

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

JUL 25 2016

SC SUPREME COURT

Opinion No.: 2016-UP-153

Appellate Case No.: 2016-001263

Andreas Ganotakis, d/b/a Seven Days Food Mart, LLC,.....Petitioner,

v.

City of Columbia Board of Zoning Appeals,.....Respondent.

APPENDIX

Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
(803) 750-8311
Attorney for Petitioner

Peter M. Balthazor
Riley, Pope, & Laney LLC
PO Box 11412
Columbia, SC 29211
(803) 799-9993
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUN 1 8 2016

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC SUPREME COURT

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2013-CP-40-4051

Andreas Ganotakis, d/b/a Seven Days Food Mart, LLC,.....Petitioner,

v.

City of Columbia Board of Zoning Appeals,.....Respondent.

APPENDIX

Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
(803) 750-8311
Attorney for Petitioner

Index to Appendix

Pleadings:

Record on Appeal	1
Final Brief of Appellant	130
Brief of Respondent	158

Orders, Judgments and Decrees:

Opinion of Court of Appeals	183
Petition for Rehearing	186
Order Denying Petition for Rehearing	200

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2013-CP-40-4051

Andreas Ganotakis, d/b/a Seven Days Food Mart, LLC,.....Appellant,

v.

City of Columbia Board of Zoning Appeals,.....Respondent.

RECORD ON APPEAL

Dietrich A. Lake
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
803-750-8311
Attorney for Appellant

Peter M. Balthazor
Riley Pope & Laney, LLC
PO Box 11412
Columbia, SC 29211
Attorney for Respondent

RECEIVED
FEB 05 2015
SC Court of Appeals

Index to Record on Appeal

Orders, Judgments and Decrees:

Order of June 27, 2013	001
Order filed June 4, 2014	003
Order filed July 30, 2014	012

Pleadings:

Petition filed July 15, 2013	014
Return on Behalf of Respondent City of Columbia Board of Zoning Appeals filed August 22, 2013	028
Memorandum of Law in Opposition to Petition of Appeal	030
Appellant's Motion for Reconsideration	035
Appellant's Notice of Appeal filed July 15, 2013	037
Appellant's Notice of Appeal filed August 25, 2014...	038

Trial Transcript:

Court	040
Arguments of Appellant Counsel	042
Arguments of Respondent Counsel	052
Arguments of Appellant Counsel	060

Exhibits/Other documents:

Respondent's Exhibit A	064
Appellant's Business License	113

Respondent's BOZA Hearing Transcript	114
Respondent City Ordinances	127
Respondent's BOZA Hearing Video of June 11, 2013 to be filed separately with this Appellate Court by order from the Clerk of the Appellate Court.	

Board of Zoning Appeals)

City of Columbia)

ORDER

ON A SPECIAL EXCEPTION

Date Heard: June 11, 2013

Case Number: 13-041-SE

Property: 5050 Fairfield Road (TMS# 11701-02-20)

Zoning District: C-3 (General Commercial)

Applicant: Andreas Ganotakis, Seven Days Food Mart LLC

Other Parties in Interest: None.

The City of Columbia Board of Zoning Appeals held a public hearing on June 11, 2013 to consider the special exception request of Andreas Ganotakis, Seven Days Food Mart LLC, Applicant, pursuant to City of Columbia Code of Ordinances §17-112 and 17-258 to permit the establishment of a liquor store in a C-3 district.

After consideration of the evidence and arguments presented, the Board decides as follows:

Findings of Fact:

Notice of public hearing for this case was posted on the property, as well as notice was published in a newspaper of general circulation within the city no less than 15 days prior to the hearing.

§17-258 of the City of Columbia Code of Ordinances states that a liquor store (SIC 592) shall require review and approval by the Board of Zoning Appeals as a special exception in the C-3 districts. The applicant requested a special exception to establish a 464 sq. ft. liquor store in a 5,950 sq. ft. building near the Northway Plaza shopping center and Alcorn Middle School on Fairfield Road. The building is across Fairfield Road from the Northwood Hills subdivision and a cemetery. An existing liquor store is within Northway Plaza and within sight of the proposed liquor store. Other uses in the applicant's building include an associated convenience store and a storage area not associated with the applicant.

The Zoning Division approved a business license application for a convenience store on September 21, 2012, and the building and fire department inspections of the business were completed by September 28, 2012. To the best of our understanding, the applicant built a non-permitted wall to separate the uses afterward. According to the South Carolina Department of Revenue, the beer and wine application and the retail liquor store licenses were active as of January 17, 2013.

Conclusions of Law:

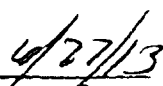
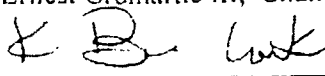
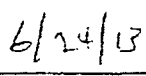
Pursuant to the Standard of Review in granting a Special Exception (§17-112), we have heard the testimony and reviewed the Applicant's request for a special exception to establish a liquor store. Based on the foregoing, we conclude as a matter of law that the

applicant has not met all criteria set forth in §17-112 (2)(c) of the City of Columbia Code of Ordinances and we make a ruling considering the following:

1. A liquor store may be permitted as a special exception by the Board of Zoning Appeals in the C-3 districts, however the special exception would adversely affect the public interest due to the proximity to a middle school and the proliferation of liquor stores in the area; and further the intent of the C-3 district is to avoid depreciation of property values in adjacent areas and a proliferation of liquor stores would contribute to this depreciation.
2. The proposed use, when operated in conformance with the application, submitted documents, and testimony presented to the Board during the public hearing:
 - a. Would not negatively impact traffic circulation;
 - b. Would create vehicular or pedestrian safety problems in that Fairfield Road is a four lane road without a median or nearby crosswalks;
 - c. Would not create noise, lights, fumes, or otherwise obstruct air flow to the detriment of adjoining properties;
 - d. Would impact the aesthetic character of the environs, especially in regards to the proliferation of signs on the photograph submitted during testimony; and
 - e. Would not negatively impact the orientation or spacing of improvements or buildings.

Therefore, based on the foregoing, the Applicant's request for a Special Exception to establish a liquor store as described above is hereby **DENIED**.

AND IT IS SO ORDERED!

	
Ernest Cromartie III, Chairman	Date
	
K. Brian Cook, Zoning Administrator	Date

Date Mailed to Applicant
and Other Parties of Interest:

6/28/13 ATC

**NOTICE OF APPEAL TO CIRCUIT COURT MUST BE FILED WITHIN
THIRTY (30) DAYS AFTER THE DATE THIS ORDER WAS MAILED**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Andreas Ganotakis, d/b/a Seven Days	)	C/A No. 2013-CP-40-4051
Food Mart LLC,	)	
	)	
Petitioner,	)	
	)	
vs.	)	ORDER
	)	
City of Columbia Board of Zoning	)	
Appeals,	)	
	)	
Respondent.	)	

FILED
 2014 JUN -4 PM 3:31
 JEANETTE L. HOBBS
 C.C.P. CLERK

This zoning matter comes before the Court in its appellate capacity. Petitioner seeks to have the Court reverse the decision of the City of Columbia Board of Zoning Appeals ("BOZA") that denied a special exception application for the Petitioner to operate a liquor store. This appeal was heard by the Court on March 7, 2014. Arguing for the Petitioner was Dietrich A. Lake, Esquire. BOZA was represented by Peter M. Balthazor, Esquire. All counsel argued ably and competently in favor of their respective clients' positions. As further discussed below, the Court affirms BOZA's decision to deny the special exception to Petitioner.

I. Procedural/Factual Background

The record of the BOZA hearing shows the following procedural and factual background. The Petitioner received a business license to operate a convenience store on September 12, 2012. After receiving the business license, the Petitioner constructed a non-permitted wall to separate a liquor store business from the convenience store business. The business began operating as a convenience store and a liquor store prior to obtaining a special exception for the liquor store. The Petitioner applied for a special exception on May 14, 2013. The Petitioner's business is

located in a C-3 zoning district. Liquor stores may be operated only pursuant to a special exception in C-3 zoning districts. City Code § 17-258.¹

A public hearing was held on the application for special exception on June 11, 2013. BOZA heard the evidence and arguments presented and then a motion was made to deny the request for special exception. The motion passed and BOZA issued its written order on June 27, 2013.

The Petitioner filed his Petition on July 14, 2013. The Petitioner raises two issues on appeal. First, the Petitioner argues that BOZA's decision to deny the request for a special exception was arbitrary and capricious where BOZA did not adhere to its own criteria for granting special exceptions. The Petitioner also argues he was prejudiced by a conflict of interest where an attorney appeared on behalf of the City Council to oppose the request for a special exception.

II. Standard of Review

This court's standard of review is governed by S.C. Code Ann. § 6-29-840(A) (Supp. 2013). This section provides in part that "[t]he findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. . . . In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." *Id.*

Section 6-29-840 is very deferential to a zoning board's findings of fact as it equates them to a jury's findings. Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000). In other words, the court must not disturb the board's findings of fact unless there is no evidence reasonably supporting the board's decision.

¹ The City provided certified copies of applicable City Code sections at the hearing in this matter, including §§ 17-112, 17-240, and 17-258.

See Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 479-480, 623 S.E.2d 373, 375 (2005) (“[A] factual finding of the jury will not be disturbed unless a review of the record discloses there is no evidence which reasonably supports the jury’s findings.”).

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

III. Applicable Law/Analysis

Issue 1. Was BOZA’s decision arbitrary and capricious?

A zoning board has the power “to permit special exceptions subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance” S.C. Code Ann. § 6-29-800(A)(3) (Supp. 2013). The City Code contains substantive provisions relating to the grant or denial of a special exception. The first of these, section 17-112(2)a.1., instructs BOZA to “[d]eny special exceptions when not in harmony with the intent and purpose of this article.” Next, section 17-112(2)b.4. states that BOZA “shall make a finding that it is empowered under the section of this article described in the application to grant the special exception and that the special exception will not adversely affect the public interest.” Therefore, if BOZA is unable to make this specific finding regarding public interest the special exception must be denied.

BOZA, pursuant to section 17-112(2)b.4., found that the special exception “would adversely affect the public interest due to the proximity to a middle school and the proliferation of liquor stores in the area.” There is evidence in the record to support BOZA’s determination

that the public interest would be adversely affected. It is undisputed that a middle school is located across the street from the proposed liquor store and a residential neighborhood is also across the street. BOZA heard testimony that children from the neighborhood walk to school and will walk right past the liquor store. The proximity of a liquor store to schools, children and neighborhoods is certainly a valid consideration in determining whether a special exception would adversely affect the public interest and whether the use is appropriate for a particular location.

BOZA also heard evidence of the number of liquor stores in the area and decided that such number would adversely affect the public interest. The evidence at the hearing showed that another liquor store was already located on the same side of the road and within view of the Petitioner's store. In addition to that store at least two other liquor stores are located within one mile of the middle school. Had the special exception been granted a total of four liquor stores would have been located within a one-mile radius of the middle school. The number of liquor stores in a particular area is a real and valid concern in the zoning context. This court is aware of no authority or reason that a zoning board cannot consider the number or concentration of a particular type of use in its evaluation to determine whether a special exception will adversely affect the public interest.

In addition to the physical evidence of the location of existing and proposed liquor stores, BOZA also heard testimony from a nearby neighborhood resident about the concentration of liquor stores. This witness stated that he had lived in the area for 8 years and had not seen any new business other than convenience stores and liquor stores.

The Petitioner argues that his position is identical to the applicant's position in Wyndham Enters., LLC v. City of North Augusta, 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012). In

Wyndham, the board denied a special exception request to operate a costume/fireworks store. The criteria used by the board, in pertinent part, in evaluating the request required the board to find: "2. That the special exception will be in substantial harmony with the area in which it is to be located. 3. That the special exception will not discourage or negate the use of the surrounding property for use(s) permitted by right." Id. at 148, 735 S.E.2d at 662. The applicable city code also required the board's decision to be supported by "competent, substantial, and material evidence." Id. The board heard concerns about an increase in traffic, a decline in property values, and detrimental impact on the character of the surrounding area. The court of appeals held that the "testimony proffered was based on speculation and opinion." Therefore, the court of appeals reversed the board's decision, finding it was arbitrary and capricious.

The present case is clearly distinguishable from the matter considered by the board in Wyndham. The zoning board in Wyndham was not called upon to determine whether the special exception would adversely affect the public interest. The court of appeals in Wyndham was concerned with the basis of the testimony relied upon by the board. It found the "testimony proffered was based on speculation and opinion." Id. at 151, 735 S.E.2d at 662. In the present case, BOZA was required to make a determination regarding the public interest. The testimony relied upon by BOZA was not based on speculation or opinion and there is no concern about the basis of the testimony provided to BOZA concerning proximity or concentration.

The Petitioner argues that BOZA's decision was arbitrary and capricious because BOZA's assertions regarding the adverse effect of the liquor store on the middle school and the proliferation of liquor stores in the area were merely opinion and conjecture and were not supported by any evidence in the record. This is an incorrect characterization of BOZA's determination. Instead, BOZA determined that the public interest would be adversely affected

by the location of the proposed liquor store and because of the number of liquor stores in the area. The testimony that formed the basis of BOZA's determination regarding the public interest was not based upon speculation or conjecture.

In the present case, the testimony concerning the proximity of the proposed liquor store to a school and the number of liquor stores in the area was undisputed and was not based on speculation, opinion or conjecture. BOZA heard this evidence and determined, in its view, that the location of the proposed liquor store and the number of liquor stores in the area would adversely affect the public interest. Others viewing the same facts may come to a different conclusion than that reached by BOZA. However, based on the record, evidence was presented by which BOZA could reasonably conclude that the special exception would adversely affect the public interest. See Restaurant Row Assocs., 335 S.C. at 216, 516 S.E.2d at 446 (stating that a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision).

The City Code also contains specific criteria for special exceptions in section 17-112(2)c. This section states that BOZA "shall consider the following: (1) traffic impact; (2) vehicle and pedestrian safety; (3) potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property; (4) adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and (5) orientation and spacing of improvements or buildings.

In addition to its evaluation of the adverse effect to the public interest, BOZA evaluated the special exception application in this case under each of the above substantive rules governing special exceptions and found that the special exception use would "create vehicular or pedestrian safety problems" and that it would "impact the aesthetic character of the environs, especially in

regards to the proliferation of signs ² BOZA considered evidence as to each of these criteria. BOZA heard evidence of children walking along the sidewalks in front of the liquor store. BOZA also heard evidence concerning signage and posters inside and outside the business. BOZA determined, in its judgment, that the signage and posters impacted the aesthetic character of the environs. This court cannot substitute its judgment for that of BOZA where evidence is in the record supporting BOZA's decision. Restaurant Row, supra.

In summary, the record provided to this court contains evidence reasonably supporting BOZA's decision to deny the special exception. This court cannot concern itself with the quantum of evidence, and this court cannot substitute its judgment for that of BOZA. As such, under the applicable standard of review, BOZA's decision must be affirmed.

Issue 2. Was the Petitioner prejudiced by an alleged conflict of interest?

Based on the record before this court, it appears that a private licensed attorney, retained specially by City Council, appeared at the BOZA hearing and spoke in opposition to the requested special exception. The Petitioner asserts that this constituted a conflict of interest and, further, that the conflict prejudiced the Petitioner.³ This court is unconvinced that a conflict of interest existed in this situation, and the Petitioner has not provided any case law or other authority demonstrating that a conflict of interest existed.

This court is unaware of any authority prohibiting a councilmember from appearing at a public hearing. BOZA hearings are advertised by public notice and are open to the public. S.C. Code Ann. § 6-29-800(D) (Supp. 2013). This court is likewise unaware of any authority

² BOZA also found that the use would not negatively impact traffic circulation, would not create noise, lights, fumes, or otherwise obstruct air flow, and that it would not negatively impact the orientation or spacing of improvements or buildings.

³ As the Petitioner recognizes in his brief, he did not object at the hearing to the comments and testimony provided by counsel appearing on behalf of the City Council. Therefore, this issue has been waived.

prohibiting a municipal body from engaging outside counsel to appear on its behalf at a public hearing. The Petitioner characterizes this situation as a conflict of interest, but the Petitioner does not explain who this conflict affects. The Petitioner does not suggest that the retained outside counsel had a conflict of interest. The Petitioner instead asserts that the City Attorney's office would have had a conflict of interest. Such a conflict of interest, if one existed in the first place, was remedied by the City Council hiring outside counsel who did not represent both the interests of the City of Columbia and the interests of the Board of Zoning Appeals. Moreover, this court cannot find a conflict of interest where the Local Government Comprehensive Planning Enabling Act (S.C. Code Ann. § 6-29-310 *et. seq.*) specifically allows "an officer or agent of the appropriate governing authority" to appeal a decision of the board to the circuit court. S. C. Code Ann. § 6-29-820(A) (Supp. 2013).

The Petitioner also asserts that the alleged conflict of interest prejudiced him in this matter. However, because the court finds that no conflict existed, there was no prejudice resulting to the Petitioner. In any event, the Petitioner has not alleged how he was prejudiced in this matter, other than being denied the special exception. As explained earlier, BOZA's decision was reasonably supported by the evidence. There is no evidence, and the Petitioner has not pointed to any, demonstrating that any board member voted a certain way because of the alleged conflict of interest.⁴

⁴ The Petitioner also asserts that a conflict existed or that he was prejudiced by the use of public money to hire outside counsel to represent the City's interest against a private citizen. The Petitioner does not explain how this would constitute a conflict of interest. However, it is not uncommon, and certainly not prohibited, for public money to be used to hire counsel to represent the City against private interests. Municipalities engage counsel regularly to, for example, pursue eminent domain actions against private interests and defend tort actions brought by private citizens.

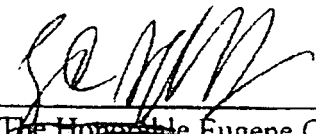
Therefore, this court finds that there was no conflict of interest created by City Council hiring outside counsel to appear on its behalf at a BOZA meeting. Further, the Petitioner was not prejudiced by an attorney appearing on behalf of City Council at the hearing.

IV. Conclusion

BOZA's decision to deny the special exception in this matter is AFFIRMED.

IT IS SO ORDERED.

June 2nd, 2014



The Honorable Eugene C. Griffith, Jr.
Court of Common Pleas, 5th Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Andreas Ganotakis, d/b/a Seven)
Days Food Mart LLC)
Petitioner)
v.)
City of Columbia Board of Zoning)
Appeals)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2013-CP-40-4051

ORDER
(MOTION FOR RECONSIDERATION)

2014 JUL 30 11:10 AM
CLERK OF COURT
COLUMBIA COUNTY

THIS MATTER is before the Court upon a Motion for Reconsideration of this Court's affirmation of the Board of Zoning Appeals denial of the special exception request by the Petitioner, Andreas Ganotakis, d/b/a Seven Days Food Mart LLC.

The Court, being fully advised, finds that the Defendant's Motion for Reconsideration of this action pursuant to Rule 59 (e) of the South Carolina Rules of Civil Procedure is not well taken and is therefore **DENIED**.

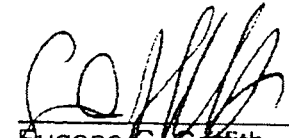
Upon the record, the Court finds:

1. The Court has jurisdiction of the parties and the subject matter herein;
2. The Petitioner timely filed a Motion for Reconsideration of this Court's Order of June 2, 2014, affirming the Board of Zoning Appeals denial of the special exception to the Petitioner;
3. It appears upon argument of counsel for reconsideration that this motion should be denied.

WHEREFORE IT IS HEREBY ORDERED AND ADJUDGED that the Motion for Reconsideration of the Court's Order of June 2, 2014 be **DENIED**.

SCANNED

IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Presiding Judge
Fifth Judicial Circuit

July 29^K, 2014
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM CITY OF COLUMBIA
Board of Zoning Appeals

Case No.: 13-041-SE

Andreas Ganotakis, d/b/a Seven Days Food Mart LLC,.....Petitioner,

v.

City of Columbia Board of Zoning Appeals.....Respondent.

PETITION

Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
(803) 750-8311
Attorney for Petitioner

FILED
2013 JUL 15 AM 9:21
JEANETTE W. McBRIDE
C.C.P. & G.S.

STATEMENT OF THE ISSUE ON APPEAL

- I. Was the zoning board decision denying the Petitioner's request for a special exception to open a liquor store arbitrary and capricious where the zoning board did not adhere to the only criteria required for granting such a special exception.
- II. Was the Petitioner prejudiced by the conflict of interest in the City of Columbia hiring private counsel to argue and/or oppose decisions by its own administrative agency, the Board of Zoning Appeals, in special exception cases related to alcohol only.

STATEMENT OF THE CASE

The Petitioner opened Seven Days Food Mart LLC, a convenience store, at 5050 Fairfield Road, Columbia, South Carolina. The business license application was approved on September 21, 2012. Petitioner applied for and received a license to sell beer and wine on or about January 17, 2013. The Petitioner made application for a special exception to open a liquor store on or about May 15, 2013. The liquor store would encompass 464 square feet in a building totaling 5950 square feet. The Petitioner contracted, at his own expense, to have a wall separating the convenience store area from the liquor store.

Notice of the public hearing was posted on the property and was published in the newspaper no less than fifteen (15) days before the hearing. A public hearing was held on the matter of the special exception on June 11, 2013, whereby the Petitioner, counsel hired by the City of Columbia to oppose granting the special exception, and others opposing granting the special exception presented testimony to the zoning board. By order dated June 24, 2013, the Petitioner's request for a special exception to open a liquor store was denied.

ARGUMENT

I.

