get to
23 that.

24 [Whereupon, Mr. Barr reviews documents]

25 MR. BARR: On page 11 now. Tab 2, number 11.

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1 And, again, the VZA has come into this hearing,
2 Judge, without any opportunity to study this. They
3 hear a case and then they move on to the next one.

4 And on line 14 the chairman says: Mr.
5 Batchelder, how do you get over number 1. That's the
6 100 feet. And Mr. Batchelder said, well, again, if
7 you look at the context of the requirement in this
8 section 54-206, it states that the stable is not
9 located within 100 feet from any residential zone
10 district.

11 And when I read this, I read that to mean the
12 use, the stable use, is not located within 100 feet of
13 any residential zone districts. There are other types
14 of land uses that are identified in the same section
15 of zoning ordinance where the wording is such that it
16 specifies that we measure from the building or from
17 the lot line. In this case there's no mention of a
18 building or property line -- that is where you would
19 take the measurement from. So I think it's
20 appropriate to measure it from the use. And if that
21 use is not at the front of the building, then you
22 don't have to measure from the front of the building.

23 He says, Mr. Batchelder, could be that. For
24 instance, if the First Baptist gymnasium -- and that
25 was then, quote, torn down -- located a half a block

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1 away was renovated and turned into multiple commercial
2 tenant spaces, where it could be because that is a
3 commercially-zoned property, and you placed your
4 stable in one of those spaces but then had offices and
5 restaurants and shops and other tenant spaces that you
6 would measure from the space that it was actually
7 occupied by the stable use and not from the building.
8 So I think it's appropriate to do that in this case.
9 And you'll hear, from the applicants, more information
10 about that as well.

11 Now, this -- I point this out, Your Honor,
12 mainly to show that there was not a clear consensus at
13 the board of zoning appeals about that issue.

14 THE COURT: What was the vote?

15 MR. BARR: The vote was -- there were six
16 members. Two recused themselves. That left four and
17 the vote was three to one against us.

18 THE COURT: Okay.

19 MR. BARR: And so I'm not disputing but that the
20 vote was against us --

21 THE COURT: I understand.

22 MR. BARR: -- or we wouldn't be here.

23 THE COURT: I understand.

24 I mean, you're just saying that Mr. Batchelder
25 --

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1 MR. BARR: Mr. Batchelder, Your Honor.

2 THE COURT: Batchelder --

3 I don't think he makes a recommendation. He
4 just presents what he found.

5 MR. BARR: Actually, at the beginning he
6 recommended approval. At the beginning of this, he --

7 THE COURT: I think there are several cases
8 where the zoning board has gone against his
9 recommendation.

10 MR. BARR: It happens all the time.

11 THE COURT: It happens all the time. I mean --

12 MR. BARR: No. I don't -- I don't dispute that.
13 I don't dispute that.

14 I simply point out, Judge, that this is a very
15 unclear question and it's a question of law.

16 THE COURT: Right.

17 MR. BARR: It's a question of law. It's the
18 construction of the statute. And the question is, and
19 we state the proposition is, that as used in the
20 zoning ordinance, stable defines a use and therefore
21 the measurement is to the use and not the structure in
22 which that use is contained. That's our case.

23 THE COURT: Okay.

24 MR. BARR: Thank you, Judge.

25 MS. CANTWELL: Thank you, Your Honor.

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1 THE COURT: Yes, ma'am.

2 MS. CANTWELL: Just for the court reporter, I'm
3 Frances Cantwell and I represent the board of zoning
4 appeals.

5 Tom Tisdale is with me, Your Honor, and he
6 represents Michael Maloney and the Maloney family.

7 MR. TISDALE: In three capacities.

8 MS. CANTWELL: And Wilbur Johnson represents the
9 Andrew Pinckney Inn.

10 Your Honor, I want to go right to the board's --

11 THE COURT: Tell me what the Maloneys and the
12 Pinckney Inn have to do with it, if you would, very
13 briefly. Just sort of why y'all are involved in the
14 lawsuit, I guess that's --

15 MR. TISDALE: Tom Tisdale, Your Honor, and I
16 represent Michael Maloney in three capacities here.
17 One is as the owner of the house across the street, 46
18 Pinckney Street --

19 THE COURT: That's the house we've been talking
20 about the measurements from?

21 MR. TISDALE: No, sir. That's another one of
22 the properties.

23 MR. BARR: It's shown on the plat.

24 MR. TISDALE: Yeah. It's shown on the plat.

25 I represent him in his capacity as a trustee of

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1 his mother's irrevokable -- a revokable trust at a
2 house -- and it involves a house at 5 Megan Lane. 4
3 Megan Lane. I'm sorry.

4 THE COURT: All right. That's the 93.1 --

5 MS. CANTWELL: That's correct.

6 MR. TISDALE: That's within the 100 feet.

7 THE COURT: Yeah. That's the one within 100
8 feet. Okay.

9 MR. TISDALE: Yes, sir. That's right.

10 And the third one, Mike Maloney as personal
11 representative of his father's estate, Robert E.
12 Maloney, to some property in the neighborhood at
13 57 Hazel Street.

14 THE COURT: Okay. According to these, that's
15 not within the --

16 MR. TISDALE: That's not within the 100 feet --

17 THE COURT: Not within the 100 feet.

18 MR. TISDALE: -- but the Megan Lane property is.

19 THE COURT: All right. Thank you, Mr. Tisdale.

20 Yes, sir?

21 MR. JOHNSON: Good morning. Wilbur Johnson,
22 Your Honor. I represent the Andrew Pinckney Inn.

23 We made an objection on behalf of the Inn, which
24 is adjacent to the proposed building to be used as a
25 stable. And we were allowed to present our objections

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1 before the board of zoning appeals, and we made a
2 presentation at the board. We filed documents which
3 were submitted and included in the record. And we
4 were named as parties to this appeal. I don't think
5 that the law requires that. But, in fact, we were and
6 that's why we're here today, Your Honor, is because we
7 were named as parties.

8 THE COURT: Okay.

9 MR. TISDALE: And that would go for us, as well,
10 Your Honor.

11 THE COURT: The same thing --

12 MS. CANTWELL: And I'm glad to have them, Your
13 Honor.

14 MR. TISDALE: They were named, also.

15 THE COURT: Well, why would they name Pinckney
16 Inn? I mean, why are they --

17 MR. BARR: Your Honor --

18 THE COURT: -- I mean, that's commercial and
19 this order doesn't have anything to do with that, does
20 it?

21 MR. BARR: It was probably out of an abundance
22 of caution on my part, but I just thought that they
23 were interested parties and I did not want there to be
24 a judication in which we would prevail and someone
25 comes in and says, hey, wait a minute, we never got

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1 notice of these proceedings.

2 THE COURT: All right. Ms. Cantwell, I'll be
3 glad to hear you.

4 MS. CANTWELL: Thank you, Your Honor.

5 What we have, Your Honor, as the record clearly
6 reveals, 45 Pinckney Street is occupied by an entire
7 building. There is no setback, there's no side
8 alleys, there's no nothing. The one building occupies
9 the entire site. There's one way into the building
10 and one way out of the building. That building, by
11 Arkay's own evidence, is within 100 feet of a
12 residential district. There's no dispute about that.
13 You can argue about where you might want to take the
14 measurement from, but at the hearing, the special
15 exception, it was conceded that this building where
16 this stable was proposed was within 100 feet of the
17 residential district.

18 So what was proposed to the VZA was like, well,
19 to get around that, we're going to subject this
20 property to a horizontal property regime and we're
21 going to devote I'm going to call it the back half --
22 it's actually more than that -- but we're going to
23 devote the back half of the building to be where the
24 horses are stored, then we're going to have a common
25 area in between that's going to be used by the office

1 use at the front and by our carriage patrons.

2 And so they said because of that, we have a
3 separate space in this building that is devoted to
4 stables and no other part of the building will be able
5 to use the use as a stable and, therefore, we meet the
6 100 feet.

7 Well, what the board said, and I want to go over
8 their order because it's pretty clear -- and they made
9 the finding that 45 Pinckney Street has one building.
10 The horizontal property regime doesn't change that.
11 And I will get into that in a minute. But just
12 because you put -- subject a property to a horizontal
13 property regime, that does not change any dimension of
14 the lot, any dimension of the building. A horizontal
15 property regime is a form of ownership only.

16 There's no dispute that the building is within
17 100 feet of the residentially-zoned district. The
18 evidence is clear on that.

19 And then they said, while Unit A is going to be
20 where the animals are going to be, they have to pass
21 within -- they have to pass an area in the building,
22 they have to use an area of this building, that's
23 within 100 feet of the residential district. There's
24 no question about that. You cannot get to the stable
25 without using the front part of 45 -- the building on

1 45 Pinckney Street.

2 And what they said is, we can't discern intent
3 to separate use from its access -- which was urged by
4 Arkay. And here's what's important: when there is
5 but one access to the building. And the law requires
6 that an apartment in a horizontal property regime,
7 which would be this so-called stable use, must either
8 have direct access to a public street, which it did
9 not, or direct access to a common area leading to a
10 public street.

11 And if you go to the law of horizontal property
12 regime, common areas are shared. They're owned by all
13 of the apartment owners. They all have the right to
14 use them, general common areas. Limited common areas,
15 and in this case there is a limited common area that's
16 just devoted to Unit B; to the so-called stable.

17 And so the point that I'm trying to make is that
18 under the circumstances of this case, trying to create
19 a separation, if you will, to dissect this building
20 into discrete parts for purposes of the law to avoid a
21 100-foot separation does not work. The horizontal
22 property regime law does not support that construction
23 of what a horizontal property regime is.

24 And zoning, in general, Your Honor -- and I
25 understand. I hear the argument about, well, it just

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1 applies to the use, to the use, not to the building
2 that the use is in. But what does -- but what does
3 zoning apply to? Zoning applies to the use of land,
4 buildings, and structures. That's what you apply it
5 to.

6 And right -- in this instance we had an
7 applicant saying, I want to use 45 Pinckney Street,
8 the building at 45 Pinckney Street, as a stable but in
9 order to get around the 100-foot separation, I'm going
10 to put them in the back of the house, if you will.

11 Well, most respectfully, Your Honor, I think that is a
12 strained interpretation of what the ordinance says and
13 what zoning is intended to do.

14 It's impossible, it is impossible, to use Unit B
15 for any purpose, for a stable or anything else,
16 without using the building -- the front part of the
17 building at 45 Pinckney Street. And I don't think
18 anybody would argue with that. And what the board
19 found is we cannot separate the two when that's the
20 only way you can get in and out of this building is by
21 going through portions of the building that are within
22 100 feet of the residential area.

23 And if you couple that with horizontal property
24 regime law that says, hey, this common area and this
25 easement is owned by everybody, I think that's a more

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1 compelling reason that the board made the correct
2 decision that the configuration or the attempted
3 configuration of the uses within this building to get
4 around the 100-foot separation was unavailing, did not
5 fly, did not comply with the intent of council when
6 they passed the ordinance.

7 And if you think about it, Your Honor, if what
8 is being argued is correct, there would be no reason
9 to put a horizontal property regime. You would just
10 say, hey, I'll just put a restricted covenant on it.
11 Or the board could say, all right, we'll just
12 condition this special exception saying you have to
13 keep it in the back part of the building. But even
14 they thought that would not fly and so they come up
15 with this clever, creative idea of trying to use a
16 horizontal property regime. But the law doesn't
17 support it.

18 The board legally could not separate the access
19 of unit B -- from unit B because horizontal property
20 regime law requires that apartment to have direct
21 access to either a public street or a common area.
22 The common area is an essential part of the ability to
23 use or occupy unit B and you could not conveniently
24 separate it when it doesn't suit your purposes.

25 And I would offer this up. The precedent we

1 could be setting here goes far beyond the stable.
2 Suppose -- their separation requirements in the
3 ordinance let's say for adult uses from other uses.
4 Well, if you're going to abide or adopt the
5 construction of -- you only consider where the
6 suggestive or racy activities are occurring, if you
7 will, you just put that in a part of the building that
8 meets the distance requirement and then you say, okay,
9 even though the building itself where that's going on
10 is with 100 feet -- within the 100 -- the prescribed
11 separation limit.

12 So I think that the practical, logical
13 construction of this ordinance is that you have to
14 consider what it's being applied to. And it's being
15 applied to a building, and it's being applied to a
16 building that has one access. And whether the
17 building stays just like it is today or whether you
18 put a horizontal property regime over the property --

19 THE COURT: What's the purpose of 100 feet?

20 MS. CANTWELL: The 100 feet --

21 THE COURT: I mean, why isn't it 75 feet or 200
22 feet? What's the purpose of 100 feet?

23 MS. CANTWELL: Well, that was a legislative
24 call, and Council determined that 100 feet was
25 sufficient -- I would argue that that was a sufficient

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1 distance to protect neighboring residential areas from
2 the potential ill effects of stables.

