

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
 )  
 GRAYS HILL BAPTIST CHURCH, )  
 )  
 Appellant-Plaintiff, )  
 )  
 vs. )  
 )  
 BEAUFORT COUNTY and THE )  
 BEAUFORT COUNTY ZONING )  
 BOARD OF APPEALS, )  
 )  
 Respondents-Defendants. )

IN THE COURT OF COMMON PLEAS  
 2008-CP-07-1114 and  
 2010-CP-07-4844 (consolidated)  
 2012-CP-07-1394

2013 MAR 21 PM 3:55  
 CLERK OF COURT  
 BEAUFORT COUNTY, S.C.  
 JAMES ROSENHEAD

FINAL ORDER OF JUDGMENT

These two (2) cases come before me pursuant to appeals from the Beaufort County Planning Commission and the Beaufort County Zoning Board of Appeals. These consolidated appeals challenge Beaufort County's refusal to allow the Appellant, the Grays Hill Baptist Church, to construct a Fellowship Hall adjacent to its existing sanctuary building in the Grays Hill area of Beaufort County, South Carolina. The first appeal involves Beaufort County's refusal to issue a construction permit and instead requiring that the Church to apply for a new development permit, which Beaufort County subsequently denied. The second appeal involves Beaufort County's refusal to grant to the Church a variance. Due to the lack of a record, and with the consent of the parties, these appeals were remanded to the Beaufort County Planning Commission for a *de novo* hearing.

Upon remand, the Beaufort County Planning Commission conducted a *de novo* hearing, and again issued a decision refusing to issue a construction permit to the Appellant. This matter is now back before me pursuant to the Appellant's most recent appeal.

After due consideration of this matter, I find and conclude that a new development permit was not required, inasmuch as the development permit that had previously been issued for this project included the Fellowship Hall. Alternatively, I find and conclude that a new development permit should have been issued, as the Church qualified for a development permit under the ordinance that was in effect at the time the new permit was sought. Finally, I find and conclude that the Church's variance request should have been granted.

## I. PROCEDURAL HISTORY

### A. DEVELOPMENT PERMIT

The first appeal, Case Number 08-CP-07-1114, was commenced by the filing of an appeal in the Beaufort County Court of Common Pleas on April 3, 2008. This appeal is from a decision of the Beaufort County Planning Commission denying the Church permission to construct a Fellowship Hall. In its appeal, the Church alleges that on February 27, 1997 it received a development permit for a 9.35 acre parcel of land in Beaufort County for the development and construction of a Church building as well as the now disputed Fellowship Hall.

The Church alleges that the County wrongfully denied the Church permission to construct its Fellowship Hall on the following grounds:

a. The County failed to acknowledge and recognize that it has already granted to the Church permission to construct the Fellowship Hall when it approved the master plan for the subject real property and gave permission to construct the subject improvement in Permit No. 3057, issued by the County on January 7, 1997.

b. The County failed to recognize the grandfathered status of the subject property,

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the Fellowship Hall, in Permit No. 3057.

c. In denying permission to the Church to construct its Fellowship Hall, the County relied upon the fact that the project site is located within Accident Potential Zone 2 (APZ-2) and Noise Zone 3 of the Airport Overlay District. The County erred in failing to recognize that the Airport Overlay District was created after Permit No. 3057 was issued to the Church and the ordinances governing the Airport Overlay District, accordingly do not apply.

d. Even if a new development permit was required, so that the Ordinance applicable to the Airport Overlay District properly applied to this project, the County applied the incorrect standard pursuant to Appendix A1, Section 7(a)(6) and Table 106-9 of the Airport Overlay District Ordinance, the appropriate standard for expansion is up to 15% of the preexisting "disturbed area," while the County improperly applied a standard limiting expansion to 15% of the preexisting buildings.

e. In refusing the new Development Permit, the County erroneously found that the construction of the Fellowship Hall would increase the occupant load of the building. The construction of a Fellowship Hall will not increase the occupant load. The Fellowship Hall and the Sanctuary would be occupied alternatively, not simultaneously. Furthermore, the occupant load of the property is governed by the available parking, which will not be increased. Additionally, the Church offered to amend its permit application so as to guarantee no increase in the occupant load.

#### B. VARIANCE REQUEST

The second appeal, Case Number 2010-CP-07-4844, is an appeal from the Beaufort County Zoning Board of Appeals (ZBOA). In this appeal, the Appellant contends that the

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Zoning Board of Appeals wrongfully denied the Church's application for a variance allowing it to build its Fellowship Hall. More specifically, the Church in this second appeal contends that the decision by the ZBOA was controlled by errors of law inasmuch as the members of the ZBOA were motivated to vote against the requested variance based upon erroneous legal conclusions, to-wit:

a. That only physical characteristics of the land could be considered in determining if "extraordinary and exceptional conditions pertained to the particular piece of property" existed, and could not consider extraordinary and exceptional conditions pertaining to the piece of property which did not relate to the physical characteristics of the property; and

b. That subsection (c) of Section 106-522 applied to this case, where this case does not involve "the establishment of a use" but rather, this case involves a use which was established more than thirteen (13) years ago, which was several years prior to the creation of the Ordinance that rendered this property nonconforming.

### C. APPEAL AFTER REMAND

Due to the lack of a record from the Planning Commission, the appeal from the Planning Commission's decision (Case No. 2008-CP-07-1114) was remanded back to the Beaufort County Planning Commission for the purpose of conducting a *de novo* hearing, and the appeal on the Church's variance request (Case No.: 2010-CP-07-4844) was taken under advisement and held in abeyance pending the Planning Commission's decision.

Pursuant to the remand, the Beaufort County Planning Commission held a *de novo* hearing on December 3, 2007, and issued its decision denying to issue a permit for the Fellowship Hall on March 6, 2012. On April 6, 2012 the Church filed its Summons and

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Complaint appealing this decision in accordance with S.C. Code Ann. §6-29-1150 (2012). This most recent appeal bears Case Number 2012-CP-07-1394. In its appeal, the Church alleges numerous errors in the decision by the Planning Commission, as is more fully discussed hereinafter.

## II. STANDARD OF REVIEW

On these appeals from the Planning Commission and the ZBOA, I am not free to substitute my judgment for that of the respective County Boards. Accordingly, I cannot reverse the decisions of these County Boards unless the Boards' findings of fact have no evidentiary support or the Boards committed an error of law. *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 443 S.E.2d 401 (Ct. App. 1994). However, "[a] broader and more independent review is permitted when the issue concerns the construction of an ordinance." *Charleston County Parks and Recreation Commission v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). It is well settled that when interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used. *Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach*, 294 S.C. 475, 366 S.E.2d 15 (Ct.App. 1988). An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. *Spartanburg County DSS v. Little*, 309 S.C. 122, 420 S.E.2d 499 (1992). In construing ordinances, the terms used must be taken in their ordinary and popular meaning. *Citizens for Lee County v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992).

Applying the foregoing standard of review, I make the following findings of fact and conclusions of law.

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### III. FINDINGS OF FACT

1. The Church is the owner of a parcel of real property located in Beaufort County, South Carolina consisting of 9.35 acres located at the intersection of U.S. Highway 21 and S.C. Highway 71.

2. In 1996, the Church applied to Beaufort County for a permit to develop its 9.35 acre parcel of real property.

3. In conjunction with its application for a development permit, the Church prepared and submitted to Beaufort County a plat depicting in detail the proposed development. The primary features of this proposed development are two (2) large buildings, one (1) labeled "Proposed Church," and the other labeled "Proposed Sanctuary." This latter building is the Fellowship Hall which is now in dispute. The development plat also shows asphalt paved roadways encircling the two (2) proposed buildings, as well as paved and unpaved parking surrounding both of the proposed buildings (See Exhibit A).

4. On January 7, 1997, the Church received a development permit from Beaufort County to develop its 9.35 acre parcel of property as shown on the aforesaid development plat. See Development Permit No. 3057, Exhibit B, attached hereto.

5. The Development Permit contains the following language:

All permits expire 2 years from the date of approval **unless substantial improvement has occurred** or final subdivision plat has been recorded.

(emphasis added).

6. On February 26, 1997, Beaufort County issued to the Church a construction permit to construct the improvements as shown on the aforesaid development plat. See Permit

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No. 970320, Exhibit C, attached hereto.

7. In December of 1997 the Church completed the construction of all improvements shown on the development plat, except for the Fellowship Hall.

8. The construction permit expired in mid-1998 (180-days after there was a stoppage in active construction).

9. The Development Permit, on the other hand, did not expire since substantial improvement to the development had occurred.

10. The Church stopped construction short of constructing all the improvements solely for financial reasons, and began saving money to pay for construction of the final item, the Fellowship Hall.

11. On December 11, 2006 Beaufort County adopted an ordinance creating the Airport Overlay District. See Exhibit D. This ordinance created three (3) types of accident potential zones (APZs) around the Marine Corps Air Station located in Beaufort County. APZs "identify areas where an aircraft accident would be most likely to occur if one occurred, but they do not reflect the probability of an accident." The three (3) types of APZ are Clear Zone, APZ1, and APZ2. The Clear Zone extends 300 feet immediately beyond a runway and has the highest potential for accidents. APZ1 extends 5,000 feet beyond the Clear Zone, while APZ2 extends 7,000 feet beyond APZ1. An accident is more likely to occur in APZ1 than APZ2, and more likely to occur in the Clear Zone than in either APZ1 or APZ2.

12. With the enactment of the Airport Overlay District in December of 2006, Beaufort County placed the Grays Hill Baptist Church development within APZ2. Compare Exhibit F with Exhibit E.

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13. In early 2007 the Church approached Beaufort County to obtain a construction permit to commence construction of the Fellowship Hall and complete its development. Beaufort County refused to issue a construction permit to the Church. Instead, Beaufort County instructed the Church to apply for another development permit for the Fellowship Hall, despite the fact that the current development permit had not expired.

14. The Airport Overlay District Ordinance prohibits the following "uses" within a Clear Zone or any Accident Potential Zone: "assembly and worship." See Exhibit D, Section 5(a)(2). Accordingly, the Church's development became a "nonconforming use" when this Ordinance was passed on December 11, 2006.

15. As instructed by Beaufort County, the Church applied for a development permit and on March 7, 2007 met with the County's Development Review Team (DRT).

16. In conjunction with its application for a new development permit the Church submitted to the DRT a new plat, nearly identical to the already approved development plat from 1997. See Exhibit G.

17. The DRT noted that the Church's development, as a result of the enactment of the Airport Overlay District, was now a nonconforming use. The DRT made a preliminary decision not to issue a development permit to the Church. The DRT explained its decision, as follows:

"Applicant was told the Airport Overlay District does not permit expansion that will increase the occupancy load of the existing building. It was explained to the Applicant that Fellowship Halls, etc. will in fact increase the occupancy load. The intent of the ordinance was to allow as a part of any expansion to consist of bathrooms, kitchen, and storage. These uses would not increase the occupancy load.

Applicant cannot expand more than 15% of the building, if

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the Applicant wishes to expand over 15%, a variance would be required, Applicant would be required to seek a variance from the Zoning Board of Appeals (ZBOA)."

See Exhibit H.

18. In making this preliminary decision, the DRT was relying upon Section 7(a)(6) of the Airport Overlay District Ordinance. At the time the Church applied for the new development permit, and at the time the Church's application was heard by the DRT on March 7, 2007, this Section allowed nonconforming places of assembly and worship to be expanded by up to 15% of the disturbed area provided the expansion did not increase the occupant load of the building. Exhibit I.<sup>1</sup> The disturbed area of the Church's development is 184,785 square feet, while the proposed Fellowship Hall is 10,000 feet. The Fellowship Hall, accordingly, is only 5.45% of the disturbed area, well below the 15% threshold. (See color-coded plat, Exhibit Q).

19. The decision of the DRT denying the Church's development permit application, as made by the DRT at its March 7, 2007 meeting, and as communicated in writing to the Church on June 29, 2007 (Exhibit H) tracks the language of a proposed amendment to the Airport Overlay District Ordinance which was being considered at the time by Beaufort County Council. This Ordinance was not enacted, however, until the following year, on February 25, 2008.

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Section 7(a)(6) references Table 106.9 which, in turn, references nonconforming "uses" and nonconforming "buildings and structures." A nonconforming use is allowed to expand up to 15% of the "disturbed area" while a nonconforming building and structure is allowed to expand up to 15%. A nonconforming building and structure is defined as a building and structure that exceeds floor area, setback or density standards by certain percentages. A nonconforming use is defined as any existing use not permitted in the general use table. A place of worship or assembly is expressly defined as a nonconforming "use" in the Airport Overlay District Ordinance (See Section 5(a)(2) of Exhibit D), and therefore the 15% of disturbed area standard applies. See Exhibit J.