THE BOARD OF ZONING APPEALS DECISION IN DENYING THE PETITIONER'S REQUEST FOR A SPECIAL EXCEPTION TO OPEN A LIQUOR STORE WAS ARBITRARY, CAPRICIOUS, AND IN ERROR WHERE THE BOARD DID NOT ADHERE TO ITS OWN CRITERIA FOR GRANTING SPECIAL EXCEPTIONS

Seven Days Food Mart, LLC is a store located at 5050 Fairfield Road, Columbia, South Carolina. The store's location is considered in a general commercial district.

Sec. 17-240 of the City of Columbia Code of Ordinances states the following:

The C-3 district is intended to accommodate a variety of general commercial and nonresidential uses characterized primarily by retail, office and service establishments and oriented primarily to major traffic arteries or extensive areas of predominantly commercial usage and characteristics. Certain related structures and uses are permitted outright or are permissible as special exceptions subject to restrictions and requirements intended to best fulfill the intent of this article. It is not the intent of this article to encourage the development of long, narrow strips of commercial development fronting on major arteries, often referred to as strip commercial areas. Such development is often incompatible with adjacent uses and may lead to the eventual formation of commercial slums, damage the traffic-carrying capacities of streets, increase congestion, lead to depreciation of property values in adjacent areas, encourage undue dispersion of commercial facilities to the inconvenience of the public, and create disproportionate costs in the provision of governmental services.

The Board of Zoning Appeals has the power to grant special exceptions in C-3 general commercial districts. The powers enumerated under *Sec. 17-112 of the City of Columbia Code of Ordinances* are as follows regarding special exceptions:

... (2) *Special exceptions.*

a. *Duties.* Duties of the board are as follows:

1. Hear and decide only the applications for special exceptions as the board of zoning appeals is specifically authorized to pass upon by terms of this article;

2. Decide the questions as are involved in determining whether special exceptions should be granted;
 3. Prescribe appropriate conditions and safeguards in conformity with this article; and
 4. Deny special exceptions when not in harmony with the intent and purpose of this article.
- b. *Procedures in consideration of special exception applications.*
1. A written application for a special exception shall be submitted indicating the section of this article under which the special exception is sought and stating the grounds on which it is requested.
 2. Notice of public hearing shall be posted on the property for which special exception is sought and shall be published at least 15 days prior to the public hearing in a newspaper of general circulation in the city.
 3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
 4. The board of zoning appeals shall make a finding that it is empowered under the section of this article described in the application to grant the special exception and that the special exception will not adversely affect the public interest.
 5. The board of zoning appeals shall not vary the conditions and/or provisions of sections 17-259 through 17-274 that establish specific standards that must be met prior to the establishment of several principal uses that require a special exception.
 6. The board of zoning appeals may prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both.
- c. *Criteria for special exceptions.* In addition to definitive standards in this article, the board of zoning appeals shall consider the following:
1. Traffic impact;
 2. Vehicle and pedestrian safety;
 3. Potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property;
 4. Adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and
 5. Orientation and spacing of improvements or buildings.
- d. *Effect of failure to meet conditions.*
1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms

under which a special exception is granted, shall be deemed a violation of this article, punishable under the penalties established in this article.

2. Failure to begin or complete, or begin and complete, an action for which a special exception is required, within the time limit specified, when such time limit is made a part of the terms under which the special exception is granted, shall void the special exception.

The Board of Zoning Appeals, in its order, found that granting the special exception would adversely affect the public interest of the area due to the proximity to a school and what the board characterized as a "proliferation of liquor stores in the area." Furthermore, the board determined that this "proliferation of liquor stores" would result in a depreciation in homes values in the surrounding area.

In analyzing the criteria for a special exception, the board found that the liquor store would not negatively impact traffic circulation, yet ironically state that the store would create vehicular or pedestrian safety problems because there was no median on Fairfield Road where the store is located. Furthermore, the board determined that while the liquor store would not create noise, lights, fumes or otherwise cause any obstructions to the detriment of adjoining properties and the store would not negatively impact the orientation or spacing of improvements or building, the board found that the store would impact the aesthetic character of the environment with a proliferation of signs.

In *Windham Enterprises v. The City of North Augusta*, 735 S.E.2d 659 (S.C.App. 2012), the Court of Appeals reversed the decision of the zoning board based upon the finding that the board's decision was arbitrary and capricious. In the *Windham Enterprises* case, the Petitioner sought a special exception to operate a fireworks store. At the hearing for the special exception, residents testified as to their objections to

granting the special exception for the fireworks store based upon traffic concerns, a concern that the store would cause a decline in property value, and based upon the negative effect the store would have on the community. The zoning board denied the special exception due to the concerns of the residents. The Court of Appeals reversed this decision and held that ~~the board's decision must be supported by competent, substantial, and material evidence~~. The Court of Appeals determined that the testimony of the residents did not meet that competent standard because the residents did not testify as to any specific injury to their own property nor did the residents sufficiently articulate how the fireworks store would either depreciate their individual property or stand in contrast to other commercial businesses in the area that did not need to seek a special exception.

The Petitioner's position is identical to the fireworks store owner's position in *Wyndham Enterprises*. The Board of Zoning Appeals decision in this case was arbitrary and capricious. The board references how the Petitioner's liquor store would adversely affect the middle school and how a "proliferation of liquor stores in the area" would contribute to a depreciation in home values; however, this assertion by the board is merely opinion and conjecture and not supported by any evidence in the record. The record clearly shows that there ~~is one liquor store (Northway Package Store)~~ directly in front of the middle school; however, the record shows no "proliferation" of liquor stores as there are no other liquor stores on Fairfield Road within a one-mile proximity of Alcorn Middle School. In fact, ~~nine (9) out of the fifteen (15)~~ stores that the residents testified to as selling alcohol as part of their evidence at the hearing (and which the board gave undue weight to) were not located on Fairfield Road. The record reflects

that nine (9) of the stores were gas stations, two (2) were grocery stores, two (2) were drug stores, and two (2) were truly liquor stores with one of the stores on North Main Street. The residents testified and presented crime statistics for the area and it showed that the Petitioner's business had been burglarized once over a year period. In addition, these same statistics showed no crime for either the Food Lion or the Northway Package liquor store across from the middle school and both of these entities also sell alcohol and are next to the Petitioner's place of business; furthermore, the residents' testimony again relied upon data incorporating stores and businesses not located on Fairfield Road and near the middle school.

The testimony of the residents in opposition of the special exception was based upon pure speculation and opinion and no definitive standard as required. See Sec. 17-112. This speculation encompassed a decline in property values, an increased risk of vehicular or pedestrian safety problems, an increase in crime, and a negative impact on the aesthetic character of the area. The board placed undue weight on this speculative testimony and failed to consider that there was no credible or competent testimony which distinguished the effect of the Petitioner's liquor store from the effects of either the Food Lion selling alcohol at its store or Northway Package store selling liquor across from the middle school. In addition, there was no competent evidence to support that the Petitioner's liquor store would create vehicular or pedestrian safety problems. There was no evidence of increased accidents or pedestrian problems before the Petitioner's application for the special exception nor was there any competent evidence presented which distinguishes why the Petitioner's store would pose a greater risk than either Food Lion or Northway Package since they are all located on the same side of the road

and within close proximity to each other. The fact remains that the location where the Petitioner's business is located housed many previous commercial businesses before the Petitioner opened his store and there was no testimony as to prior problems with vehicle or pedestrian safety when the previous tenants operated at the same location as the Petitioner's store.

Finally, the board arbitrarily sites a proliferation of signs as a reason for denying the special exception; however, the Petitioner offered to make any corrections so as to not affect the aesthetic character of the area. The Petitioner had a limited number of signage on the building itself and offered to remove any signage to comply with any conditions the board could have prescribed in lieu of denying the special exception. The board refused to offer the Petitioner the opportunity to remove some signage though it was within the board's power to do so.

The Board of Zoning Appeals' decision denying the Petitioner's request for a special exception to open a liquor store was arbitrary and capricious. The board's decision was based upon opinion and conjecture with no competent evidence to support the decision; therefore, the decision of the board denying the Petitioner's decision should be reversed and the special exception should be granted to the petitioner.

ARGUMENT

II.

THE PETITIONER WAS PREJUDICED BY A CONFLICT OF INTEREST BETWEEN THE CITY OF COLUMBIA AND THE BOARD OF ZONING APPEALS WHEN THE CITY HIRED PRIVATE COUNSEL TO ARGUE BEFORE THE BOARD AGAINST SPECIAL EXCEPTIONS IN ALCOHOL CASES ONLY

A conflict of interest has been generally defined as a set of circumstances that creates a risk that professional judgment or actions regarding a primary interest will be unduly influenced by a secondary interest. *Wikipedia, Conflict of Interest*, http://en.wikipedia.org/wiki/Conflict_of_interest (as of June 13, 2013 at 14:32).

Pursuant to *Sec. 2-151 of the City of Columbia Code of Ordinances*, the city created and states as the follows:

- (a) The following departments of the city are created:
 - (1) City clerk;
 - (2) Information technology;
 - (3) Finance;
 - (4) Legal;
 - (5) Human resources;
 - (6) Municipal court;
 - (7) Police;
 - (8) Fire;
 - (9) Public works;
 - (10) Utilities and engineering;
 - (11) Community development;
 - (12) Parks and recreation;
 - (13) General services;
 - (14) Economic development;
 - (15) Zoning, inspections and planning;
 - (16) Construction management;
 - (17) Public relations;
 - (18) Communications (911/311).
- (b) The head of each department shall be a director, who shall be an officer of the city and shall have supervision and control of his department, subject to the city manager. The city manager may serve as director of one or more departments or divisions within any department.
- (c) Each department head shall be responsible for preparation of departmental and administrative regulations and procedures subject to the review and approval of the city manager.

Sec. 2-115 of the City of Columbia Code of Ordinances addresses the role of the City Attorney and states:

City attorney.

- (a) *Appointment.* The city council shall appoint a city attorney and labor counsel, who shall serve at its pleasure.
- (b) *Duties.* The city attorney shall be the chief legal counsel to the city, the mayor and members of the council and the city manager and to the officers and department heads of the city. The city attorney shall prosecute and defend the city in all actions and appear on behalf of the city and its officers in legal proceedings. The city attorney shall prepare or supervise the preparation of all legal documents and instruments of the city and shall approve all ordinances, resolutions, contracts and related documents as to form. The city attorney may employ assistant city attorneys and legal assistants as necessary for the performance of his duties, when such positions are provided for in the city budget. When requested the city attorney shall attend meetings of the council, render legal opinions, represent the city at meetings and conferences and perform such other duties as prescribed by law and by the city council.

Sec. 2-128 of the City of Columbia Code of Ordinances addresses the role of the Director of Zoning and States as follows:

Director of zoning, inspections and planning.

The director of zoning, inspections, and planning, subject to the city manager, shall have administrative supervision over the activities relating to zoning, building codes, building inspections and property maintenance codes, and planning, and shall perform such additional duties as may be assigned to him by the city manager.

Sec. 17-81 of the City of Columbia Code of Ordinances addresses the responsibilities of the zoning administrator and states as follows:

Responsibility for administration.

- (a) *Zoning administrator.* A zoning administrator designated by the city manager shall administer and enforce this article. The zoning administrator may be provided with the assistance of such other persons as the city manager may direct. It is the intent of this article that all questions of administration and enforcement shall first be presented to the zoning administrator and that such questions shall be presented to the board of zoning appeals only upon reference

by, or appeal from, the zoning administrator, and that recourse from the decisions of the board of zoning appeals shall be to the courts as provided by law.

- (b) *City council.* It is further the intent of this article that the function of the city council under this article shall not include hearing and deciding questions of interpretation and enforcement which may arise, but that the city council shall have only the responsibility for acting on proposals for amendment or repeal of this article, and for establishing a schedule of fees and charges as provided in this article.

The Petitioner was unable to find where the City of Columbia has an ordinance that specifically addresses the issue of conflict of interest; however, there is strong prima facie evidence of not only a conflict of interest in the City of Columbia hiring private counsel to argue before a branch of the City of Columbia government, but there was extreme prejudice to the Petitioner by the entire process.

The City of Columbia has a city attorney who is empowered with the duties to appear on behalf of the city and all of the city's departments and/or to approve all documents and contracts related to the City of Columbia's daily business; yet, the city attorney for the City of Columbia did not appear at the hearing to argue the City of Columbia's position in this matter. The city attorney could not appear because of the obvious and inherent conflict of litigating a matter where he represents both the interests of the City of Columbia and the interests of the Board of Zoning Appeals. Furthermore, it is not clear from the record whether the city attorney authorized or employed private counsel to represent the interests of the City of Columbia in opposing the granting of the special exception in this case which is part of the city attorney's duties. See Sec. 2-115. The City of Columbia seeks to do what it should not and could not do with the city attorney by hiring private counsel to oppose the granting of special

exceptions in alcohol cases only. The conflict of interest still exists even with private counsel.

In addition, the Petitioner was prejudiced by the City of Columbia hiring private counsel to oppose his special exception to open a liquor store in following other ways:

1) The Petitioner received no notice of the conflict of interest or that the City of Columbia had retained private counsel for the hearing; and 2) The City used public money to pay for the retained counsel for the hearing.

The Petitioner received no notice of the conflict of interest or notice that the City of Columbia would retain private counsel to oppose the special exception allowing him to open his store. The Petitioner lost any opportunity to retain his own counsel before the hearing and lost his opportunity to object or consent to the testimony of the private counsel because of the inherent conflict of interest between the City of Columbia, private counsel, and the Board of Zoning Appeals. A strong argument can be made that the board placed a great deal of undue weight on the testimony of the private counsel who was clearly acting as a de facto city attorney for the City of Columbia. The Petitioner was prejudiced by the lack of notice and this prejudice resulted in the Petitioner being denied the special exception.

The Petitioner owns a business within the City of Columbia and pays fees and taxes as part of the right to operate his business in the City of Columbia. The fees and taxes that the Petitioner's pays to the City of Columbia becomes part of the public money the City of Columbia uses to operate as a municipality. Therefore, presumably, the City of Columbia used the Petitioner's own money (paid through fees and taxes) to hire private counsel to fight against an interest of the Petitioner. This conflict is open,

obvious, and was not waived by the Petitioner. The Petitioner presented testimony that he expended a large sum of money to improve and enhance the store in anticipation of obtaining the special exception to open the liquor store. The Petitioner sustained a great financial loss with the investment in the liquor store and with his tax money from the business being used to hire an attorney to affectively fight against the Petitioner's interests.

The City of Columbia should play absolutely no role in using public money to hire private counsel in these types of hearings. It is clear that the City of Columbia and council's only perfunctory role in zoning board matters is to act on proposals for amendment or repeal of this article, and for establishing a schedule of fees and charges. See Sec. 17-81. The hiring of private counsel by the City of Columbia violated Sec. 17-81, in that private counsel, while representing the interest of the City of Columbia and city council, is now deciding "questions of interpretation and enforcement" as it applies to special exceptions in alcohol cases only. The City of Columbia has discriminately targeted the Petitioner's liquor store by hiring private counsel for this hearing without distinguishing why hiring private counsel for liquor store exceptions hearing is either allowed or more important or needed than the City of Columbia hiring private counsel for other zoning board hearings involving other stores that sell alcohol along with other commercial items.

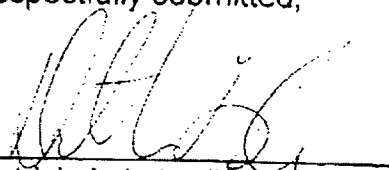
The Petitioner was prejudiced by the conflict of interest between the City of Columbia, the Board of Zoning Appeals, and private counsel. The City of Columbia acted outside the scope of its powers in zoning board matters by advocating a role of interpretation and enforcement. Private counsel for the city acted as a de facto city attorney when

counsel appeared before the board. As a de facto city attorney, private counsel should not have testified before the board as counsel essentially represented both the City of Columbia and the Board on Zoning Appeals in his role as a de facto city attorney. The Petitioner received no disclosure that the City of Columbia was retaining private counsel for this hearing, the petitioner received no notice of this conflict of interest, the Petitioner did not waive his right to object to this conflict of interest between all of the parties, and the Petitioner sustained prejudice and a financial loss as a result of this conflict and denial of request for a special exception to open his liquor store.

CONCLUSION

For the reasons stated above, this Court should reverse the decision of the Board of Zoning Appeals and grant the Petitioner's request for a special exception to open the liquor store.

Respectfully submitted,



Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate Circle, Ste. 201
803/750-8311 office
803/750-8312 fax
ATTORNEY FOR PETITIONER

July 12, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Andreas Ganotakis, d/b/a Seven Days	)	C/A No. 2013-CP-40-4051
Food Mart LLC,	)	
	)	
Petitioner,	)	RETURN ON BEHALF OF
	)	RESPONDENT CITY OF
vs.	)	COLUMBIA BOARD OF
	)	ZONING APPEALS
City of Columbia Board of Zoning	)	
Appeals,	)	
	)	
<u>Respondent.</u>	)	

The Respondent City of Columbia Board of Zoning Appeals (hereinafter "Respondent") respectfully makes the following Return to the Petition filed on July 15, 2013.

1. The Respondent hereby certifies that it has attached to this Return as Exhibit A, the official record of the proceedings before the City of Columbia Board of Zoning Appeals (Bates numbered BZA001-BZA049), including a DVD of the public hearing held on June 11, 2013 (the hearing begins at 1:47:25 of the DVD).

2. The Respondent denies the substantive grounds for appeal as stated by the Petitioner and asserts that there is evidence in the record supporting the decision of the board and, consequently, the Petition should be dismissed.

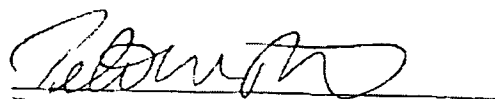
3. The Respondent craves reference to the Record on Appeal for the procedural/factual background concerning this matter and denies Petitioner's Statement of the Case or other factual matters in the Petition to the extent such is inconsistent with the official record.

4. The Respondent denies Petitioner is entitled to the relief sought to the extent Petitioner seeks relief or asserts error concerning matters or issues that are outside the jurisdiction of the City of Columbia Board of Zoning Appeals.

5. The Respondent denies Petitioner is entitled to the relief requested to the extent that one or more of Petitioner's grounds for appeal were not raised to and ruled upon by the City of Columbia Board of Zoning Appeals.

6. Upon information and belief, the Petition may contain factual and/or legal matter that was not presented to the City of Columbia Board of Zoning Appeals at or before the public hearing, and, therefore, such matter is not part of the record and should be stricken from the official record and should not be considered by the court in its determination of this appeal.

WHEREFORE, having fully set forth its Return to the Petition, the Respondent prays for an Order of this Court dismissing the appeal and for such other and further relief as may be deemed just and proper.



Peter M. Balthazor
Office of the City Attorney
P.O. Box 667
Columbia, South Carolina 29202
(803) 737.4242
Facsimile: (803) 737.4250

Attorney for Respondent

August 22, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Andreas Ganotakis, d/b/a Seven Days	)	C/A No. 2013-CP-40-4051
Food Mart LLC,	)	
	)	
Petitioner,	)	MEMORANDUM OF LAW
	)	IN OPPOSITION TO PETITION
vs.	)	FOR APPEAL
	)	
City of Columbia Board of Zoning	)	
Appeals,	)	
	)	
<u>Respondent.</u>	)	

I. Introduction

This is an appeal from a denial of a special exception to operate a liquor store. The Respondent City of Columbia Board of Zoning Appeals ("BZA") submits this memorandum in opposition to the Petition filed by the Petitioner on July 15, 2013. BZA filed its Return to the Petition on August 22, 2013, and provided the court with a complete copy of the record of the proceedings held on June 11, 2013, before the City of Columbia Board of Zoning Appeals.

The Petitioner received a business license to operate a convenience store on September 12, 2012. After receiving the business license the Petitioner constructed a non-permitted wall to separate a liquor store business from the convenience store business. (BZA020). The business began operating as a convenience store and a liquor store prior to obtaining a special exception for the liquor store. (BZA040). The Petitioner applied for a special exception on May 14, 2013.

The Petitioner's business is located in a C-3 zoning district. Liquor stores may be operated only pursuant to a special exception in C-3 zoning districts. City Code § 17-258.

A public hearing was held on the application for special exception on June 11, 2013. The Board of Zoning Appeals (BZA) heard the evidence and arguments presented and a motion was

made to deny the request for a special exception. The motion passed and BZA issued its written order on June 27, 2013. (BZA001-002, BZA040-042)

II. Standard of Review

The reviewing court's standard of review is governed by S.C. Code Ann. § 6-29-840(A) (Supp. 2013). This section provides in part that "[t]he findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. . . . In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." *Id.*

Section 6-29-840 is very deferential to a zoning board's findings of fact as it equates them to a jury's findings. Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000). In other words, the court must not disturb the board's findings of fact unless there is no evidence reasonably supporting the board's decision. See Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 479-480, 623 S.E.2d 373, 375 (2005) ("[A] factual finding of the jury will not be disturbed unless a review of the record discloses there is no evidence which reasonably supports the jury's findings.").

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

III. Applicable Law/Analysis

Under South Carolina law, a zoning board has the power “to permit special exceptions subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance” S.C. Code Ann. § 6-29-800(A)(3) (Supp. 2013). The City Code contains substantive provisions relating to the grant or denial of a special exception. The first of these, section 17-112(2)a.1., places a duty on BZA to “[d]eny special exceptions when not in harmony with the intent and purpose of this article.” Next, section 17-112(2)b.4. states that BZA “shall make a finding that it is empowered under the section of this article described in the application to grant the special exception and that the special exception will not adversely affect the public interest.” Therefore, if BZA is unable to make this specific finding regarding public interest the special exception must be denied.