3 THE COURT: Then you've got a statute that says
4 -- talks about ventilation.

5 MS. CANTWELL: Correct.

6 THE COURT: Worried about odors, I assume;
7 right? That's the whole purpose of the statute?

8 MS. CANTWELL: Well, you're worried about odors,
9 you're worried about traffic --

10 THE COURT: Right.

11 MS. CANTWELL: -- you're worried about --

12 THE COURT: Well, traffic, I don't know why
13 you're worried about it because it's everywhere in
14 Charleston.

15 MS. CANTWELL: Well, but -- and here's where I
16 differ again --

17 THE COURT: I mean, it's unreal, the traffic in
18 downtown Charleston.

19 MS. CANTWELL: Well, here again is where I -- it
20 does apply to downtown Charleston. But this stable
21 ordinance, this is the only ordinance --

22 THE COURT: Right.

23 MS. CANTWELL: -- it applies citywide.

24 THE COURT: Right.

25 MS. CANTWELL: And there are other stables in

1 the city that are outside the downtown area. There's
2 one up in Hampton Park. For example, there's a number
3 of them on John's Island. And there are some I would
4 imagine up on Highway 61 where you have more rural
5 type of development. And so the idea was to --
6 everybody knows when you get stables, you get noise,
7 you get odors, you get traffic potential, you get
8 flies, you get all kind of things that just come with
9 animals. That's just the way it is. And Council
10 selected 100 feet as the minimum.

11 THE COURT: All right. Let me ask you this. I
12 believe section 54-206, subsection P, the section
13 provides safeguard to ensure cleaning, loading,
14 tacking of horses will not slow down traffic,
15 interfere with traffic, refuse and drainage needs will
16 be met, odors will not be adequately laid out in the
17 air, I guess for lack of a better term. I mean,
18 aren't you concerned about the traffic? You don't
19 have the horses and the carriages in the street
20 blocking traffic when they're changing the horses and
21 the carriages?

22 MS. CANTWELL: Yes, sir, that is a -- that is a
23 concern.

24 THE COURT: All right. And then you've got your
25 odors; right? And then you have what else? Refuse

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1 and drainage.

2 I mean, aren't you concerned about if the 100
3 feet is the magic figure, then what difference does it
4 make if the building is within 100 feet but the
5 objectionable part of the business is not within the
6 100 feet? I'm not sure of the logic of your argument,
7 other than your horizontal property issue, i.e., the
8 easement. The only thing that's going to be happening
9 in the easement is access. You're not going to be
10 unhooking horses, you're not going to be hooking up
11 carriages. Hopefully, there's no odors there. I
12 guess there could be. But, I mean, I'm -- if you're
13 objecting to the odors, and the 100 feet is the magic,
14 the what's producing the odors is outside the 100
15 feet.

16 MS. CANTWELL: Your Honor, but the 100 feet --
17 but the stable use itself --

18 THE COURT: Right.

19 MS. CANTWELL: -- is within 100 feet.

20 THE COURT: Well, the building is. But not the
21 use, other than walking through it.

22 MS. CANTWELL: I have to -- well, that's
23 correct.

24 THE COURT: Matter of fact, if a horse dumps in
25 the easement, yeah, you might have a problem. But

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1 that's going to get cleaned up. I mean, if your
2 objection is odors, the use is outside the 100 feet,
3 which is the objection on behalf of the City. And
4 that's what you're trying to protect the residential
5 zone from.

6 MS. CANTWELL: But the board has to apply the
7 law that's given to it.

8 THE COURT: I understand. But I'm just asking
9 you these questions with your argument.

10 MS. CANTWELL: And I don't disagree with what
11 you're saying. But the building within which that
12 activity is occurring is within 100 feet of the
13 residential district.

14 THE COURT: I don't argue that.

15 MS. CANTWELL: And so that's where the board
16 came down.

17 And, Your Honor, if you go to the tourism
18 ordinance -- and I -- you know, frankly, I think we're
19 comparing two different things. Got to comply with
20 both. If you're a carriage operator, you've got to
21 comply with the tourism ordinance. But if you're not,
22 you don't.

23 But the point is how do they -- how does it
24 define -- when City Council defines stable in there,
25 it said it's the barn, the barn, where the animals are

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1 kept. A barn is a building. A barn is a building.
2 And what they're trying to do here, by a horizontal
3 property regime, is try to carve out and say this is
4 not part of that building anymore. It is.

5 THE COURT: I think the purpose of a horizontal
6 property regime is so they can't come in and put
7 stables in the front part, where that can be
8 controlled -- as you said, it could be controlled by a
9 restriction on the property.

10 MS. CANTWELL: Well, the board can make that --
11 they could have made it a condition --

12 THE COURT: And the board could -- the board
13 could make that decision, impose that restriction on
14 that.

15 MS. CANTWELL: Exactly.

16 THE COURT: I mean, I guess my difficulty with
17 your argument is if the objection is the odors, and
18 odors aren't supposed to be within 100 feet, the odors
19 are outside the 100 feet except for whatever limited
20 odors you have when horses are coming in and out of
21 the easement going to the stables.

22 I think you've answered the best you can.

23 MS. CANTWELL: Well, I think, Your Honor, too,
24 is that what they -- you know, the City Council
25 obviously is concerned about the health of the horses,

1 the convenience of the neighborhood --

2 THE COURT: Right.

3 MS. CANTWELL: -- all those other things. But
4 they said, we don't want a stable. And the question
5 is is the stable a barn or is the stable -- is it a
6 verb when it needs to be a noun and then a noun when
7 it needs to be a noun. And they said, we don't want
8 stables within 100 feet of a residential district.

9 And so the issue comes down is is the building
10 at 45 Pinckney Street a stable and is it within 100
11 feet of the residential district. And we would say
12 that it is.

13 THE COURT: So your position is there's just no
14 way you could break up the building and the stable and
15 offices?

16 MS. CANTWELL: I'm sorry?

17 THE COURT: There's no way you could break up
18 the building and the stable and offices because of the
19 easement?

20 MS. CANTWELL: Correct.

21 I don't think that that -- I believe that that
22 is -- does not comport with the intent of council to
23 separate -- the distance separation between residences
24 and stables.

25 This is not a situation where there's two

1 buildings on the site. There is not a situation where
2 you have separate accesses to the site. This is one
3 building that occupies the whole site. And they're
4 trying to circumvent, if you will, the distance
5 requirements by saying we're going to restrict
6 everything to the back, regardless of the fact,
7 regardless of the fact, that we have to use other
8 parts of the building to even legally occupy that as a
9 stable.

10 I just don't know how he can separate the two.
11 And that's where the board came down on this, on this
12 factual situation that was presented to them.

13 THE COURT: Okay. Thank you very much.

14 MS. CANTWELL: Thank you.

15 THE COURT: Anybody else have any comments?
16 Mr. Tisdale? Mr. Williams? Anything you want to add?
17 I mean, it's not -- y'all are not involved in the
18 appeal, but I know you're named as parties and I don't
19 want to exclude you.

20 MR. TISDALE: Well, thank you very much.

21 And, well, just to say that we, of course,
22 support in full what Ms. Cantwell said.

23 And I would simply add that City Council has the
24 right and duty to set what the law is. They said it's
25 100 feet. They could have said 125 feet, they could

1 have said 75 feet, but they said 100.

2 And the fact is that under the law of horizontal
3 property regimes, the land is not changed. There's no
4 way that this place can be a stable without that
5 easement. And I think that pretty well settles the
6 issue and the question.

7 But the traffic in and out of the building, they
8 can't use the stable without the easement because they
9 have to get through. And that's what City Council is
10 trying to prevent. They picked the 100 feet, there's
11 nothing wrong with 100 feet, and that's just where it
12 is. And unfortunately for these folks, they're not --
13 they don't comply.

14 THE COURT: Okay. Thank you. Mr. Williams?

15 MR. JOHNSON: Wilbur Johnson, Your Honor.

16 THE COURT: I'm sorry, Mr. Johnson.

17 MR. JOHNSON: That's all right.

18 THE COURT: Excuse me. I'm sorry.

19 MR. JOHNSON: That's all right, Your Honor.

20 I think Ms. Cantwell and Mr. Tisdale and have
21 stated it appropriately.

22 The only thing that I would add, Your Honor, is
23 that the horizontal property regime law is pretty
24 clear on this issue. By trying to put this easement
25 in their place, they create one section of the

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1 building where the so-called stable is and another
2 section where offices are, is simply a legal fiction.

3 Under the horizontal property regime law,
4 section 27-31-20, it's all one building. You can't --
5 you're not creating a separate building. You're not
6 creating a separate structure under HPR law. It's
7 still all one building under the HPR law. There is no
8 question about that. The law is absolutely clear on
9 that point.

10 So the board of zoning appeals had no authority
11 -- they had no choice, actually -- but to wind up with
12 the result that they wound up with. They said they
13 could not discern any separation between the two
14 because that is, in fact, what the law requires.

15 The easement is -- you know, I'm sorry to say on
16 behalf of Arkay, but it's simply a legal fiction. It
17 is an effort to do something indirectly which cannot
18 be done directly. And the law is pretty clear on
19 that, Your Honor.

20 THE COURT: Okay. Mr. Johnson, thank you very
21 much.

22 Mr. Barr, anything you want to say on the
23 horizontal easement? Or anything you want to say in
24 reply, too.

25 MR. BARR: Well, much of what they argue about

1 real property law is, in fact, not disputed.

2 And this was -- I appreciate counsel
3 contributing some machiavellian scheme to me, but I
4 wish I were that shrewd. But our intent in setting up
5 the horizontal property regime was to give assurance
6 that by doing that and filing a covenant, that this
7 stable use would never be any closer than 119 feet
8 away.

9 THE COURT: I understand. But like Ms. Cantwell
10 said, the zoning board could have done that without
11 the horizontal property --

12 MR. BARR: They could have. But we did it
13 because we wanted to give them that assurance.

14 And this is not about adult use. This is about
15 the way that these statutes are written now. And so
16 we're not interpreting the adult-use statute. I
17 haven't even read that.

18 The stable zoning statute clearly describes it as
19 a use. And I respectfully suggest that the City still
20 has not responded to that question.

21 THE COURT: Well, the way I -- their response is
22 that easement is part of that use and the easement of
23 the horses is within the 100 feet.

24 MR. BARR: And that's their argument.

25 THE COURT: And that's their argument.

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1 MR. BARR: But the use is -- if the use is
2 defined -- now, if I were writing that tourism
3 ordinance in this case, I would not have put the word
4 barn in there. But it has to be -- but these have to
5 be -- ordinances have to be interpreted together. And
6 the operative description of a stable is where -- the
7 place where the horses are kept. And that's the
8 important thing. As Your Honor already asked --
9 pointed out, all of this activity is regulated by
10 zoning as 119 feet away. They may have to get through
11 some other place to get there, but it's no different
12 from going in front of the house. So we respectfully
13 suggest that the decision of the VZA should be
14 reversed for that reason.

15 THE COURT: Okay. Thank y'all so very much.
16 Give me a chance to read some of this stuff. I
17 appreciate it. Thank you for being here.

18 The other one -- you've got the other one.

19 MR. BARR: Well, let me do this. I know that --

20 THE COURT: I mean, can't y'all do that on some
21 short -- I'm sure you've already put it in your
22 memorandum.

23 MR. BARR: I filed a memorandum, Your Honor,
24 and I --

25 THE COURT: I mean, I'll be perfectly honest

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1 with you, and I don't want to prejudge it because I
2 haven't read it, if your argument on the use is not
3 correct and they won't grant the variance, I'm sure
4 there's enough in that transcript to justify the
5 decision because that's a different standard from me.
6 All I've got to do is look at that and see if there's
7 sufficient facts --

8 MS. CANTWELL: It's a different --

9 THE COURT: -- to justify the denial of the
10 variance. And I'm sure that's in there. I haven't
11 read it, but I know Ms. Cantwell -- I've heard a lot
12 of these cases that she's involved in, so I know
13 there's enough in that record to justify it. Maybe
14 I'm wrong. And I may be corrected after I read it.
15 Okay?

16 MR. BARR: May I hand up -- I did a -- I filed a
17 memorandum on the variance --

18 THE COURT: If y'all want to do a memorandum on
19 that second issue, I'll be happy for you to do that.

20 There it is.

21 MS. CANTWELL: There is one, Your Honor. You've
22 got one on --

23 And, Your Honor, just --

24 THE COURT: I guess what I'm saying, Mr. Barr,
25 your hat is hanging on the use.

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(1 MR. BARR: Your Honor, if that -- I agree. I
2 agree.

3 But we don't abandon the variance argument --

4 THE COURT: I understand. But I just don't --

5 MR. BARR: -- but it hangs on the question of --
6 we take the position that the intent of the zoning
7 ordinance was to regulate and measure from the use of
8 the --

9 THE COURT: Well, the intent was to control the
10 odor from residential areas.

11 MR. BARR: Correct.

12 THE COURT: All right. Thank you.

13 [HEARING CONCLUDES AT 12:07 P.M.]