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This amendment alters Section 7(a)(6) so as to eliminate the reference to Table 106.9, and thereby eliminate the allowance of an expansion of up to 15% of the disturbed area, and instead flatly provide that nonconforming places of assembly and worship may be expanded by up to 15% of the existing floor area provided that the expansion does not increase the occupant load of the building. The amendment also added this sentence: "Only minor expansions to accommodate bathrooms, storage space, kitchens and office space may be permitted."

20. On October 10, 2007 the DRT made a final decision on the Church's application, recommending that it be disapproved. Apparently in recognition of the fact that the Fellowship Hall would occupy substantially less than 15% of the disturbed area, the only reason relied upon by the DRT in disapproving the project was its conclusion that allowing the new building "could substantially increase the occupant load of the site." See Exhibit K (emphasis added).

21. The Church appealed the decision of the DRT to the Beaufort County Planning Commission. The Planning Commission heard the Church's appeal on December 3, 2007. At the hearing, members of the Church explained that allowance of the Fellowship Hall would not increase the occupancy load of the site. Members of the Church explained that the Fellowship Hall would not be occupied while Church services were being held in the Church building, and conversely, the Church building would not be occupied while activities were occurring within the Fellowship Hall. Currently, the Sanctuary of the Church building is outfitted with folding chairs and when the Church desires to hold an activity such as a dinner or service function, the members of the Church pick up, fold, and store away all of the chairs, and replace them with tables, and once the dinner or social function is concluded, they then have to remove all the

tables and return all the folding chairs, ready for the next Church service. Once the Fellowship Hall was constructed, then the folding chairs in the Sanctuary would be replaced with permanent pews, and the ancillary fellowship activities, instead of taking place within the Sanctuary, would take place in the Fellowship Hall. In other words, the number of people on the development site at any one time would be the same, they would simply be located in the Fellowship Hall as opposed to within the sanctuary building.

Additionally, the Church noted that the occupancy load of the site was restricted by the number of parking spaces on the site, and that the number of parking spaces was already set. No new parking was being created. See Exhibit L and also Exhibit N.

22. On June 24, 2008 the Planning Commission affirmed the decision of the DRT not to issue a permit. The Planning Commission explained that it was denying the application because "the number of persons that could be on this site at any one time could be increased" if the Fellowship Hall were allowed. See Exhibit M (emphasis added).

23. On April 3, 2008 the Church appealed the decision of the Beaufort County Planning Commission to this Court, on the grounds as set forth above. *Supra*, pp. 2-3. A hearing was held before me on March 15, 2010. During the course of the hearing it was agreed by the parties that it would be in the best interest of justice for me to hold my decision on the appeal in abeyance so as to allow the County the opportunity to consider a variance request by the Church. I accordingly took the matter under advisement.

24. On April 26, 2010 the Church applied to the Beaufort County Zoning Board of Appeals for a variance. As previously noted, as a result of the amendments to the Airport Overlay District Ordinance in February of 2008, the current Ordinance provides that

nonconforming places of assembly and worship may be expanded by up to 15% of the existing floor area provided that the expansion does not increase the occupant load of the building. The 10,000 foot Fellowship Hall accordingly required a variance under the new statute, inasmuch as it would be larger than a 15% expansion of the existing floor area.

25. The standards for granting a variance are set forth in Section 106-522 of Beaufort County's Zoning Development Standards Ordinance (ZDSO).

26. The ZBOA met on May 27, 2007 to consider the Church's application for a variance. The Board decided to continue the hearing in order to allow a representative from the Marine Corps Air Station more time to prepare. In the meantime, the Board asked the Church to submit to it a written document addressing the criteria for granting a variance as set forth in Section 106-522 of the ZDSO. This document was prepared and submitted to the Board members. (Exhibit O).

27. The ZBOA concluded its consideration of the Church's application for a variance at its meeting on July 22, 2010, and on August 10, 2010 sent to the Church its decision to deny its request for a variance. The Board denied the Church's request for a variance based on the following findings:

(a) There were no extraordinary and exceptional conditions pertaining to this particular piece of property;

(b) The authorization of the variance would adversely affect the adjacent properties or the public good. Also, the character of the district would be harmed by the granting of the variance;

(c) Is not in harmony with the chapter's purposes and intent; and

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(d) Is not consistent with the Comprehensive Plan.

28. The first finding made by the Planning Commission, i.e., that there are no extraordinary and exceptional conditions pertaining to this particular piece of property, is not supported by any evidence. The evidence is uncontradicted that the Church, in reliance upon the Development Permit initially issued to it by the County, began construction of this development and has spent a substantial sum of money constructing its Church building, as well as other improvements, including roadways and parking that serves both the Church building as well as the proposed Fellowship Hall which is plainly and clearly shown on the development plat. It is certainly "extraordinary and exceptional" for the County to deny the lawful completion of a development which has been permitted. Furthermore, when the Church went to pull the construction permit to begin building the Fellowship Hall, the County erroneously informed the Church that it had to apply for a new Development Permit, and when the Church, in reliance upon the County's representation, applied for the new Development Permit, the County denied the same, upon the erroneous conclusion that construction of the Fellowship Hall "could" increase the occupancy load of this property. The occupancy load of this property, that is, the number of people that can be on this property, is the same whether or not the Fellowship Hall is constructed. This error is compounded by the use to which this Fellowship Hall will be put, inasmuch as the contemplated use will have no effect whatsoever on the number of people who can occupy this piece of property. As previously noted, the Fellowship Hall will simply house the fellowship activities which would otherwise be taking place within the already existing Church building. The Fellowship Hall will provide an alternative place for these meetings which would take place anyway, and simultaneous meetings will not be occurring in both the

Church building and in the Fellowship Hall. The County's action is even more egregious due to the fact that the Church offered to stipulate to this use as a condition of the new Development Permit, as provided by Section 106-372(b) of the ZDSO, but the County refused to even grant a new conditional Development Permit, which would have guaranteed no effect on the occupancy load of this property. These are all "extraordinary and exceptional conditions" which are unique to this particular piece of property.

29. The Zoning Board of Appeals second finding, i.e., that authorizing the variance would adversely affect the adjacent properties, the public good, and the character of the district, is also not supported by any evidence. The character of the district, in fact, will not change one iota. This piece of property is already used as a place of worship. The construction of the Fellowship Hall will not change the character of this use. Nor is there any evidence to support a finding that allowing the variance would adversely affect adjacent properties or the public good. In fact, at the public hearings held on the variance, numerous members of the public from the area spoke and urged the Board to grant the variance. The lone voice in opposition was a representative of the Marine Corps Air Station, who noted that the Church is located in APZ2, in which there is a possibility of an aircraft crash. The Church, however, was there before the APZ2. The construction of the Fellowship Hall will not increase the likelihood of an aircraft accident. The construction of the Fellowship Hall likewise will not increase the probability of anyone on the ground being injured in an aircraft accident. The construction of the Fellowship Hall simply means that people who would have been in the Church building during a fellowship function will now be in the Fellowship Hall. A plane is just as likely to crash into the Church building as into the Fellowship Hall, so if the Fellowship Hall is built, a plane crashing into the

Church during a fellowship function will actually have the result of saving lives, not endangering them. The Air Station's concern that the construction of the Fellowship Hall will increase the probability of injury on the ground in the event of an aircraft accident is based upon the belief that the Fellowship Hall and the Church will both be occupied at the same time, a belief which is not only not supported by the evidence, but directly contrary to it.

30. The final two (2) findings by the Board of Appeals, i.e., that a variance would not be in harmony with the ZDSO's purposes and intent and is inconsistent with the Comprehensive Plan, are rather vague and general. As with the other two (2) findings, however, they are not supported by any evidence. One of the purposes and intents of the ZDSO is to allow a variance when the standards set forth in Section 106-522 are satisfied. The same is true of the Comprehensive Plan. Indeed, in this case the Church's requested variance is precisely in harmony with the ZDSO and the Comprehensive Plan. As acknowledged by the County's Zoning and Development Administrator in her October 10, 2007 letter to the Church, it is the intent of the ZDSO to allow expansions to nonconforming uses where such expansions involve an "auxiliary" use. The Fellowship Hall in this case is clearly an auxiliary use to the Church.

31. The March 6, 2012 decision of the Beaufort County Planning Commission, issued as a result of a hearing held before it on December 3, 2011 following remand of the first appeal, contains several errors of law and factual findings that are without evidentiary support, as follows, to-wit:

a. The Commission expressly, and correctly, found that the "original master plan had both a Church and Fellowship Hall planned," and that "the master plan (was) approved by the County." In direct contradiction of this finding, however, the Commission concludes that

development of the Fellowship Hall was not approved. In so finding, the Commission relies upon the fact that the original construction permit encompassed only the Church building and the surrounding infrastructure, not the Fellowship Hall. In so doing, the Commission erroneously confused the development permit, which clearly and expressly encompassed both the Church and the supporting infrastructure as Phase I, and the Fellowship Hall as Phase II, with the Construction Permit, which was limited to Phase I. Since the Development Permit, Development Permit No. 3057, clearly and expressly encompassed both the Church and supporting infrastructure as Phase I, as well as the Fellowship Hall as Phase II, all of which is clearly shown on the admittedly approved master plan, it was error to deny the Church's application for a construction permit for the Fellowship Hall when the Church was ready to proceed with the construction of the Fellowship Hall as Phase II of the previously approved development.

b. The Commission erred in finding that there was "confusion" in the original Airport Overlay District Ordinance which was adopted on December 11, 2006 regarding the expansion limitation which it limited expansion of a Church to 15% of the disturbed area. This original ordinance clearly allowed expansions to 15% of the disturbed area of a Church complex. As previously noted, the Church's proposed construction of a Fellowship Hall fell within this limitation. The Commission erroneously found that when the County amended this ordinance on February 25, 2008, it was simply "clarifying" the 15% expansion, when it is clear from the express change in wording of the ordinance that the County changed the ordinance from 15% expansion of disturbed area to a 15% expansion of the building only.

c. The Commission erred in failing to find that the Church's application for the

construction of a Fellowship Hall was grandfathered by virtue of the application and development permit and plat clearly showing a Fellowship Hall, where the Development Permit issued on January 7, 1997 predated the enactment of the Airport Overlay District on December 11, 2006.

d. The Commission erred in finding that there is "no evidence" which would support the continued validity or vested right of the Church with respect to the January 7, 1997 Development Permit issued by the County, where this finding is contrary to the evidence. Development Permit No. 3057 expressly provides under its own terms that it expires only if the Church did not commence substantial improvement of the property. The evidence is undisputed that the Church did commence development of the property and that substantial improvement did occur, inasmuch as the Church completed Phase I of the development, building the primary Church building or Sanctuary itself, together with all surrounding infrastructure necessary to support both the Church building as well as the Fellowship Hall.

e. The Commission erred in finding that "all construction which was requested in the initial Development Permit was completed in 1997." In so finding, the Commission is seeking to substantially re-write the Development Permit, changing the project from a single development which encompasses both Phase I and Phase II, into a project which, for some unknown reason, encompasses one development known as Phase 1, and another, separate development known as Phase 2. This construction ignores both the express language of the Development Permit which discusses both Phase 1 and Phase 2, as well as the development plat, which shows the primary Church building, the Fellowship Hall, and all supporting infrastructure for both buildings. The clear evidence in this case is (1) that the Church sought a development

permit for the development of the entire project, both Phase I and Phase II as shown on the plat; (2) once the **Development** Permit was issued the Church applied for the **Construction** Permit to commence and complete Phase I; and (3) the Development Permit for Phase II remained open once substantial improvement of the development occurred.

f. The Commission erred in finding that it was undisputed that the Church is a nonconforming use. This finding takes the evidence and argument out of context. Assuming that the Church is not grandfathered and that a development permit had not previously been issued, then only under those circumstances would the Church be a "nonconforming use." Only under these circumstances does the issue of "occupancy load" come into play.

g. The Commission erred in adopting a definition for "occupancy load" which is not set forth in the ordinance. In so doing, the Commission relied upon the testimony of Tim Ogdon, a fire code official, in creating a definition for "occupancy load." Mr. Ogdon expressly testified that as a fire code official his definition was the maximum load that a building could hold no matter what the use, and he was giving no consideration to how many people will actually occupy the proposed building. Such a definition totally ignores the use to which a building will put. Utilizing a definition that ignores the use to which a building will be put defies logic, common sense, and is an abuse of discretion.

h. Finally, the Commission erred in finding that the construction of the Fellowship Hall on this property would increase the "occupancy load." This finding is not only unsupported by the evidence, but is directly contrary to the evidence. As previously noted, when the Fellowship Hall is occupied, the Sanctuary building will be vacant, and conversely, when the Sanctuary building is occupied, the Fellowship Hall will be vacant. The Church

testified extensively regarding the use to which the Fellowship Hall will be put, and there is absolutely no reason not to credit the Church's testimony regarding its intended use. This evidence is unchallenged and uncontradicted. The Commission's fear that this would be no difficult to enforce is likewise unfounded. It would be more difficult to enforce than any other zoning restriction such as, for example, ensuring that a structure built in a residential area is being used as residence and not as a business.