The City Code also contains specific criteria for special exceptions in section 17-112(2)c. This section states that BZA “shall consider the following: (1) traffic impact; (2) vehicle and pedestrian safety; (3) potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property; (4) adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and (5) orientation and spacing of improvements or buildings.

BZA evaluated the special exception in this case under each of the above substantive rules governing special exceptions and denied the special exception request.

BZA, pursuant to section 17-112(2)b.4., found that the special exception “would adversely affect the public interest due to the proximity to a middle school and the proliferation of liquor stores in the area.” (BZA002). There is evidence in the record to support BZA’s determination that the public interest would be adversely affected. It is undisputed that a middle

school is located across the street from the proposed liquor store and a residential neighborhood is also across the street. BZA heard testimony that kids from the neighborhood walk to school and will walk right past the liquor store. The proximity of a liquor store to schools, children and neighborhoods is certainly a valid consideration in determining whether the use is appropriate for a particular location.

The number of liquor stores in a particular area is also a real and valid concern in the zoning context. There is no reason that a zoning board cannot consider the number of a particular type of use in its evaluation to determine whether a special exception will adversely affect the public interest. BZA heard evidence of the number of liquor stores in the area and decided that such number would adversely affect the public interest. The evidence at the hearing showed that another liquor store was already located on the same side of the road and within view of the Petitioner's store. (BZA006-007). In addition to that store, at least two other liquor stores are located within one mile of the middle school. Had the special exception been granted, a total of four liquor stores would have been located within a one-mile radius of the middle school.

In addition to the physical evidence of the location of existing and proposed liquor stores, BZA also heard testimony from a neighborhood representative about the concentration of liquor stores. (See David Rhodes' testimony starting at 1:57:11). The neighborhood representative stated that the area had plenty of liquor stores and another liquor store would not help family-oriented investment in the area. This witness stated that he had lived in the area for 8 years and had not seen any new business other than convenience stores and liquor stores.

The testimony concerning the proximity of the proposed liquor store to a school and the number of liquor stores in the area is not speculation or conjecture. BZA heard this evidence and

determined, in its view, that the location of the proposed liquor store and the number of liquor stores in the area would adversely affect the public interest. It is certainly acknowledged that others viewing the same facts may come to a different conclusion than that reached by BZA. However, based on the record, evidence was presented by which BZA could reasonably conclude that the special exception would adversely affect the public interest. See Restaurant Row Assocs., 335 S.C. at 216, 516 S.E.2d at 446 (stating that a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision).

IV. Conclusion

For the reasons stated herein, BZA's decision denying the special exception should be affirmed and the appeal should be dismissed.



Peter M. Balthazor
Office of the City Attorney
P.O. Box 667
Columbia, South Carolina 29202
(803) 737.4242
Facsimile: (803) 737.4250

Attorney for Respondent

March 7, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Andreas Ganotakis, d/b/a Seven)
Days Food Mart LLC)
)
Petitioner)
)
vs.)
)
City of Columbia Board of Zoning)
Appeals)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No: 2013-CP-40-4051

MOTION FOR RECONSIDERATION
[RULE 59(e)]

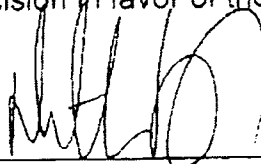
NOW COMES Petitioner, by and through undersigned counsel, and moves this Honorable Court to reconsider its Order affirming the Board of Zoning Appeals denial of the Petitioner's special exception pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

In support thereof, Plaintiff avers as follows:

1. The Court erred in determining that the Board of Zoning Appeal adhered to the only criteria for granting special exceptions;
2. The Court erred in determining that the Board of Zoning Appeals decision was not arbitrary and capricious; and
3. The Court erred in determining that no conflict of interest existed at the Board of Zoning Appeals hearing.

The Petitioner incorporates all arguments made at the hearing of the motion on March 7, 2014 and the Petitioner's brief of July 12, 2013.

WHEREFORE, the Petitioner prays this Honorable Court grant him reconsideration of its Order affirming the Board of Zoning Appeals decision pursuant to Rule 59 (e) of the South Carolina Rules of Civil Procedure and to issue an order reversing the Board of Zoning Appeals decision in favor of the Petitioner.



Dietrich A. Lake
Attorney for Plaintiff
The Lake Law Firm
1034 Briargate, Circle, Suite 201
Columbia, SC 29210
803/750-8311 *office*
803/750-8312 *fax*

June 10, 2014
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM CITY OF COLUMBIA
Board of Zoning Appeals

Case No.: 13-041-SE

Andreas Ganotakis, d/b/a Seven Days Food Mart LLC,.....Petitioner,

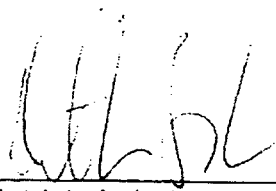
v.

City of Columbia Board of Zoning Appeals.....Respondent.

NOTICE OF APPEAL

The Petitioner hereby appeals the attached Order of the City of Columbia Board of Zoning Appeals. The Petitioner received written notice of the Order on June 29, 2013.

July 12, 2013


Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
(803) 750-8311
Attorney for Petitioner

FILED
2013 JUL 15 AM 9:21
JANETTE M. McBRIDE
C.C.P. & C.S.

1 the Court with a case that was just almost analogous to
2 this situation which is the case of Wyndham Enterprises
3 versus the City of North Augusta. It is cited as 735 S.E.
4 2d 659. And in that case you have a situation that there
5 is a firework station and they had to see, get a, obtain a
6 special exception in order to open that particular
7 location which is almost identical to Mr. Ganotakis'. And
8 when they had people come in and testify to essentially,
9 when they got up there and testified in these hearings,
10 essentially, well, we believe in general terms that
11 somehow opening a, in that particular case, a firework
12 stand, and Mr. Ganotakis case, a liquor store brings down
13 the value of this property or increases crime in these
14 particular areas and things of that sort. And based upon
15 that type of, speculative type testimony where no
16 individual testified as to any specific harm to their
17 specific property and how that particular business, the
18 firework stand affected their particular product or their
19 particular home, you know, the Court or the Circuit Court
20 actually overturned that particular decision. They
21 basically said that in terms of making, I beg the Court's
22 indulgence, they basically intended, Your Honor, that the
23 decisions of the Zoning Board must be supported by
24 competent substantial and material evidence. And in this
25 particular case, as you look through the transcript, Your

1 Honor, I think you have a copy of the video also, there is
2 absolutely no competent evidence as to any affects that
3 this liquor store would have on their premises. You had
4 maybe one or two individuals that may have spoken
5 generally in regards to liquor bottles that may have been
6 located, not even at this particular location but on
7 trails that aren't even connected to Mr. Ganotakis'
8 property at all. And none of these individuals testified
9 that these particular liquor stores came or this
10 particular liquor or alcohol came from Mr. Ganotakis'
11 store. So, Your Honor, we believe that type of testimony
12 is speculative in that which Wyndham, the Court of Appeals
13 agreed that that is not something that the Court should
14 essentially consider. I would also point, Your Honor,
15 that one of their officer's, an officer who came and
16 testified essentially at the hearing gave specific
17 testimony, essentially saying that that is in no way that
18 you could say that, by her statistics, by opening a liquor
19 store that it increased crime or increased traffic or
20 increased any sort of hazards. In fact, I think her
21 testimony was that it was the exact opposite especially in
22 regards to Mr. Ganotakis' location. That is really
23 specifically what we are talking about, liquor store as in
24 regards to his location. But she found that there had
25 never been any incidents at his location. The Court

1 speaks of, they consider the issue of proliferation. They
2 talk about proliferation and proximity to a school in this
3 particular matter. Yet, Your Honor, there have been no
4 issues of any crime reported at the liquor store that is
5 directly in front of the school or from the Food Lion.
6 They cite records in here at that particular time that
7 there has been proliferation. By my calculation, Mr.
8 Ganotakis' liquor store, there is only two liquor stores
9 on that particular street. The only other place that
10 sells, I think, that is in close proximity is a Food Lion.
11 Every other item or store that they have cited and it is
12 in my brief, all of the locations are on North Main Street
13 or on different streets that are not associated with where
14 my client's business is located. But again, Your Honor,
15 that is not even one of the criteria by which they are
16 required to make a decision. And when you watch the video
17 and you listen to the audio, Your Honor, you will hear
18 them specifically refer to the criteria but the
19 proliferation of a liquor store is not a criteria. We are
20 arguing that there is an error by him considering that
21 particular factor because that is not even something that
22 they are required to even consider.

23 THE COURT: You said a convenient store selling beer
24 and wine.

25 MR. LAKE: Yes, Your Honor. He opened the convenient

1 store, he was selling beer and wine there. There was no
2 problems, there was no issues. The very thing they were
3 discussing in terms of a problem regarding, you know, I
4 addressed the first issue of the vehicle or pedestrian
5 safety. I mean that place and even the Zoning Board
6 members said, there had been previous businesses that had
7 been there. There was an Auto Zone once before and also
8 been a shoe store for a long period of time. And then Mr.
9 Ganotakis came to that location and opened up his
10 convenient store that was allowed to sell beer and wine.
11 And there had never been any issue of any vehicle or
12 pedestrian safety issues. And when the officer or someone
13 was asked about it, no one could testify specifically that
14 there had been an accident at that location. So, Your
15 Honor, we would argue that there has been, there was no
16 competent evidence presented to the Zoning Board at that
17 particular time and there has never been any issues with
18 traffic or any specific problems at that location in terms
19 of pedestrian safety or vehicle safety. I know they
20 mentioned something in reference to the fact, well, this
21 is a four-lane road with two medians, two lines in the
22 middle of the road and no median or something along those
23 lines. But that has been the case for decades. Food Lion
24 has been there without any issues, the previous liquor
25 store, the store that Mr. Ganotakis has operated. And,

1 Your Honor, if you look at the, the information that has
2 been presented, there are kind of aerial views of that
3 location. There are a number of businesses on both sides
4 of that road. I mean, if you want to sit there and, you
5 know, make that specific to Mr. Ganotakis' business I
6 think that is improper because whether you are going down
7 Fairfield toward North Main or going back towards I-20,
8 you are going to face the same thing in terms of the fact
9 that there is two, you know, four-lane road with no
10 median. So I do believe that is just a, you know, what
11 the Court described in Wyndham as being arbitrary and
12 capricious. And that is one of the reason's why we think
13 this decision should be reversed. The other thing, Your
14 Honor, they talk about esthetic character of the location.
15 You know, one of the powers the Zoning Board has is to
16 basically say, we are going to impose circumstantial's that
17 you can't have so many posters or so many things or things
18 of that sort.

19 THE COURT: It seems to be a commercial area and if
20 it is a commercial area it is a commercial area.

21 MR. LAKE: Correct.

22 THE COURT: I mean, it is not, a convenient store is
23 a convenient store, a liquor store is not a dramatic
24 change.

25 MR. LAKE: Well, it is not as much of a dramatic

1 change but in this particular case, Your Honor, Mr.
2 Ganotakis thought, he agreed whatever you want us to do,
3 he had some posters in there, inside of his store, not
4 outside his store, inside his windows they thought could
5 be deemed as something that invited kids or invited people
6 to come into his store. So based upon that, they thought
7 that was something that was not esthetically correct for
8 the location. But Mr. Ganotakis offered at that
9 particular time, say, I will take down whatever you want
10 me to take down. I will change the outside of my building
11 in terms of the way it looks, in terms of removing
12 whatever you want me to do which is within their power as
13 opposed to denying, they could just impose some
14 restrictions. They didn't even discuss that with some of
15 the questions and they chose not to do this. So, Your
16 Honor, again, if you look at the law in Wyndham, we do
17 believe their decision has been arbitrary and capricious.
18 So we, based upon that, Your Honor, we would ask that this
19 decision be reversed. One thing, Your Honor, I think is
20 just as important is the fact that the decision was
21 arbitrary and capricious, one of the other reason's why I
22 thought this decision should be decided and overturned is
23 that, because I believe, my client believes that there was
24 a clear conflict of interest in this particular case in
25 terms of what was presented to the Zoning Board and who

1 presented it. In this particular case, Your Honor, there
2 was an attorney who was hired by City Council to
3 essentially come in and, you know, argue before the Zoning
4 Board. And, Your Honor, we believe in this particular
5 case that is essentially a conflict of interest. Because
6 in this particular case, usually the City Attorney
7 represents both the City, represents both the Zoning Board
8 and all other agencies of the City in this particular
9 matter. And he is the person charged with that
10 responsibility. Your Honor, he didn't do that in this
11 particular case and I think that is clearly the reason why
12 he didn't do that because there was a clear conflict of
13 interest because he can't represent one interest and then
14 go in there and argue against the interest of another. It
15 is suppose to be an independent Board that is suppose to
16 kind of make the decision. In this particular case he
17 came in there under the authority, and I think if you read
18 some of the terminology you will hear that the Board was
19 kind of concerned by the fact that he is coming before
20 them. It is almost as if he is saying, I think really
21 kind of unduly influencing their decision. I think a lot
22 of it came down to unduly influencing. But he goes in
23 there under the authority of City Council, wouldn't
24 necessarily explain what his role, who authorized him to
25 do those things. But he did say he was compensated to

1 represent them in this interest and then in another type
2 of interest appeal or something like that. Your Honor, I
3 think that was kind of disconcerting in terms of his
4 ability to come in there and testify. If you look at, I
5 think, I cited one of the statutes in regards to the
6 City's responsibility as relates to zoning and then Zoning
7 ultimately decides these issues. And that the City
8 Council can play no active role in either interpreting or
9 trying to enforce the statute. The only thing that they,
10 their sole role is to essentially, if someone wants to
11 submit some information to them, for them to change the
12 law or repeal the law or amend the law, they have that
13 authority and have the ability to do that. But other than
14 that they cannot play any role in. In this particular
15 case, Your Honor, our argument is that the City clearly
16 was trying to or City Council was clearly trying to
17 influence the decision of the Board by having this
18 attorney go in there, knowing that the City itself, I
19 believe, appoints the Board. And to have someone go in
20 there, it is almost, specifically, well actually I think
21 he testified that they do this specifically for liquor
22 stores. No other business, you can never really, no one
23 ever explained by you distinguish liquor stores from any
24 other type business that makes it like, like Food Lion or
25 any other convenient stores. But they have kind of carved

1 out this ditch without explaining how and how it violates
2 their ordinances, how they are allowed to then say
3 specifically that we are going to just target liquor
4 stores. So, Your Honor, based upon those factors I would
5 ask this Court to, as a conflict of interest that was not
6 disclosed, should have been disclosed, the individual
7 should not have been there. So therefore based upon that
8 and the arbitrary capriciousness of the decision, we ask
9 that it be reversed.

10 THE COURT: Okay.

11 MR. BALTHAZOR: May it please the Court.

12 THE COURT: Tell me your name.

13 MR. BALTHAZOR: Pete Balthazor. Today I am here on
14 behalf of the City of Columbia Board of Zoning Appeals,
15 may refer to it as BOZA just so everyone is clear on what
16 I am referring to. Let me start off just by discussing a
17 little bit of the standard of review for the Court in
18 these matters. The petitioner may not agree with the
19 decision of the Board in this matter. The entire world
20 may not agree with the decision of the Board in this
21 matter. But if there is any evidence in the record to
22 support the Board's decision in this matter must be upheld
23 by the Court. It is a very differential standard of
24 review for a Board's findings and rules in a matter such
25 as this. As far as the criteria that the Board deals with

1 when it looks at a special exception. Mr. Lake mentioned
2 the five criteria that are listed in 17-112. There are,
3 in addition to those five criteria, started like with the
4 traffic impacts or vehicular, pedestrian safety, there is
5 also a couple of other criteria that the Board is required
6 to look at in these type cases. The first one is that the
7 Board shall make a finding that the special exception will
8 not adversely affect the public interest. That is
9 something that the Board, under the ordinance, is required
10 to look at. If they don't look at that and if they don't
11 make a ruling based on facts on that a decision can be
12 overturned because the Board did not make that finding.
13 Another thing that the Board must look at, I guess another
14 criteria you would call, is that the Board, a specialist
15 from the Board must find that a special exception is in
16 harmony with the intent and purpose of the zoning
17 ordinance. And if the Board's order, which is found on
18 page two of the record submitted to the Court, the Board
19 addressed all of those different criteria. You address
20 those five criteria that Mr. Lake referred to, it also
21 addressed the public interest. And specifically the Board
22 found that the special exception would adversely affect
23 the public interest due to the proximity to a middle
24 school and the proliferation of liquor stores in the area.
25 So the next question, that was the Board's ruling. The

1 next question for us then, is there evidence in the record
2 to support that decision, first of all, just talking about
3 the public interest and the statement that the Board made
4 there, that criteria they are required to look at. First
5 of all, is the liquor store, the proposed liquor store in
6 proximity to a middle school. Yes, it is. That is
7 undisputed evidence, that is not speculation, that is not
8 opinion, that is hard evidence that is in the record. On
9 pages 4, 5, 7 and 13 of the record there is photographs
10 showing the location of the liquor--

11 THE COURT: I got the location, you don't need to
12 keep hammering on that.

13 MR. BALTHAZOR: Got ya. There is also evidence in
14 the record concerning the number of liquor stores and that
15 is something that the Board referred to here, was the
16 proliferation of liquor stores in the area. There is
17 undisputed testimony that there are, if this liquor store
18 was allowed in this area there would then be four liquor
19 stores within a one-mile radius of the middle school that
20 is there at that location. That is undisputed testimony
21 also. The number of liquor stores is not something that
22 is opinion or conjecture writing on it, that is a hard
23 number that is out there. So BOZA took that evidence,
24 they took that evidence of a proximity to a school, they
25 took the evidence of the number of liquor stores in the

1 area and they applied that to the public interest criteria
2 that they are required to look at and they said, it is not
3 in the public interest to have this liquor store in
4 proximity with all of these other liquor stores here. And
5 so at some point, and I think as one of the Board members
6 recognized, at some point the Board, if the facts support
7 it, can in the public interest say enough is enough for
8 some use like this because we are not talking about a use
9 that as of right. We are talking about a use that you
10 have got to come and get a special exception for. And so
11 the Board, and here the public came out too. There is
12 members of the public, neighborhood representatives came
13 out and pointed out the proximity to the school to the
14 Board, pointed out the number of liquor stores in the
15 area. This is not just something that the Board took
16 notice of on their own. Evidence was brought to the Board
17 about these facts. So I think looking at the petitioner's
18 brief, the petitioner I think wants the Court to take a
19 different view of the evidence and say, well, in Your
20 Honor's view that the proximity to the liquor store is not
21 so close to the middle school that it affects the public
22 interest or this number of liquor stores is not so much
23 that it affects the public interest. But I don't think
24 that is in the Court's discretion to do right now. That
25 was the Board's decision to make and the Board made that

1 decision based on those facts. If it had been a different
2 Board just like say, a different jury looking at a issue,
3 a different Board may have come down differently on that.
4 But this Board came down on the public interest that this
5 use would not be in the, not be in the public interest.
6 As far as the Wyndham case, I wanted to address the
7 Wyndham case, that came out in 2012, I am sure that case
8 certainly gave heart to some applicants like the
9 petitioner here who have been denied a special exception.
10 But Wyndham is different than this case because the
11 evidence that the Board relied upon here in this case,
12 like I said earlier, is not opinion or conjecture, it is
13 hard evidence. There are three liquor stores in the area.
14 There is a school right there. There is not, the evidence
15 that the Board is relying on in this case is not some
16 vague testimony about, hey, we think there is going to be
17 more traffic here because of this thing, or hey, we think
18 that property values are going to decline because of this.
19 When the Board made its decision on public interest the
20 Board did that based on the hard facts that were submitted
21 to the Board. So I don't think Wyndham even would apply
22 in this instance. There were a couple of other criteria
23 that the Board relied on in making its decision. First of
24 all, the Board said that the use would create a vehicular
25 or pedestrian safety problem. I submit there is evidence

1 in the record concerning that determination by the Board.
2 This used to be, I think there is evidence in the record
3 that this used to be a parts store or used to be a shoe
4 store, now it is a convenience liquor store, certainly
5 will get more foot traffic and that it was, I think,
6 expressed in the record. Certainly will get more foot
7 traffic from children, from kids, going up and down the
8 sidewalk. There is evidence in the record as to that,
9 that kids walk to school. And so a parts store is not
10 going to be trafficking kids across the street and go to a
11 parts store. But now there is a convenient--

12 THE COURT: You can't tell me that it makes sense
13 that a convenient store attracts kids, but a convenient
14 store, liquor store attracts more kids. I am not buying
15 that. A convenient store attracts kids, I know that, it
16 is already there.

17 MR. BALTHAZOR: The convenient store is already
18 there.

19 THE COURT: So I am not saying that a convenient
20 store, liquor store is going to attract more kids. I
21 wouldn't think that that would make a bit of difference,
22 that a convenient store and a doughnut shop, yeah okay, I
23 will buy that.

24 MR. BALTHAZOR: Not necessarily children then. There
25 is evidence that kids do go up and down that street and I

1 think that is part of the argument though, that is more
2 the argument towards public interest. Here you have got a
3 liquor store in an area where children are walking up and
4 down the street. Foot traffic though, there is testimony
5 that foot traffic will be increased in this area. The
6 other thing that BOZA touched on was the esthetic care for
7 the environment, of the environs--

8 THE COURT: See, that is where you kind of lose me,
9 well, there is too many liquor stores in the area so we
10 are not going to give you permanent the esthetics.