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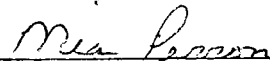
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing held before the Honorable J.C. Nicholson, Jr., on Friday, April 11, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 12th day of September, 2014.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

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PART 3 DEFINITIONS

Sec. 54-120. Definitions.

For the purpose of this chapter, certain terms and words are herein defined.

Accessory Building. A subordinate building on the same lot as the principal building(s) or use. Accessory buildings may include but not be limited to pool houses, additional living space, storage sheds, garages, and additional dwelling units in zoning districts that permit additional dwelling units. Accessory buildings in SR (Single-family Residential) zone districts shall not include kitchens.

Accessory Use. A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use.

Accommodations Uses. Commercial uses to provide living or sleeping units, for remuneration, to one or more individuals where the intended and/or usual occupancy would not exceed twenty-nine (29) consecutive days, including hotels, motels, inns, bed and breakfasts, short term rental units, rooming and boarding houses, hostels, lodging units, resort units, condominiums, cooperatives, apartments, units that are included in a "Vacation Timesharing Plan" as defined in S.C. Code Ann. § 27-32-10(7), and/or in a "Vacation Timesharing Lease Plan" as defined in S.C. Code Ann. § 27-32-10(8), as each may be amended from time to time, as well as any and all similar uses where the intended and/or usual occupancy is for periods not to exceed twenty-nine (29) consecutive days, and residence club uses. For purposes hereof, individual(s) mean a person, one who owns or receives an undivided interest in a premises, a partner in a partnership that owns a premises, a beneficiary in a trust that owns a premises, a shareholder in or member of a corporation that owns a premises, a beneficiary in a trust that owns a premises, a holder of a leasehold interest in a premises or a member of a residence club or other organization that owns a premises.

Adult Uses:

Adult Book /Video Store. An establishment having as a substantial or significant portion of its stock in trade books, magazines, videos, and/or other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical area" (as defined herein) or an establishment with a segment or section devoted to the sale, rental or display of such material. Adult Book/Video Store uses as defined herein, operating as legal nonconforming uses, shall be amortized and discontinued three (3) years after the effective date of Ordinance No. 1999-08.

Adult Drive-In Motion Picture Theater. Any outdoor theater requiring an automobile for admittance used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual

activities" or "specified anatomical areas" (as defined herein) for observation by patrons therein. This use when operated as a lawful non-conforming use shall be amortized and discontinued one year after the effective date of Ordinance No. 2003-50.

Adult Media/Novelty Store. An establishment with (1) ten percent or more of its retail sales area or (2) ten percent or more of its gross revenues from the sale or rental of any one or more of the following or combination thereof: (a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, DVD, slides, computer programs, or other visual representations which are distinguished or characterized by their emphasis on the exhibition or display of "specified sexual activities" or "specified anatomical areas" (sometimes hereinafter "adult media material") or (b) instruments, devices, or paraphernalia which are designed for use or marketed for stimulation of human genital organs (sometimes hereinafter "adult novelty").

Adult media/novelty store is a non-exclusive classification that may include adult book/video stores, adult drive-in motion picture theaters, adult mini-motion pictures theaters, adult motion picture theaters, or other adult uses, combinations thereof and combinations of adult uses and non-adult uses. The amortization period for adult media/novelty stores operated as a legal non-conforming use is one year from the date of this ordinance. As it relates to any amortization period, the more restrictive (shorter) amortization period shall apply to any business that is an adult media/novelty store and some other use. If a lawful amortization period for the use has already expired (for example, adult bookstore amortization period), then business shall not be entitled to an additional amortization period by operation of this section.

For the purposes of determining adult media/novelty store "DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS ON" means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of 'Specified Sexual Activities' or 'Specified Anatomical Areas,' the films so described are those whose dominant or principal character and theme are the exhibition or display of 'Specified Anatomical Areas' or 'Specified Sexual Activities'".

For the purposes of determining adult media/novelty store percentages of stock and percentages of revenue:

- (1) Percentages of stock shall be determined by calculating the total display area generally available to customers and determining that percentage of that display space containing the specified adult media materials and adult novelty items. Stockrooms, backrooms and other areas not generally accessible to the public and off premises inventory shall not be counted towards percentages. Goods at another physical location shall not be counted towards percentage, even if operated by the same business.

- (2) Percentages of gross revenue shall be counted only for the same physical business location and only bona fide sales or rentals may be counted. Where a sale or rental includes a free or reduced price "adult novelty" or "adult media material" with the purchase or rental of an item not an adult novelty or adult media material, the entire transaction shall be counted for the purposes of calculating revenue percentage.
- (3) All techniques and devices used to artificially skew percentages shall be disregarded and the true business of the establishment shall be discerned. Techniques and devices used to artificially skew percentages include but shall not be limited to: reduced price or free adult materials with purchase of non-adult materials, sham transactions or sales, mis-statement of retail value by inflating non-adult material prices above prices generally prevailing as to goods of that type, goods not held for bona fide sale or rental, sham transactions, etc.
- (4) Any business potentially operating as a non-conforming adult media /novelty store by selling or renting adult media material or adult novelties in an area not zoned LI (light industrial) or HI (heavy industrial) shall keep records at the store showing inventory on hand by category and retail value (updated no less than every month) as well as records showing for a six month period (updated no less than every month) which shall be available to zoning administrator or his designee upon request so as to enable zoning administrator or his designee to discern percentages of retail stock and percentages of gross revenue derived from sale or rental of adult media materials and adult novelty items as described above.

Adult Mini-Motion Picture Theater. Any business with an enclosed building or portion of a building with a capacity for less than fifty persons regularly used for presenting material which is characterized by an emphasis on the exhibition or display of "Specified Sexual Activities" or "Specified Anatomical Areas". This shall include booths or stalls (whether entirely enclosed or not) and arcades whether operated by coin or by attendant or otherwise where such materials are shown to a single person or up to forty-nine (49) persons. (This shall not include a bona fide hotel or motel room.) This use when operated as a lawful non-conforming use shall be amortized and discontinued one year after the effective date of Ordinance No. 2003-50.

Adult Motion Picture Theater. An enclosed building with a capacity for 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (as defined herein) for observation by patrons therein. This use when operated as a lawful non-conforming use shall be amortized and discontinued one year after the effective date of Ordinance No. 2003-50.

Adult Show Bar. An establishment used for presenting live performances of humans and/or animals having as a dominant theme or characterized or distin-

guished by an emphasis on (1) matter depicting or relating to specified sexual activities, as herein defined, or (2) the actual or simulated touching, caressing or fondling of the breast, buttocks, anus or genitals, or (3) actual or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law, or (4) indecent exposure (as defined by state law) for observation by persons therein and which sells alcoholic beverages to its customers. This use when operated as a lawful non-conforming use shall be amortized and discontinued one year after the effective date of Ordinance No. 2003-50.

Bath House. An establishment for providing bathing, sauna, steam and/or lavatory facilities for male and/or female persons which promotes its services by using and/or advertising the use of homosexual attendants or attendants of the opposite sex of the patron. This use when operated as a lawful non-conforming use shall be amortized and discontinued one year after the effective date of Ordinance No. 2003-50.

Cabaret. A nightclub, bar, juice bar, restaurant, or similar commercial establishment which features or tolerates any of the following: strippers, dancers, entertainers, patrons, impersonators, or other persons, either male or female, who expose to view of the patrons of said establishment at any time "Specified Anatomical Areas."

Massage Parlor. Any business, trade or profession commonly known as massage parlors, health salons, physical culture studios, clubs or establishments, or similar establishments by whatever name designated, wherein physical culture, massage, hydrotherapy or other physical treatment of the human body involving "specified sexual activities" (as defined herein) is carried on or practiced. This use when operated as a lawful non-conforming use shall be amortized and discontinued one year after the effective date of Ordinance No. 2003-50.

Sexual encounter establishment. Means a business or commercial establishment that offers as one of its primary business purposes, for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "Specified Sexual Activities" or the exposure of "Specified Anatomical Areas". The definition of sexual encounter establishment shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

Affordable Housing. Single-family, two-family or multi-family dwelling units, where occupants have, in the aggregate, household income of less than or equal to one hundred twenty (120) percent of median area income for owner occupied units, or eighty (80) percent of median area income for rental units. Median area income shall be determined annually by the U.S. Department of Housing and Urban Development as adjusted by the City of Charleston Department of Housing and Community Development, or its successor. Household income shall include all sources of financial support, both cash and in

kind, of adult members of the household, to include wages, salaries, tips, commissions, all forms of self-employment income, interest, dividends, net rental income, income from estates or trusts, Social Security benefits, railroad retirement benefits, Supplemental Security income, Aid to Families with Dependant Children or other public assistance or public welfare programs, other sources of income regularly received, including Veterans' (VA) payments, unemployment compensation and alimony, awards, prizes, government or institutional or eleemosynary loans, grants or subsidies and contributions made by the members' families for medical, personal or educational needs.

Alley. A right-of-way of narrow width publicly maintained and used principally as a means of secondary access.

Arborist. Means a person or firm, possessing a current city business license, who has been trained in the business of diagnosing, treating, pruning and removing trees.

Bed and Breakfast. A use by the record owner of property, who is also the resident of the property where the use is proposed, which contains one (1) or more rooms arranged for the purpose of providing sleeping accommodations for transient occupancy by one family.

Block. A tract of land bounded by streets on all sides.

Bona fide Agricultural Use. Means a parcel zoned C (Conservation) under the city's Zoning Ordinance which has greater than fifty percent (50%) of the parcel in active agricultural production.

Buffer Shrub. Means a three gallon or larger shrub, having a fullness appropriate for its container size, intended to be used in a landscape buffer for screening purposes. (Refer to Appendix A, unless otherwise specified.)

Building. Any structure built for the support, shelter, housing or enclosure of persons, animals or property of any kind, including appurtenances to buildings such as chimneys, stairs, and elevated stoops, porches, terraces and decks; except that assistive technology for accessibility including ramps and platform lifts shall not be defined as part of the building for the purpose of measuring setbacks and the lot occupancy of a building.

Casino. The use of a lot(s) or any buildings(s) thereon by one or more persons where, in the aggregate, such persons make available for use or play more than three (3) game machines or simulated gambling devices. For purposes of this definition, a game machine means an electronic video game machine that, upon insertion of cash, is available to play or simulate the play of games authorized by the South Carolina Tax Commission utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash, and simulated gambling device means any device that, upon connection with an object, is available to play or operate a computer simulation of any game, and which may deliver or entitle the person or persons playing or operating the device to a payoff. The following rules of construction apply to this definition of "simulated gambling device":

- i. The term "device" means any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading

games from a central server system, machine, computer or other device or equipment. The term "device" also includes any associated equipment necessary to conduct the operation of the device.

- ii. The term "upon connection with" means insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting an object to a device.
- iii. The term "object" means a coin, bill, ticket, token card or similar object, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration.
- iv. The terms "play or operate" or "play or operation" includes the use of skill, the application of the element of chance, or both.
- v. The term "computer simulation" includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation.
- vi. The term "game" includes slot machine, poker, bingo, craps, keno, any other type of game ordinarily played in a casino, a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, sweepstakes, and any other game associated with gambling or which could be associated with gambling, but the term "game" does not necessarily imply gambling as that term may be defined elsewhere.
- vii. The term "payoff" means cash, monetary or other credit, billets, tickets, tokens or other electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually.

Communication Tower. A tower of any size which supports communication equipment, transmission or reception, and is utilized by commercial, governmental, or other public or quasi-public users. This does not include communication towers for amateur radio operators licensed by the Federal Communications Commission which are exempt from municipal zoning restrictions.

Canopy. A structure constructed of rigid materials, including, but not limited to, metal, wood, concrete, plastic or glass, which is attached to and supported by a building or by columns, poles or braces extended to the ground.

Certificate of Occupancy. A statement, signed by the administrative officer, setting forth either that a building or structure complies with this chapter or that a building, structure, or parcel of land lawfully may be employed for specified uses, or both.

City. The words "city," "the city" or "this city" shall mean the City of Charleston, in the County of Charleston, and State of South Carolina, except as otherwise provided.

Commercial Industrial or Office Developments. One (1) or more retail, industrial or office establishments or any other non-residential use not necessarily in single ownership

but which occupies common and/or adjacent buildings on one or more lots of record utilizing common parking, ingress or egress, developed as, and appearing to be, a unified entity.

Commercial Nursery. Means an ongoing business for the planting, growing, and sale of plants and trees. A commercial nursery does not include an ongoing silviculture operation.

Commercial Parking Lot. A tract of land, building, or structure used for the storage or parking of automobiles by the general public and either operated for profit by the charging of fees, rents or the like, or used as an accessory to a principal business or industrial use.

Commercial Timber Operation. Means property which, on the effective date of this Ordinance, is being used to raise, harvest or produce trees for commercial marketing. The burden shall be upon the owner to establish this use through evidence such as prior leases or marketing agreements, the actual planting of the trees for harvesting, etc.