Pursuant to the foregoing findings of fact I make the following conclusions of law.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over these appeals from the Beaufort County Planning Commission and Zoning Board of Appeals. Venue is proper in this Court.
2. On appeal, the Circuit Court will not disturb the findings of a County Board such as the Planning Commission or the ZBOA unless such finding or decision resulted from Board action which is arbitrary, an abuse of discretion, illegal, or in excess of lawfully delegated authority. *Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 516, S.E.2d 439 (1999). An abuse of discretion occurs if the Board's findings of fact have no evidentiary support, or are based upon an error of law. *Charleston County Parks and Recreation Commission v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). See also *Grant v. City of Folly Beach*, 346 S.C. 74, 83, 551 S.E.2d 229, 233 (2001).
3. The Planning Commission committed an error of law when it affirmed the Zoning and Development Department's decision not to honor Development Permit No. 3057, which had been issued on January 7, 1997 and instead required the Church to seek a new Development Permit as a prerequisite to requiring a construction permit for the Fellowship Hall. The

Fellowship Hall is plainly and clearly shown on the development plat and the Development Permit, under its own terms, had not expired since substantial improvement to the development had occurred within two (2) years from issuance of the permit. This Development Permit was, and still is, valid.

4. Although it is not necessary for me to go any further in order to resolve this appeal, since my Order may be subject to further review, I will briefly address the other grounds raised by the Church in its appeal.

5. Assuming arguendo that Development Permit 3057 had never been issued, the Planning Commission also abused its discretion in refusing to issue an new Development Permit to the Church based on the conclusion that "the number of persons that could be on this site at any one time would be increased" if the Fellowship Hall were allowed. (Exhibit M). This is a factual finding which not supported by any evidence. The only evidence in this case, as set forth in Finding of Fact Number 21, supra, is that construction of the Fellowship Hall will have no effect on the occupancy load of this development site. As previously noted, a restriction can be placed on the new permit that the Fellowship Hall shall not be occupied at the same time as the Sanctuary, and this restriction can be enforced in the same manner as any other zoning restriction.

6. Finally, the findings of fact by the ZBOA that there are no extraordinary and exceptional conditions pertaining to this particular piece of property, that authorizing the variance would adversely affect adjacent properties, the public good and the character of the district, that a variance would not be in harmony with the ZDSO's purposes and intent and is inconsistent with the Comprehensive Plan, are likewise arbitrary and not supported by any

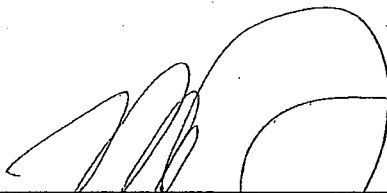
evidence, as is more fully discussed in Findings of Fact Numbers 27, 28 and 29, supra. Like the Planning Commission, the ZBOA is assuming that the Fellowship Hall and the existing Sanctuary building would be occupied simultaneously (as opposed to alternatively), which is an assumption that has no evidentiary support.

IT IS, THEREFORE, ORDERED:

a. In Case Number 12-CP-07-1394 the decision of the Beaufort County Planning Commission shall be and is hereby reversed, and the Respondent Beaufort County is directed to allow the Appellant, Grays Hill Baptist Church to conclude the development of its property and proceed with the construction of its Fellowship Hall as depicted on the development plat, Exhibit A; and

b. Case Numbers 2008-CP-07-1114 and 2010-CP-07-4844 shall be and is hereby dismissed, as they are rendered moot by my decision in Case Number 2012-

AND IT IS SO ORDERED.



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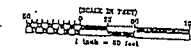
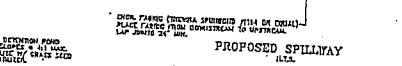
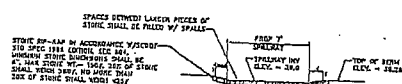
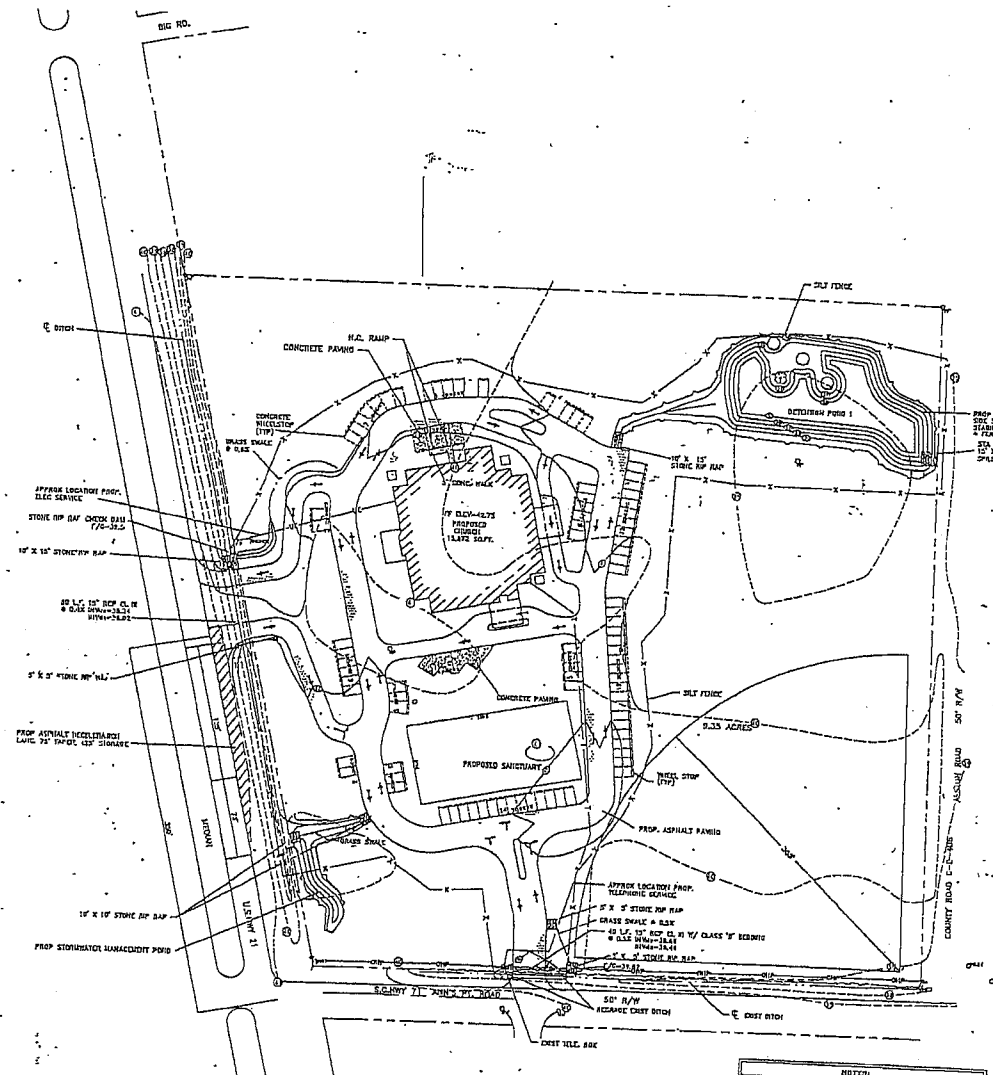
Honorable Marvin H. Dukes  
Master in Equity and Special Circuit  
Court Judge for Beaufort County

Beaufort, South Carolina

Date: 9/19/13



Permit #970320



LEGEND	
EXISTING SPOT ELEVATION	0 12.2
UNDERGROUND ELECTRIC	—
TELEPHONE	—
WATERLINE	—
S&E FENCE	—
PROP STA SEWER	—
STONE RIP RAP	—
CONCRETE PAVERS	—
ASPHALT PAVERS	—
SILT FENCE	—
TOP OF PAVEMENT	TO BE DETERMINED BY FIELD SURVEY
TOP OF SIDEWALK	TO BE DETERMINED BY FIELD SURVEY
PROPOSED GRADE	TO BE DETERMINED BY FIELD SURVEY
EXISTING GRADE	TO BE DETERMINED BY FIELD SURVEY
PROPOSED CURB	TO BE DETERMINED BY FIELD SURVEY
PROPOSED CURB	TO BE DETERMINED BY FIELD SURVEY

**NOTES**

- 1) ALL DIMENSIONS SHALL BE IN FEET UNLESS OTHERWISE NOTED.
- 2) ALL DIMENSIONS SHALL BE IN FEET UNLESS OTHERWISE NOTED.

IF THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY THE ACCURACY OF THE DATA IS AS TO THE DATA AND NOT THE DATA AS SUPPLIED BY THE CLIENT.

EVERY SETTING SHALL BE TO BE MADE IN THE PRESENCE OF THE CONTRACTOR TO VERIFY THE ACCURACY OF THE DATA IS AS TO THE DATA AND NOT THE DATA AS SUPPLIED BY THE CLIENT.

PERMIT #970320 DATE 12/15/10

1/2" = 40' SCALE

Bldrs Copy

**EXHIBIT A**

GRAYS HILL BAPTIST CHURCH  
 U.S. HIGHWAY 21  
 S.E. COR. MAP 71  
 REUFORT, SOUTH CAROLINA

AEC  
 Anderson Engineering Co., Inc.

**DRAWING RELEASED FOR:**

- PLAN REVIEW
- PERMIT DRAWINGS
- CONSTRUCTION PLANS
- AS-BUILT DRAWINGS
- OTHER

ISSUED: 04/20/11  
 CHECK: A.R.T.  
 APPROVED: S.W.A.  
 DATE: 10/18/10  
 SCALE: 1" = 40'



SEDIMENT CONTROL PLAN

Beaufort County, South Carolina  
**DEVELOPMENT PERMIT**  
Zoning and Development Administration

Permit Number 3057 Zone: GCD Date Issued: 1/7/97

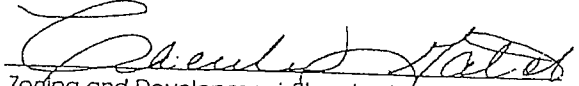
Development Name: GRAY'S HILL BAPTIST CHURCH

Development Address: HWY 21, BEAUFORT

District/Map/Parcel Number: 100/20/18C Acreage: 9.35

Type of Development: INSTITUTIONAL

This permit certifies that the above named development has met and is in accordance with the Zoning and Development Standards Ordinance.

By:   
Zoning and Development Standards Administrator

Conditions of Permit Approval:

1. TREE PROTECTION BARRIER MUST BE ERECTED PRIOR TO COMMENCING CONSTRUCTION.

1. All permits expire two (2) years from the date of approval unless substantial improvement has occurred or final Subdivision plat has been recorded.
2. Subdivision approvals are Final/Construct unless bonding has been accepted by the County.
3. Commercial projects may not be occupied until a Certificate of Compliance, Fire District Signoff and Certificate of Occupancy have been received.)
4. Deviation from the approved plan, without additional approval, may cause withdrawal of permit. Minor field modifications must be approved by the County Engineer and the Zoning/Development Administrator.
5. Bonding, when offered for residential developments, shall be in the form of Cash, Certified Check or Unconditional, Irrevocable Letter of Credit.
6. Bonding, when accepted, provides twelve (12) months for completion of bonded items.

**EXHIBIT B**

PM17A PERMIT FOR CONSTRUCTION IN BEAUFORT COUNTY, SOUTH CAROLINA  
 Department of Inspections

PERMIT FEE: \$1,910.00

PERMIT NUMBER: 0000970320 - 00

DISTRICT	TAX MAP SHEET	SUB-MAP	PARCEL	ZONE DISTRICT	DATE ISSUED
100	020	000	018C	GCD	02/26/1997

LOCATION OF BUILDING FLOOD ZONE C  
 LOT STREET 2749 TRASK PKWY  
 BLOCK SUBDIVISION GRAYSHILL  
 ELEVATION REQUIRED 0 MSI.

NAME	MAILING ADDRESS	NO. ST	CITY & STATE	ZIP CODE	TELEPHONE
OWNER	CHURCH, GRAYSHILL BAPTIST	2749 TRASK PARKWAY	BEAUFORT SC	29902	(803) 846-0621
GEN CONTR.	NL VENS ENGINEERING	PO DRAWER 1839	BEAUFORT SC	29902	(803) 846-2206
FIRE					
DRAIN					
SCHOOL					

COST DATA

BUILDING: \$ ELECTRICAL: \$  
 PLUMBING: \$ HVAC: \$  
 TOTAL COST OF CONSTRUCTION \$632,800.00

TYPE IMPROVEMENT	BUILDING PERMIT	OWNERSHIP	PRIVATE
PROPOSED USE	ASSEMBLY	NUMBER UNITS	1
PRINC. TYPE FRAME	TYPE VI UNPROTECTED	TYPE OF HEATING	ELECTRIC
TYPE SEWAGE	SEPTIC TANK	SEPTIC TANK NO.	1996-120002
NUMBER-BEDROOMS	0	NUMBER-BATHROOMS	6
NUMBER-STORIES	1	TOTAL FLOOR SQ. FT	15,280
CENTRAL A/C	Y	ELEVATOR	N
INTERIOR WALLS	DRYWALL	TYPE FLOORING	CARPET VINYL

INSPECTIONS REQUIRED

TS	PT	RP	FL	SL	FR	PL
BL	HV	IN	PS	OTHER	CO.	