11 MR. BALTHAZOR: Well, these are, and all of these I
12 think can be mutual exclusive. I mean the Board has to
13 consider and that is what the Board is required to do, is
14 to consider all five of these criteria. So they did that
15 which they have to do which is their duty. But once they
16 determine it was not in the public interest the facts did
17 not support that. That is probably--

18 THE COURT: I like that as your stronger argument.

19 MR. BALTHAZOR: That is probably as far as the Board
20 had to go. I will touch on real quick the conflict of
21 interest issue. Yes, it is true that in this instance, it
22 is my understanding that City Council hired a private
23 attorney to go and make a presentation to BOZA in
24 opposition to this liquor store. I do not believe that
25 that is a conflict of interest because City Council, City

1 Council can and has in the past appealed decisions of the
2 Board of Zoning appeals. City Council's impower to do so
3 pursuant to State code 6-29-820(a) which states an officer
4 or agent of the City can, an officer or an agent of the
5 appropriate governing authority can appeal a decision of a
6 Board of Zoning appeals. And the only way an officer or
7 agent of the City, say the City manager is going to be
8 able to bring an action in the name of the City, is to get
9 City Council's approval to do so. If City Council can
10 bring actions contesting Board action, there is no reason
11 the City can't also hire someone to make their views known
12 at a Board of Zoning appeals hearing. And in this case
13 there is no evidence of actual prejudice here. This
14 argument about conflict of interest was brought up after
15 the fact, it was not brought up at the hearing, it was a
16 four to two decision by the members of BOZA. If the
17 petitioner is claiming prejudice I think there has got to
18 be some evidence of actual prejudice. I don't think there
19 is any evidence of any prejudice here. There is no
20 evidence of any conflict of interest here either. I think
21 a conflict of interest in this situation would be geared
22 more towards whether some Board member had some financial
23 interest in some decision. There is no evidence of
24 anything like that. So, based on that I have also
25 submitted a brief to the Court. I will just rest on the

1 brief and the arguments unless the Court has any
2 questions.

3 THE COURT: I understand, I have got to read
4 everything.

5 MR. BALTHAZOR: Certainly.

6 THE COURT: That is the long and short of it, I have
7 got to read all of this.

8 MR. BALTHAZOR: I don't mind submitting proposed
9 orders if the Court needs that.

10 THE COURT: I may request that later. Anything else,
11 Mr. Lake?

12 MR. LAKE: Yes, briefly, Your Honor. I think Wyndham
13 is actually right on on this case because that is the case
14 where they had, if you have had a chance to read it, they
15 had multiple fireworks in that particular location and the
16 Court found it has arbitrary and capricious. And I point
17 out to you again, you look at the criteria and I think
18 those five factors, there is no such thing as a public
19 interest criteria that is cited in terms of their special
20 exceptions. And I will point to you, one thing that, you
21 know, Mr. Cromartie, who is the head of the Board and you
22 will have this in his transcript and in the minutes. One
23 of the last things he said, unless this Board can change
24 the State law he could see no grounds to deny this request
25 as presented. I clearly think, I mean their decision

1 denies is definitely arbitrary. And to say that Mr.
2 Ganotakis wasn't prejudiced by the conflict of interest
3 is, doesn't pass the test in this particular case because
4 his appeal was denied. And you can see, when you have a
5 chance to look at the minutes and have a chance to watch
6 the video, Your Honor, you will see some of the Board
7 members showing great deference to him and basically
8 telling him, well, you need to kind of do this or have the
9 Board do this right here or tell the Board, I am sorry,
10 tell Council this right here and they need to have this
11 right here changed. So you can tell there was some kind
12 of influence and they definitely were unduly influenced by
13 his presentation. And I think they thanked him for coming
14 down there, something along those lines, in speaking on
15 behalf of Council. So I think there is clearly a
16 conflict, I never heard why the City Attorney himself
17 whose responsibility it is or his staff to come down there
18 and represent the interest of the City Council. Why that
19 office never presented themselves and testified. And I
20 will close with just one thing in regards that right
21 there. When it comes to zoning I think section 1781 of
22 the Code of Ordinance for the City, as it relates to City
23 Council, it basically says, you will see this in my brief,
24 it says City Council shall not include hearing in deciding
25 questions of interpretation and enforcement which may

1 arise. The City Council shall have only the
2 responsibility in acting on proposals or amendment or
3 reappeal. That clearly says that is their only
4 responsibility of that Zoning Board. Hiring of an
5 attorney to go in there and argue against, specifically a
6 liquor store definitely exceeds that authority.

7 THE COURT: All right. I will read y'all's
8 submissions and let y'all know what I need from y'all, if
9 anything else.

10 MR. LAKE: Thank you, Your Honor.

11 MR. BALTHAZOR: Thank you.

12 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

13

14

15

16

17

18

19

20

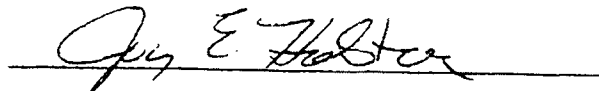
21

22

23

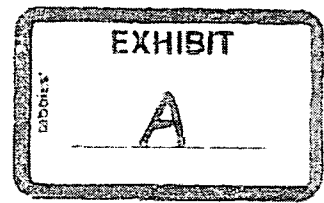
24

25

1
2
3
4 CERTIFICATE OF REPORTER5 State of South Carolina)
6)
7 County of Newberry)
89 I, Joy E. Holston, Official Court Reporter for the
10 Eighth Judicial Circuit of the State of South Carolina, do
11 hereby certify that the foregoing is a true, accurate and
12 complete transcript of record of the proceedings had and
13 evidence introduced in the trial of the captioned case,
14 relative to appeal, in the County of Richland, South
15 Carolina on the 7th day of March 2014.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
1819 October 15, 2014
2021 
22

23 Joy E. Holston, Court Reporter

24 My Commission expires: March 13, 2016
25



Board of Zoning Appeals)
)
City of Columbia) **ORDER**
) **ON A SPECIAL EXCEPTION**

Date Heard: June 11, 2013
Case Number: 13-041-SE
Property: 5050 Fairfield Road (TMS# 11701-02-20)
Zoning District: C-3 (General Commercial)
Applicant: Andreas Ganotakis, Seven Days Food Mart LLC
Other Parties in Interest: None.

The City of Columbia Board of Zoning Appeals held a public hearing on June 11, 2013 to consider the special exception request of Andreas Ganotakis, Seven Days Food Mart LLC, Applicant, pursuant to City of Columbia Code of Ordinances §17-112 and 17-258 to permit the establishment of a liquor store in a C-3 district.

After consideration of the evidence and arguments presented, the Board decides as follows:

Findings of Fact:

Notice of public hearing for this case was posted on the property, as well as notice was published in a newspaper of general circulation within the city no less than 15 days prior to the hearing.

§17-258 of the City of Columbia Code of Ordinances states that a liquor store (SIC 592) shall require review and approval by the Board of Zoning Appeals as a special exception in the C-3 districts. The applicant requested a special exception to establish a 464 sq. ft. liquor store in a 5,950 sq. ft. building near the Northway Plaza shopping center and Alcorn Middle School on Fairfield Road. The building is across Fairfield Road from the Northwood Hills subdivision and a cemetery. An existing liquor store is within Northway Plaza and within sight of the proposed liquor store. Other uses in the applicant's building include an associated convenience store and a storage area not associated with the applicant.

The Zoning Division approved a business license application for a convenience store on September 21, 2012, and the building and fire department inspections of the business were completed by September 28, 2012. To the best of our understanding, the applicant built a non-permitted wall to separate the uses afterward. According to the South Carolina Department of Revenue, the beer and wine application and the retail liquor store licenses were active as of January 17, 2013.

Conclusions of Law:

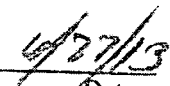
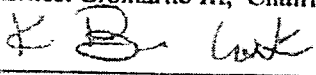
Pursuant to the Standard of Review in granting a Special Exception (§17-112), we have heard the testimony and reviewed the Applicant's request for a special exception to establish a liquor store. Based on the foregoing, we conclude as a matter of law that the

applicant has not met all criteria set forth in §17-112 (2)(c) of the City of Columbia Code of Ordinances and we make a ruling considering the following:

1. A liquor store may be permitted as a special exception by the Board of Zoning Appeals in the C-3 districts, however the special exception would adversely affect the public interest due to the proximity to a middle school and the proliferation of liquor stores in the area; and further the intent of the C-3 district is to avoid depreciation of property values in adjacent areas and a proliferation of liquor stores would contribute to this depreciation.
2. The proposed use, when operated in conformance with the application, submitted documents, and testimony presented to the Board during the public hearing:
 - a. Would not negatively impact traffic circulation;
 - b. Would create vehicular or pedestrian safety problems in that Fairfield Road is a four lane road without a median or nearby crosswalks;
 - c. Would not create noise, lights, fumes, or otherwise obstruct air flow to the detriment of adjoining properties;
 - d. Would impact the aesthetic character of the environs, especially in regards to the proliferation of signs on the photograph submitted during testimony; and
 - e. Would not negatively impact the orientation or spacing of improvements or buildings.

Therefore, based on the foregoing, the Applicant's request for a Special Exception to establish a liquor store as described above is hereby **DENIED**.

AND IT IS SO ORDERED!

	
Ernest Cromartie III, Chairman	6/27/13 Date
	6/24/13
K. Brian Cook, Zoning Administrator	Date

Date Mailed to Applicant
and Other Parties of Interest:

6/28/13 ATC

**NOTICE OF APPEAL TO CIRCUIT COURT MUST BE FILED WITHIN
THIRTY (30) DAYS AFTER THE DATE THIS ORDER WAS MAILED**



U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 Return Receipt Fee: \$2.80 (if required)

Postage	\$
Certified Fee	\$
Return Receipt Fee (if required)	\$
Restricted Delivery Fee (if required)	\$
Total Postage & Fees	\$

Postmark
here

13-041-SE
 To: Andreas Ganotakis
 Seven Days Food Mart LLC
 5050 B Fairfield Road
 Columbia, SC 29203

Service
MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 Return Receipt Fee: \$2.80 (if required)



Postage	\$
Certified Fee	\$
Return Receipt Fee (if required)	\$

Postmark
here

USER: COMPLETE THIS SECTION

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

Addressed to:

USE

Andreas Ganotakis
 Seven Days Food Mart LLC
 5050 B Fairfield Road
 Columbia, SC 29203

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent ☐ Addressee
 B. Received by (Printed Name) ☐ Date of Delivery
 Leon Joseph 06/29/13
 D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

Tracking Number 7012 1010 0000 8012 0573

Form 3811, February 2004

Domestic Return Receipt

102596-02-44-1640

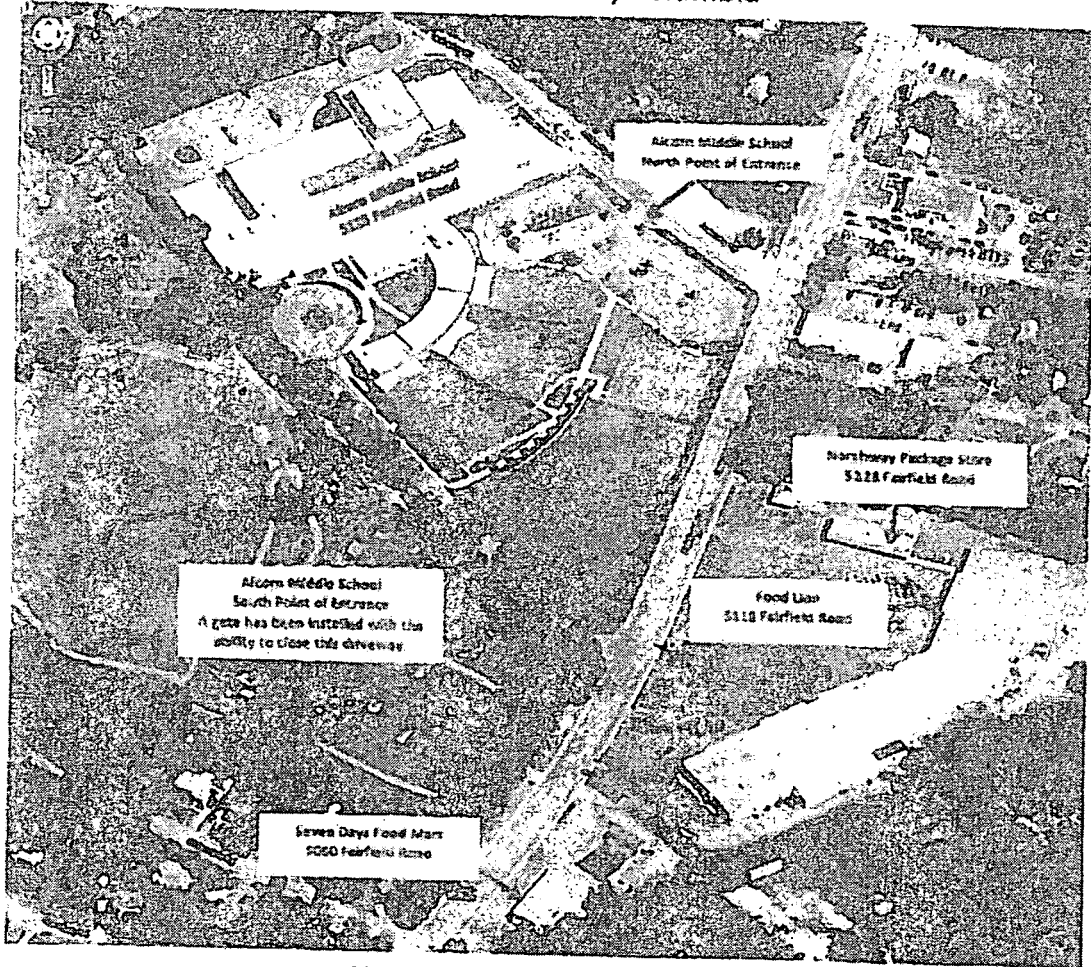
COLUMBIA
 Planning and Development
 PO Box 147 / Columbia

BZA003

066 63

Go gl:

5000 Fairfield Road, Columbia



6/6/2013

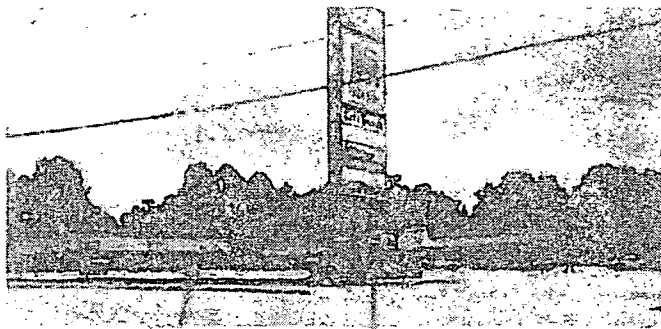
Columbia Police Department Professional Standards Division

EXHIBIT A

Presenter Chaplain Spencer

Case No. 13-041-SE

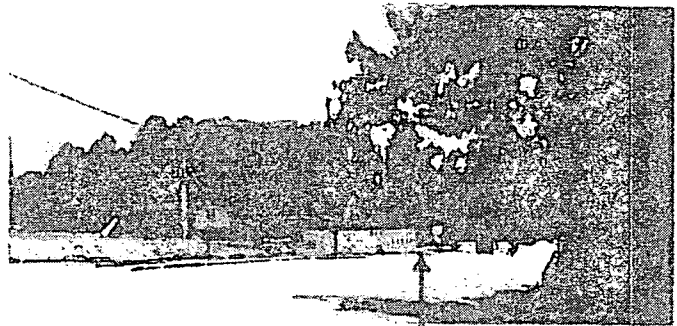
Date 6/11/13



Hardway Package Store

Food Won

Looking to the LEFT



Looking to the RIGHT

Seven Days Food Mart

Photographs were taken standing at the stop sign at the end of the school's (south) driveway.
(Zoom/magnification levels are the same in the photographs above.)



EXHIBIT B

Presenter Chapman Spencer

Case No. 13-041-SE

Date 6/11/13

EXHIBIT C

Presenter Clayton Savage 82

Case No. 13-041-SE

Date 6/11/13



EXHIBIT D

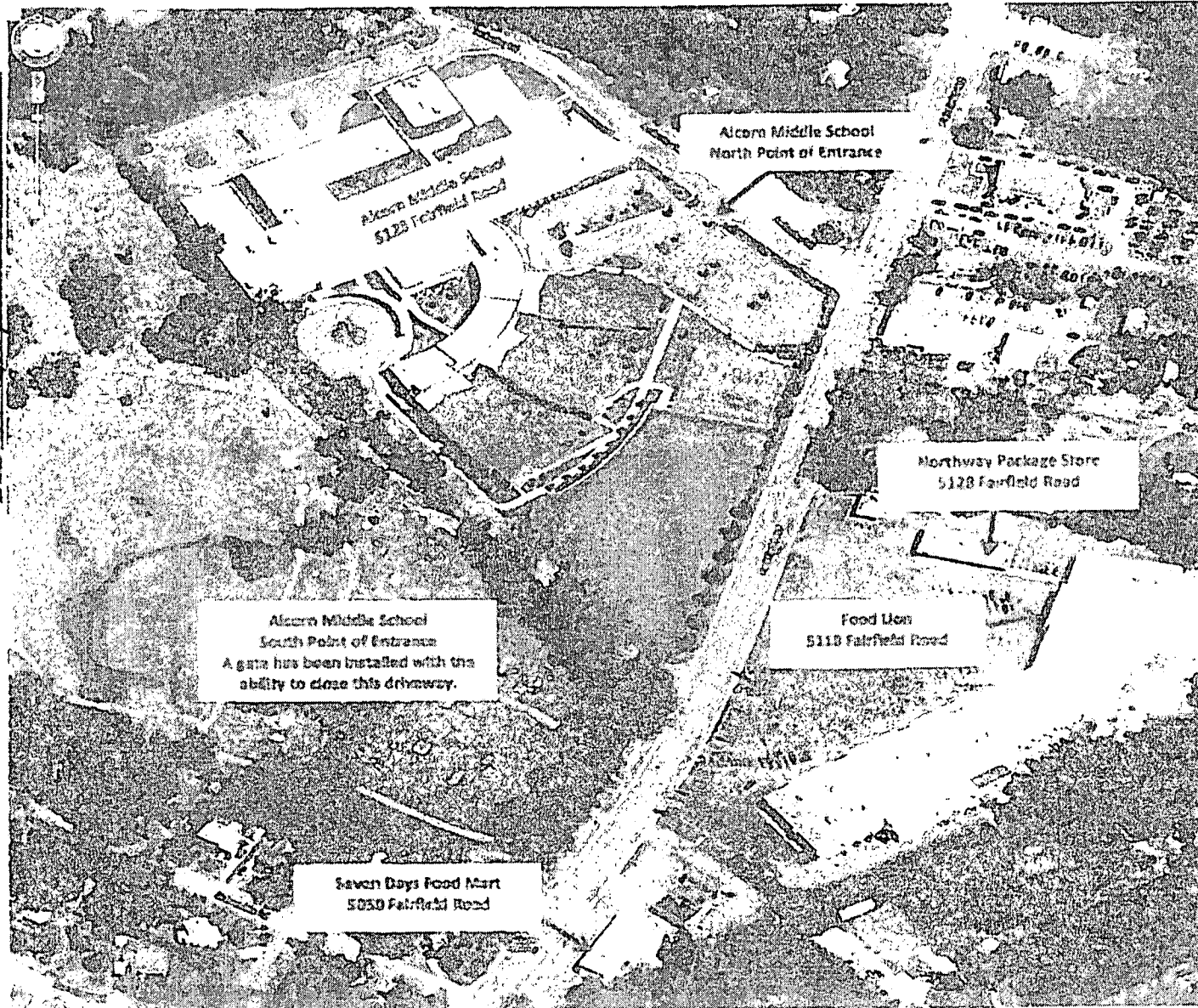
Presenter Insp. Hartley CPD

Case No. 13-041-SE

Date 6/11/13

Google

5000 Fairfield Road, Columbia



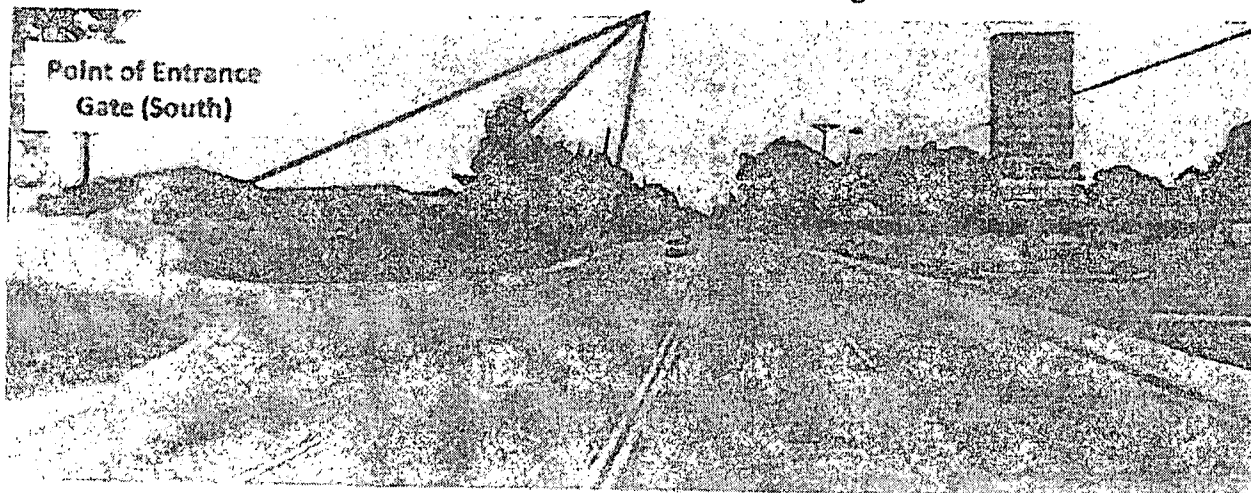
**Alcorn Middle School
5125 Fairfield Road, Columbia**



North Entrance
(Image: Googlemaps)

This parking lot entrance is the closest point of entrance to the north side of school grounds from Fairfield Road.