Community Garage. A group of private garages, either detached or under one roof, arranged in a row or around a common means of access, and erected for use of residents in the immediate vicinity.

Community Parking Lot. An open area in a residential district for the parking of cars of residents of the immediate vicinity; provided, however, there shall be no sale of parking spaces on an hourly, daily, or weekly basis.

Corner Lot. A lot abutting upon two or more streets at their intersection.

Council, City Council. The words "the council" or "city council" shall mean the city council of the City of Charleston, South Carolina.

Court. An open unoccupied space, other than a yard, on the same lot with a building, unobstructed from floor or ground level to the sky.

Damage or Abuse. Means any action which does not follow good arboricultural practices. Abuse also includes damage inflicted upon roots by machinery, changing the natural grade above the root system or around the trunk, changing drainage patterns around the tree, destruction of the natural shape of the tree or any action which causes infection, infestation or decay.

Dance Halls and Studios. A building or a portion of a building used as a place of work, or for public or private entertainment, by one or more dancers.

Day Care. The care, supervision or guidance of a person or persons, unaccompanied by the parent, guardian or custodian, on a regular basis, for periods of less than twenty-four hours per day in a place other than the person or persons' own home or homes.

Day Care Facility. 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. For the

purposes of this definition, related means any of the following relationships by marriage, blood or adoption: parent, grandparent, brother, sister, step-parent, step-sister, step-brother, uncle, aunt, cousin of the first degree. Day Care Facilities include, but is not limited to day nurseries, day care centers, group day care homes and family day care homes. The term does not include:

1. any educational facility, whether private or public, which operates solely for educational purposes in grades one or above;
2. five-year-old kindergarten programs operated by a public or private school;
3. kindergartens, preschools, nursery schools or other daytime programs receiving children younger than lawful school age primarily for educational purposes;
4. facilities operated in connection with a shopping center or service or other similar facility, where the same children are cared for less than four hours a day and not on a regular basis while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and immediately available;
5. summer resident or day camps;
6. Bible schools normally conducted during vacation periods;
7. programs offered by a church, synagogue or other religious institute which are primarily for the purpose of religious instruction or practice;
8. programs offered by parks, senior citizen centers, etc., for which the primary purposes are recreation and social interaction rather than care taking.

Types of Day Care Facilities:

Day Care Center. Any facility which regularly receives persons for day care during the hours of 6 a.m. to 7 p.m.

Family Day Care Home. Any facility, within a dwelling unit, which regularly provides day care for no more than five persons, unattended by a parent, custodian or legal guardian, during the hours of 6 a.m. to 7 p.m., including those persons living in the home and persons received for day care who are related to the resident caregiver, provided, however, that an occupied dwelling in which day care is regularly provided only for a person or persons related to the resident caregiver, or only for a person or persons of one unrelated family, or only for a combination of such persons, is not a family day care home. Please note that building codes may prohibit a family day care home within a dwelling unit without significant improvements. Applicants for family day care homes are advised to check with the City of Charleston Inspections Division prior to applying for zoning approval.

Group Day Care Home. Any facility, within a dwelling unit, which regularly provides day care for at least six but not more than twelve persons, unattended by a parent, custodian or legal guardian, during the hours of 6 a.m. to 7 p.m., including those persons living in the home and persons received for day care who are related to the resident caregiver, provided, however, that an occupied dwelling in which day

care is regularly provided only for a person or persons related to the resident caregiver, or only for a person or persons of one unrelated family, or only for a combination of such persons, is not a group day care home. Please note that building codes may prohibit a group day care home within a dwelling unit without significant improvements. Applicants for group day care homes are advised to check with the City of Charleston Inspections Division prior to applying for zoning approval.

Overnight Day Care Facility. Any facility which regularly provides day care for persons unattended by a parent, custodian or legal guardian between the hours of 7 p.m. and 6 a.m., provided, however, than an occupied dwelling in which day care is regularly provided only for a person or persons of one unrelated family, or only for a combination of such person, is not an overnight day care facility.

dBA. A uniform noise measurement that simulates people's perception of loudness and annoyance. It is weighted to account for those frequencies most audible to the human ear. This is known as the A-weighted sound level, or dBA.

Decibels. Sound is a fluctuation in air pressure. Sound pressure levels are measured in units called decibels (dB).

Deferred Presentment Lender. A business or use that regularly accepts checks from a borrower drawn on the borrower's bank account to be presented for payment at a later date and that charges a fee for the service, such as those regulated by Chapter 39 of Title 34 of the Code of Laws of South Carolina, 1976, as amended.

Depth of Lot. The mean horizontal distance between the front lot line and the rear lot line.

Depth of Front Setback. The least distance from any part of or point on the building to the front lot line of the lot.

Depth of Rear Setback. The least distance from any part of or point on the building to the rear lot line of the lot.

Diameter Breast Height (D.B.H.). Means the total diameter, in inches, of a tree trunk or leaders, measured four and one-half (4½) feet above existing grade. In instances where a tree splits into leaders below four and one-half (4½) feet above existing grade and the leaders are physically attached above the ground and of the same specie of tree, all leaders equal to or greater than six (6) inches D.B.H. shall be measured separately and count as one tree.

Dormitory. A building or part of a building operated by an academic institution containing a room or rooms forming one (1) 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.

Drip Line. Means an imaginary vertical line that extends downward from the outermost branches of a tree to the ground.

Dwelling. Any building, or part thereof, used and occupied for human habitation or intended to be so used including any appurtenances belonging thereto or usually enjoyed therewith but not including hotels, motels, inns, bed and breakfasts, boarding or rooming houses, and timesharing facilities (see also "Residential Use").

Types of Dwellings:

One-Family Detached Dwelling. A separate detached building designed for and occupied exclusively as a residence by one family.

One-Family Attached Dwelling. A building designed for and occupied exclusively as a residence by one family, being attached by means of a common dividing side wall or walls to one or more buildings likewise designed for and occupied as a residence for one family. A single housing 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", or "row" houses.

Two-Family Dwelling. A separate detached building designed for or occupied exclusively as a residence by two families.

Mobile Home. See definition under "Mobile Home" in this Section.

Multiple Dwelling. A building designed or occupied otherwise than as a one-family dwelling or a two-family dwelling. The term "multiple dwelling" shall be understood to include apartment houses, tenement houses, residential condominiums and similar multi-family buildings exclusive of hotels, apartment hotels, and motels, inns, boarding or rooming houses, bed and breakfasts, and timesharing facilities.

Dwelling Unit. One or more rooms arranged for the use of one (1) or more individuals living together as a single housekeeping unit, with cooking, living, sanitary and sleeping facilities.

Discount Stores. A single store or group of stores advertising a wide variety of merchandise for sale at less than retail cost.

Facade. The entire building wall, including parapet, fascia, windows, doors and canopy on any complete elevation. For purposes of this ordinance "building wall" shall also mean the exterior wall of an individual business unit within a building containing more than one business.

Family.

1. An individual; or
2. One (1) or more persons related by blood or marriage with any number of natural children, foster children, stepchildren or adopted children, plus not more than two (2) unrelated persons living together as a single housekeeping [unit]; or
3. A group of not more than four (4) persons not related by blood, marriage, adoption, or guardianship, living together as a single housekeeping unit, except that for properties in non-residential zoning districts containing twenty (20) or more dwelling units the maximum number of unrelated persons allowed in a single housekeeping unit shall be six (6).

Fence or Wall. Means a structural device erected to serve as an architectural element, landscape element, screen or barrier.

Foot Candle. A unit of illumination equal to the light flux falling on one square foot of area one foot away from a light source of one candle power.

Foot Lambert. A unit of brightness equivalent to the emission of foot candle of illumination from one square foot of area.

Fraternity House. A building maintained exclusively for fraternity members and their guests or visitors and affiliated with an academic or professional college, university or other institution of higher learning.

Front Setback. A setback across the full width of the lot extending from the front line of the lot to the corresponding line of the building.

Garage. A building or any portion thereof used for housing or repairing motor vehicles. This does not include rooms for storing, exhibiting or showing new cars for sale.

Garage Apartment. A room or rooms intended to be used as sleeping quarters, attached to a private or community garage.

Grade. Means the natural elevation of the ground.

Grand Tree. Means a tree twenty-four inches (24") or greater D.B.H. Grand trees shall not include any species of pine trees (genus Pinus).

Gross Acreage. The total area of a lot or lots including all submerged land and wetlands.

Gross Density. The number of dwelling units per gross acre.

Ground Cover. Means low growing plant material less than eighteen inches (18") in height.

Half Story. A story under a gabled or hipped roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the finished floor of such story.

Height of Building. The vertical distance measured from the curb line to the highest point on the finished roof, including appurtenant parts and mechanical penthouses, of the structure. Elevator shaft penthouses set back from the side lines of the building a distance equal to the height of such shafts shall be excluded for the purpose of measuring height.

Height of Terrace. The difference in elevation between the lowest terrace level and the top of the terrace at a point central to the width of the nearest on-lot building wall or building profile.

High Ground. Such portion of a lot or tract of land and exclusive of naturally occurring water bodies and any areas lying below the critical line of the South Carolina Office of Ocean and Coastal Resources Management (OCRM) or any areas within the jurisdiction of the U.S. Army Corps of Engineers as shown on a plat or site plan of a lot or tract that has been stamped by the OCRM or the U.S. Army Corps of Engineers, or both, as appropriate. A man-made body of water contained within the boundaries of a project shall be assessed at fifty percent (50%) of the total acreage of said body of water for purposes of calculating project density. However, the total number of developable acres shall not exceed a twenty percent (20%) increase in the number of developable acres that would exist if the body of water was excluded from the calculation.

Home Occupation. A home occupation shall be defined as an occupation, profession or trade that is customarily conducted within a dwelling by the resident of record, is incidental and subordinate to the principal residential use, and does not constitute a nuisance or adversely affect the use and development of adjoining properties in the neighborhood.

Hotel. A building or part of a building in which living or sleeping accommodations served by common entrances are used primarily for transient occupancy and may be rented on a daily basis.

Inn. See Hotel.

Inner Court. A court not extending to a street or alley or to a front or rear yard.

Interior Lot. A lot, the side lines of which do not abut on a street.

Land Development. Means the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics.

Landscaping. Means the practice or physical product of the arrangement of plant materials including ground cover, shrubs and trees, along with other natural and man-made elements such as rocks, fences and walls, as a means to enhance the built or natural environment by screening undesirable or unsightly land uses, buildings or other structures, or parking areas; by creating privacy; by buffering different land uses; and by modifying micro-climatic conditions (wind, shade, air temperature, etc.).

Leq(1). The constant sound level that, in a given situation and time period of one hour, conveys the same sound as the actual time-varying sound. This is a way of describing fluctuation sound by describing the fluctuating noise heard over a one-hour time period as if it had been a steady, unchanging sound. The method of averaging the noises made over a given time period weights the louder, more intrusive noises more heavily.

Lot. A portion or parcel of land laid out and approved by proper authorities and recorded as a single parcel in the R.M.C. office for Charleston County or Berkeley County, which is devoted to a common use or occupied by a building or buildings.

Lot Frontage. The front side of a lot that abuts a street or thoroughfare from which direct vehicular access to lots may be available.

Lot Occupancy of a Building. The horizontal area measured within the outside of the exterior walls or foundations of a building (see definition of "building"), except that appurtenances to buildings such as stairs and elevated stoops, porches, terraces and decks, that are not covered and are not elevated more than three feet above grade, shall not be included for the purpose of calculating lot occupancy of a building.

Mixed Occupancy. Occupancy of a building or land for more than one use.

Mobile Home. Any building or structure used or designed to be used for habitation of persons, or so designed and constructed that such building or structure may be transported in its entirety or in substantial part by a wheeled vehicle and placed upon a permanent foundation; or any manufactured structure designed or intended to be utilized as a single family dwelling which is over thirty-five feet (35') in length, or over eight feet (8') in width, and which can be temporarily or permanently parked upon a mobile home space.

Mobile Home Pad. A paved foundation equipped with utility connections located on a mobile home space.

Mobile Home Park. A development which meets the requirements of Article 3, Part 3, upon which two (2) or more mobile homes are placed for occupancy.

Mobile Home Space or Lot. A parcel or lot in a mobile home park or a single lot of record which meets the requirements of this ordinance for the placement of a mobile home.

Motel or Auto Hotel. A roadside commercial establishment offering lodging and automobile parking for transient travelers which has individual entrances from outside the building to serve the separate units.

Neighborhood Use. A term which shall be used to identify specific areas in a Planned Unit Development where a variety of uses including, but not limited to, residential, commercial, office and institutional uses may be permitted subject to zoning regulations on a PUD Master Plan approved in accordance with Article 2: Part 7 Planned Unit Development, PUD District.

Net Acreage. The total area of high ground on a given lot or group of lots, including areas for proposed public and private roads.

Net Density. The number of dwelling units per net acre.

Nonconforming Use. A use of building or land that does not conform with the regulations of the district in which it is situated.