IT IS UNDERSTOOD AND AGREED BY THE UNDERSIGNED OWNER OR AGENT THAT THE APPROVAL OF THIS PERMIT DOES NOT CONSTITUTE A PRIVILEGE TO VIOLATE THE BUILDING CODE, ZONING ORDINANCE, OR OTHER ORDINANCES OF THE COUNTY OF BEAUFORT AND THAT ANY OMISSION OF OR MISREPRESENTATION OF FACT WITH OR WITHOUT INTENTION OF THE UNDERSIGNED, OR ANY ALTERATION OR CHANGE FROM THIS PERMIT WITHOUT THE APPROVAL OF THE BUILDING OFFICIAL, SHALL CONSTITUTE SUFFICIENT GROUND FOR THE REVOCATION OF THIS PERMIT. THIS PERMIT DOES NOT AUTHORIZE ANY ENCROACHMENT UPON COUNTY PROPERTY. EXHIBIT C

SIGNATURE *Steve Blankenship*  
 RUN: 27-FEB-97 10:59 BUILDING CODES

## APPENDIX A1.

### AIRPORT OVERLAY DISTRICT/MCAS--BEAUFORT\*

\* Note: This Appendix supersedes the requirements of the Airport Overlay District in Appendix A with respect to MCAS--Beaufort.

#### Sec. 1. Purpose.

The AO District shall overlay other zoning classifications that shall be referred to as base zoning. The AO District includes all lands within an established footprint affected by airport operations at the Marine Corps Air Station Beaufort (MCAS--Beaufort). The overlay includes all lands underlying the noise zones of 65 DNL (day-night average sound level) and above, and accident potential zones as designated in the most recent Air Installations Compatible Use Zones (AICUZ) Report for MCAS--Beaufort as authorized for use by the Department of the Navy, and as adopted by the County Council of Beaufort County.

In order to increase public awareness and to ensure the general safety and welfare of persons affected by adverse impacts common to military aircraft operations, section 4 of this appendix requires that property owners within the AO District be properly notified of their location. In addition, section 5 of this appendix sets forth limitations and restrictions that shall apply to certain land uses that have been determined to be incompatible according to federal standards.

(Ord. No. 2006/27, § 1, 12-11-2006)

#### Sec. 2. Accident potential zones (APZ).

Accident potential zones (APZ's) are divided into three types along primary flight paths. The clear zone (CZ) is an area at either end of a runway which possesses a high potential for accidents. APZ-1 is the area normally beyond the clear zone, which possesses a significant potential for accidents. APZ-2 is an area normally beyond APZ 1, which has a measurable potential for accidents. Accident potential zones are shown on the map in section 9.

(Ord. No. 2006/27, § 2, 12-11-2006)

#### Sec. 3. Noise zones.

The noise exposure from aircraft operations is measured using the day-night average sound level noise metric (DNL). The DNL averages aircraft sound levels over a 24-hour period with an adjustment for increased sensitivity to nighttime noise. The DNL visually is depicted as a noise contour that connects points of equal value. The area between two noise contours is known as a noise zone. Noise zones are hereby established as follows:

Airport Noise Zone	DNL Values
1	Less than 65
2a	65 to 70
2b	70 to 75
3	Greater than 75

EXHIBIT D

Noise zones are shown on the map in section 9. Noise zone 1 covers that portion of the county that lies outside of the airport overlay district. Properties within noise zone 1 are exempt from the requirements of this appendix.

(Ord. No. 2006/27, § 3, 12-11-2006)

**Sec. 4. Notification.**

(a) At all real estate closings involving a property in an accident potential zone or noise zone, the buyer, seller and witnesses shall sign the following form, which shall be filed with the deed and/or plat at the Beaufort County Register of Deeds Office (RMC Office).

**Airport Overlay Disclosure Form**

The property at \_\_\_\_\_ (address/location) is located in proximity to the Marine Corps Air Station Beaufort. Beaufort County has determined that persons on the premises will be exposed to accident potentials and/or significant noise levels as a result of the airport operations. The County has established certain noise zones and accident potential zones (APZs) within its Zoning and Development Standards Ordinance (ZDSO).

The above property is located in Noise Zone \_\_\_\_\_ and in Accident Potential Zone \_\_\_\_\_.

The County has placed certain restrictions on the development and use of property within these areas. Before purchasing the above property, you should consult the Beaufort County Zoning and Development Administrator to determine the restrictions that have been placed on the subject property.

**CERTIFICATION**

As the owner of the subject property, I hereby certify that I have informed \_\_\_\_\_, as a prospective purchaser, that the subject property is located in an Airport Overlay district.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Witness \_\_\_\_\_ Owner \_\_\_\_\_

As a prospective purchaser of the subject property, I hereby certify that I have been informed that the subject property is in an Airport Overlay district, and I have consulted the Beaufort County Zoning and Development Administrator to determine the restrictions which have been placed on the subject property.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Witness \_\_\_\_\_ Purchaser \_\_\_\_\_

(b) All prospective renters signing a commercial or residential lease shall be notified by the property owner through a written provision contained in the lease agreement if the leased property is located within the AO District.

(c) All subdivision plats, planned unit development plats, townhouse plats and /or condominium documents shall contain the following disclosure statement:

Airport Overlay Disclosure Statement

This property lies within an Airport Overlay District, which applies to property in proximity to the Marine Corps Air Station Beaufort. Beaufort County has determined that persons on the premises will be exposed to accident potentials and/or significant noise levels as a result of the airport operations. Purchasers are required to sign a Disclosure Form per Appendix A1 of the Beaufort County Zoning and Development Standards Ordinance and file the form with the deed and/or plat at the Beaufort County Register of Deeds Office. All or a portion of this property lies within:

Accident Potential Zone: \_\_\_\_\_

Noise Zone: \_\_\_\_\_ DNL (Day-Night Average Sound Level): \_\_\_\_\_

(d) In the case of new construction, a signed Airport Overlay Disclosure Statement shall accompany the building permit application.  
(Ord. No. 2006/27, § 4, 12-11-2006)

**Sec. 5. Use limitations.**

Note: Pending the adoption of Appendix D of the Joint Land Use Study, which was approved in October 2004 by Resolution of County Council, and a Transfer of Development Rights Program, the following interim standards shall apply.

(a) The following uses are not permitted within a clear zone, any accident potential zone and/or within noise zone 3 (DNL 75 and above), regardless of size:

1. Hospitals and health clinics.
2. Assembly and worship.
3. Schools.
4. Commercial day care centers.
5. Commercial lodging.
6. Restaurants.
7. Multifamily housing (including duplexes).

8. Indoor recreation.
9. Commercial amusement (indoor or outdoor).
10. Commercial retail centers (only single, freestanding uses are permitted).
11. Parks with active recreation.
12. Mobile home parks.
13. Storage of explosive, flammable or toxic materials in outdoor, above-ground storage tanks, except for individual residential use, e.g. heating. (Prohibited in clear zones and APZ's only).
14. Petroleum refining and related industries (NAICS 324) (Prohibited in clear zones and APZ's only).
15. Chemical manufacturing (NAICS 325) (Prohibited in clear zones and APZ's only).
16. Manufacturing of plastic and/or rubber products (NAICS 326) (Prohibited in clear zones and APZ's only).

(b) Single-family residential development within any accident potential zone and/or within noise zone 3 (DNL 75 and above) shall not be permitted at a gross density that exceeds one dwelling unit per three acres. Gross density means the total number of dwelling units on a site divided by the base site area. No residential development is permitted within a clear zone.

(c) Residential development within noise zone 2b (DNL 70 to 75) shall not be permitted at a gross density that exceeds one dwelling unit per acre. If the maximum density requirement of the base zoning district is less than one dwelling unit per acre, the more stringent standard shall apply.

(d) Residential development within noise zone 2a (DNL 65 to 70) shall not be permitted at a gross density that exceeds two dwelling units per acre. If the maximum density requirement of the base zoning district is less than two dwelling units per acre, the more stringent standard shall apply.

(e) Residential units may be required by the DRT to be clustered outside of the APZ's and/or noise zones if possible. In those instances, the number of allowable units on the remainder of the property shall be determined by the gross density permitted in the base zoning district calculated for the base site area. The DRT may modulate the minimum lot size requirement to achieve this result.

(f) Family compounds that meet the requirements of section 106-2105 are exempt from this section.

(Ord. No. 2006/27, § 5, 12-11-2006; Ord. No. 2008/19, 5-19-2008)

**Sec. 6. Noise attenuation.**

(a) The following noise level reduction standards shall be required for all new buildings within an airport noise zone:

Additional Construction Standards

DNL 65--70: 25 dB reduction required.

DNL 70--75: 30 dB reduction required.

DNL 75 and above: 35 dB reduction required.

(b) Because manufactured homes are constructed to federal standards that may not meet the standards listed above for noise attenuation, all permit applications for the placement of manufactured homes within a noise zone shall be accompanied by the following disclosure statement:

Airport Noise Zone Disclosure Statement

I hereby acknowledge and understand that in making this application for the location of a manufactured home within Noise Zone \_\_\_\_\_, I fully acknowledge that such zone has been determined to be possibly hazardous to health by excessive aircraft noise. I further acknowledge that manufactured homes are constructed to national standards and may not meet Beaufort County standards for noise attenuation consistent with the location of homes within this zone.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Witness \_\_\_\_\_ Owner \_\_\_\_\_

(Ord. No. 2006/27, § 6, 12-11-2006)

**Sec. 7. Nonconforming uses and structures.**

The standards for nonconforming uses and structures contained in section 106-9 are modified or supplemented as follows:

(a) *Nonresidential uses and structures.*

1. Nonconforming structures with damage greater than 50 percent of their market value shall be replaced by conforming structures.
2. Nonconforming uses and structures shall not be expanded.

3. Nonconforming uses and structures shall not become conforming through the special use permit process.
4. Improvements to a structure that exceed 50 percent of market value shall be required to meet the noise attenuation requirements in section 6. Permits for improvements shall be cumulative for a period of five years.
5. Any nonconforming use or structure shall be considered abandoned if vacant or unused for 90 days, and shall only be replaced with conforming uses and structures.
6. Notwithstanding the above, nonconforming places of assembly and worship shall be permitted to be rebuilt if damaged greater than 50 percent of their market value provided that the noise attenuation requirements of section 6 are met. Nonconforming places of assembly and worship may be expanded by up to 15 percent of the existing floor area provided that the expansion does not increase the occupant load of the building. Only minor expansions to accommodate bathrooms, storage space, kitchens and office space may be permitted.

- (b) *Residential structures.* Improvements to a residential structure that exceed 50 percent of market value shall be required to meet the noise attenuation requirements in section 6. Permits for improvements shall be cumulative for a period of five years.

(Ord. No. 2006/27, § 7, 12-11-2006; Ord. No. 2008/8, 2-25-2008)

#### **Sec. 8. Variances.**

The Beaufort County Zoning Board of Appeals (ZBOA) shall not act upon a request for a variance from this section affecting lands within the AO District until they have received an advisory opinion from MCAS--Beaufort. If an advisory opinion is not received within 30 days of notification, the ZBOA may proceed to act on the request without the opinion.