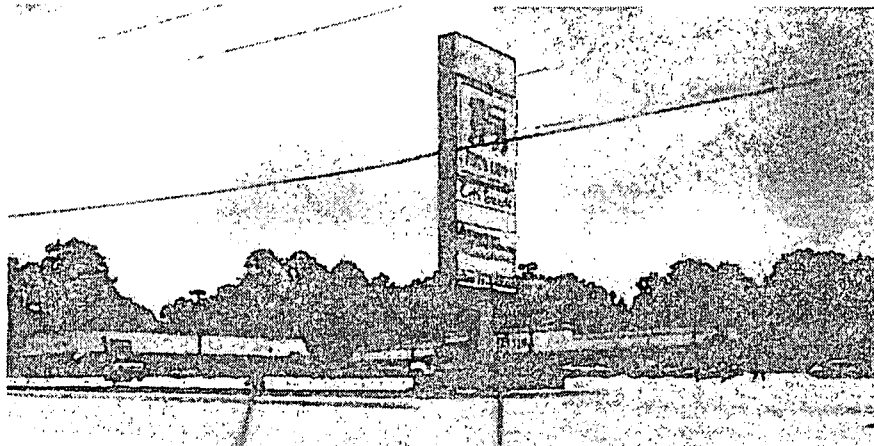
There are no walk gates in the fencing.



South Entrance
(Image: Bingmaps)

The school has recently installed a gate at the end of the existing fence that has the ability to close the driveway. This is the closest point of entrance to the south side of the school grounds from Fairfield Road.

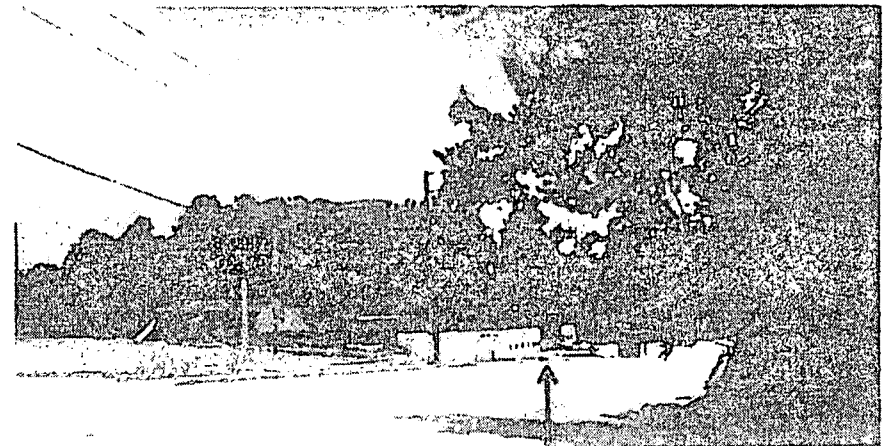
Alcorn Middle School View From Intersection of Fairfield Road and Alcorn's Driveway (South of the School)



Northway Package Store

Food Lion

Looking to the LEFT



Looking to the RIGHT

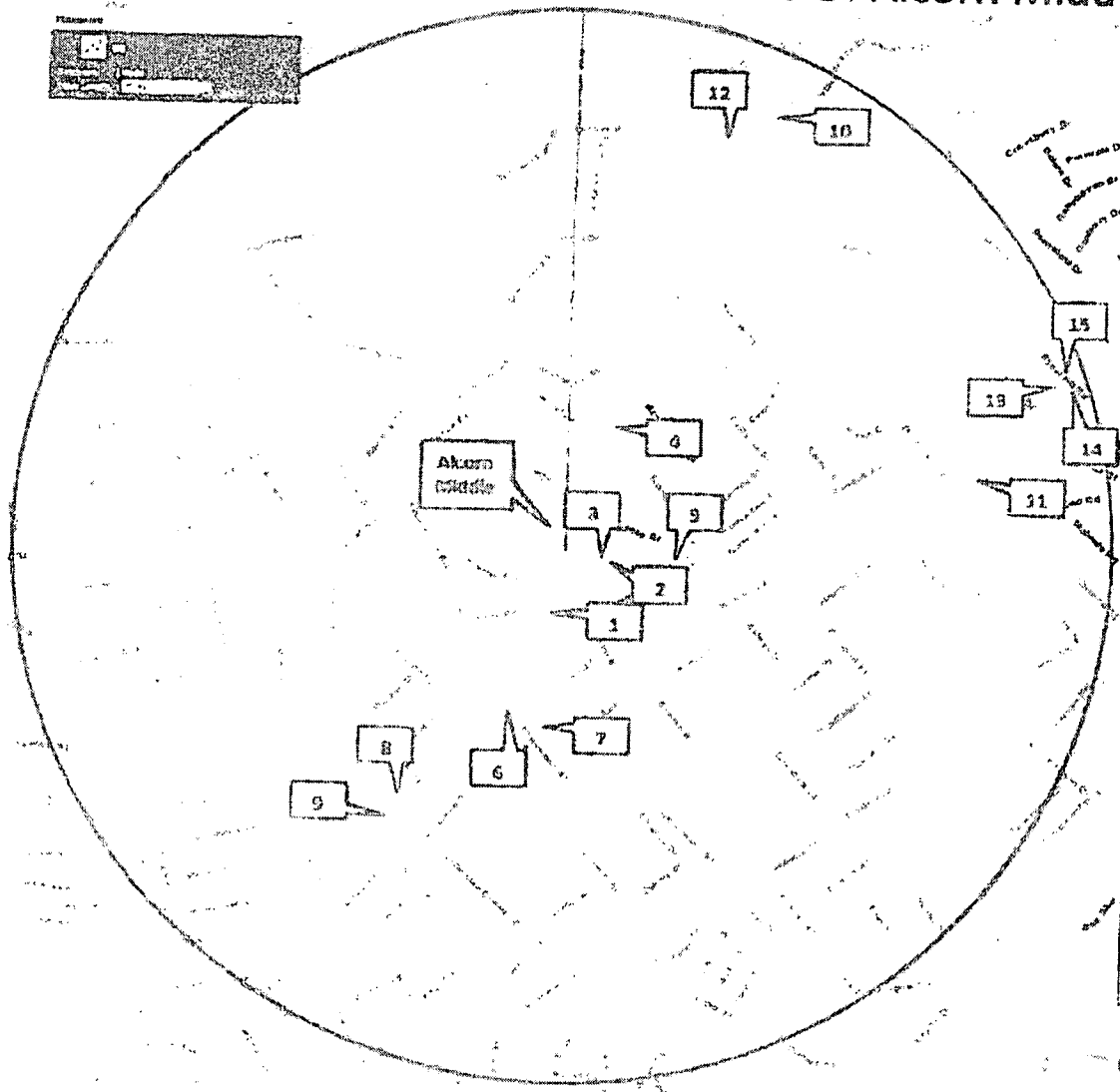
Seven Days Food Mart

Photographs were taken standing at the stop sign at the end of the school's (south) driveway.
(Zoom/magnification levels are the same in the photographs above.)



Northway Package Store

Fifteen Businesses Licensed To Sell Alcohol Are Located Within 1 Mile Of Alcorn Middle School



**Businesses Licensed To Sell Alcohol
Located Within 1 Mile Of Alcorn Middle School
5125 Fairfield Road, Columbia, SC 29203**

#	Business Name Business Address	Walking Distance From Business to Alcorn Middle School
1	Seven Days Food Mart 5050 Fairfield Road	693 feet to gate on south side of school; 1355 feet to access north side of school
2	Food Lion 5118 Fairfield Road	680 feet to gate on south side of school; 915 feet to access north side of school
3	Northway Package Store 5128 Fairfield Road	635 feet to gate on south side of school; 829 feet to access north side of school
4	Fast Point 5310 Fairfield Road	1049 feet to access north side of school
5	Community Grocery 1003 Ashley Street	1319 feet to access north side of school
6	Pantry Express #650 4905 North Main St	1690 feet to gate on south side of school
7	CJ Handy Mart (Paul's Place) 4900 North Main St	1920 feet to gate on south side of school
8	El Cheapo 4701 North Main St	2978 feet to gate on south side of school
9	CVS Pharmacy #5596 4627 North Main St	3200 feet to gate on south side of school
10	Pantry Plus 5820 Fairfield Road	4157 feet to access north side of school
11	N Main Beer & Wine 5704 North Main St	4415 feet to access north side of school
12	Pilot Travel Center #712 5901 Fairfield Road	4455 feet to access north side of school
13	Alhassik LLC (Obama Station) 5831 North Main St	5754 feet to access north side of school
14	Rite Aid #11582 5900 North Main St	5801 feet to access north side of school
15	Chapman and Main Spirits 5901 North Main St	5995 feet to access north side of school

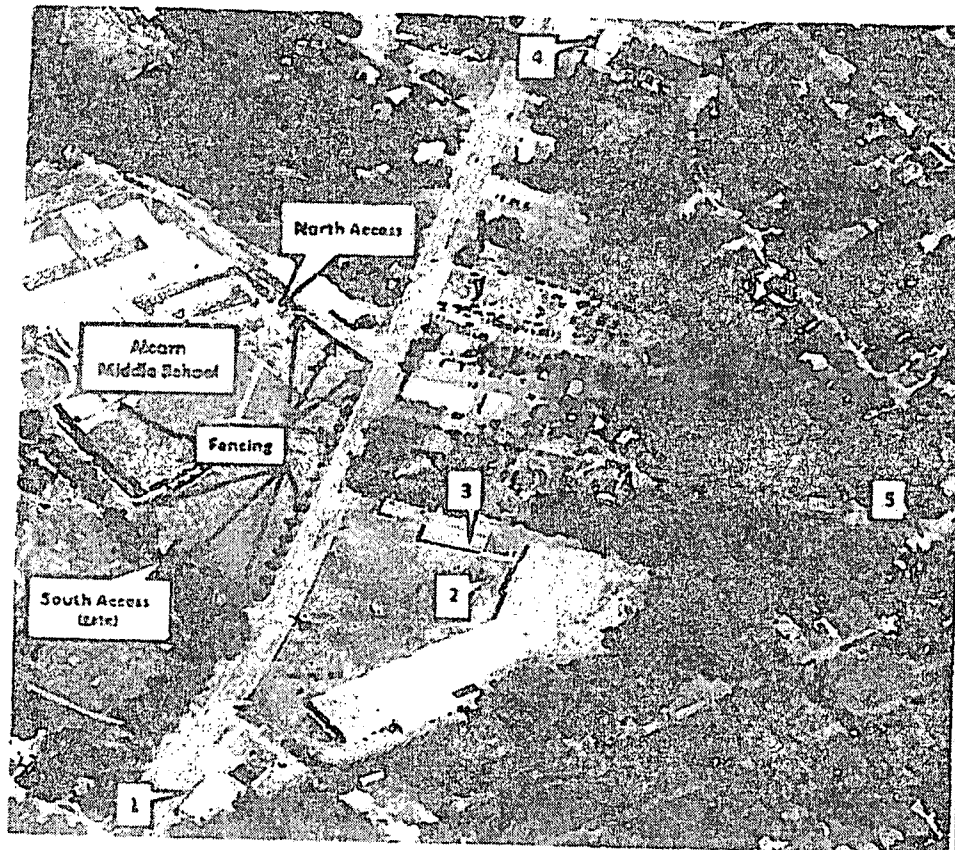
Red circle indicates 1 mile radius

Department of Revenue License Types Held By Businesses Selling Alcohol Within 1 Mile Of Alcorn Middle School

Map #	Business Name	Address #	Street Name	License Type
1	Seven Days Food Mart	5050A	Fairfield Road	Off Premises Beer and Wine (6 days/week)
		5050B		Retail Liquor Store
2	Food Lion	5118	Fairfield Road	7 Day Beer/Wine Off Premises Consumption
3	Northway Package Store	5128	Fairfield Road	Retail Liquor Store
4	Fast Point	5318	Fairfield Road	7 Day Beer/Wine Off Premises Consumption
5	Community Grocery	1003	Ashley Street	7 Day Beer/Wine Off Premises Consumption
6	Pantry Express #650	4905	North Main Street	7 Day Beer/Wine Off Premises Consumption
7	CJ Handy Mart (Paul's Place)	4900	North Main Street	Off Premises Beer and Wine (6 days/week)
8	El Cheapo	4701	North Main Street	7 Day Beer/Wine Off Premises Consumption
9	CVS Pharmacy #5596	4627	North Main Street	7 Day Beer/Wine Off Premises Consumption
10	Pantry Plus	5820	Fairfield Road	7 Day Beer/Wine Off Premises Consumption
11	N Main Beer & Wine	5704	North Main Street	Off Premises Beer and Wine (6 days/week)
	N Main Liquor	5704 1/2		Retail Liquor Store
12	Pilot Travel Center #712	5901	Fairfield Road	7 Day Beer/Wine Off Premises Consumption
13	Alhanik LLC (Obama Station)	5831	North Main Street	7 Day Beer/Wine Off Premises Consumption
14	Rite Aid #11582	5900	North Main Street	7 Day Beer/Wine Off Premises Consumption
15	Chesapeake	5901	North Main Street	7 Day Beer/Wine Off Premises Consumption
	Main Spirits	5901A		Retail Liquor Store

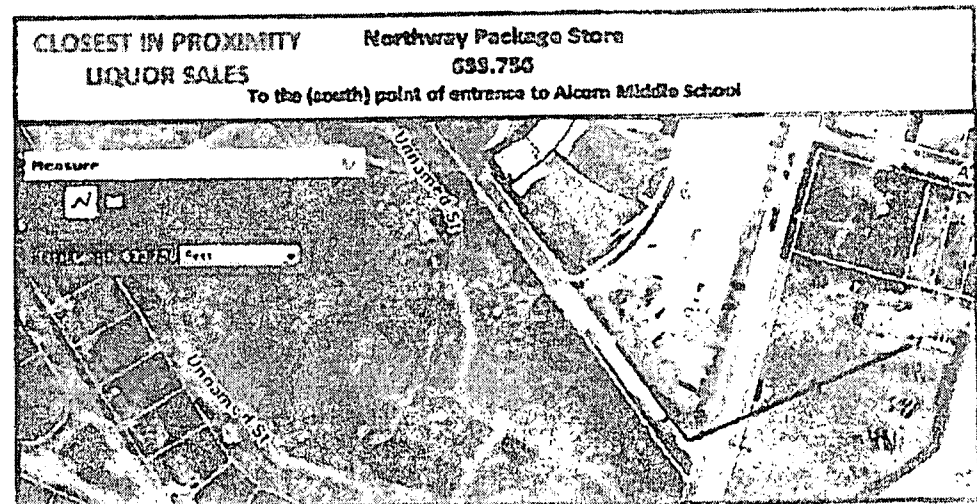
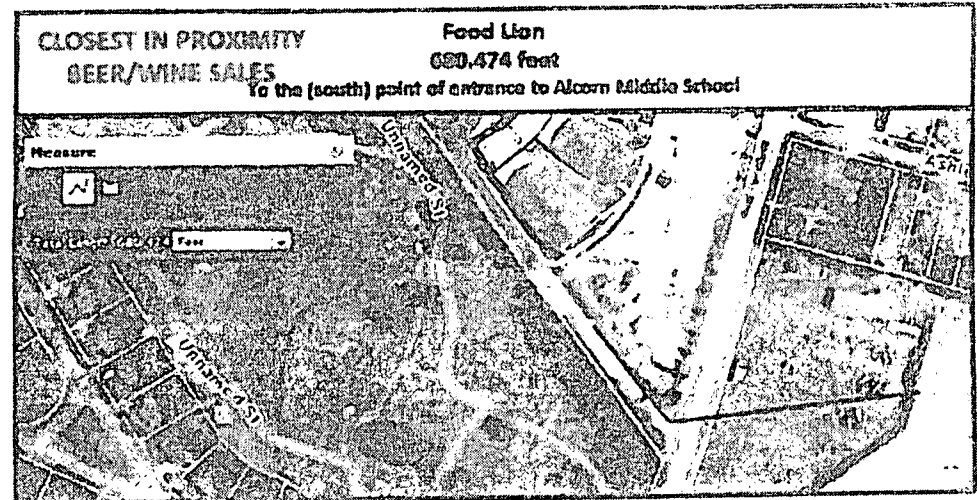
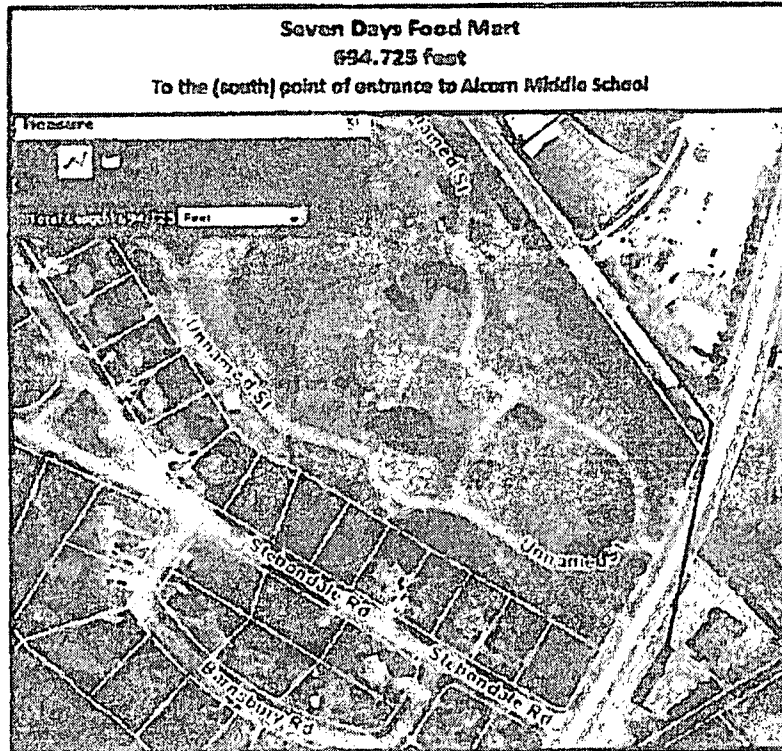
BZA011 71 074

Businesses Licensed To Sell Beer/Wine and/or Liquor In Close Proximity To Alcorn Middle School



g	Business Name	Walking Distance* From Business To
	Business Address [Current DOR Licenses]	"Point of Entrance" To Access The Grounds Of Alcorn Middle School
1	Seven Days Food Mart 5050 Fairfield Road [Beer/Wine & Liquor]	695 feet to gate on south side of school 1355 feet to access north side of school
2	Food Lion 5118 Fairfield Road [Beer/Wine]	580 feet to gate on south side of school 915 feet to access north side of school
3	Northway Package Store 5128 Fairfield Road [Liquor]	635 feet to gate on south side of school 829 feet to access north side of school
4	Fast Point 5318 Fairfield Road [Beer/Wine]	1,089 feet to access north side of school
5	Community Grocery 1003 Ashley Street [Beer/Wine]	1,319 feet to access north side of school
BEER/WINE SALES: Food Lion the closest in proximity to the school (south point of entry).		
LIQUOR SALES: Northway Package Store is the closest in proximity to the school (south point of entry).		
*The south gate was installed after the 5-1-13 "door to door" distance estimates. The revised distances above indicate the estimated distance from nearest business entrance to the indicated "point of entrance" of the school grounds. Distances were calculated using Richland County's GEO mapping.		

Distance Calculations*



The distances estimates are from the nearest business entrance to the closest "point of entrance" to the school grounds.

*Distances were calculated using Richland County's GEO mapping.