OCRM. The South Carolina Office of Ocean and Coastal Resources Management.

Open Space. Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space. Open space shall not include streets, drives, off-street parking and loading areas, area so located or of such size or shape to have no substantial aesthetic or recreational value and any area within residential lots.

Ornamental Shrub. Means a three gallon or larger shrub, having a fullness appropriate for its container size, intended for ornamental purposes. (Refer to Appendix A.)

Outer Court. A court extending to a street or alley or to a front or rear yard.

Owner. The word "owner," applied to building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

Parapet. A vertical false front or wall extension above the roof line.

Personal Property. Includes every species of property except real property, as herein defined.

Person. The word "person" shall include a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual.

Porch. A roofed or unroofed structure forming an entrance to a building or used primarily as a partial access to the exterior of the building. A porch is primarily open and subject to exterior views of its interior portion.

Principal Building. The building(s) in which the principal use on a lot is conducted.

Property. The word "property" shall include real and personal property.

Protected Tree. Means a tree eight inches (8") or greater D.B.H.

Protective Barricade. Means a physical structure not less than four feet (4') in height, limiting access to protected and grand trees. A suitable protective barrier shall be composed of wood or other durable material which insures protection of protected trees and grand trees during development.

Real Property. "Real property" shall include land, tenements, hereditaments, fixtures and appurtenances.

Rear Setback. A setback across the full width of the lot, extending from the rear line of the lot to the corresponding line of the building.

Recommended Tree. Means a tree of two and one-half inches (2½") or greater in diameter as measured six inches (6") above grade, which will grow to a minimum height of fifty feet (50') at maturity. (Refer to Appendix A, unless otherwise specified.)

Relocated Tree. Means a protected tree that has been transplanted in the areas specified in Article 3: Part 3 and Part 7.

Remuneration. Money, rent, reward, recompense, salary, compensation or other bargained for consideration given in return for occupancy, possession or use of property, including the use of property to reward persons associated with clients or potential clients of a commercial venture.

Replaced Tree. Means the planting in the areas specified in Article 3: Part 6 of a recommended tree in place of a protected tree that is removed, irreversibly damaged or destroyed in violation of the standards set forth in Article 3: Part 6.

Residence Club Use. Use of a property by a club for the benefit of the members and/or guests of the club, who are eligible to occupy the property for varying lengths of time that may or may not exceed twenty-nine (29) consecutive days. Residence clubs are characterized by the ownership of properties and sale of club memberships for the purpose of allowing members and/or guests to occupy club-owned properties for varying lengths of time that may or may not exceed twenty-nine (29) consecutive days. Residence club uses are accommodation uses and subject to the regulations of the accommodations overlay zone.

Residential Use. The use of land or the building(s) thereon, or any part thereof, as a home by one or more individuals or families where the intended duration of occupancy is for a period of not less than thirty (30) consecutive days. Occupancy of a transient nature such as in motel, hotel, inn, bed and breakfast, rooming or boarding house, or timesharing uses shall not be defined as a residential use, but shall be defined as a commercial use.

Roadway. The word "roadway" shall mean that portion of a street improved, designed or ordinarily used for vehicular travel.

Roof Peak. The point at the highest level of the roofline excluding all appurtenant parts, mechanical penthouses and elevated shafts.

Screening. Means the use of landscape planting, fences, walls or other structures to obscure vision of an unsightly or undesirable land use or structure and to minimize the intrusion of lighting on neighboring property.

Setback. An open unoccupied space, other than a court, between the building and any lot line.

Shipping Container Storage Uses. Outdoor storage of three (3) or more shipping containers that are not attached to a truck trailer chassis and may or may not be used for storage of materials.

Shoreline Frontage. Means the edge of high ground along a river, and its tributaries and creeks, which is visible from any part of the river channel at high tide.

Short-term Lender. A deferred presentment lender or a title loan lender.

Short Term Rental. Short term rentals are a distinct type of accommodations use consisting of a limited number of fully functioning private dwelling units that are rented to families for periods of between one (1) day and twenty-nine (29) days. Distinguishing characteristics of a short term rental is: 1) it has all the attributes of a typical dwelling unit including cooking, living, sanitary and sleeping facilities, 2) is occupied by not more than four unrelated people pursuant to the definition for family, and 3) is located on a commercially zoned property with a limited number of short term rental units, if more than one such unit is provided.

Side Setback. A setback between the side line of the lot and the adjacent side line of the building, extending from the front yard to the rear yard. If there is no front yard, the side setback shall be considered as extending to the front line of the lot, and if there is no rear yard, the side setback shall be considered as extending to the rear line of the lot.

Sidewalk. The word "sidewalk" shall mean any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians.

Sign. Any device or representation for visual communication that is used for the purpose of bringing the subject thereof to the attention of others which is located on or attached to premises, real property, structures on real property, or a vehicle, and which is visible from a public street or way.

Types of Signs.

Abandoned Sign. A sign which was erected on property in conjunction with a particular use which has been discontinued for a period of ninety (90) days or more, or a sign the content of which pertains to a time, event or purpose which no longer applies.

Canopy Sign. A sign which is suspended from, attached to, supported from or forms a part of a canopy.

Dilapidated Sign. Any sign which is insecure or otherwise structurally unsound, has defective parts in the support, braces, guys and/or anchors or which is unable to withstand the wind pressure for which it was originally designed.

Directional and Warning Sign. (a) A traffic, directional or informational sign, permanently erected in the public right-of-way or on private property by a governmental agency and permitted signs in public rights-of-way; (b) off-premises signs which contain information regarding the time and place of regular meetings of civic or religious groups; and/or (c) an on-premises permanent sign located at the curb cuts of a commercial, industrial, or office establishment giving direction or

information as to matters as entrance, exit or the like. These signs may contain a logo or other information identifying the use of the premises, so long as such information is for direction and not advertising purposes.

Directory Sign. A sign listing only the names and/or use, or location of more than one business, activity or professional office conducted within a building, group of buildings or commercial center.

Flashing Sign. Any lighted or electrical sign which emits light in sudden transitory bursts. On/off time and temperature signs and message boards are not considered flashing signs for the purpose of this ordinance.

Freestanding Sign. A sign, not including sandwich boards, supported by a sign structure secured in the ground and which is wholly independent of any building, other than the sign structure, for support.

Illuminated Sign. A sign designed to give forth artificial light or to reflect such light from an artificial source.

Institutional Signs. On-premises signs which identify the name of an institution, such as a church, school, hospital, club, museum, a civic, fraternal or charitable organization, or similar entity and which describe the activities thereof.

Moving Message Board. Any electrical sign having a continuous message flow across its face by utilization of lights or other electrical impulses forming various words or designs.

Off-premises Sign. A sign identifying, advertising or directing the public to a business or commercial activity located on property other than where the sign is located.

On-premises Sign. A sign which (a) identifies, advertises or directs the public to a use, occupancy, function, service or product which is sold or manufactured on the property where the sign is located or at the site of a commercial, industrial or office development where the sign is located or (b) identifies, advertises or directs attention to a venture or message of a non-commercial or not-for-profit nature regardless of the location of such venture or message.

Portable Sign. Any sign, except a sidewalk/sandwich board sign, which is not permanently affixed to a building, structure or the ground.

Project Sign. Any sign erected and maintained on the premises temporarily while undergoing construction by an architect, contractor, developer, finance organization, subcontractor or materials vendor upon which property such individual is furnishing labor, services or material.

Reader Board. That portion of a sign face that allows for interchangeable letters, usually placed below the identification portion of the sign face. Reader boards are to be included in the calculation of the allowed sign size of a particular establishment.

Real Estate Sign. A temporary sign advertising the real property upon which the sign is located for rent, for lease, or for sale and providing the name and location of the owner or his agent.

Roof Sign. A sign erected over or on, and wholly or partially dependent upon, the roof of any building for support, or attached to the roof in any way.

Sandwich Board Sign. A freestanding movable sign, not secured or attached to the ground or any building or structure, composed of a sign panel and supporting structure or one or more panels which form both the structure and sign face, and which is intended to be placed in a sidewalk or pedestrian way.

Sign Band. A panel, either permanently affixed to or removable from a building façade, which is designed specifically to accommodate sign letters or graphics.

Snipe Sign. A sign which is tacked, nailed, posted, pasted, glued or otherwise attached to trees, poles, stakes or fences, or to other objects, and the advertising matter appearing thereon is not applicable to the present use of the premises upon which such sign is located.

Special Event Sign. A sign which carries a message regarding a special event or function which is of general interest to the community, such as historic, ethnic, cultural, religious, political or similar activities.

Temporary Sign. Any sign or information transmitting structure intended to be erected or displayed for a limited period, or any sign towed behind an aircraft.

Vehicle Sign. A permanent or temporary sign affixed, painted on, or placed in or upon any parked vehicle, parked trailer or other parked device capable of being towed, which is displayed in public view under such circumstances as to location on the premises, time of day, duration, availability of other parking space on the premises, and the proximity of the vehicle to the area on the premises where it is loaded, unloaded or otherwise carries out its principal function, which circumstances indicate that the primary purpose of said display is to attract the attention of the public rather than to serve the business of the owner thereof in the manner which is customary for said vehicle.

Window Sign. Any sign which is permanently painted on, applied to, attached to or projected upon the glass area of a building, including doors, whose identification, message, symbol, insignia, visual representation, logo type, or any other form which communicates information is intended to be read from off-premises, contiguous property or a public right-of-way.

Silviculture. Means the cultivation of a forest for the purpose of harvesting timber.

Site Plan. A plan delineating the overall design of a development on a tract of land, including but not limited to grading, engineering design, construction details and survey data for existing and proposed improvements, the size, height, shape and location of buildings, location and design of parking areas, landscaping, refuse areas, and pedestrian and vehicular circulation on site.

Skirting. Panels specifically designed for the purpose of screening the underside of a mobile home or manufactured dwelling unit by forming an extension of the mobile home body and covering the entire distance between the bottom of the exterior walls and the ground elevation below and along the entire perimeter of the mobile home or manufactured dwelling.

Sleeping Unit. A single room with accommodations for sleeping or a suite of rooms designed for occupancy by a family that has accommodations for sleeping.

Sorority House. See Fraternity House.

Special Exception. A departure from a general provision of this chapter which, by the expressed terms of such provision, may be permitted by the Board of Zoning Appeals upon application only after the Board finds the existence of facts and circumstances detailed in such provision.

Specified Anatomical Areas. "Specified Anatomical Area" means: a) less than completely and opaquely covered: i) human genitals, pubic region; ii) buttocks, and iii) female breast below a point immediately above the top of the areola; b) human male genitals in a discernibly tumid state, even if completely and opaquely covered; and c) a covering or device that when worn, simulates genitals, pubic region, buttocks, or any part of the female breast below the top of the areola.

Specified Sexual Activities. "Specified sexual activities" means: a) human genitals in a state of sexual stimulation or arousal; b) acts of human masturbation, sexual intercourse or sodomy; c) fondling or other erotic touching of human genitals, pubic region, buttocks, or female breast.

Specimen Tree. A tree listed in any of the categories in Section 54-331, that is healthy, undamaged, disease free and shows exceptional form and growth habits for that specific species.

State. The words "state" or "this state" shall mean the State of South Carolina.

Story. That portion of a building included between the surface of any floor and the surface of the next floor above, or if there be no floor above it, then the space between such and the ceiling next above it.

Street. The word "street" shall mean the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic and shall be taken to include any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge and approaches thereto within the city. The word "street" shall also mean a private street within a subdivision.

Street, Public. A dedicated public right-of-way which affords the principal means of access to abutting property and which has been accepted for maintenance by the city, county or the S.C. Department of Transportation. For the purposes of these regulations, the term street or streets shall also mean avenues, boulevards, roads, lanes and all other public rights-of-way.

Local Street. A public street used primarily for providing direct access to abutting property.

Collector Street. A public street designed primarily to connect private ways serving multi-family complexes or other local streets with arterial streets and may be expected to carry a significant volume of traffic having neither origin nor destination on the street.

Arterial Street. A federal or state highway designed primarily for the movement of large volumes of traffic from one area to another.

Structure. Anything constructed or erected, the use of which demands its permanent location on the land; or anything attached to something having a permanent location on the land. The word "structure" shall include the word "building."

Structural Alteration. Any change or replacement in the supporting members of a building or structure, such as bearing walls, columns, beams or girders.

Subdivision. Means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, lease, or building development, and includes all division of land involving a new street or change in existing streets, and includes re-subdivision which would involve the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law; or, the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, and includes combinations of lots of record.

Tenant, Occupant. The words "tenant" or "occupant" applied to a building or land shall include any person who occupies the whole or a part of such building or land, whether alone or with others.

Through Lot. An interior lot having frontage on two streets.

Timesharing. The use of land or the buildings thereon, or any part thereof, as living quarters by one or more individuals or families where the intended duration of occupancy is normally less than thirty (30) consecutive days and when the basis of the right to such occupancy is dependent upon the acquisition, either through title or lease, of units of time which entitle one to exclusive possession of the premises. Timesharing use includes fee simple ownership, commonly called "interval ownership" and right of use or non-fee contract.