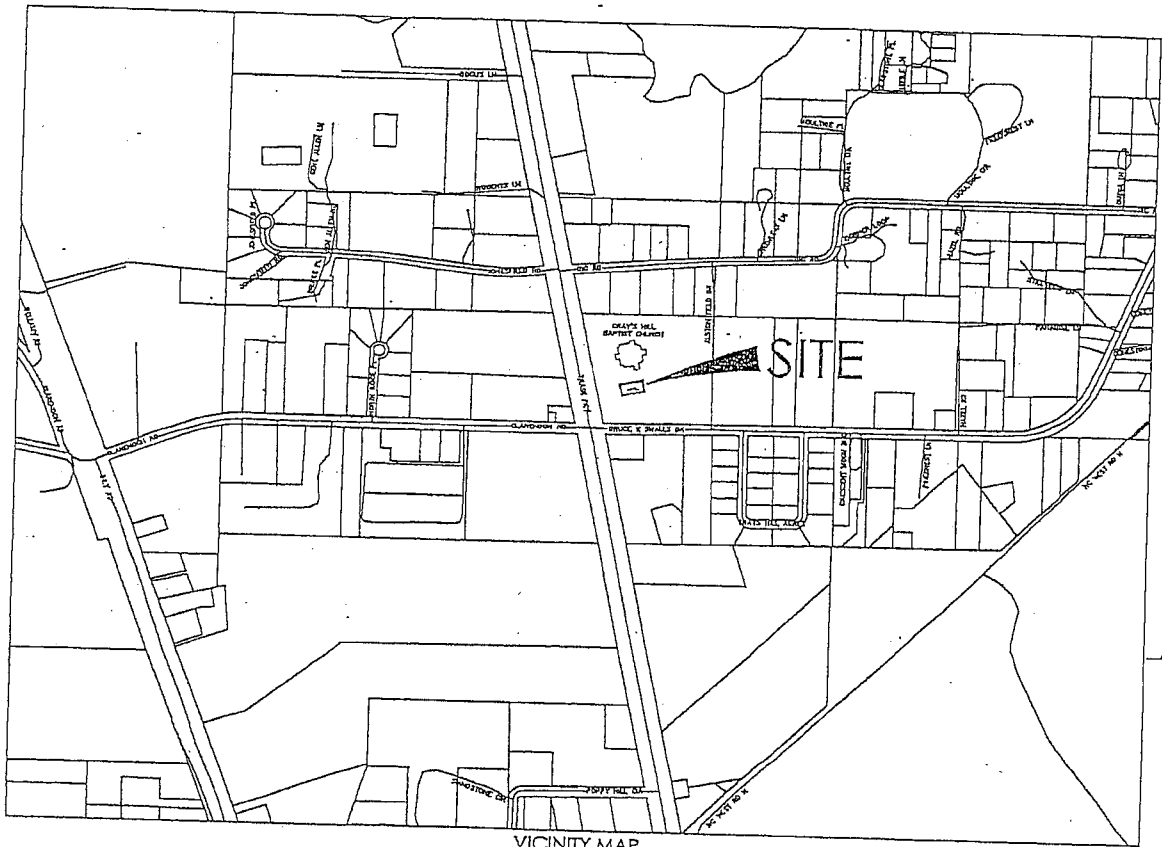
(Ord. No. 2006/27, § 8, 12-11-2006)

#### **Sec. 9. Official map.**

GRAPHIC UNAVAILABLE: MCAS--Beaufort Noise Contours and APZs  
(Ord. No. 2006/27, § 9, 12-11-2006)

FELLOWSHIP HALL EXPANSION  
 FOR  
 GRAY'S HILL BAPTIST CHURCH  
 TRASK PKWY. & BRUCE K. SMALLS DR.  
 BURTON  
 BEAUFORT COUNTY, SOUTH CAROLINA

EXHIBIT F



VICINITY MAP  
 SCALE 1"=500'

N.P.D.E.S. DISTURBED AREA = 0.22 Acres

3 DAYS BEFORE DIGGING IN SOUTH CAROLINA  
 CALL 1-888-721-7877  
 PALMETTO UTILITY PROTECTION SERVICE

APPROXIMATE LOCATION OF SITE:  
 LONGITUDE 80°-44'-28"  
 LATITUDE 33°-28'-37"

DEVELOPER NAME:  
 STEVE BLANKENHORN  
 GRAY'S HILL BAPTIST CHURCH  
 PO BOX 333  
 22 AIRBORN, SC 29940  
 PHONE #

PROJECT DATA INFORMATION:  
 PROJECT NAME: Gray's Hill Baptist Church Fellowship Hall  
 DISTRICT # 100  
 PLAN # 20  
 PARCEL # 18-C  
 PROJECT ZONING: AIRPORT OVERLAY DISTRICT  
 ZONING REQUIREMENTS:  
 FEMA FLOOD ZONE C

PHONE #:	PERMITS:
HAYNES: 843.977.2290	_____
D.M.C.D.: 843.532.7345	_____
C.M.M.: 843.744.0818	_____
S.C.E.D.C.: 843.224.7235	_____
S.C.E.A.R.: 843.533.7712	_____
PAL. ELEC.: 843.228.9312	_____

APPROVED FOR CONSTRUCTION  
 BY: \_\_\_\_\_ DATE: \_\_\_\_\_

**Andrews & Burgess Inc.**  
 Engineering & Surveying

16A Sherrin Road  
 Beaufort, SC 29906  
 P.O. #4420169  
 Phone: 843.662.0100

THE DESIGNS AND IDEAS PRESENTED IN THESE DRAWINGS ARE THE COPYRIGHTED PROPERTY OF ANDREWS AND BURGESS, INC. THE USE OR REPRODUCTION OF THESE PLANS OR THEIR CONTENT IS STRICTLY PROHIBITED WITHOUT PRIOR WRITTEN CONSENT.

INDEX OF DRAWINGS	
SHEET #	DESCRIPTION
1	TITLE SHEET GENERAL SITE PLAN

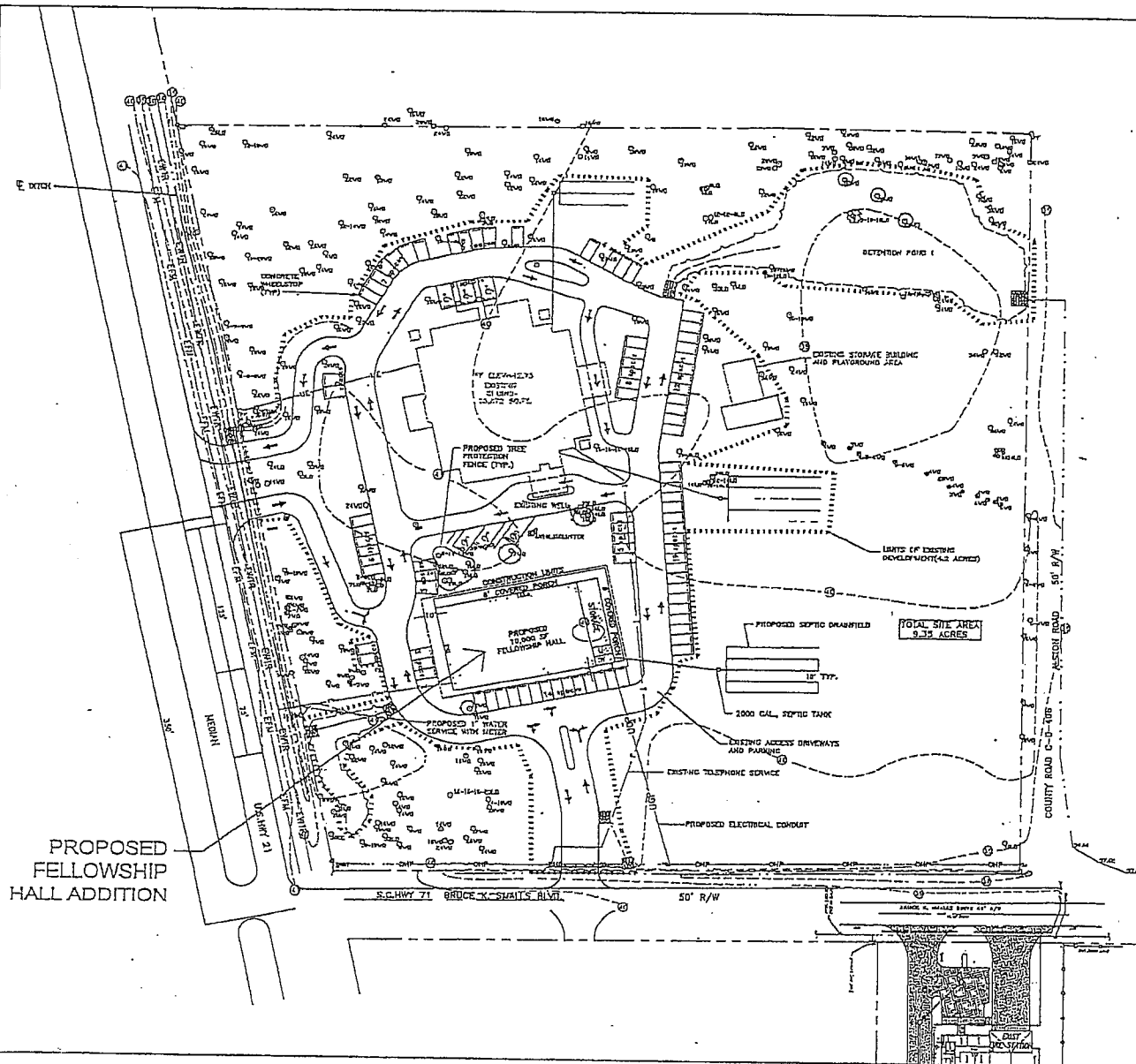
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<input type="checkbox"/> PERMIT DRAWINGS	_____/_____/2007
<input type="checkbox"/> CONSTRUCTION DRAWINGS	_____/_____/
<input type="checkbox"/> HIS SET	_____/_____/
<input type="checkbox"/> RECORD DRAWINGS	_____/_____/
<input type="checkbox"/> OTHER:	_____/_____/

PLAN REVISIONS

NO.	DESCRIPTION	DATE	BY:
1	CONCEPTUAL DRY STRUCTURAL	03/25/07	RL
2			
3			
4			
5			
6			
7			

B. STABLE PLACEMENT PER "BURSER"



**GRAY'S HILL BAPTIST CHURCH FELLOWSHIP HALL, PARKING TABLE**

TOTAL SITE AREA	97,377 SF = 2.23 ACRES			
<b>BUILDING 1 - EXISTING SANCTUARY</b>				
BUILDING SIZE	15,872 SF			
<b>BUILDING 2 - PROPOSED FELLOWSHIP HALL</b>				
BUILDING SIZE	10,000 SF			
<b>PARKING SUMMARY</b>				
TYPE	RATIO REQUIRED	DATE	SPACES REQUIRED	SPACES PROVIDED
EXISTING SANCTUARY (CHURCH PERMITTED)	1.37/ACRE / 2.23 ACRES	200	78	78
PROPOSED FELLOWSHIP HALL (NO PARKING REQUIRED)	0.5 SPACE / 10,000 SF	10,000 SF	0	0
<b>TOTAL</b>			<b>78</b>	<b>78</b>
<b>ALLOWABLE 1.5% EXPANSION</b>				
EXISTING DEVELOPED AREA	18,743 SF = 0.42 AC			
PROPOSED FELLOWSHIP HALL	10,000 SF = 0.23 AC			
<b>INCREASE (%)</b>	0.33 AC / 0.42 AC = 78% INCREASE			

**TREE SUMMARY**

TREES TO BE REMOVED	0%
TREES TO REMAIN	100%
<b>TOTAL TREES</b>	<b>100%</b>

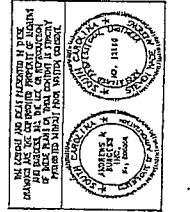
**TREE LEGEND**

REMAIN	REMOVE
12" DBH	12" DBH
X 12" DBH	X 12" DBH

\*NOTE: NO TREE IMPACT REQUIRED FOR CONSTRUCTION OF THE BUILDING AND DRAINFIELD

**PLAN REVISIONS**

NO.	DESCRIPTION	DATE	BY
1	CORRECT TO BASE PLAN	05/11/07	
2			
3			
4			
5			
6			
7			
8			



PRELIMINARY / NOT FOR CONSTRUCTION

**Andrews & Burgess Inc.**  
 Engineering & Surveying  
 1400 W. Main Street  
 215 W. Main Street  
 Fayetteville, NC 28404

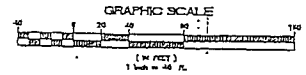
Fellowship Hall Expansion  
 For  
 Gray's Hill Baptist Church  
 Trail Parkway (Hwy 21)  
 Burton  
 Beaufort, South Carolina

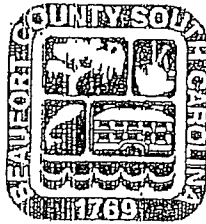
Overall  
 Site  
 Plan

Date Drawn: 02/25/07  
 Last Revised: 05/11/07  
 Drawn By: E. H. H.  
 Engineer: S. Andrew

SHEET #:  
**1**  
 of 1

JOB: 270026





COUNTY COUNCIL OF BEAUFORT COUNTY

Beaufort County Zoning & Development  
Multi Government Center ♦ 100 Ribault Road  
Post Office Drawer 1228, Beaufort, SC 29901-1228  
OFFICE (843) 470-2780  
FAX (843) 470-2784

June 29, 2007

Mr. Steve Blankenship  
c/o Grays Hill Baptist Church  
2749 Trask Parkway  
Beaufort, SC 29908

Re: Staff Discussion -- ACU4Z, Expansion of Church

On March 7, 2007, the applicant discussed the referenced topic with the Development Review Team (DRT) staff. The following is a list of concerns voiced by the applicant and addressed by the DRT.