Crime Data Sources

Seven Days Food Mart					
Business Name	Address	Beer/Wine License*	Liquor License	Convenience Store	Gas Station
Seven Days Food Mart	5050 Fairfield Road	Yes (6)	Yes	Yes	No
The businesses listed below were selected for crime data comparison offer similar services and are located within reasonable proximity to Seven Days Food Mart. Businesses have been grouped by their issued DOR license types.					
Businesses Licensed To Sell Beer/Wine					
Business Name	Address	Beer/Wine License*	Liquor License	Convenience Store	Gas Station
Fast Point	5328 Fairfield Road	Yes (7)	No	Yes	No
Community Grocery	1003 Ashley Street	Yes (7)	No	Yes	No
A-1 Food Store	4151 Monticello Road	Yes (7)	No	Yes	No
Amexico Convenience Store	4002 Farrow Road	Yes (7)	No	Yes	No
CJ Handy Mart	4200 N Main Street	Yes (6)	No	Yes	No
* "()" Indicates number of days per week that Beer/Wine can be sold for off premises consumption					

BZA014 74 077

Businesses Licensed To Sell Beer/Wine
Crime By Type And Location
January-May 2012 compared to January-May 2013

Businesses Licensed To Sell Beer/Wine												
Business Name Business Address	Seven Days Food Mart* 2550 Fairfield Road		Fast Point 5810 Fairfield Road		Community Grocery 1209 Ashley Street		A-1 Food Store 4104 Monticello Road		Amelito Convenience 4003 Farrow Road		CJ Handy Mart 4500 North Main St	
CRIME TYPES	Jan - May 2012*	Jan - May 2013	Jan - May 2012*	Jan - May 2013	Jan - May 2012*	Jan - May 2013	Jan - May 2012*	Jan - May 2013	Jan - May 2012*	Jan - May 2013	Jan - May 2012*	Jan - May 2013
Homicide												
Sexual Assault							1					
Robbery							1					
Aggravated Assault			1									
Burglary		1	2									
Motor Vehicle Theft							1					
Autotheft							1					
Larceny			2				2	1				
Simple Assault								2				
Drug Offenses			1				1	2			2	
Vandalism								1				
DUI											1	
Disorderly Conduct								1				
All Other Offenses			1	1			4	9			2	1
Location Total	N/A	1	7	1 (-4)	0	0	11	15 (+4)	0	0	5	1 (-4)
* <u>Seven Days Food Mart</u> City of Columbia Business License Issued: 09/28/2012 DOR Off Premises Beer/Wine License Issued: 01/17/2013 DOR Retail Liquor Store License Issued: 01/17/2013												

- * 40% of the comparison locations experienced a significant decrease in crime from 2012 when compared to the same period in 2013.
- * Seven Days Food Mart was not in business January-May 2012.
- * Seven Days Food Mart's occurrence of crime from January-May 2013 is equal to or lower than 60% of the comparison locations.

Businesses Licensed To Sell Beer/Wine & Liquor
Crime By Type And Location
January-May 2012 compared to January-May 2013

Businesses Licensed To Sell Beer/Wine & Liquor												
Business Name Business Address	Seven Days Food Mart* 5050 Fairfield Rd		Party Town 2324A Two Notch Rd		E-Z Food Mart 32089 Two Notch Rd		One Stop Party Shop 1529A W Clinton Blvd		Bartine One Love 2322A W Clinton Blvd		N Main Liquor 5704 N Main St	
CRIME TYPES	Jan - May 2012*	Jan - May 2013	Jan - May 2012	Jan - May 2013	Jan - May 2012	Jan - May 2013	Jan - May 2012	Jan - May 2013	Jan - May 2012	Jan - May 2013	Jan - May 2012	Jan - May 2013
Homicide												
Sexual Assault												
Robbery												
Aggravated Assault												
Burglary		1			1							
Motor Vehicle Theft				1								
Autobreaking										1		
Larceny								1				
Simple Assault							2		1	2		
Drug Offenses			1									
Vandalism										2		
DUI												
Disorderly Conduct												
All Other Offenses			1	4								
Location Total	N/A	1	2	5 (+4)	1	0 (-1)	0	3 (+3)	1	3 (+4)	0	0
* Seven Days Food Mart City of Columbia Business License Issued: 09/28/2012 DOR Off Premises Beer/Wine License Issued: 01/17/2013 DOR Retail Liquor Store License Issued: 01/17/2013												

- 60% of the comparison locations experienced a significant increase in crime from 2012 when compared to the same period in 2013.
- Seven Days Food Mart was not in business January-May 2012.
- Seven Days Food Mart's occurrence of crime from January-May 2013 is significantly lower than 60% of the comparison locations.

Crime Totals and Average Number Of Crimes By Business Type January-May 2012 and 2013

Time Frame	Seven Days Food Mart		Comparison Beer/Wine Business Locations		Comparison Beer/Wine & Liquor Business Locations	
	Crime Total	Average # of Crimes Per Location	Crime Total For (5) Comparison Locations	Average # of Crimes Per Location	Crime Total For (5) Comparison Locations	Average # of Crimes Per Location
January - May 2012	N/A	N/A	23	4.6	5	1
January - May 2013	1	1	18	3.6	18	3.2

2012

- Convenience stores selling beer/wine had an average of 4.6 crimes per location.
- Convenience stores selling beer/wine & liquor had an average of 1 crime per location.
- Seven Days Food Mart was not open during the months of January – May 2012.

2013

- Convenience stores selling beer/wine had an average of 3.6 crimes per location.
- Convenience stores selling beer/wine & liquor had an average of 3.2 crimes per location.
- Seven Days Food Mart, while selling beer/wine & liquor, experienced only 1 crime at their location.

Comparison Of 2012 vs. 2013 Crime Data Of All Addresses (business and residential) Within ½ Mile of Alcorn Middle School

Total Crimes Occurring Within 1/2 Mile Radius Of Alcorn Middle School										
CRIME TYPES	January		February		March		April		May	
	2012	2013	2012	2013	2012	2013	2012	2013	2012	2013
Homicide	0	0	1	0	0	0	0	0	0	0
Sexual Assault	1	0	0	0	0	0	0	0	0	0
Robbery	2	0	4	0	0	1	0	2	2	0
Aggravated Assault	4	0	2	0	1	2	4	0	1	2
Burglary	16	2	9	3	7	2	5	1	18	10
Motor Vehicle Theft	2	2	1	3	1	2	5	0	1	0
Autobreaking	2	1	1	2	1	0	1	1	1	0
Larceny	9	5	6	3	9	5	4	6	5	9
Simple Assault	6	5	7	6	4	7	4	5	2	6
Drug Offenses	4	6	0	5	1	1	3	1	5	3
Vandalism	3	2	7	2	5	2	1	5	4	4
DUI	1	0	1	1	0	1	0	1	0	0
Disorderly Conduct	2	1	2	3	1	0	2	0	1	2
All Other Offenses	13	5	8	14	10	6	12	12	7	18
Crime Total	65	29	49	42	40	29	41	34	47	54

- Crime data indicates that there has been a significant decrease in total crime during 2013 for the months of: January, February, March, and April when compared to the same months in 2012.
- The month of May 2013 is the only month that shows an increase in crime when compared to 2012 crime data.

Comparison Of Crime Data By Business Types (located near Alcorn Middle School)

January - May 2012						
Business Type	Seven Days Food Mart ^a	Gas Station	General Merchandise	Clothing	Restaurant	"Stand Alone Liquor Store"
Location	5050 Fairfield Rd	4905 N. Main St.	5110 Fairfield Rd	5112 Fairfield Rd	5128 C Fairfield Rd	5128 A Fairfield Rd
Incident Type						
Homicide						
Sexual Assault						
Robbery		1	2			
Aggravated Assault						
Burglary						1
Motor Vehicle Theft						
Autobreaking						
Larceny		5	4	1		
Simple Assault			1			
Drug Offenses						
Vandalism						
DUI						
Disorderly Conduct						
All Other Offenses						
Business Type	Seven Days Food Mart ^a	Gas Station	General Merchandise	Clothing	Restaurant	"Stand Alone Liquor Store"
Total	0	6	7	1	0	1

^a Seven Days Food Mart was not open Jan - May of 2012.

2012

- The general merchandise store had 7 crimes.
- The gas station had 6 crimes.
- The clothing store and "stand alone liquor store" each had 1 crime.
- The restaurant had no crime

January - May 2013						
Business Type	Seven Days Food Mart	Gas Station	General Merchandise	Clothing	Restaurant	"Stand Alone Liquor Store"
Location	5050 Fairfield Rd	4905 N. Main St.	5110 Fairfield Rd	5112 Fairfield Rd	5128 C Fairfield Rd	5128 A Fairfield Rd
Incident Type						
Homicide						
Sexual Assault						
Robbery						
Aggravated Assault						
Burglary	1 ^a			1		
Motor Vehicle Theft		1	1			
Autobreaking		1				
Larceny		4	5	1		
Simple Assault						
Drug Offenses						
Vandalism						
DUI						
Disorderly Conduct						
All Other Offenses		2				
Business Type	Seven Days Food Mart	Gas Station	General Merchandise	Clothing	Restaurant	"Stand Alone Liquor Store"
Total	1 ^a	8	6	2	0	0

^a 2013 Burglary was of the convenience store side of business.

2013

- The gas station store had 8 crimes.
- The general merchandise had 6 crimes.
- The clothing store had 1 crime.
- The convenience store side of Seven Days Food Mart had 1 crime.
- The restaurant, "stand alone liquor store", and the liquor store side of Seven Days Food Mart had no crime.



**BOARD OF ZONING APPEALS
CASE SUMMARY FOR
APPLICATION FOR SPECIAL EXCEPTION**

5050 Fairfield Road

June 11, 2013 at 10:00 A.M.
Eau Claire Print Building, 3907 Ensor Avenue (N. Main Street and Monticello Road)
Columbia, South Carolina

Case Number: 13-041-SE
Subject Property: 5050 Fairfield Road (TMS# 11701-02-20)
Zoning District: C-3 (General Commercial)
Applicant: Andreas Ganotakis, Seven Days Food Mart LLC
Property Owner: Vicken & Zozete Baklayan
Council District: 2
Summary Prepared: 24 May 2013

Requested Action: Special Exception to establish a Liquor Store (SIC 592)
Applicable Sections of Zoning Ordinance: §17-258 Liquor Stores (SIC 592) permitted by Special Exception within the C-3 districts.
§17-112 Standard criteria for special exceptions

Case History: None.

Staff Comments: This application for Special Exception is to establish a 464 sq. ft. liquor store in a 5,950 sq. ft. building near the Northway Plaza shopping center and Aleorn Middle School on Fairfield Road. The building is across Fairfield Road from the Northwood Hills subdivision and a cemetery. Other uses in the building include an associated convenience store and a storage area not associated with the applicant. The Zoning Division approved a business license application for a convenience store on September 21, 2012, and the building and fire department inspections of the business were completed by September 28, 2012. To the best of our understanding, the applicant built a non-permitted wall to separate the uses afterward. According to the South Carolina Department of Revenue, the beer and wine application and the retail liquor store licenses were active as of January 17, 2013.

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

None.

Zoning Map **Special Exception 13-041-SE**

Department of Planning &
Development Services

Legend

INTERSTATES CITY LIMITS
RAILROADS FEDERAL

ZONING

	G-1		MX-2
	R6-1		C-7
	R6-1A		G-3
	R6-1B		G-3A
	R6-2		G-4
	R6-3		G-5
	R6-4		G-6
	R6-5		M-1
	R6-6		M-2
	R6-7		RUD-0
	R6-1A		RUD-0.5
	R6-2		RUD-0.5E
	R6-3		RUD-0.5H
	R6-4		RUD-0.5R
	R6-5		OUT OF CITY
	DD DISTRICT		
	DP DISTRICTS		
	PD DISTRICT		
	CC OVERLAY		

1 inch = 175 feet

Legend

INTERSTATES CITY LIMITS
RAILROADS FEDERAL

ZONING

	G-1		MX-2
	R6-1		C-7
	R6-1A		G-3
	R6-1B		G-3A
	R6-2		G-4
	R6-3		G-5
	R6-4		G-6
	R6-5		G-7
	R6-6		G-8
	R6-7		G-9
	R6-8		G-10
	R6-9		G-11
	R6-10		G-12
	R6-11		G-13
	R6-12		G-14
	R6-13		G-15
	R6-14		G-16
	R6-15		G-17
	R6-16		G-18
	R6-17		G-19
	R6-18		G-20
	R6-19		G-21
	R6-20		G-22
	R6-21		G-23
	R6-22		G-24
	R6-23		G-25
	R6-24		G-26
	R6-25		G-27
	R6-26		G-28
	R6-27		G-29
	R6-28		G-30
	R6-29		G-31
	R6-30		G-32
	R6-31		G-33
	R6-32		G-34
	R6-33		G-35
	R6-34		G-36
	R6-35		G-37
	R6-36		G-38
	R6-37		G-39
	R6-38		G-40
	R6-39		G-41
	R6-40		G-42
	R6-41		G-43
	R6-42		G-44
	R6-43		G-45
	R6-44		G-46
	R6-45		G-47
	R6-46		G-48
	R6-47		G-49
	R6-48		G-50
	R6-49		G-51
	R6-50		G-52
	R6-51		G-53
	R6-52		G-54
	R6-53		G-55
	R6-54		G-56
	R6-55		G-57
	R6-56		G-58
	R6-57		G-59
	R6-58		G-60
	R6-59		G-61
	R6-60		G-62
	R6-61		G-63
	R6-62		G-64
	R6-63		G-65
	R6-64		G-66
	R6-65		G-67
	R6-66		G-68
	R6-67		G-69
	R6-68		G-70
	R6-69		

Legend

INTERSTATES CITY LIMITS
RAILROADS FEDERAL

ZONING

	G-1		MX-2
	R6-1		C-7
	R6-1A		G-3
	R6-1B		G-3A
	R5-2		G-4
	R5-3		G-5
	R5		U-1
	R2-2		M-2
	R2-1		RUD-3
	R6-1A		RUD-3.5
	R4-7		RUD-3.6-E
	R4-3		RUD-3.6-I
	UFD		RUD-4
	MX-1		OUT OF CITY
	DD DISTRICT		
	DP DISTRICTS		
	PD DISTRICT		
	CC OVERLAY		

1 inch = 175 feet

Legend

INTERSTATES CITY LIMITS
RAILROADS FEDERAL

ZONING

	G-1		MX-2
	R6-1		C-7
	R6-1A		G-3
	R6-1B		G-3A
	R6-2		G-4
	R6-3		G-5
	R6-4		G-6
	R6-5		G-7
	R6-6		G-8
	R6-7		G-9
	R6-8		G-10
	R6-9		G-11
	R6-10		G-12
	R6-11		G-13
	R6-12		G-14
	R6-13		G-15
	R6-14		G-16
	R6-15		G-17
	R6-16		G-18
	R6-17		G-19
	R6-18		G-20
	R6-19		G-21
	R6-20		G-22
	R6-21		G-23
	R6-22		G-24
	R6-23		G-25
	R6-24		G-26
	R6-25		G-27
	R6-26		G-28
	R6-27		G-29
	R6-28		G-30
	R6-29		G-31
	R6-30		G-32
	R6-31		G-33
	R6-32		G-34
	R6-33		G-35
	R6-34		G-36
	R6-35		G-37
	R6-36		G-38
	R6-37		G-39
	R6-38		G-40
	R6-39		G-41
	R6-40		G-42
	R6-41		G-43
	R6-42		G-44
	R6-43		G-45
	R6-44		G-46
	R6-45		G-47
	R6-46		G-48
	R6-47		G-49
	R6-48		G-50
	R6-49		G-51
	R6-50		G-52
	R6-51		G-53
	R6-52		G-54
	R6-53		G-55
	R6-54		G-56
	R6-55		G-57
	R6-56		G-58
	R6-57		G-59
	R6-58		G-60
	R6-59		G-61
	R6-60		G-62
	R6-61		G-63
	R6-62		G-64
	R6-63		G-65
	R6-64		G-66
	R6-65		G-67
	R6-66		G-68
	R6-67		G-69
	R6-68		G-70
	R6-69		

Legend

INTERSTATES CITY LIMITS
RAILROADS FEDERAL

ZONING

	G-1		MX-2
	R6-1		C-7
	R6-1A		G-3
	R6-1B		G-3A
	R6-2		G-4
	R6-3		G-5
	R6-4		G-6
	R6-5		G-7
	R6-6		G-8
	R6-7		G-9
	R6-8		G-10
	R6-9		G-11
	R6-10		G-12
	R6-11		G-13
	R6-12		G-14
	R6-13		G-15
	R6-14		G-16
	R6-15		G-17
	R6-16		G-18
	R6-17		G-19
	R6-18		G-20
	R6-19		G-21
	R6-20		G-22
	R6-21		G-23
	R6-22		G-24
	R6-23		G-25
	R6-24		G-26
	R6-25		G-27
	R6-26		G-28
	R6-27		G-29
	R6-28		G-30
	R6-29		G-31
	R6-30		G-32
	R6-31		G-33
	R6-32		G-34
	R6-33		G-35
	R6-34		G-36
	R6-35		G-37
	R6-36		G-38
	R6-37		G-39
	R6-38		G-40
	R6-39		G-41
	R6-40		G-42
	R6-41		G-43
	R6-42		G-44
	R6-43		G-45
	R6-44		G-46
	R6-45		G-47
	R6-46		G-48
	R6-47		G-49
	R6-48		G-50
	R6-49		G-51
	R6-50		G-52
	R6-51		G-53
	R6-52		G-54
	R6-53		G-55
	R6-54		G-56
	R6-55		G-57
	R6-56		G-58
	R6-57		G-59
	R6-58		G-60
	R6-59		G-61
	R6-60		G-62
	R6-61		G-63
	R6-62		G-64
	R6-63		G-65
	R6-64		G-66
	R6-65		G-67
	R6-66		G-68
	R6-67		G-69
	R6-68		G-70
	R6-69		

ORIGINAL PREPARATION DATE:
This map was prepared by:
Andrew Livengood
for
June 11, 2013
BoZA meeting

ORIGINAL PREPARATION DATE:
This map was prepared by:
Andrew Livengood
for
June 11, 2013
BoZA meeting

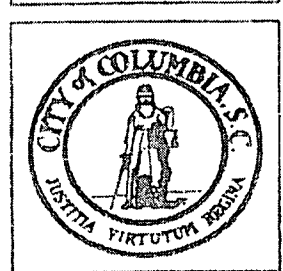
ORIGINAL PREPARATION DATE:
This map was prepared by:
Andrew Livengood
for
June 11, 2013
BoZA meeting

ORIGINAL PREPARATION DATE:
This map was prepared by:
Andrew Livengood
for
June 11, 2013
BoZA meeting

ORIGINAL PREPARATION DATE:
This map was prepared by:
Andrew Livengood
for
June 11, 2013
BoZA meeting

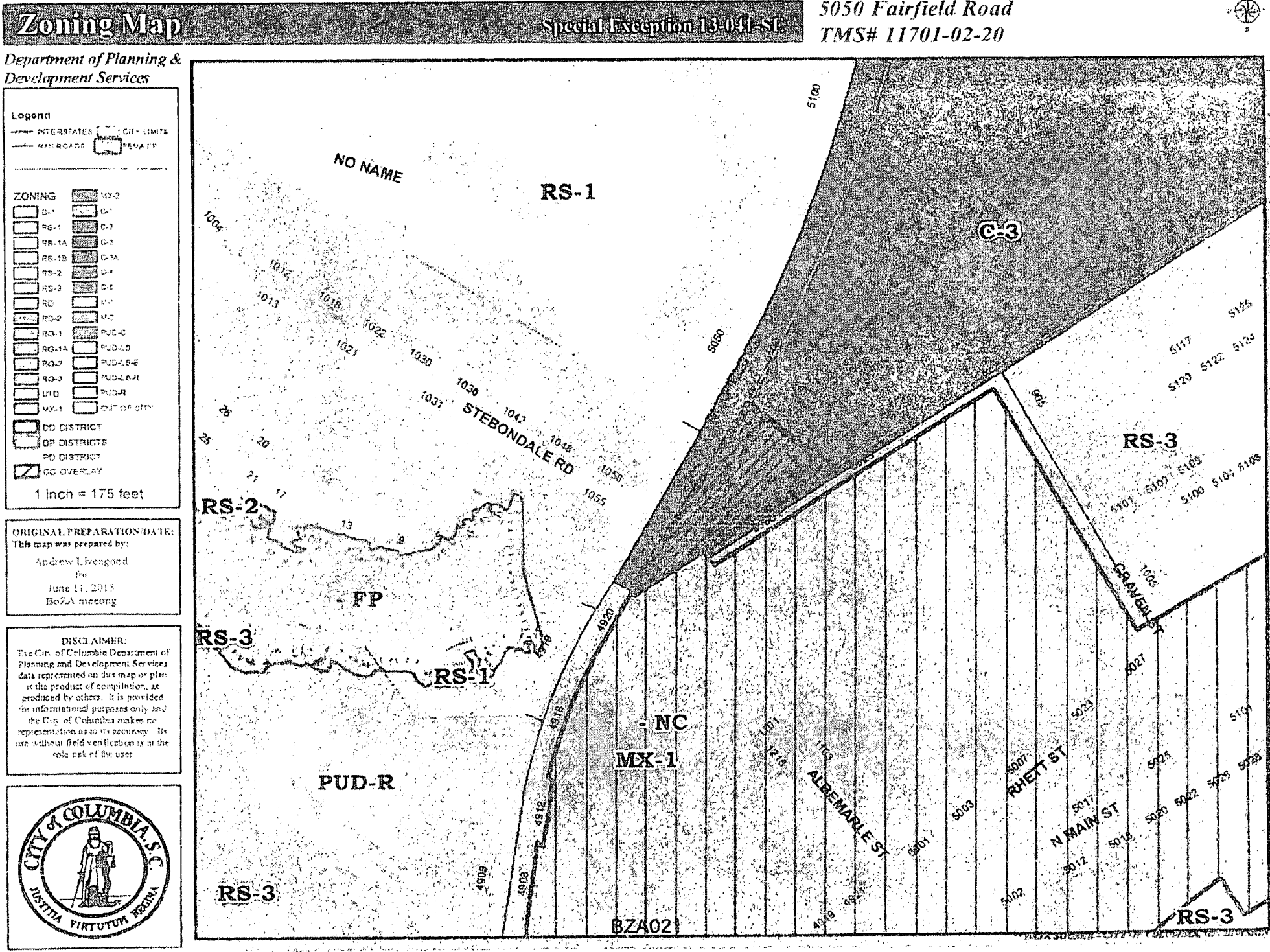
DISCLAIMER:
The City of Columbia Department of Planning and Development Services data represented on this map or plan is the product of compilation, as produced by others. It is provided for informational purposes only and the City of Columbia makes no representation as to its accuracy. Its use without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