Title Loan Lender. A lender which regularly extends short-term nonpurchase money loans secured by titles to motor vehicles, such as those regulated by S. C. Code § 37-3-413 (Cum. Supp. 2011). The term does not include other supervised lenders, banks, credit unions, savings banks and like depository institutions.

Total Ambient Noise Levels. All stationary and mobile noise sources including vehicular or truck traffic associated with the proposed use of the property. Total ambient noise will be measured at any property line, using a sound level meter which is capable

of measuring $L_{eq}(1)$ noise levels. Measurements should be made at a setback distance of 1,000 feet or greater from any existing roadway in order to accurately measure noises at the proposed use only. This measurement is not intended to restrict construction activity but only the operation of the proposed use.

Understory Tree. Means a 10 to 12 feet tall, which will grow to a minimum height of twenty feet (20') at maturity (refer to Appendix A, unless otherwise specified).

Usable Open Space. Open space areas of high ground developed to provide for active recreational uses.

Vacation Time Sharing Ownership Plans. Any arrangement, plan or similar devise, whether by tenancy in common, sale, term for years, deed, or other means, whereby the purchaser receives an ownership interest in real property and the right to use accommodations or facilities, or both, for a period or periods of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one year.

Variance. Relief from the literal enforcement of this chapter, permitting the use of property in a manner otherwise forbidden, granted by the Board of Zoning Appeals upon a finding that the enforcement of this chapter as written would inflict practical difficulty or unnecessary hardship as hereinafter described; provided, however, that the Board of Zoning Appeals may not, by variance, permit to be established or carried on in any use district an activity, business or operation which is not otherwise allowed in such district by a specific provision of this chapter.

Velocity Decibels. Vibration levels are measured in terms of velocity, representing the instantaneous speed at a point on the object that is displaced. The root mean square of a vibration signal is the average of the squared amplitude of the signal over a given period of time (usually one second). The rms velocity is normally described in inches per second. Decibel notation is defined as $L_v = 20 \times \log_{10} (V/V_{ref})$, where L_v is the velocity level in decibels, V is the rms velocity amplitude, and V_{ref} is the reference velocity amplitude. VdB is used for vibration decibels to reduce the potential for confusion with noise decibels.

Video Arcades. A building or any specifically designated portion thereof, the principal use of which is the providing of entertainment by means of coin or token operated machines for amusement and/or gaming.

Water-Dependent Structures. Means those structures associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within required building setbacks or buffers. Water-dependent structures do not include residences, restaurants or motel/hotel facilities.

Wetland. Means land that falls under the jurisdiction of one or more of the following agencies: OCRM or the United States Army Corps of Engineers.

Width of Court. The least horizontal dimension of a court at its lowest level.

Width of Side Setback. The least distance from any part of or point on the building or porch to the adjacent side lot line of the lot.

(Ord. No. 1996-227, § 1, 2, 11-26-96 ; Ord. No. 1997-459, § 1, 11-25-97; Ord. No. 1998-76, § 1, 4-28-98; Ord. No. 1998-147, § 1, 8-18-98; Ord. No. 1998-203, § 1, 11-24-98; Ord. No. 1999-02, §§ 1, 2, 1-12-99; Ord. No. 1999-08, § 1, 2-9-99; Ord. No. 1999-54, §§ 4, 5, 4-27-99; Ord. No. 1999-94, § 1, 8-17-99; Ord. No. 2001-44, § 11, 5-8-01; Ord. No. 2002-19, §§ 1, 2, 2-12-02; Ord. No. 2002-92, § 1, 8-13-02; 2002-130, § 1, 11-26-02; Ord. No. 2003-44, § 1, 4-22-03; Ord. No. 2003-50, §§ 1—3, 5-27-03; Ord. No. 2004-25, § 1, 3-9-04; Ord. No. 2005-92, § 1, 5-10-05; Ord. No. 2005-95, § 1, 5-17-05; Ord. No. 2006-397, § 1, 9-12-06; Ord. No. 2006-428, §§ 1—4, 9-26-06; Ord. No. 2006-489, § 1, 10-24-06; Ord. No. 2007-136, §§ 1, 2, 7-17-07; Ord. No. 2007-172, § 1, 9-11-07; Ord. No. 2008-160, § 1, 12-9-08; Ord. No. 2010-09, § 1, 3-9-10; Ord. No. 2011-08, §§ 1—3, 2-8-11; Ord. No. 2011-11, § 1, 2-8-11; Ord. No. 2011-28, § 1, 4-12-11; Ord. No. 2012-41, §§ 2, 3, 1-24-12; Ord. No. 2013-22, § 1, 2-26-13; Ord. No. 2013-31, § 1, 3-12-13)

That such museum operate during normal business hours and does not inherently exhibit noise, light or traffic conditions clearly debilitating to neighboring residents.

- o. Sewage disposal facilities shall be permitted as an exception within the Conservation Zone where the Board, after review, determines that such uses are in accordance with the City's comprehensive land use plan.



- p. Stables shall be permitted within the GB and UC district as an exception where the Board, after review, finds that:
1. The stable is not located within 100 feet of any residential zone district.
 2. The City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable.
 3. The stable complies with all city, county, and state regulations for stables.
 4. A site plan is provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right-of-way.
 5. A written explanation is submitted detailing how refuse will be handled in accordance with city, county, state, and federal regulations. This shall be reviewed by the Department of Public Service.
 6. A plan is submitted showing how drainage on the property is to be collected in accordance with city, county, state, and federal regulations. This shall be reviewed by the Commissioners of Public Works and the Department of Public Service.
 7. Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted.
- q. Electric substation or gas regulator station. Such station shall be permitted within the Conservation District, all residential districts, the CT district, and the RO district only as an exception where the Board, after review, finds that such station is essential for service of the immediate area, will be enclosed within an appropriate woven wire or solid fence, will be suitably landscaped and no storage of vehicles or equipment will occur.
- r. Storage yards, junk yards, scrap yards or auto salvage yards.
1. Outdoor storage yards, which are used for storage of materials and equipment, other than vehicles, boats or shipping containers, are permitted within the LI (Light Industrial) and HI (Heavy Industrial) districts as an exception where the Board, after review, finds that adequate provision and maintenance of visual screening by fences, planting or other means, from public streets, roads, residences and adjacent residential zone districts will be provided.
 2. Junk yards, scrap yards, or auto salvage yards are prohibited within the LI district but permitted within the HI district as an exception where the board, after review, finds that the same standards for visual screening listed in 54-206.r.1. are met.
- s. Reserved.
- t. Golf courses and membership sports and recreation clubs, private or for profit, or changes thereto, shall be permitted within the Conservation district as an exception where the Board, after review, finds that the location, lighting, hours of operation, type and size of the facility, or changes thereto, will not adversely affect any neighboring residentially zoned areas.
- u.

Charleston, South Carolina, Code of Ordinances >> - CITY CODE >> Chapter 29 - TOURISM >>
ARTICLE V. - TRANSPORTATION BY ANIMAL-DRAWN VEHICLES FOR PURPOSES OF TOURING >>
DIVISION 1. GENERALLY >>

DIVISION 1. GENERALLY

Sec. 29-201. Restricted.

Sec. 29-202. Franchise agreement required; restrictions.

Sec. 29-203. Route limitations.

Sec. 29-204. Drivers.

Sec. 29-205. Tour guide required.

Sec. 29-206. Gatekeeper loading and medallion issuance procedure.

Sec. 29-207. Design standards.

Sec. 29-208. Zones of operation.

Sec. 29-209. Diapering apparatus and sanitation communication required.

Sec. 29-210. Number of medallions to be issued.

Sec. 29-211. Fees.

Sec. 29-212. General health care and management requirements.

Secs. 29-213—29-218. Reserved.

Sec. 29-201. Restricted.

No person shall operate or cause to be operate for hire any vehicle, of whatever nature, drawn by animals for the purpose of conducting tours within the old city district or the old and historic district, except animal-drawn vehicles as provided in this chapter.

(Ord. No. 1983-22, § 56, 5-10-83)

Editor's note—

Formerly numbered as section 29-202

Sec. 29-202. Franchise agreement required; restrictions.

(a) *Findings of fact:*

- (1) City council finds that certain of the operators of animal drawn vehicles in the old and historic district of the city have begun to utilize aggressive solicitation practices, adjacent to or upon the streets, sidewalks and public properties, urging upon citizens and visitors the use of their services; have abruptly approached citizens and visitors and thrust brochures in their hands, which are often unwanted and end up on the streets and sidewalks; have utilized solicitors, pamphleteers, persons holding signs, hawkers and pullers-in and have even placed fixed structures upon or adjacent to the streets, sidewalks and public properties to solicit business and/or distribute materials urging the use of their services.
- (2) City council further finds that the success of such commercial practices requires that persons congregate and respond to such solicitation, thereby impeding pedestrian and vehicle travel.
- (3)

City council further finds that such practices have an adverse impact on the ambiance of the city and its old and historic district; tend to create confrontations with citizens and visitors; adversely impact pedestrian and vehicle traffic flow; create litter; tend to create nuisances; adversely impact the health, safety and well being of the public; and otherwise have a negative impact on the tourism industry and economy of the city.

- (4) City council further finds that it is appropriate that, as a condition of operating animal-drawn vehicles in the old and historic district, all persons must obtain a franchise, and must agree to desist from the aforesaid business practices, which agreement shall be a condition of the franchise.
 - (5) City council further finds that the operation of animal drawn vehicles on the public streets is a privilege and not a right and such operation is for the benefit of the public.
 - (6) City council further finds in the adoption of this section, that this is part of an ongoing effort to reasonably regulate the conduct of business upon the streets and sidewalks of the central business district and the market area for the benefit of the general public.
- (b) *Franchise required:* No person shall operate or cause to be operated upon the streets or sidewalks of the old and historic district of the city any animal-drawn vehicle, without first entering into a franchise agreement with the city. Such franchise agreement shall be granted for a period of one (1) year and shall expire on the anniversary of the date of execution; provided, however, upon compliance with the provisions of the franchise agreement and Chapter 29, Articles V and VI, the agreement shall be automatically renewed. The franchise agreement shall contain the following provisions, which provisions are material and go to the essence of the franchise agreement:
- (1) The franchisee shall maintain a current business license.
 - (2) The franchisee shall agree to operate its business strictly in accordance with the ordinances of the city, applicable thereto, as from time to time amended.
 - (3) The franchisee shall agree that it will not carry out the following business practices, or suffer them to be carried out on its behalf, upon the sidewalks, streets and public properties in the old and historic district, or upon private property adjacent to such streets, sidewalks and public properties, but directed at persons upon such streets, sidewalks and public properties:
 - a. The distribution of pamphlets or other printed materials to solicit or advertise for business.
 - b. The use of hawkers, pullers-in, pamphleteers, or persons holding signs to solicit or advertise the business or inviting the public to make inquiries to such persons.
 - c. The placement of fixed structures for the purpose of sales, solicitation, hawking, pullers-in, pamphleteering or the support of signage or advertising.
 - d. The parking or storage of animals or equipment on the public streets and sidewalks, except to load or unload passengers in approved loading zones. Nothing herein shall regulate the parking or storage of animals or equipment on private property.
 - (4) Nothing herein shall prohibit the solicitation of business immediately alongside an animal-drawn vehicle in an approved loading zone so long as such solicitation is not done in a raucous manner.
 - (5) The franchise shall be nonexclusive.
 - (6)

The franchisee shall agree that, upon the violation of the provisions of this section by the franchisee, its agents, employees, or persons acting on its behalf, the right to operate animal-drawn vehicles in the old and historic district shall be suspended as follows:

- a. Upon two (2) violations within a six-month period, the franchise shall be suspended for a period not to exceed seven (7) days.
- b. Upon three (3) violations within a one-year period, the franchise shall be suspended for a period not to exceed thirty (30) days.
- c. Upon four (4) violations within a one-year period, the franchise shall be suspended for a period not to exceed one hundred eighty (180) days.
- (c) *Administration and appeals.* This section shall be administered by the director of tourism. All appeals from an interpretation or determination by the director of tourism shall be made to the tourism commission, within fifteen (15) days of notice of such interpretation or determination. All appeals from an adverse decision by the tourism commission shall be made to the Court of Common Pleas within thirty (30) days of such decision.
- (d) *Execution of agreement.* City council, by the adoption of this section, authorizes the mayor to enter into a franchise agreement with any and all persons who desire to operate animal-drawn vehicles in the old and historic district. Unless otherwise stated, each franchise agreement shall automatically renew on January 1 of every year so long as the franchisee is in good standing.