Concern 1. Applicant wants to build a 8,000 sq. ft. fellowship hall addition to the existing church. Building will have bathrooms, kitchen, classrooms and storage areas.

DRT's Comment: Applicant was told the Airport Overlay District does not permit expansion that will increase the occupancy load of the existing building. It was explained to the applicant that fellowship halls, etc. will in fact increase the occupancy load. The intent of the ordinance was to allow as a part of any expansion to consist of bathrooms, kitchen, and storage. These uses would not increase the occupancy load.

Staff's Recommendations: Applicant cannot expand more than 15% of the building, if the applicant wishes to expand over 15%, a variance would be required, applicant would be required to seek a variance from the Zoning Board of Appeals (ZBOA). At that time staff will meet with the air station to discuss the expansion.

If I may be of further assistance, please do not hesitate to give me a call at 843.470.2781.

Sincerely,

*Hillary A. Austin*  
Hillary A. Austin  
Zoning & Development Administrator

Cc: DRT Members

EXHIBIT H

2008/8

AN ORDINANCE OF THE COUNTY OF BEAUFORT, SOUTH CAROLINA, TO AMEND THE BEAUFORT COUNTY ZONING AND DEVELOPMENT STANDARDS ORDINANCE/ZDSO:

- ARTICLE I. IN GENERAL; SEC. 106-8. EXEMPTION FROM SUBDIVISION REVIEW: TO REQUIRE BASE SITE AREA CALCULATION FOR MINOR SUBDIVISIONS
- ARTICLE I. IN GENERAL; SEC. 106-18. DEFINITIONS: AMEND THE DEFINITION OF "SUBDIVISION" TO CORRESPOND WITH STATE STATUTES
- ARTICLE IV. ZONING DISTRICTS; SEC. 106-926. DEVELOPMENTS IN MORE THAN ONE ZONING DISTRICT: TO PROHIBIT USES IN THE "LOWER-INTENSITY" DISTRICT THAT ARE NOT OTHERWISE ALLOWED IN THAT DISTRICT
- ARTICLE VI. OPEN SPACE AND DENSITY, LOT AND BUILDING INTENSITY, BUFFERYARDS AND LANDSCAPING, EXTERIOR STORAGE AND ILLUMINATION; SEC. 106-1526. TABLE EXPLANATION: TO CLARIFY EXPLANATION OF TERMS
- APPENDIX A.I. AIRPORT OVERLAY DISTRICT / MCAS-BEAUFORT; SEC. 7. NONCONFORMING USES AND STRUCTURES: TO CLARIFY ALLOWED EXPANSIONS TO NONCONFORMING PLACES OF ASSEMBLY AND WORSHIP

*Whereas, Standards that are underscored shall be added text and Standards ~~lined through~~ shall be deleted text.*

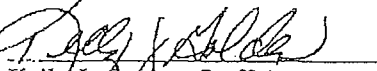
Adopted this 25th day of February, 2008.

COUNTY COUNCIL OF BEAUFORT COUNTY


BY: 

Wm. Weston J. Newton, Chairman

APPROVED AS TO FORM:

  
Kelly J. Golden, Staff Attorney

ATTEST:

  
Suzanne M. Rainey, Clerk to Council

First Reading: January 28, 2008  
Second Reading: February 11, 2008  
Public Hearing: February 25, 2008  
Third and Final Reading: February 25, 2008  
(Amending 99/12)

EXHIBIT I

**Article I. In General; Sec. 106-8. Exemption from subdivision review.**

(2) *Minor subdivision exemption.* These subdivisions shall be exempt from certain review requirements that larger subdivisions must comply with. All other appropriate standards of this chapter shall be adhered to. The ZDA shall review and approve minor subdivisions complying with the specific requirements explained as follows:

- a. Minor subdivisions are exempt from DRT review and the site capacity analysis in article VII, except for the calculation of the base site area, provided the subject land has not been previously subdivided within five years.

**Article I. In General; Sec. 106-18. Definitions.**

*Subdivision* means:

- (1) The division or redivision of a lot, tract, or parcel of land, by any means, including by means of a plan or description by metes and bounds, into two or more lots, tracts, parcels or other divisions of land, for the purpose, whether immediate or future, of lease, of the transfer of ownership or of building development, ~~exempting, however, the division of land for agricultural purposes into parcels of more than ten acres not involving any new streets or easements of access, divisions of property by testamentary or intestate provision, or divisions of property upon court order;~~
- (2) ~~The combination or recombination of parts of previously platted lots where the total number of lots is not increased and the lots maintain the standards of the governing authority;~~
- (3) ~~The division of land into parcels of five acres or more where no new street is involved;~~
- (4) ~~The combination of entire lots of record where no new street or change in existing street is involved; or~~
- (5) ~~The division or allocation of land for the opening, widening or extension of any street, or the division or allocation of land as open spaces for common use by owners, occupants or leaseholders, or as easements for the extension and maintenance of public sewer, water supply, storm drainage or other public facilities.~~

**Article IV. Zoning Districts; Sec. 106-926. Development in more than one zoning district.**

**Sec. 106-926. Developments in more than one zoning district.**

Where a single parcel of land is in more than one zoning district, the development may be designed as if each district were a separate parcel or designed and developed as a single project provided the following rules are followed:

- (1) The acreage in both districts may be used to determine minimum site area in table 106-1526.
- (2) The required open space and maximum dwelling units shall be the sum of that required by separate calculations (see division 2 of article VII of this chapter) for each district.
- (3) The proportions of a development need not be identical to that calculated for each district. However, the plan for allocating development shall be approved as a preliminary-conceptual plan for the entire property. Approval shall be based on the following criteria:
  - a. Where the development is in both residential and nonresidential districts, the area allotted to each may not be changed. The nonresidential district may intrude into the residential district only where at least 300 feet exist between the intrusion and residential zoning on abutting properties.
  - b. The proportion of land used for development shall be increased only in the higher intensity district, except as provided in subsection (3)c of this section.
  - c. Where, for aesthetic, safety, environmental, or ecological reasons, allowing for the development to occur in the lower density zoning district results in a better plan. If this situation presents itself, the developer shall submit, as part of the sketch-conceptual plan approval process, an environmental impact review an area impact statement showing alternative siting options. These options must demonstrate the advantages of the proposed location as opposed to siting the development as required in subsection (3)a and (3)b of this section.
  - d. Uses permitted within the higher intensity district may not be located within the lower intensity district if prohibited within that district.

**Article VI. Open Space and Density, Lot and Building Intensity, Bufferyards and Landscaping, Exterior Storage and Illumination; Sec. 106-1526. Table explanation.**

**Sec. 106-1526. Table explanation.**

Table 106-1526 contains varying open space and density standards for each district depending upon development type. These standards may be modified by the DRT pursuant to article XIV of this chapter. The following describe the various elements of table 106-1526.

Min. OSR or LSR	OSR is the open space ratio used for residential uses. OSR is the preserved natural area divided by the <u>base site</u> area of the site. LSR is the landscape surface ratio used for nonresidential uses. LSR is the land devoted to pervious landscaping divided by the <u>base site</u> area of the site.
Density	A residential measure of intensity translated to dwelling units (du's) per acre. (Also, rooms per acre.)

Max. Gross	Overall density for an <del>entire</del> <u>base site</u> which includes lots, open space and roads.
Max. Net	The resulting density of a portion of a site including roads and lots, but not open space or landscaped surface.
Floor Area Ration (FAR)	A nonresidential measure of intensity comparing floor area to lot area.

Appendix A1: Airport Overlay District / MCAS-Beaufort; Sec. 7. Nonconforming uses and structures.

(a) *Nonresidential uses and structures.*

6. Notwithstanding the above, nonconforming places of assembly and worship shall be permitted to be rebuilt if damaged greater than 50 percent of their market value provided that the noise attenuation requirements of section 6 are met. Nonconforming places of assembly and worship may be expanded by up to 15 percent of the existing floor area in accordance with table 106-9 provided that the expansion does not increase the occupant load of the building. Only minor expansions to accommodate bathrooms, storage space, kitchens and office space may be permitted.



## COUNTY COUNCIL OF BEAUFORT COUNTY

Beaufort County Zoning & Development  
 Multi Government Center ♦ 100 Ribaut Road  
 Post Office Drawer 1228, Beaufort, SC 29901-1228  
 OFFICE (843) 470-2780  
 FAX (843) 470-2784

October 10, 2007

Mr. Steve Blankenship  
 Gray's Hill Baptist Church  
 2749 Trask Parkway  
 Beaufort, SC 29906

Re: Gray's Hill Baptist Church Fellowship Hall - Expansion (Conceptual)

Dear Mr. Blankenship:

As stated in the Beaufort County Zoning & Development Standards Ordinance, Section 106-388 (b) (1) "Upon completion of all appropriate county reviews, the ZDA shall then file a staff report including all review recommendations no later than five working days prior to the scheduled DRT meeting". This letter will serve as the recommendations from each member of the DRT for conceptual review of the referenced project.

The project site is located within Accident Potential Zone 2 (APZ-2) and Noise Zone 3 (Greater than 75 DNL) of the Airport Overlay District for MCAS-Beaufort. Beaufort County has determined that persons within these zones will be exposed to measurable accident potentials and significant noise levels as a result of aircraft operations. To protect the public health and safety, the County has prohibited uses within these zones that attract concentrations of individuals such as schools, hotels, restaurants, daycare centers and churches. The Grays Hill Baptist Church is nonconforming to the Airport Overlay District because it would not be allowed to be built today at the current location. During the development of the Overlay District, a compromise was reached between the County, MCAS-Beaufort and representatives from the Grays Hill area to allow existing churches within these zones to be rebuilt if damaged greater than 50% (other nonconforming uses may not be rebuilt) and to permit a 15% expansion as long as the expansion did not increase the occupant load of the building. It was the intent of this section of the ordinance to allow small expansions to existing churches to accommodate restrooms, storage space, a kitchen, and the like. It was not the intent to permit an expansion that could allow more people to be in harm's way, such as additional classroom space or expansions to the sanctuary. The applicant is proposing a new 10,000 square foot building to accommodate a fellowship hall. This is over a 60% increase in floor area over the existing church building. This expansion clearly does not meet the intent of the Airport Overlay District because it allows a new "assembly" building that could substantially increase the occupant load of the site.

The proposed addition of the fellowship hall does not comply with the ordinance. Adding a 10,000 square foot building to the existing site would double the occupancy load. The intent of Section 7(a)(8) Nonconforming Uses is to allow for additions i.e. parking spaces, restrooms, storage and other auxiliary uses where the seating capacity in the sanctuary and other places of assembly will not increase.

DRT recommends the project be disapproved.

**NOTE: THE DRT RESERVES THE RIGHT TO CONSIDER ADDITIONAL INFORMATION RELATED TO THE PROJECT LISTED ABOVE PRIOR TO THE DATE OF THE DRT MEETING. THEREFORE, THE DRT'S DECISIONS MAY CHANGE ACCORDING TO NEW FACTS OR THE CONSIDERATION OF ADDITIONAL FACTS UNKNOWN AS OF THE DATE OF THIS REPORT.**

Sincerely,

*Hillary A. Austin*  
 Hillary A. Austin  
 Zoning & Development Administrator

**EXHIBIT K**



HARVEY & BATTEY, PA  
— ATTORNEYS AT LAW —  
SINCE 1922

P.O. DRAWER 1107 • 1001 CRAVEN STREET • BEAUFORT, SC 29901-1107  
(843) 524-3109 • (843) 524-6973 FAX  
www.harveyandbattey.com

W. BRANTLEY HARVEY, SR.  
(1893-1981)  
W. BRANTLEY HARVEY, JR.  
COLDEN R. BATTEY, JR.  
WILLIAM B. HARVEY, III  
(SC Circuit Court Mediator)  
JOHN M. TATUM, III  
THOMAS A. HOLLOWAY  
(also admitted in PA and NJ)

DEREK C. GILBERT  
(also admitted in GA)  
EUGENE PARRS  
(also admitted in NY, NC, FL and GA)  
CAROLINE MENG  
(also admitted in MS and TN)  
SHAWN L. REEVES  
THOMAS C. DAVIS  
(Of Counsel)

November 6, 2007

Beaufort County Planning Commission  
Post Office Drawer 1228  
Beaufort, SC 29901

Re: Appeal of decision by the Development Review Team  
Denying Grays Hill Baptist Church's proposed Fellowship Hall  
HB File No. 23313