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



Zoning Map **Special Exception 13-041-SE**

Zoning Map **Special Exception 13-041-SE**



Zoning Map

Special Exception 13-041-SE

5050 Fairfield Road
TMS# 11701-02-20

Department of Planning &
Development Services

Legend
INTERSTATES
RAILROADS
CITY LIMITS
REMAINS

ZONING

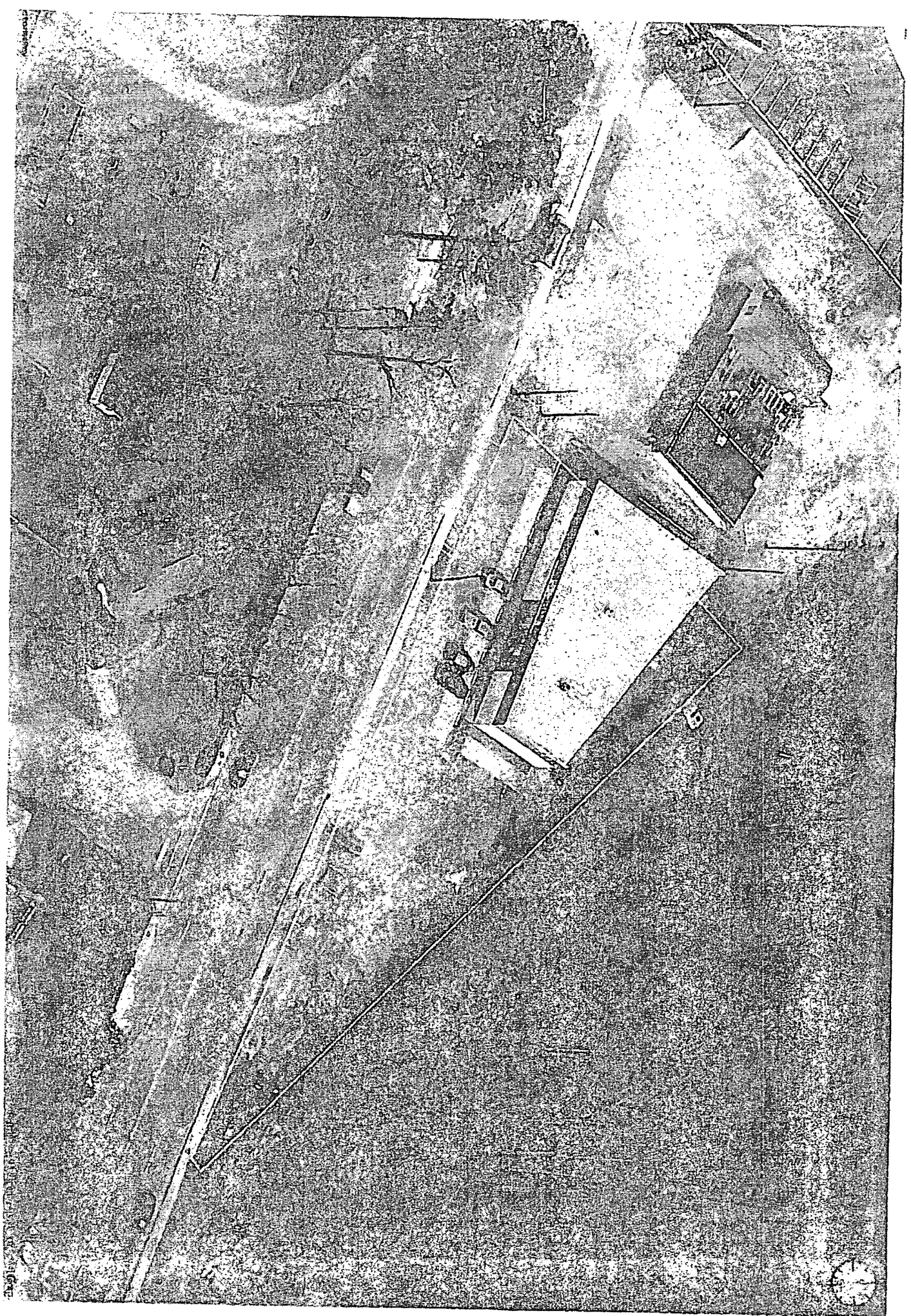
RS-1	MX-2
RS-2	MX-3
RS-3	MX-4
RS-4	MX-5
RS-5	MX-6
RS-6	MX-7
RS-7	MX-8
RS-8	MX-9
RS-9	MX-10
RS-10	MX-11
RS-11	MX-12
RS-12	MX-13
RS-13	MX-14
RS-14	MX-15
RS-15	MX-16
RS-16	MX-17
RS-17	MX-18
RS-18	MX-19
RS-19	MX-20
RS-20	MX-21
RS-21	MX-22
RS-22	MX-23
RS-23	MX-24
RS-24	MX-25
RS-25	MX-26
RS-26	MX-27
RS-27	MX-28
RS-28	MX-29
RS-29	MX-30
RS-30	MX-31
RS-31	MX-32
RS-32	MX-33
RS-33	MX-34
RS-34	MX-35
RS-35	MX-36
RS-36	MX-37
RS-37	MX-38
RS-38	MX-39
RS-39	MX-40
RS-40	MX-41
RS-41	MX-42
RS-42	MX-43
RS-43	MX-44
RS-44	MX-45
RS-45	MX-46
RS-46	MX-47
RS-47	MX-48
RS-48	MX-49
RS-49	MX-50
RS-50	MX-51
RS-51	MX-52
RS-52	MX-53
RS-53	MX-54
RS-54	MX-55
RS-55	MX-56
RS-56	MX-57
RS-57	MX-58
RS-58	MX-59
RS-59	MX-60
RS-60	MX-61
RS-61	MX-62
RS-62	MX-63
RS-63	MX-64
RS-64	MX-65
RS-65	MX-66
RS-66	MX-67
RS-67	MX-68
RS-68	MX-69
RS-69	MX-70
RS-70	MX-71
RS-71	MX-72
RS-72	MX-73
RS-73	MX-74
RS-74	MX-75
RS-75	MX-76
RS-76	MX-77
RS-77	MX-78
RS-78	MX-79
RS-79	MX-80
RS-80	MX-81
RS-81	MX-82
RS-82	MX-83
RS-83	MX-84
RS-84	MX-85
RS-85	MX-86
RS-86	MX-87
RS-87	MX-88
RS-88	MX-89
RS-89	MX-90
RS-90	MX-91
RS-91	MX-92
RS-92	MX-93
RS-93	MX-94
RS-94	MX-95
RS-95	MX-96
RS-96	MX-97
RS-97	MX-98
RS-98	MX-99
RS-99	MX-100

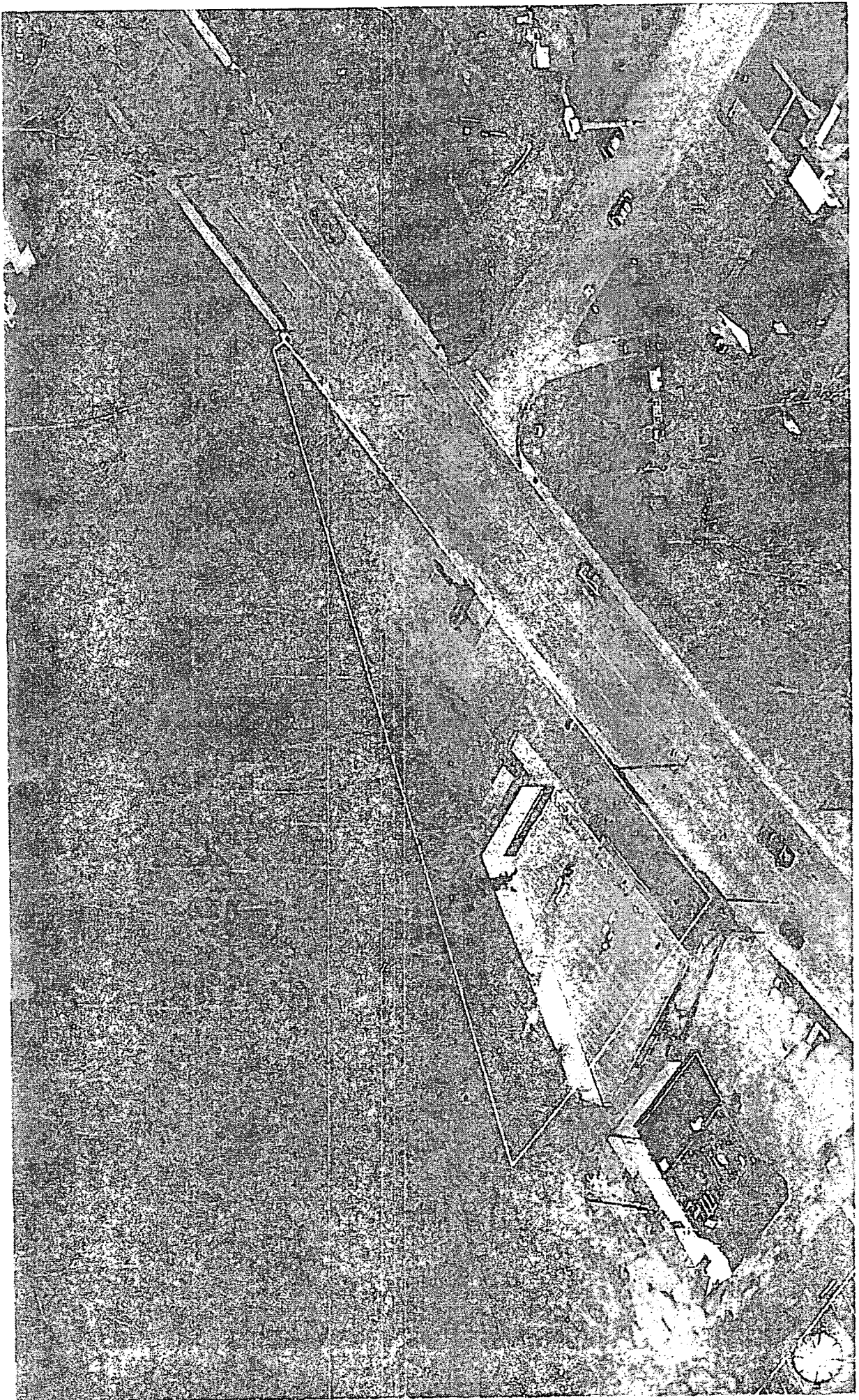
DD DISTRICT
OP DISTRICTS
PD DISTRICT
CC OVERLAY

1 inch = 175 feet

ORIGINAL PREPARATION DATE:
This map was prepared by:
Andrew Livengood
on
June 11, 2013
BoZA meeting

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







CITY OF COLUMBIA

BOARD OF ZONING APPEALS

APPLICATION for SPECIAL EXCEPTION

OFFICE USE ONLY:

Date Received

5/15/13

By

A+L

Case Number

13-041-SE

Fee (CODE 05) \$

75-

*****VERY IMPORTANT - PLEASE READ THIS SECTION THOROUGHLY*****
APPLICATION MUST BE SUBMITTED AND COMPLETE BY 12:00 NOON ON DEADLINE DATE!

City staff cannot place this application upon the agenda of the Board of Zoning Appeals unless the applicant performs the following tasks prior to the deadline date:

1. Answer all questions upon this application.
2. Sign and date this application.
3. Include a site plan drawn to scale, showing the shape and dimensions of the lot; the location and size of existing and/or proposed structures, if any; the location and size of required parking spaces, if any; and the location of required landscaping and bufferyards, if any.

In addition, City staff recommends that you:

1. Provide photographs of the subject property and contiguous property.
2. Contact the neighborhood association and the property owners of contiguous property and inform each of your application. Opinions of these persons are best communicated to the Board in writing.
3. Attach additional paper if you feel that any portion of this application does not provide enough space.

THE APPLICANT MUST BE PRESENT AT THE PUBLIC HEARING!

THE BOARD OF ZONING APPEALS CONDUCTS PUBLIC HEARINGS ON
 THE SECOND TUESDAY OF EACH MONTH AT
 CITY HALL, CITY COUNCIL CHAMBERS, THIRD FLOOR
 1737 MAIN STREET (Southwest Corner of Main and Laurel Streets)
 COLUMBIA, SOUTH CAROLINA, 29201

Location/Subject Property: 5050 Fair Road, Columbia, SC 29203
 Tax Map Number (Sheet, Block, and Lot(s)): 11701-7020
 Zoning District: C-3

Describe your proposal in detail: my intention is to have a successful
business here which includes a food mart
convenience store and liquor store and property above
I follow all the rules and regulations that apply
 The Zoning Ordinance classifies this use as a (include SIC Code Number): (592)

Area Attributed to Your Proposal (in square feet): 480 Square Feet
 Are other uses located upon the subject property? (if YES, list each use and the square feet attributed to each use):
convenience store 1600 square feet

Total Number of Parking Spaces Upon the Subject Property: 26

Please address the following **CRITERIA FOR SPECIAL EXCEPTION** (see §17-112 (2) c. of the Zoning Ordinance). Please note that the members of the Board of Zoning Appeals will use your answers, among other things, as they evaluate your application:

1. Impact of your proposal upon traffic: Where this business is located it should have no negative impact on the 4 lanes of traffic that proceed on Fairfield Rd.
2. Impact of your proposal upon vehicular and pedestrian safety: To repeat as above the safety for vehicular and pedestrian should not be a problem and no negative impact.
3. Impact of your proposal in terms of noise, lights, fumes, or obstruction of air flow upon adjoining property: There would be no impact negatively or unfavorably as to the items mentioned.
4. Impact of your proposal upon the aesthetic character of the environs, to include the possible need for screening from view: There would be no reason to screen from view - the business is well-kept and illegal activity present no interfering soliciting etc.
5. Impact of your proposal in terms of the orientation and spacing of improvements or buildings: The total building for the businesses within, interior & exterior, and should be up to code.

And §17-112 (2) b.4. asks, "Will your proposal adversely affect the public interest?" NO. It should not at all.

Applicant (PLEASE PRINT CLEARLY): Andreas Ganolakis

Name of Company: SEVEN DAYS FOOD MARKET LLC

Address: 5050B FAIRFIELD RD C

City, State, ZIP: COLUMBIA, SC 29203

Office Telephone Number: 803-435-8000

Home Telephone Number: _____

Cellular Telephone Number: 803-477-6916

Fax Number: _____

Do you check email at least once per day? ☒ Y ☐ N

Email Address: Andreas.Ganolakis@seven.com

Relationship to Property Owner:

☐ Same;

☒ Lessee;

☐ Agent of property owner;

☐ Contract lessee;

☐ Contract purchaser;

☐ Other _____

Unless the applicant is property owner, the applicant must complete and submit a **LETTER OF AGENCY**.

By signing below, I, the applicant, understand and/or acknowledge that:

1. I have completely read this application and understand all that it includes;
2. While the members of the Board of Zoning Appeals will carefully review and consider this application, the burden of proving conformance with the criteria for grant of special exception rests with me;
3. The proposed use and construction complies or will comply with all other requirements of the City of Columbia Zoning Ordinance;
4. The Board of Zoning Appeals will render a written final decision regarding my application as soon as possible following the public hearing; and
5. Any time frames related to an appeal of a decision of the Board of Zoning Appeals shall start from the date that the written final decision is signed by the Chairman of the Board of Zoning Appeals.

Signature [Signature]

Date 5-14-12

FORM REVISED 8/11/03



LETTER OF AGENCY

DATE:

TO: ZONING ADMINISTRATOR, CITY OF COLUMBIA

I, the undersigned PROPERTY OWNER below, do hereby attest that I am the person that holds, or I am authorized to act on behalf of the party that holds, fee simple interest in the following property:

COMMON STREET ADDRESS(ES): 5050 Fairfield rd Columbia South Carolina

also known by TAX MAP NUMBER(S):

R11701-02-20 29203

Further, I hereby authorize the person listed as AUTHORIZED AGENT below to act on my behalf for the purpose of submitting documents, amending documents, meeting with staff, attending public meetings and hearings, and as otherwise may be necessary and proper to fulfill the required steps to request (CHECK ALL THAT APPLY):

- ☐ a variance from the Board of Zoning Appeals;
- ☒ a special exception from the Board of Zoning Appeals;
- ☐ an appeal of the decision of the Zoning Administrator from the Board of Zoning Appeals;
- ☐ a change to the Zoning Maps of the City of Columbia from City Council, rezoning the property listed above from _____ to _____; and/or
- ☐ site plan review by the Planning Commission.

SIGNATURE OF PROPERTY OWNER:

Vicki B. Ballew

DATE: 5-1-13

PRINT Name of Property Owner:

Vicki B. Ballew

Street Address of Property Owner:

300 S Australian Ave Unit 1610

City, State, ZIP of Property Owner:

West Palm Beach, FL 33401

Telephone Number of Property Owner:

443-804-4393

SIGNATURE OF WITNESS:

DATE: 5-1-13

PRINT Name of Witness to Signature of Property Owner:

Zohrab Baicamian

SIGNATURE OF AUTHORIZED AGENT:

DATE: 5-14-13

Name of Authorized Agent:

Andreas G. Goukalis

Company/Firm of Authorized Agent:

Seven Days Real Estate

Street Address of Authorized Agent:

5050 Fairfield Rd

City, State, ZIP of Authorized Agent:

Columbia, SC 29203

Telephone Number of Authorized Agent:

803-477-6916

Seven Days Food Mart and Liquor Store
5050 Fairfield Rd
Columbia, SC 29203



090 87

BZA029

ASSOCIATED ENGINEERS & SURVEYORS, INC.	
Landscape Architects & Engineers	
1111 Wisconsin Ave., N.W.	
Washington, D.C. 20005	
Project No. 1111	
Date: 11/11/75	
Scale: 1" = 100'	
Sheet No. 1 of 1	
North Arrow	

X-9175

Handwritten notes:
The proposed site is located within the existing site boundaries. The proposed site is located within the existing site boundaries. The proposed site is located within the existing site boundaries.

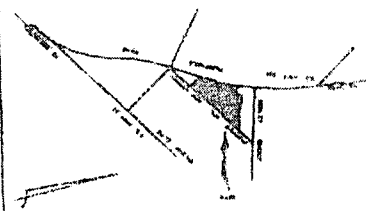
THE PROPOSED SITE IS LOCATED WITHIN THE EXISTING SITE BOUNDARIES. THE PROPOSED SITE IS LOCATED WITHIN THE EXISTING SITE BOUNDARIES. THE PROPOSED SITE IS LOCATED WITHIN THE EXISTING SITE BOUNDARIES.

NORTHWAY PLAZA

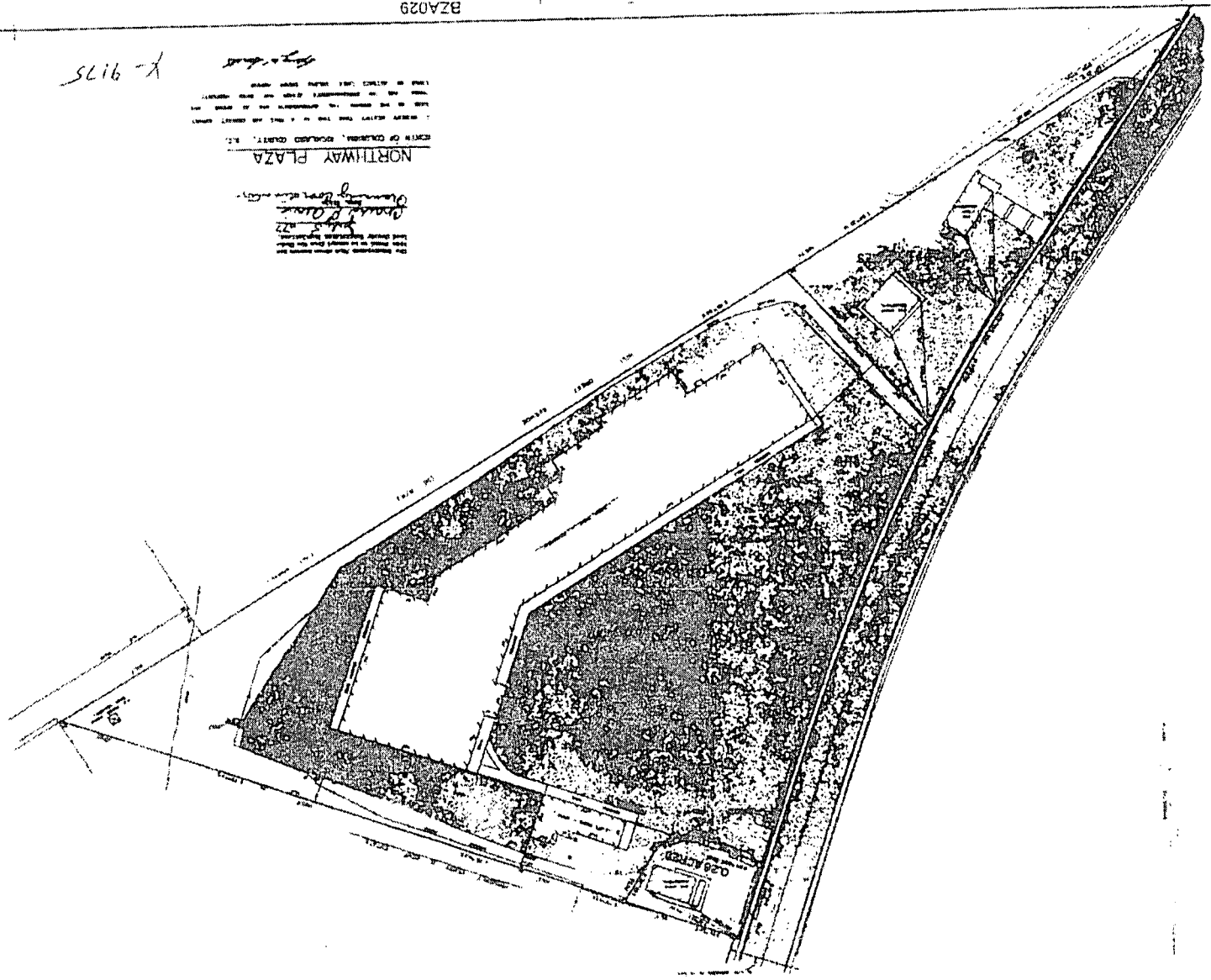
Handwritten notes:
The proposed site is located within the existing site boundaries. The proposed site is located within the existing site boundaries. The proposed site is located within the existing site boundaries.