(Ord. No. 1995-110, § 1, 3-28-95; Ord. No. 1998-174, § 23, 9-22-98; Ord. No. 2001-133, § 1, 12-18-01; Ord. No. 2002-99, § 1, 8-13-02; Ord. No. 2006-200, § 1, 5-23-06)

Editor's note—

Ord. No. 1995-110, § 1, adopted March 28, 1995, enacted provisions designated as following former § 29-201. In order to accommodate the provisions of said ordinance, the editor renumbered former § 29-202 as § 29-201 and added the provisions of Ord. No. 1995-110 as § 29-202

Sec. 29-203. Route limitations.

Animal-drawn vehicles may operate on all streets or public ways in the district except the following:

- (a) The bricked portion of Church Street, from Water Street to South Battery, and all cobblestone and Belgium block streets;
- (b) Any public way designated as an alley, land or court (excluding St. Michael's Alley which may be used through Friday from 4:00 to 6:00 p.m., excepting legal holidays and Horlbeck Alley which may be used Monday through Friday from 9:00 a.m. to 4:00 p.m. and during regular touring hours on weekends and on legal holidays);
- (c) The following streets:
 - (1) Atlantic Street;
 - (2) Price's Alley;
 - (3) Rope Maker's Lane;
 - (4) Bedons Alley;
 - (5) Ladson Street;
 - (6) Big Lamboll Street;
 - (7) Water Street (from Church to Meeting Streets);
 - (8) Church Street (from Tradd to Water Street);

- (9) Broad Street (West of State Street) from 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m., Monday through Friday, excepting legal holidays;
- (10) Meeting Street (North of Broad Street) from 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m., Monday through Friday, excepting legal holidays;
- (d) On such streets or at such times as are restricted for such use by the department of traffic and transportation with the approval of the city council committee on traffic and transportation and so designated in the office of the commission.
- (e) There shall be an amended commercial route that can be used during eastern standard time between the hours of 4:30 p.m. to 6:00 p.m. The commercial route approved is as follows: Market Street to Concord Street to Vendue Range to Prioleau Street to Elliot Street to E. Bay Street to Exchange Street to Prioleau Street to Concord Street to Market Street.

(Ord. No. 1983-22, § 59, 5-10-83; Ord. No. 1986-88, § 1, 8-19-86; Ord. No. 1993-58, § 9, 4-27-93; Ord. No. 2013-10, § 1, 1-22-13)

Sec. 29-204. Drivers.

All drivers of animal-drawn vehicles shall have a current automotive vehicle drivers license and demonstrate competence in handling animal-drawn vehicles. All drivers of animal-drawn vehicles shall be required to pass an animal-drawn vehicle competency examination which will satisfy the city that the driver is knowledgeable and capable of handling horses and animal-drawn vehicles in emergency situations.

(Ord. No. 1983-22, § 60, 5-10-83; Ord. No. 1993-58, § 7, 4-27-93)

Sec. 29-205. Tour guide required.

All tours on animal-drawn vehicles must be conducted by a registered or temporary tour guide.

(Ord. No. 1983-22, § 61, 5-10-83)

Sec. 29-206. Gatekeeper loading and medallion issuance procedure.

- (a) The city shall establish a central location at the corner of North Market and Church Streets for the distribution of medallions to be issued in the conduct of tours in the zones of operation as established pursuant to section 29-208 of the Code of the City of Charleston. The central location point shall be designated as the "gate" which will consist of a structure to be occupied by a city employee authorized to issue medallions for touring as provided herein, said employee to be more commonly referred to as the "gatekeeper." The gate loading procedure shall require an animal-drawn vehicle to load and discharge passengers as herein provided and to pass through the gate to receive a medallion. This medallion shall indicate the zone in which the animal-drawn vehicle shall conduct its tour. The zone designation shall be obtained by random selection by the gatekeeper as hereinafter provided. The medallion shall be issued by the gatekeeper and affixed to the back of the animal-drawn vehicle. Upon completion of the tour, the medallion shall be returned to the gatekeeper by the driver or company representative of the animal-drawn vehicle having been issued the medallion. A medallion shall be returned to the gatekeeper no later than seventy-five (75) minutes after its issuance.
- (b)

Animal-drawn vehicles shall load and discharge passengers at the city's one (1) central loading zone, located on Anson Street south of Pinckney Street and on North Market Street between Anson Street and Church Street, provided that an animal-drawn vehicle shall be able to load and discharge passengers on private property that is owned or operated by its company and provided that the said private loading zone is within the Market zone which is described as the area lying between and including Pinckney Street to the north; Cumberland Street to the south; East Bay Street to the east, and Meeting Street to the west.

- (c) The gate shall operate between the hours of 9:00 a.m. through 5:30 p.m. during Eastern Standard Time and from 9:00 a.m. and 6:30 p.m. during daylight savings time. During Eastern Standard Time, medallions shall be issued until 4:30 p.m. and shall be returned by 5:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 5:00 p.m. During daylight savings time, medallions shall be issued until 5:30 p.m. and shall be returned by 6:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 6:00 p.m. Notwithstanding the foregoing, during the month of April 2011 only, the gate shall operate between the hours of 9:00 a.m. and 7:30 p.m. Furthermore, during the month of April 2011, medallions shall be issued until 6:30 p.m. and shall be returned by 7:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 7:00 p.m.
- (d) Animal-drawn vehicles shall be permitted to remain in a loading zone no longer than fifteen (15) minutes prior to entering the gate to receive a medallion. If a medallion is not issued to a vehicle which has been in the loading zone for fifteen (15) minutes, the said vehicle shall move to the rear of the loading zone and wait in line to enter the gate and receive a medallion.
- (e) A special tour, which is defined as a tour that has been scheduled in advance by the director of tourism, shall require a medallion before the said special tour can be conducted. A special tour must also utilize the city's loading zone or private property for loading and discharging passengers as provided herein.
- (f) A commercial tour, shall be defined as a tour that is conducted in the commercial district only and after 4:30 p.m. There shall be no more than be five (5) commercial tours permitted to begin between 4:30 p.m. and 5:00 p.m. industry wide, and there shall be no more than five (5) commercial tours permitted to begin between 5:00 p.m. and 5:30 p.m. industry wide. The carriage company owners will determine among themselves how the five (5) commercial tours permitted to begin between 4:30 p.m. and 5:00 p.m. and the five (5) commercial tours permitted to begin between 5:00 p.m. and 5:30 p.m. will be divided up among the carriage companies. Commercial tours conducted after 5:30 p.m. shall not be restricted in the number of tours permitted and shall not require a medallion.

(Ord. No. 1983-22, § 62, 5-10-83; Ord. No. 1993-58, § 1, 4-27-93; Ord. No. 2002-73, § 1, 5-28-02; Ord. No. 2006-495, § 1, 11-14-06; Ord. No. 2010-85, § 2, 5-11-10)

Sec. 29-207. Design standards.

Animal-drawn vehicles shall be authentically styled passenger carriages. Wagons which patently were designed for cargo instead of passengers will not be approved. Carriages must not exceed twelve (12) feet in length or six (6) feet in width. Carriages will be measured from end to end, excluding the steps and shafts; and, from axle tip to axle tip. No part of the carriage may be over six (6) feet in width; provided, however, any certificated carriage which was in use as of January 1, 1982, and no longer than thirteen (13) feet may continue in use.

(Ord. No. 1983-22, § 63, 5-10-83; Ord. No. 1998-174, § 24, 9-22-98)

Sec. 29-208. Zones of operation.

- (a) The peninsula city shall be divided into zones of operation as may be recommended from time to time by the commission and approved by city council. A map outlining such zones shall be maintained in the office of the director of tourism.
- (b) Based upon traffic studies, industry input and observations and experience of the commission, the maximum number of animal drawn vehicles to be allowed to operate in a given zone may be restricted, all as may be recommended by the commission and approved by city council.
- (c) The right to operate in Zones 1, 2 and 3 shall be made available to touring entities having animal drawn vehicles for which certificates of appropriateness have been issued as follows:
 - (1) Through the use of the gate and gatekeeper procedure as hereinabove defined, the gatekeeper shall utilize a bingo machine and twenty (20) pingpong balls, six (6) of which shall be designated for Zone 1, six (6) of which shall be designated for Zone 2, and eight (8) of which shall be designated for Zone 3, to randomly select a ball with a designated zone destination marked thereon, and that upon selection, the ball shall be removed from the bingo machine and replaced when the medallion is returned.
 - (2) When a medallion is issued, the gatekeeper shall record the company's name, the animal-drawn vehicle drivers' name, medallion number and the time that it is issued. No animal-drawn vehicle shall be issued more than one (1) medallion within forty-five (45) minutes from the time of issuance of the first medallion. When the medallion is returned, the check-in time shall be recorded by the gatekeeper. The gatekeeper shall verify that the maximum check-out time has not been exceeded.
 - (3) A medallion shall be returned to the gatekeeper no later than seventy-five (75) minutes from the time of its issuance.

(Ord. No. 1985-148, § 5, 12-17-85; Ord. No. 1986-49, § 2, 5-27-86; Ord. No. 1993-58, § 4, 4-27-93)

Sec. 29-209. Diapering apparatus and sanitation communication required.

It shall be unlawful for any person, firm, corporation or other entity to utilize any animal for the purpose of pulling any vehicle on city streets unless such animal is equipped with diapering apparatus that prevents the droppings of such animal from being deposited or otherwise left on city streets. It shall be the responsibility of the person, firm, corporation or other entity utilizing any animal-drawn vehicle to see that the diapering apparatus is maintained in working order. Further, every animal-drawn vehicle shall be equipped with a two-way communication system and flags to identify areas in need of sanitation. It shall be the responsibility of the person, firm, corporation or other entity utilizing any animal-drawn vehicle to drop a sanitation flag marking areas where animals deposit or otherwise leave excreta on city streets and to utilize two-way communications to provide notice of areas in need of equine sanitation.

(Ord. No. 1987-82, § 1, 7-21-87; Ord. No. 1998-174, § 25, 9-22-98; Ord. No. 2007-223, § 1, 11-27-07)

Sec. 29-210. Number of medallions to be issued.

- (a) The city shall authorize a total of twenty (20) medallions to be distributed as follows:
 - Zone 1 6
 - Zone 2 6
 - Zone 3 8
- (b) The medallions shall be labeled with a serial number as follows:

Zone 1 Serial Nos. 1—15

Zone 2 Serial Nos. 16—30

Zone 3 Serial Nos. 31—45

(Ord. No. 1993-58, § 3, 4-27-93)

Sec. 29-211. Fees.

- (a) Each animal-drawn vehicle company authorized to do business within the City of Charleston shall be assessed an annual fee of seventeen thousand five hundred dollars (\$17,500.00) to operate a carriage business in the City of Charleston. This fee will allow a company to have one (1) animal-drawn vehicle in the central loading zone at any given time.
- (b) Each animal-drawn vehicle company shall be assessed a fee of three dollars (\$3.00) each time one of its animal-drawn vehicles receives a medallion at the gate. The company shall be billed on a monthly basis.
- (c) A company which operates an animal-drawn vehicle business in the City of Charleston shall be assessed a monthly sanitation fee in a sum to be assessed by the director of tourism, which fee shall be paid before the company shall be allowed to participate in the gatekeeper system, said fee to be billed to the company on a monthly basis.

(Ord. No. 1993-58, § 5, 4-27-93)

Editor's note—

Ord. No. 1993-58, § 5, adopted April 27, 1993, enacted a new section 29-212. In order to better conform to the organization of the Code, the editor has redesignated the provisions of § 5 of Ord. No. 1993-58 as § 29-211

Sec. 29-212. General health care and management requirements.

- (a) *Findings of fact.* City council hereby makes the following findings of fact:
 - (1) The City of Charleston, carriage company operators, residents, and visitors to the City of Charleston have sought to take a proactive approach to protect and ensure the health, safety and welfare of animals used in the tourism industry;
 - (2) A study was conducted to develop and recommend animal welfare policies to the tourism commission. In response to the study, the tourism commission formed the ad hoc committee on animal-drawn carriages which committee was comprised of representatives from the tourism commission, animal control, the carriage industry, the Society for the Prevention of Cruelty to Animals ("SPCA"), and an independent veterinarian;
 - (3) The ad hoc committee on animal-drawn carriages has now reviewed and updated the previously recommended policies after much deliberation and with input from the general public, Carriage Operators of North America ("CONA"), and the veterinarian community; and
 - (4) The codification of the ad hoc committee on animal-drawn carriages recommended regulations is in the best interest of protecting the health, safety, and welfare of the animals used in the tourism industry and protects the health, safety, and welfare of motorists and pedestrians using the public right-of-ways along with the residents and tourists of the City of Charleston.
- (b) *Definitions.* Except where the context clearly indicates otherwise, the following terms and phrases as used in this section shall have the following meanings:
 - (1)

Animal shall mean any horse or mule used for touring purposes and operated under a franchise agreement as outlined in section 29-202.