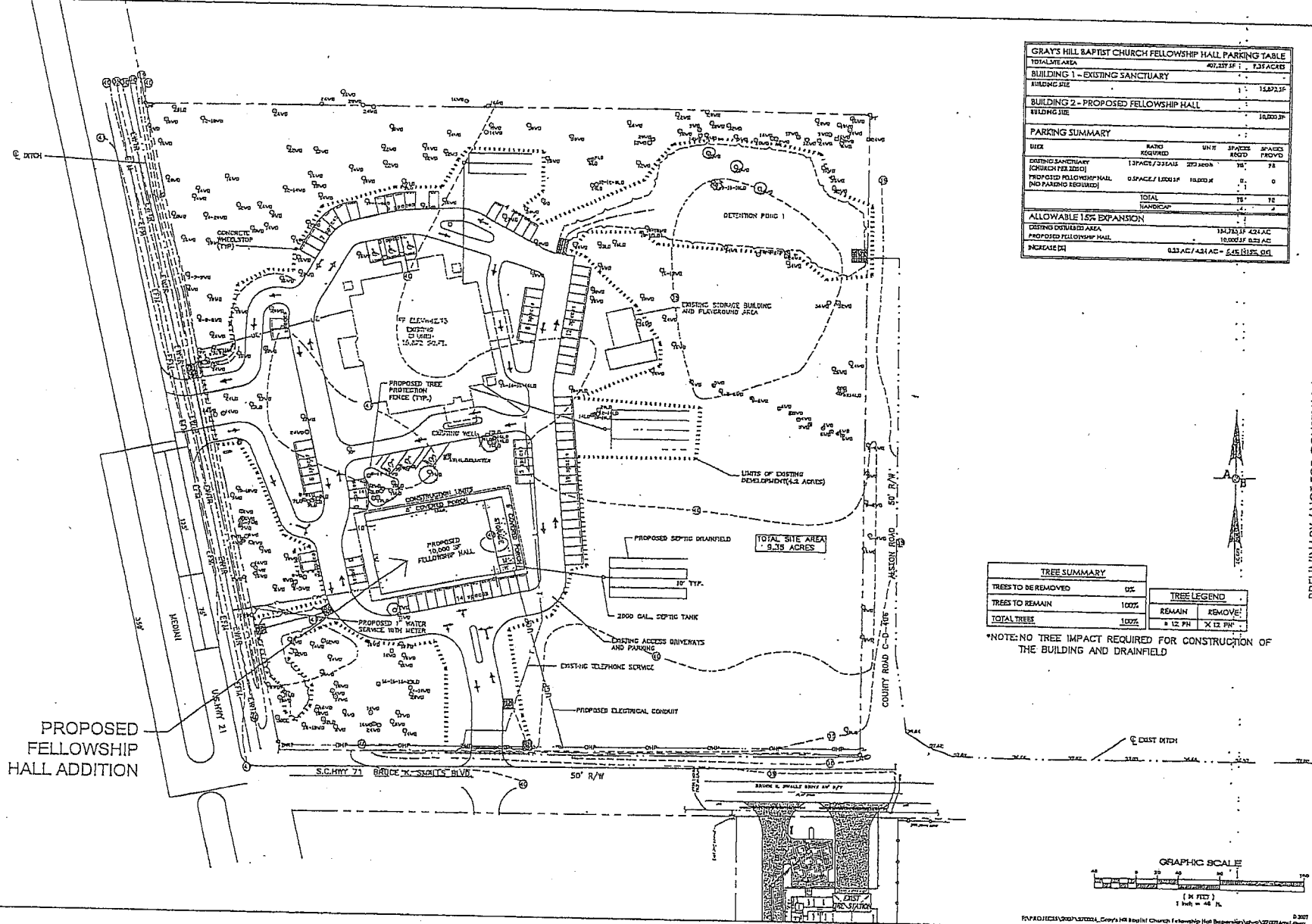
Dear Members of the Planning Commission:

Grays Hill Baptist Church has retained me to represent it in this appeal. Please allow this letter to serve as a narrative describing the Church's reasons for this appeal. Attached hereto are documents previously provided to the Development Review Team ("DRT") supporting my client's application for approval of the construction of a fellowship hall.

Grays Hill Baptist Church is located within Accident Potential Zone 2 (APZ-2) of the Air Installation Compatible Use Zone (AICUZ). Because of its location within APZ-2, the property constitutes a nonconforming use and structure within the Airport Overlay District guidelines. Appendix A1 (Airport Overlay District/MCAS - Beaufort), Section 7(a)(6) (Nonconforming uses and structures) states in part, "Nonconforming places of assembly and worship may be expanded by up to 15 percent in accordance with table 106-9 provided that the expansion does not increase the occupant load of the building." The ordinance does not define the term "occupant load."

The DRT met on October 17, 2007 to consider my client's proposed fellowship hall. Representatives of Grays Hill Baptist Church were in attendance at that meeting. However, in violation of Section 106-404, the DRT did not give my client a full opportunity to be heard prior to voting on the Church's application. Specifically, representatives of the Church were not given an opportunity to counter DRT staff recommendations opposing the Church's application. The DRT voted on the application first and then gave the Church's representatives an opportunity to be heard. This failure to abide by established procedure and failure to give my clients the opportunity to be fully heard violated my client's right to due process.

Aside from the procedural errors at the October 17 meeting, the DRT erred in disapproving the Church's application. The DRT stated its disapproval of the Church's application by letter dated October 18, 2007. The DRT's reason for disapproving the

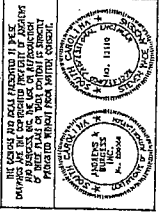


GRAY'S HILL BAPTIST CHURCH FELLOWSHIP HALL PARKING TABLE				
TOTAL SITE AREA	407,337 SF = 9.33 ACRES			
BUILDING 1 - EXISTING SANCTUARY	11,158 SF			
BUILDING 2 - PROPOSED FELLOWSHIP HALL	10,000 SF			
PARKING SUMMARY				
USE	RATIO REQUIRED	UNIT	SPACES REQ'D	SPACES PROVIDED
EXISTING SANCTUARY (CHURCH PER 2000)	1.33 SPACE/2000 SF	270,000 SF	18	28
PROPOSED FELLOWSHIP HALL (NO PARKING REQUIRED)	0.5 SPACE/1,000 SF	10,000 SF	0	0
TOTAL			18	28
ALLOWABLE 15% EXPANSION				
EXISTING DEVELOPED AREA	134,763 SF 42.41 AC			
PROPOSED FELLOWSHIP HALL	10,000 SF 0.31 AC			
INCREASE (%)	0.33 AC / 42.41 AC = 0.78% (0.78% INCREASE)			

TREE SUMMARY		TREE LEGEND	
TREES TO BE REMOVED	0%	REMAIN	REMOVE
TREES TO REMAIN	100%	• 12" DBH	• 12" DBH
TOTAL TREES	100%		

\*NOTE: NO TREE IMPACT REQUIRED FOR CONSTRUCTION OF THE BUILDING AND DRAINFIELD

PLAN REVISIONS		
NO.	DESCRIPTION	DATE
1	CORRECT TO BRASS WATER	09/21/07



404 SHAWNEE ROAD  
 CHARLOTTE, NC 28216  
 TEL: 704.366.1234  
 FAX: 704.366.1235

# Andrew Burgess Inc.

Engineering & Surveying

Fellowship Hall Expansion  
 For  
 Gray's Hill Baptist Church  
 1141 Parkway (Hwy 21)  
 Burlington  
 Beaufort, South Carolina

Overall  
 Site  
 Plan

Date Drawn: 03/15/07  
 Last Revised: 01/21/07  
 Drawn By: L. Lyle  
 Engineer: J. Adams

SHEET #:  
**1**  
 of 1  
 JOB: 270026

**COUNTY OF BEAUFORT  
DEVELOPMENT REVIEW TEAM  
ACTION FORM**

Members Present - Hillary (FOR), Delores (FOR), Arthur (FOR), Robert (FOR)

PROJECT NAME: Gray's Hill Baptist Church Fellowship Hall      PROJECT TYPE: Institutional

APPLICANT(DEVELOPER)NAME, ADDRESS, PHONE#: Steve Blakenship, Gray's Hill Baptist Church

PROJECT LOCATION	PIN	LAND AREA (ACRES)	LOTS/UNITS	BLDG AREA (SQFT)
Hwy 21	100-20-18C	9.35	N/A	10,000

DATE OF REVIEW	OVERLAY DISTRICT	FIRE DISTRICT	ZONING DISTRICT
10/17/07	HCOD	Burton	CS

TYPE OF DRT REVIEW     CONCEPTUAL                       PRELIMINARY                       FINAL

APPROVED NO CONDITIONS \_\_\_\_\_

DISAPPROVED  REASONS: PROJECT DOES NOT MEET THE INTENT OF THE AIRPORT OVERLAY DISTRICT. ADDING A 10,000 SQUARE FOOT BUILDING TO THE EXISTING SITE WOULD DOUBLE THE OCCUPANCY LOAD. (APPENDIX A.1, SECTION (7)(6) OF THE BEAUFORT COUNTY ZONING & DEVELOPMENT STANDARDS ORDINANCE.

\* APPLICANT HAS THE OPTION TO APPEAL THE DRT'S DECISION

APPROVED WITH CONDITIONS \_\_\_\_\_ CONDITIONS: TO THE PLANNING COMMISSION WITHIN 30 DAYS FROM THE DATE OF THIS MEETING.

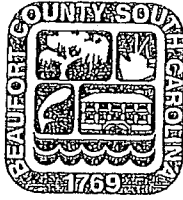
APPROVED SUBJECT TO \_\_\_\_\_ CONDITIONS: \_\_\_\_\_

DEFERRED: (PLEASE SUBMIT THE FOLLOWING) \_\_\_\_\_

*Hillary A. Austin*  
ZONING & DEVELOPMENT ADMINISTRATOR

10-17-07  
DATE

\*\*LETTER WILL BE MAILED WITHIN 48 HOURS FOLLOWING THE MEETING\*\*



COUNTY COUNCIL OF BEAUFORT COUNTY  
BEAUFORT COUNTY PLANNING DEPARTMENT  
Multi Government Center • 100 Ribaut Road, Room 115  
Post Office Drawer 1228, Beaufort, SC 29901-1228  
Phone: (843) 470-2724 • FAX: (843) 470-2731

June 24, 2008

Mr. Shawn L. Reeves, Esquire  
Harvey & Battey, PA  
Attorneys at Law  
P.O. Drawer 1107  
Beaufort, SC 29901

Re: Administrative Appeal of a Decision by the Development Review Team (DRT) for Grays Hill Baptist Church

Dear Mr. Reeves,

On December 3, 2007, the Beaufort County Planning Commission heard your appeal of a decision by the Beaufort County Development Review Team (DRT) to deny your client's application for a 10,000 square foot fellowship hall addition to the Grays Hill Baptist Church, which is located at 2749 Trask Parkway. The property is zoned Commercial Suburban and is within the Airport Overlay District for the Marine Corps Air Station (MCAS) Beaufort - Accident Potential Zone 2 and Noise Zone 3.

Mr. Tony Criscitiello, representing the County, stated that the DRT voted to deny the application because they determined that the expansion would increase the occupancy load of the site in violation of the County's Zoning and Development Standards Ordinance (ZDSO), Appendix A-1, Section 7(A)(6). As the representative for Grays Hill Baptist Church, you stated that the DRT erroneously applied the standard in that section of the ZDSO in that the expansion would not increase the occupancy load of the site because the fellowship hall would serve the existing church population. You further noted that the ZDSO does not define occupant load.

After consideration of both sides, the Planning Commission voted unanimously to uphold the decision of the DRT to deny the application for the expansion to the church. The Planning Commission found that while the church currently has a small membership, the proposed 10,000 square foot addition could accommodate an expanded church population in the future, thus the number of persons that could be on the site at any one time could be increased with the expansion. This would be a violation of Appendix A-1, Section 7(A)(6) of the ZDSO. Your request for an appeal of the DRT decision is hereby denied.

Very Respectfully,

Jim Hicks  
Beaufort County Planning Commission Chairman

EXHIBIT M



COUNTY COUNCIL OF BEAUFORT COUNTY  
BEAUFORT COUNTY PLANNING DEPARTMENT  
Multi Government Center • 100 Ribaut Road, Room 260  
Post Office Drawer 1228, Beaufort, SC 29901-1228  
Phone: (843) 470-2724 • FAX: (843) 470-2731

The regular meeting of the Beaufort County Planning Commission (hereinafter "Commission") was held on Monday, December 3, 2007, in County Council Chambers, the Beaufort County Administration Building at 100 Ribaut Road, Beaufort, South Carolina.

**Members Present:**

Mr. Jim Hicks, Chair  
Ms. Mary LeGree

Ms. Diane Chmelik  
Mr. Frank Mullen

Mr. Brian Flewelling  
Mr. Vernon Pottenger

**Members Absent:** Mr. Ronald Petit

**Member Vacancies:** Two (Bluffton-Daufuskie representative since February 2007--formerly Thomas Mike, Sr.; and At-Large representative--formerly Alan Herd since November 2007)

**Staff Present:**

Mr. Anthony Criscitiello, Planning Director  
Ms. Delores Frazier, Assistant Planning Director  
Ms. Barbara Childs, Admin. Asst. to Planning Director

**CALL TO ORDER:** Chairman Hicks called the meeting to order at approximately 6:02 p.m.

**PLEDGE OF ALLEGIANCE:** Chairman Hicks led those assembled in the Chambers with the pledge of allegiance to the U.S.A. flag.

**REVIEW OF MINUTES:** The November 1, 2007, minutes were reviewed. Motion: Mr. Flewelling made a motion, and Ms. Chmelik seconded, to accept the November 1, 2007, minutes as written. The motion was carried (FOR: Chmelik, Flewelling, Hicks, LeGree, Mullen and Pottenger).

**CHAIRMAN'S REPORT:** Chairman Hicks thanked the Commissioners for their services on the Commission, and gave his personal appreciation to each of them.

**PUBLIC COMMENT** for items other than agenda items: Queen Quet (also known as Marquette Goodwine) noted she was beginning to review the County's new Comprehensive Plan. She asked that the Commission include a component to include the October 2007 U.S. Law entitled the Gullah-Geechee Cultural Heritage Act. She noted that she and 14 others are serving on a Federal Commission regarding this Act.

EXHIBIT N

moved the parking to the back of the lot. He noted the shallow buffer of the abutting subdivision, Arbor Village. The Applicants thought there was a means of moving districts similar to Southern Beaufort, but since the parcels are zoned CP such moving was not possible. The Applicants considered the split zoning as a mapping error. A parcel to the east is zoned PMD and is farther from Highway 21 than his clients' parcels and it was not split zoned. Mr. Tedder noted that there was no need for a special use condition as recommended by the staff. His clients will be moving the building 400 feet beyond the zoning line. He asked that the Commission examine the general guidelines for the CP district. The current ordinance allows too big a building too close to the road. The current parking space ordinance requires 3 spaces per 1000 square feet of building. The Publix and the Food Lion on Lady's Island allow more parking spaces per 1000 square feet of building. Mr. Tedder would like to have appropriate parking requirements based on engineering and human ergonomics. He noted that the building frontage was on Polowana Road, with parking on the side of the building. He and his clients will continue to meet with County staff to design a plan for the property that will benefit the community.

Further discussion included the ramifications of a zoning change where the property owner may build whatever is allowed in the new zoning, and clarification on the rezoning request.

Public Comments:

1. Ms. Ann Politzer, a lifetime resident of Beaufort and a member of the Corners Area Community Preservation (CCP) Committee, noted that the Applicants do not have a contract with Publix at this time. The Applicants want to have the zoning in case a "big box" comes. The CCP Committee designated this particular parcel for a future public library site. The proposed development is a shopping center, but the CCP Committee did not want shopping centers in the Public Market District. She noted that once the zoning is changed, any of the allowable uses could be placed on the property. She noted that Dataw residents were concerned with the anticipated increased traffic from this type of project.
2. Queen Quet (also known as Ms. Marquette Goodwine), chieftess of the Gullah-Geechee Nation and chair of the CCP and the Cultural Protection Overlay Committees, clarified that the CCP Committee met for years, not months. The CCP Committee had several community meetings to inform the community of the CCP Committee recommendations. The Corners Area Plan has specific guidelines that the community wanted. She noted the change of Community Planners and Planning Directors over the years. The CCP Committee was asked not to recommend text amendments during the various staff changes. She noted the CCP Committee's letter requesting the Commission to deny the text amendment and the rezoning request. The CCP Committee wants to change the building size requirements in the CCP. She asked that the County staff work with the CCP Committee on the text amendments the CCP Committee wanted addressed. Queen Quet affirmed that there are unresolved amendments that have not been addressed by the staff. The CCP agrees with the staff recommendation of denial and disagrees with special use text amendment.
3. Mr. Reed Armstrong, a CCP Committee member, noted the two split parcels involved in the rezoning request. He noted that the staff report stated a large grocery store was an

the 15% allowable increase of the existing building size, a clarification by Mr. Tim Hodges of Building Codes Department that occupant load was based on square footage and the use of a building, and a clarification on the possible Commission actions.

**Motion:** Mr. Flewelling made a motion, and Ms. Chmelik seconded, to deny the Administrative Appeal of a Decision by the Development Review Team (DRT) to deny approval of a request for a 10,000 square foot fellowship hall addition for Grays Hill Baptist Church. The motion was carried unanimously (FOR: Chmelik, Flewelling, Hicks, LeGree, Mullen, and Pottenger).

The Administrative Appeal hearing ended at approximately 8:35 pm.

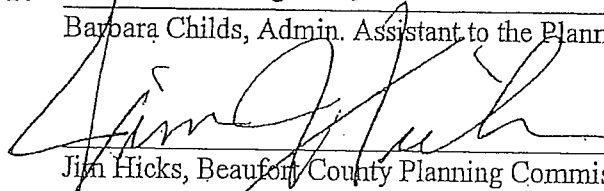
**OTHER BUSINESS:** Chairman Hicks noted that the next Commission meeting would be on Thursday, January 3, 2008. He also noted that elections for Commission chair and vice-chair would occur at that January 2008 meeting.

**ADJOURNMENT:** **Motion:** Mr. Flewelling made a motion, and Mr. Pottenger seconded, to adjourn the meeting. The motion was carried unanimously (FOR: Chmelik, Flewelling, Hicks, LeGree, Mullen and Pottenger). The meeting adjourned at approximately 8:37 p.m.

SUBMITTED BY:



Barbara Childs, Admin. Assistant to the Planning Director



Jim Hicks, Beaufort County Planning Commission Chairman

APPROVED:

February 4, 2008 (as amended; additions are underscored and in bold)

IN THE STATE OF SOUTH CAROLINA      ZONING BOARD OF APPEALS  
COUNTY OF BEAUFORT

IN RE: GRAYS HILL BAPTIST CHURCH

Section 106-522 provides that a variance may be granted in an individual case of unnecessary hardship if five (5) conditions exist.

The first condition is that there must be "extraordinary and exceptional conditions" pertaining to the subject piece of property. In this case, there is an existing Church building on the property, and the requested variance would simply allow the construction of an adjunct Fellowship Hall. The "extraordinary and exceptional conditions" pertaining to this particular property arise from the fact that this Fellowship Hall was shown on the original master plan submitted in 1996. The Sanctuary was built in 1997 as Phase I of the development, and the Fellowship Hall was to follow as part of Phase II. This pre-dates the creation of the Airport Overlay District, which came into being on December 11, 2006. The Church submitted its application for conceptual review of the Fellowship Hall to the Planning Commission on September 25, 2007. At that time, the Ordinance allowed an expansion of "up to 15% in accordance with Table 106.9 provided that the expansion does not increase the occupant load of the building." Table 106.9 allows a nonconforming use to be expanded up to 15% of the "disturbed area." The disturbed area of the subject property is 184,785 square feet. The proposed Fellowship Hall is 10,000 square feet, which is only 5.4% of the disturbed area, well below the 15% threshold. Hillary Austin, the

**EXHIBIT O**

Zoning and Development Administrator, in her letter dated October 10, 2007 acknowledged that it "was the intent of this Section of the Ordinance to allow small expansions to existing Churches to accommodate restrooms, storage space, a kitchen, and the like. . . . The intent of Section 7(a)(6) nonconforming uses is to allow for additions, i.e. parking spaces, restrooms, storage and other auxiliary uses where the seating capacity in the Sanctuary and other places of assembly will not increase." (emphasis added).

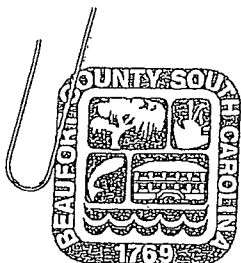
Despite the appropriateness of the Fellowship Hall use, the Development Review Team at its meeting held December 17, 2007, and the Beaufort County Planning Commission at its hearing held on December 3, 2007, denied the Church's application for the Fellowship Hall, concluding that while the expansion fell within the 15% allowance, that it would impermissibly increase the occupant load. This finding is erroneous. One of the unique conditions to this property is that this Church is not located in a residential area or other area where people could walk to Church. The occupancy load, accordingly, is defined by the allowable parking. Another unique condition of this property is that the allowable parking has already been established. The construction of a Fellowship Hall will neither increase nor decrease the number of parking spaces permitted on this property. Since the occupancy load is already defined by the number of parking spaces, the construction of the Fellowship Hall necessarily will not increase the occupancy load. As stated by Tony Criscitiello, the Planning Director, in his November 27, 2007 Memorandum, while the term "occupant load" is not specifically defined in the ZDSO, it is referred to in the International Building Code as the number of occupants for whom a space is "designed." Accordingly, the "occupant load" for this particular piece of property has already been "designed" and fixed by the number of allowable parking spaces.

Accordingly, the proposed Fellowship Hall was part of the original master plan submitted and approved in 1996. Additionally, the proposed Fellowship Hall satisfied the requirements of the Airport Overlay District Ordinance when the Church was required to re-submit its application in 2007, and the application was denied based upon the erroneous assumption that the occupancy load would increase (this decision is currently on appeal to the Beaufort County Court of Common Pleas). These are all circumstances which are unique to this particular property.

The second criteria for a variance referenced in Section 106-522 is that the conditions do not generally apply to other property in the vicinity. As previously noted, the conditions noted above are unique to this particular piece of property.

The third criteria of Section 106-522 is that these conditions effectively prohibit or unreasonably restrict utilization of the property. It is respectfully submitted that it is unreasonable to restrict utilization of this 9.35 acre parcel of property to the existing Sanctuary building. The Fellowship Hall is a reasonable adjunct use, and it is unreasonable to restrict a nearly 10 acre parcel of property to the construction of one (1) building. As noted above, one purpose of the Ordinance is to allow "auxiliary" uses

The fourth criteria for granting a variance under Section 106-522 is that authorization of the variance will not adversely affect adjacent property or the public good, nor harm the character of the district. Granting the variance will allow the Church to more effectively carry on its mission, which by definition is to promote the public good. Furthermore, this property is utilized by Beaufort County as part of its emergency preparedness plan, which would also be enhanced by granting of the variance. Also, while this property is located within the Airport Overlay District for MCAS Beaufort, it lies within



COUNTY COUNCIL OF BEAUFORT COUNTY

Beaufort County Zoning & Development  
Multi Government Center • 100 Ribaut Road  
Post Office Drawer 1228, Beaufort, SC 29901-1228  
OFFICE (843) 255-2170  
FAX (843) 255-2174

August 10, 2010

H. Fred Kuhn Jr., Esq.  
1501 North Street  
Post Office Drawer 507  
Beaufort, SC 29901-0507

Grays Hill Baptist Church  
2749 Trask Parkway  
Beaufort, SC 29906

Re: ZBOA – Variance Request from Appendix A-1, Section 7 (A)(6) & Table 106-9  
Grays Hill Baptist Church – 2749 Trask Parkway, Port Royal Island  
District 100, Tax Map 020, Parcel 018C

Dear Mr. Kuhn Jr.,

On Thursday, July 22, 2010, the Zoning Board of Appeals completed its review of your request for a variance from Appendix A-1, Section 7 (A)(6) & Table 106-9, Airport Overlay District & Nonconformities, in accordance with the Zoning & Development Standards Ordinance. The Zoning Board of Appeals by a majority (4 members FOR, 2 members AGAINST, and 1 member ABSTAINED) voted to deny your request for a variance. The board stated the following, "This application does not meet the criteria of Section 106-522 of the Beaufort County Zoning & Development Standards Ordinance".

The board denied your request for a variance based on the following findings:

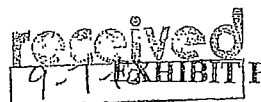
- a. There were no extraordinary and exceptional conditions pertaining to this particular piece of property.
- b. The authorization of the variance would adversely affect the adjacent properties or the public good. Also, the character of the district would be harmed by the granting of the variance.
- c. Is not in harmony with the chapter's purposes and intent; and
- d. Is not consistent with the comprehensive plan.

If you require additional information of the Zoning Board of Appeals relating to this matter, please contact Hillary Austin, Zoning & Development Administrator, at (843) 255-2170.

Sincerely,

Thomas Gasparini  
Chairman, Zoning Board of Appeals  
Beaufort, South Carolina

This 31st Day of August, 2010



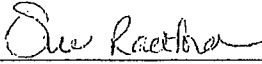
CERTIFICATE OF SERVICE

Undersigned certifies that the **Final Order of Judgment**, to which this certificate is affixed, was served upon the party(s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

Mary Bass Lohr, Esquire  
Howell, Gibson & Hughes, P.A.  
Post Office Box 40  
Beaufort, South Carolina 29901

David M. Wunder  
Environmental Counsel  
Eastern Area Counsel Office  
67 Virginia Dare Drive, Suit 206  
Camp Lejeune, North Carolina 28547

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on March 26, 2013.

By:   
Sue Radford  
Secretary for H. Fred Kuhn, Jr.