- (2) *Contamination* shall mean the introduction of unwholesome or undesirable elements, including but not limited to, bedding, mold, bugs, and rodent droppings.
- (3) *Director of tourism* shall mean the director of tourism or his or her designee.
- (4) *Equine sanitation flag* shall mean the marker used to identify animal excreta and is generally recognized as a two and one-half-inch rubber ball cut in half with an eight-inch surveyor's flag attached.
- (5) *Farrier* shall mean a specialist in horse care who addresses the hooves, feet and legs of the animal.
- (7) *Inspection* shall mean to permit the director of tourism, the police department, or a city contracted veterinarian to enter upon the premises of any carriage company subject to this ordinance to make inspections and to examine and audit required records.
- (8) *Old and Historic District* shall mean that portion of the city that is so designated from time to time on the official zoning map of the city.
- (9) *Out of service* shall mean when the animal is unhitched from a carriage and out of its harness.
- (10) *Police department* shall mean the chief of police or his or her designee.
- (11) *Rest* shall mean the time when the animal is in service but not performing work as defined herein.
- (12) *Stable* shall mean the barn where the animals are kept.
- (13) *Stall* shall mean individual space within the barn where each animal is kept.
- (14) *Tour* or *touring* shall mean the conducting of or the participation in sightseeing in the districts for hire or in exchange for a donation.
- (15) *Touring stock* shall mean all animals used for touring pursuant to this section.
- (16) *Vintage carriage* shall mean any carriage built before 1900.
- (17) *Work* and *working* shall mean the act of pulling a carriage.
- (18) Reserved.
- (19) Reserved.
- (20) *Free choice* shall mean that water shall be ready and in front of a horse for 15 minutes after a tour is conducted so that a horse is free to choose to drink or not to drink water.

(c) *Equipment.*

- (1) Every carriage used for touring purposes and operated under a franchise agreement as outlined in section 29-202 shall be equipped with the following:
 - a. Head lights or lanterns and tail lights or lanterns which are visible for a distance of (500) feet when the carriage is operated from a half hour after sunset to a half hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred feet ahead;
 - b. A slow moving vehicle emblem attached to the rear of the carriage;
 - c. A diapering apparatus that prevents the droppings of the animal used to pull the carriage from being deposited on the ground or the right-of-way;
 - d. A fifth wheel or cut under turning mechanism on the front axle with the exception of vintage carriages;

- e. Reflective ankle cuffs or another reflective device approved by the tourism committee shall be used on at least two (2) of the animal's legs if one (1) animal is pulling a carriage, or if two (2) animals are pulling a carriage reflective ankle cuffs or another reflective device approved by the tourism committee shall be used on at least one (1) of the outside legs of each animal when the carriage is operated from a half (½) hour after sunset to a half (½) hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred (500) feet ahead;
 - f. A two-way electronic communication system; and
 - g. A minimum of two (2) equine sanitation flags to mark animal excreta droppings.
- (2) Carriages must be properly lubricated and the carriage wheels shall spin freely.
 - (3) Each carriage shall be maintained in a safe condition so as to not endanger any person or property.
 - (4) Each carriage shall be maintained in a clean and sanitary condition, free of litter and debris and at all times suitable for public transportation of passengers.
 - (5) No carriage shall be operated having more passengers than what is permitted by its certificate of appropriateness or having a combined weight of carriage, passengers, and drivers that is more than three (3) times the weight of the animal(s) pulling the vehicle.
- (d) *Carriage stands, client pick-up locations, staging areas, and barns.*
- (1) Carriages queuing in the medallion booth line shall move and circle the block during equine sanitation cleaning.
 - (2) Each carriage company shall ensure that their animals in the queue line at the medallion booth shall have a fresh water source every hour.
 - (3) Each carriage company shall post at their barns in a conspicuous place signage as required under applicable federal, state, and local laws, including but not limited to, the Equine Activity Liability Act (S.C. Code 47-9-730), along with providing brochures outlining the City's ordinances governing the general health and welfare of the animals used in the tourism industry of Charleston.
- (e) *Care and shelter of animals.*
- (1) No animal shall be used to draw a carriage unless the animal is in good health and the following standards are met:
 - a. The animal shall not have open sores, open wounds, diarrhea, nor shall the animal be lame or have any other ailments unless the city tourism office as well as the individual company's stable has a current written statement by a veterinarian on file that the animal is fit for such work notwithstanding such condition. Further, the written statement by the veterinarian must have a required expiration date;
 - b. The hooves of all animals while engaged in work on pavement, brick, concrete or other like hard surfaces shall have rubber or elastomer shoes, boots or pads to prevent slipping and shall be evenly trimmed and shod. However, steel shoes can be used upon introduction to the touring stock during an initial two-week trial period. Also, if a farrier determines that the horse's hooves will not accommodate the use of rubber pads, metal shoes can be used on the rear legs of the animal;

- c. The animal shall be properly and appropriately groomed;
 - d. The animal shall have adequate flesh and muscle tone as determined by the Body Condition Scale of the Henneke Chart and shall average between 4 and 7;
 - e. The animal is kept in good working condition;
 - f. At introduction into the touring stock then bi-annually thereafter, the animal shall have had a physical inspection completed by and a certificate of serviceability for carriage work signed by a licensed veterinarian, with the results thereof provided to the City of Charleston Tourism Director and made available for inspection on site;
 - g. All animals upon reasonable notice by the tourism director or police department shall be made available for an annual physical inspection to be conducted by the tourism director or police department's veterinarian with the results thereof being maintained by the office of tourism with a copy being provided to the carriage company operator;
 - h. At introduction into the touring stock then quarterly thereafter, the animal shall have been de-wormed; and
 - i. At introduction into the touring stock, the animal has been vaccinated under the direction of a veterinarian for appropriate diseases and risk factors of the area, as outlined on the certificate of serviceability.
- (2) Free choice water shall be provided to each animal immediately after completing a tour for a minimum of fifteen (15) minutes.
 - (3) Animals shall be provided electrolyte supplements at each feeding.
 - (4) Animals shall have at least fifteen (15) minutes rest between back to back tours.
 - (5) In a twenty-four-hour period, animals shall not engage in Work more than eight (8) consecutive hours or ten hours with out a one and one-half (1½) hour break being disconnected from the carriage, in a twenty-four-hour period.
 - (6) Animals shall not engage in work more than six (6) days in a seven-day period.
 - (7) Animals shall not engage in work with equipment causing an impairment of vision, other than normal blinders.
 - (8) Animals shall not be driven at a speed faster than a slow trot.
 - (9) Animals shall not be subject to any cruel or harassing treatment or equipment.
 - (10) Animals shall not be sold or disposed of except in a humane manner in accordance with American Association of Equine Practitioners' guidelines.
 - (11) Animals shall be at least three and one-half (3½) years of age and shall not weigh less than nine hundred fifty (950) pounds in fit condition.
- (f) *Harnesses.*
- (1) Animals shall not engage in work with harnesses or bits that harm or are unsafe to the animal.
 - (2) Harnesses, bridles, bits and padding shall be properly fitted and kept in clean and good repair.
 - (3) Harnesses shall be kept free of makeshifts like wire, rope, and rusty chain.
 - (4) Trace chains shall not put pressure on the collar and shoulders of the animal when it starts pulling the carriage resulting in a jolting start versus a smooth start with a snug collar already in place.
 - (5) Breeching shall fit so that it will not rub or hinder the hind leg movement of the animal.

(g) *Weather conditions.*

- (1) Carriage company operators and drivers shall use caution when Working animals in adverse weather conditions such as high heat and humidity, snow, ice, heavy rain, and other slippery or reduced visibility situations.
- (2) When the ambient temperature reaches or exceeds eighty-five (85) degrees Fahrenheit at any point during the carriage company's hours of operation, the carriage company operators shall implement a mandatory system of taking the rectal temperature of each working animal immediately after completing a tour. In the event an animal's temperature reaches one hundred three (103) degrees Fahrenheit or above, the animal's temperature shall be taken every fifteen (15) minutes until the animal's temperature falls below one hundred three (103) degrees Fahrenheit before the animal is allowed to return to work.
- (3) When the rectal temperature of an animal reaches between 103—103.9 degrees Fahrenheit, the carriage company operator shall require the animal to be removed from service and be cooled down to a temperature of 101.5 degrees Fahrenheit before returning them to engage in Work.
- (4) In the event that an animal's rectal temperature reaches 104 degrees Fahrenheit or above the animal shall be taken out of service for the day and cooled down.
- (5) In the event an animal can not be cooled down to a rectal temperature of 101.5 degrees Fahrenheit within two (2) hours of the first 103 degree Fahrenheit or above rectal temperature recording, a veterinarian shall be immediately contacted to inspect the animal.
- (6) At any time when an animal's rectal temperature reaches 105.0 or above, or if any animal shows signs of distress such as panting motions, thumping of the chest (synchronous diaphragmatic flutter), tying up, or stiffening of legs or back, muscle trembling, or colic, a veterinarian shall be immediately contacted to inspect the animal.
- (7) When either the ambient temperature reaches ninety-eight (98) degrees Fahrenheit or the Heat Index reaches one hundred twenty-five (125) degrees Fahrenheit, as determined by the director of tourism or the police department, the carriage company operators shall discontinue working their animals and pull them off the street until the temperature decreases below the above stated temperatures as authorized by the director of tourism or the police department.
- (8) The official thermometer used for determining the temperature and the heat index shall be located at 113 Calhoun Street, in the City and County of Charleston, South Carolina. In the event this thermometer is out of service, as determined by the director of tourism or the police department, the back-up thermometer shall be the thermometer located at 180 Lockwood Drive, in the City and County of Charleston, South Carolina.

(h) *Feeding.*

- (1) Animals shall receive an adequate amount of equine feed daily, which is free from contamination, sufficient in quantity, having nutritional value, and be provided frequently enough to meet normal daily requirements for the animal's condition, special needs, environmental factors and size of the animal so as to maintain a healthy flesh.
- (2) Clean drinking water free from contamination shall be available to an out of service animal at all times.
- (3) Out of service animals shall at all times have access to salt in a block or loose form.

(i) *Stables and stalls.*

- (1) Stables shall be safe, well lighted, ventilated, and provide protection from the weather as described herein;
 - a. Stables and stalls shall be kept clean and in good repair and excreta shall be removed daily;
 - b. The floors of the stalls shall be graded and raked to keep their surface dry; each stall shall have rubber mats under the shavings or shavings with a minimum depth of four (4) inches;
 - c. Fans shall be used to increase ventilation when the ambient temperature reaches eighty (80) degrees Fahrenheit;
 - d. Sharp surfaces and any other hazards shall not be permitted in any stable or stall where they can come in contact with the animals;
 - e. Stables and stalls shall be kept free of leaks, including but not limited to, leaks from roofs or from plumbing;
 - f. Stalls sizes shall be no less than five (5) feet nine (9) inches × eleven (11) feet unless a carriage company undertakes any remodeling or refurbishing of any sorts to their stable that equals fifty (50) percent of the market value of the stable or moves their stable. In the event a carriage company does remodel or refurbish their stable as stated in the previous sentence then they must implement a minimum stall size of twelve (12) feet × twelve (12) feet for every stall;
 - g. The practice of tethering the animal in a stall is permitted so long as the animal can lie down without the risk of entanglement or injury;
 - h. Occupied stalls shall have a minimum of three (3) inches of bedding or have a specialized surface so as to keep animals clean, dry and free of concussion, abrasion or pressure points;
 - i. Interior and exterior areas of the stable shall be kept clean, properly drained and free of nuisances including, but not limited to, unreasonable and excessive odors and unreasonable accumulation of refuse and excreta;
 - j. There shall be no smoking at any time in stables; and
 - k. Unless otherwise directed by a veterinarian, animals shall be given a pasture turn-out time of a minimum of four (4) consecutive days to total fourteen (14) days within four (4) months;
 - (2) Stables shall be located within walking distance the medallion gate located at the corner of Church and North Market.
 - (3) All stables shall have a yearly inspection by the fire department. Fire extinguishers must be kept in obvious places in every stable as required by law and as recommended by the fire department.
- (j) *Recordkeeping.*
- (1) Feeding, shoeing, medication, and treatment logs, bi-annual inspection records, certificate of serviceability, quarterly de-worming records, rectal temperature logs, work schedules, disposal documentation, and such other records as requested by the tourism director and police department shall be maintained for a three year period by each carriage company operator for every animal used in the touring stock.
 - (2) These records shall be made available for inspection by the city and its designee.
- (k) *Inspections.* In addition to the annual inspection provided for herein, animals, facilities and records shall be subject to random or unannounced inspections at the discretion of the tourism director, police department, and/or the city designated veterinarian. The inspector is

permitted to take notes, pictures and video if they deem appropriate. These inspections shall be brief in order to not interfere with the work flow of the business. The inspector should be allowed to enter the premises no longer than fifteen (15) minutes after arrival at the facility during business hours.

(Ord. No. 2007-90, § 1, 4-24-07; Ord. No. 2011-58, §§ 1—10, 8-16-11; Ord. No. 2011-59, § 1, 8-16-11; Ord. No. 2011-60, § 1, 8-16-11)

Secs. 29-213—29-218. Reserved.