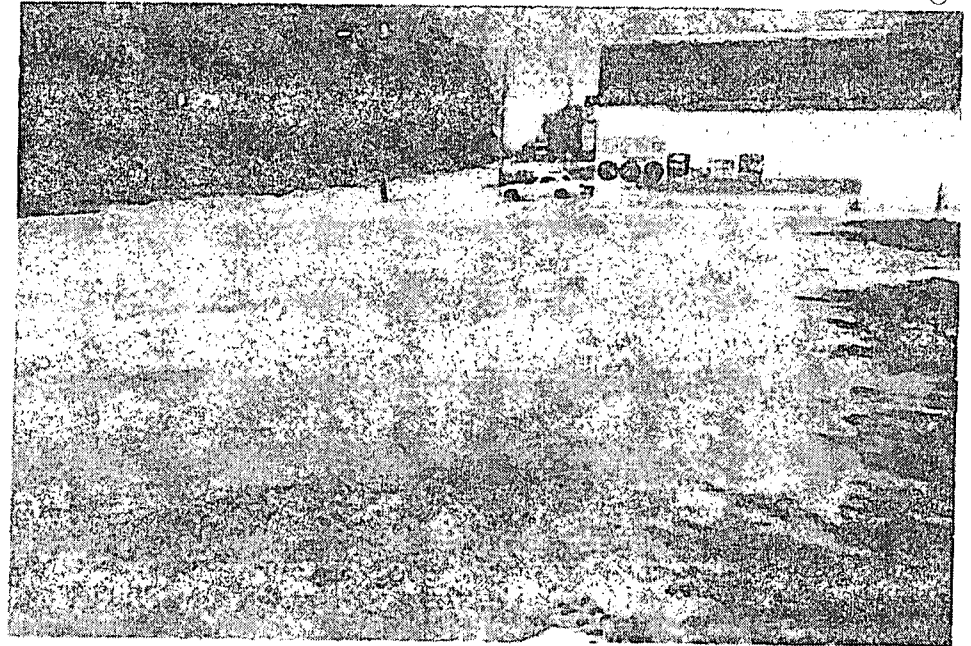
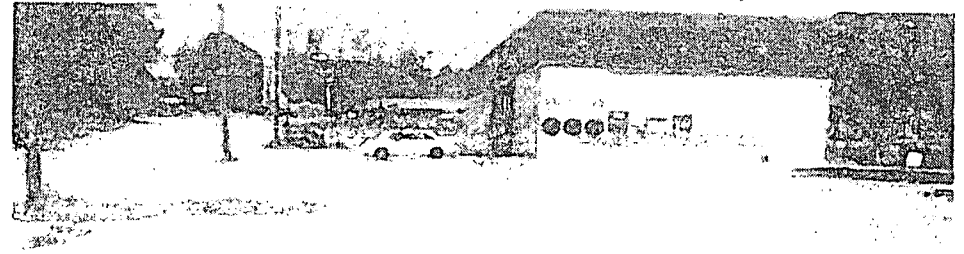
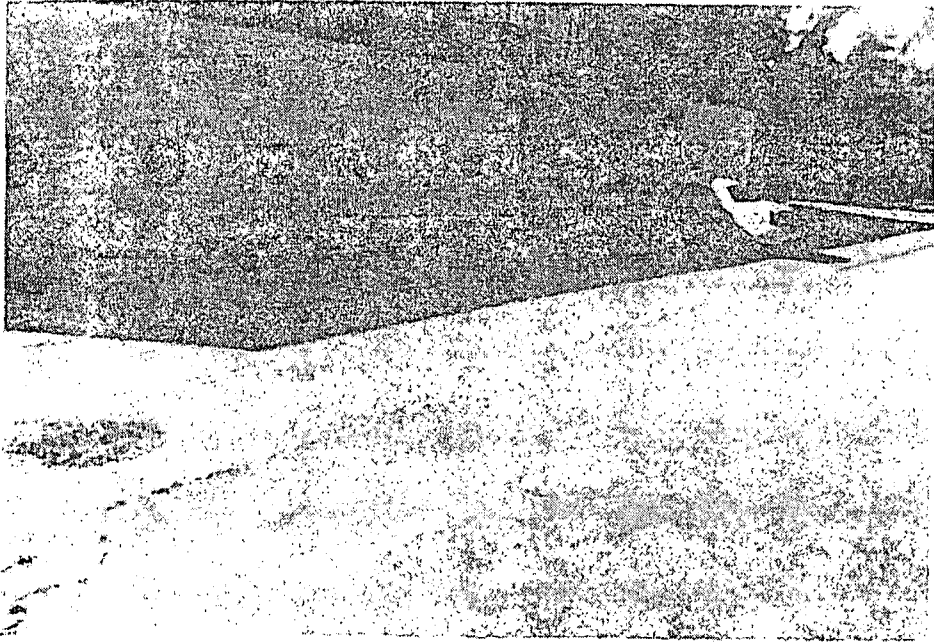
- 1. SITE BOUNDARIES
- 2. EXISTING BUILDING
- 3. EXISTING DRIVE
- 4. EXISTING PARKING
- 5. EXISTING LANDSCAPE
- 6. EXISTING UTILITIES
- 7. EXISTING STRUCTURES
- 8. EXISTING FENCES
- 9. EXISTING SIGNAGE
- 10. EXISTING LIGHTING
- 11. EXISTING TREES
- 12. EXISTING SHRUBS
- 13. EXISTING GRASS
- 14. EXISTING SOIL
- 15. EXISTING WATER
- 16. EXISTING AIR
- 17. EXISTING SOUND
- 18. EXISTING VIBRATION
- 19. EXISTING CLIMATE
- 20. EXISTING ECOSYSTEM

NOTES:
1. THE PROPOSED SITE IS LOCATED WITHIN THE EXISTING SITE BOUNDARIES.
2. THE PROPOSED SITE IS LOCATED WITHIN THE EXISTING SITE BOUNDARIES.
3. THE PROPOSED SITE IS LOCATED WITHIN THE EXISTING SITE BOUNDARIES.



1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50





BZA030

002

06

License

License Details

- Completeness Check v.1
- Planning & Zoning Review v.1
 - 1. Planning & Zoning Review
 - 2. Planning & Zoning Review
- Continuing Zoning Fees Paid v.1
- Clearance Form Signoffs v.1
 - 1. Clearance Form Signoffs - Planning
 - 2. Clearance Form Signoffs - Planning

Activity Type	Activity Name	Activity Number
Planning & Zoning Review	Planning & Zoning Review	110ACT-021129-2012

Activity Comments:

Created By: Created On:

Additional Info:

No gasoline sales permit req.

Notes:

+ Add State
+ Record View/Id

CITY OF COLUMBIA
BOARD OF ZONING APPEALS MINUTES
JUNE 11, 2013- 10:00 AM

Eau Claire Print Building
3907 Ensor Avenue • N. Main Street and Monticello Road • Columbia, SC

In attendance: Ernest Cromartie, III, Patricia Durkin, Dr. Pat Hubbard, Reggie McKnight, Calhoun McMeekin, and Preston Young

Absent: Chuck Salley

Staff: Brian Cook, Andrew Livengood, Andrea Wolfe

I. CALL TO ORDER and DETERMINATION OF QUORUM

Ernest Cromartie, III, chairperson, called the meeting to order at 10:05 AM, and introduced the members of the Board of Zoning Appeals (BOZA). Mr. Cromartie explained the purpose and role of the Board of Zoning Appeals; speakers sworn in.

Brian Cook, Zoning Administrator, Planning and Development Services Department, noted changes to the agenda since publication. Item 6, **2101 Main Street** request for special exception has been deferred to the July 9, 2013 meeting.

Mr. Cook reviewed general housekeeping rules and proceeded with review of Consent Agenda items.

II. CONSENT AGENDA

OLD BUSINESS

None.

NEW BUSINESS

- | | | |
|------------|---------|--|
| 1.13-038-V | Dist. 2 | 1433 Burley Court (TMS# 11516-05-03) Variance to the fence height requirements in a required front yard (Ryal Bird)(RS-2) |
| 2.13-043-V | Dist. 3 | 1524 Westminster Drive (TMS# 11416-12-13) Variance to the fence height requirements in a required secondary front yard (Barbara Rackes and Michael Mann)(RS-1) |

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

III. REGULAR AGENDA

OLD BUSINESS

3. 13-028-SE Dist. 3 700 Woodrow Street (TMS# 11390-01-01 through -09; 11390-02-01 through -11; 11390-03-01 through -11; 11390-04-01 through -11; 11390-05-01 through -11; 11390-06-01 through -11; 11390-07-01 through -11;) Special Exception to allow for multifamily use of existing building (Matt Mundy and Theresa Hodge, Estates Properties, LLC)(C-2 and RG-2, -DP)

Theresa Hodge presented on the request for special exception providing background of the project. Ms. Hodge said the applicants met with the Devine Street Merchant Association and The Old Shandon Neighborhood Association to discuss the plan, and received full support for the proposal.

Ms. Hodge reviewed the criteria for special exception and thanked the neighborhood association and local merchants association for their support.

Phillip Bush, neighborhood resident, voiced concerns with the conversion of the units being used as rentals for college students and that impact on property values.

Mr. Hubbard stated all the Board is tasked with approving is the use for multi-family as opposed to hotel use. Once approval is given, it cannot be guaranteed what the use will be, no matter what the applicants say that use will be.

Catherine Fenner, University Hill Neighborhood resident, said many homes in her neighborhood were owned by parents and passed on to their children as student occupied. She added if she were a student, she would rather live at the Whitney than down in Five Points.

Christina Crock, vice president of the Devine Street Association, said they are in support of the request for special exception to the Whitney to condominium use.

Hoyt Burnett, president of the Old Shandon Neighborhood, said they are in support of the request.

Ms. Hodge addressed concerns.

Testimony closed for Board discussion.

Mr. Hubbard voiced concerns with the Ordinance which states that generic special exception criteria is to be used which he felt was inappropriate for C-2 zoning. It should be explicitly stated there should be a limit in the number of them [condos] in general. He urged staff that when and if code is rewritten, C-2 zoning needs to be revisited for multi-family uses. This is not the case in this situation but may be in others.

Mr. Cook stated that would definitely be taken into consideration.

Motion by Mr. Hubbard to grant the request for special exception for 700 Woodrow Street as testimony evidence has indicated, if anything, it will have a positive impact upon traffic, and upon vehicular and pedestrian safety. It is basically the same use; there is no change in noise, lights, fumes, or obstruction of air flow. Because it is an existing building, impact upon the aesthetic character based upon testimony presented today, may possibly be an improvement upon the aesthetic character; and there will be no impact upon the orientation and spacing of improvements as it is existing. Though there is a balance of concerns; there will be no adverse effect on the public interest. *Motion seconded by Mr. McMeekin. Request granted 6-0.*

4. 13-029-V Dist. 3 700 Woodrow Street (TMS# 11390-01-01 through -09; 11390-02-01 through -11; 11390-03-01 through -11; 11390-04-01 through -11; 11390-05-01 through -11; 11390-06-01 through -11; 11390-

07-01 through -11;) Variance to the parking requirements for a multifamily development (Matt Mundy and Theresa Hodge, Estates Properties, LLC)(C-2 and RG-2, -DP)

Theresa Hodge presented on the request for a variance to the parking requirements. When the Whitney was established as a hotel, it was felt 1.5 spaces per unit was adequate, and based on their experience, the developers are comfortable that still stands for multifamily development in the southeast. Ms. Hodge spoke on parking requirements for similar cities where they are 1 or 1.5 spaces per unit.

Ms. Hodge stated they are aware Mr. Daniels is in opposition of the request for variance and had offered two pieces of property to use for parking.

Jim Daniel, commercial real estate broker and representative for LRADAC, said as point of order, there was a conflict of interest with Mr. Hubbard as he lives in the Old Shandon Neighborhood, and he should disqualify himself from this case.

Mr. Cromartie stated that generally any conflicts of interest are left up to Board members to use their own judgment and he would defer to Mr. Hubbard to decide if he wished to remain for this request. He has not raised that issue or submitted documentation that is not consistent with what is required, so if he is comfortable with staying, Mr. Daniel's comments would be taken into advisement.

Mr. Hubbard stated this is the only project for this building he has ever supported. He is not next to it, he is some distance from the property as Old Shandon is rather large and a couple of blocks away. He has no financial interest in any of this. He left before this item was even proposed for discussion at the Old Shandon Neighborhood Association meeting. Everything he has reviewed and heard regarding this proposal is what is presented in his Board packet and being discussed today. He does not think he has a conflict of interest in any way. He thought hard of his appearance with regard to conflict, and stated that even though Mr. Bush is a neighbor, he has not had any discussions of any kind with anyone in the neighborhood.

Mr. Daniel explained his opposition to the variance request.

Ms. Hodge responded.

Mr. Hubbard discussed retail and hours of operation that will not require parking at night, and said there will be many parking areas available for use when the businesses are closed. There is a unique situation as it is an existing building. He agrees with the applicant about not tearing down buildings and having more asphalt. There is plenty of on-street parking in the area and he feels the variance request should be granted.

Mr. McMeekin said the Whitney's decline has been in existence for a long time. As a professional, residential realtor, he is familiar with Mundy developers who have a good track record. He feels it is a positive move for the City.

Motion by Mr. Hubbard to approve the request for variance for 700 Woodrow Street. As the evidence indicated today, there are extraordinary and exceptional conditions that pertain to the subject property that do not generally apply to other properties in the area. Because of these conditions, the requirements of the Zoning Ordinance would unreasonably restrict the use of the property. Approval of the variance would not be of substantial detriment to adjacent property or to the public good, nor would the character of the district be harmed. Given the special conditions, it is the minimum necessary, and is in harmony with the purpose and intent of the Zoning Ordinance, and would not be injurious to the neighborhood or public welfare.
Motion seconded by Mr. McMeekin. Request granted 6-0.

5. 13-032-SE Dist. 2 2053 Two Notch Road (TMS# 11509-01-04) Special Exception to establish a gasoline service station (Rolland E Greenburg, III) (C-3)

Property was previously a gas station that was later approved as a tire store, and has sat vacant for a number of years.

Rolland E. Greenburg, III represented the applicant who wants to establish a gasoline stations and convenience store at the location across from Benedict College. They will have beer and wine for sale. Mr. Greenburg proposed improvements to the building and site to address concerns.

Carl Frederick, president of the Edgewood/Read Street Community Improvement Cooperative Council, community resident and Two Notch Road Merchant Association member, said the case summary page indicated he submitted a letter of opposition. He clarified that he is not in opposition of the request for special exception, and did not think his letter suggested opposition. He is supportive of the request, but there are some concerns that were raised by the neighborhood association at their May 20th meeting.

Christy Savage said she is neither in favor or opposition of the request. Mr. Muhammed came to their neighborhood wanting to put a store in their location. They questioned his intent with his other stores and their upkeep, and were told the stores were leased and he could not be responsible for them. She feels those stores should be taken care of before opening a new one.

Deborah Stratton, Russell Jeffcoat Realty, agent for the property said she selected this station as it was an existing station and good location with great potential to be restored as a gas station.

Larry Sally, Benedict College, said they are not in opposition of the request and would like to see some commerce in the building. He voiced concern with safety of the students and residents who attend the college. The structure is an eyesore and has been vacant for a number of years. Their concern is that the store be aesthetically pleasing because of large investments made by Benedict to the area.

Mr. Greenburg addressed the issues brought up by Mr. Frederick.

Mr. Greenburg stated that these statements can be made as conditions to approval.

Testimony closed for Board discussion.

Mr. Young questioned, within the C-3 zoning, if a special exception was required for the use of the previous gas station or if different zoning was in place. Mr. Livengood stated the building was constructed around 1960 prior to the Zoning Ordinance.

Mr. Cromartie said with respect to changes to the code, it would be advisable to re-evaluate the density of particular businesses in a particular area. The applicant has sought to address the concerns of the community which is good, but looking at the layout of Two Notch, he cannot see why there is a need for five gas stations on one strip of road and in one community. He suggested staff to address this when the code is revisited.

Motion by Mr. Hubbard to approve the request for special exception for 2053 Two Notch Road to establish a gasoline service station subject to following conditions as indicated by the applicant: the hours of operation, the lighting in terms of direction, the façade, resurfacing, privacy fencing, landscaping, and there will be at least an expenditure \$100,000 by testimony of the applicant. Furthermore there is minimal impact imposed upon traffic; or vehicular and pedestrian safety; minimal impact in terms of noise/lights/fumes/or obstruction of air flow; with the improvements indicated by the applicant, the aesthetics will be improved; the impact in terms of orientation and spacing of improvements is basically the same; and it will not adversely affect the public interest.

Mr. Young questioned if staff comments would be included as conditions. The comment should the value of the improvements of the property exceed 50% of the building value as established by the Richland County

Assessor, all requirements within the landscaping ordinance be met, specifically buffer yard and street protective requirements.

Mr. Hubbard stated as he did not know that amount, he did not know what 50% would be. That is why he was more comfortable with the statement of at least \$100,000 which was a specific dollar figure.

Mr. McMeekin felt it would bring the structure up to standard, and Mr. Livengood stated that it will bring it up to about half of the current standards. If someone builds a structure from scratch, it will actually have higher values than would be required in this situation. His belief is that \$100,000 more than exceeds 50% of the value of the present building.

Motion second by Mr. Young. Request granted 6-0.

Meeting adjourned at 11:36 am for short break and resumed at 11:49 am

NEW BUSINESS

6. 13-040-SE Dist. 1 2101 Main Street (TMS# 09016-13-08) Special Exception to establish 90 foot tall stealth wireless communications facility (90 foot stealth cell tower) (PTA-FLA, Inc., dba Clear Talk) (MX-1, - NC)

7. 13-041-SE Dist. 1 5050 Fairfield Road (TMS# 11701-02-20) Special Exception to establish a liquor store (Andreas Ganotakis, Seven Days Food Mart LLC)(C-3)

Current use of the property has been out of compliance since January 2013.

Andreas Ganotakis, business owner, was approved for a business license by the City of Columbia to operate a convenience store on September 21, 2012. He was approved to operate a beer/wine and package store by the SC Department of Revenue as of January 17, 2013. The community was present at the opening of the package store. He did not know a special exception was needed for a liquor license in the City.

Mr. Cromartie asked staff to ensure that applicants applying for a business license for a convenience store are made aware that a special exception will be needed in the event they decide to have a liquor store.

Mr. Ganotakis reviewed the criteria for special exception.

David Roach, represented the Cabb Island Community, was opposed to the liquor store.

Ms. Durkin asked if there have been any incidences in this location, and if so, if it is known if they came from this store.

Mr. Roach said there have not been at this time, but there are empty bottles in the area where people drink and toss bottles. He does not know if they came from this specific store.

Chaplin Spencer represented the City of Columbia through an opposition as authorized by City Council with areas getting inundated by liquor stores. Mr. Spencer felt it is in the best interest to deny the request because of its proximity to schools, residences, and other liquor stores.

Mr. Cromartie said the BoZA appreciates the service of City Council and are glad they thought to provide a representative with respect to this application. He finds it very informative that one of the reasons Mr. Spencer listed for opposition is the proximity to another liquor store and to the number of stores in one community. He asked Mr. Spencer, as a representative, that he might be sure to communicate to those that actually provide the Board with the criteria, before making a decision, that might be something they may want to look at in working with staff and the Board of Zoning Appeals so that the issues raised on behalf of Council can be directly addressed in the Board's decision making.

Mr. Spencer said that would be duly noted. Responding to Mr. Cromartie's question of specifics that might help minimize the impact of this use if it were approved, Mr. Spencer said there are large posters with scantily dressed people in loud colors advertising certain type liquors. If the number of these or the size of these could be limited as they are very visible as someone drives by.

Mr. Hubbard asked staff if there are already limitations on signage in the ordinance.

Mr. Livengood said that is hard to enforce because they tend to be temporary signs which can be easily removed and replaced.

Mr. McMeekin said there is a liquor store directly across the street from Alcorn middle school and he feels enforcement should be equal. He asked Mr. Spencer that when he says he represents the City, is he saying that everyone on City Council opposes this application.

Mr. Spencer said he cannot speak individually, but City Council as a whole authorized him and his firm to look into the liquor store applications in BoZA, and to protect the public interest; and he knows they act as a group. He was not in on their discussions, so he cannot discuss that.

Mr. McMeekin asked if every City Council member engaged this firm [to research] liquor stores or for gas stations; or what exactly Council has engaged them for.

Mr. Spencer did not want to fully discuss the attorney/client privilege on what Council wants him to do. City Council may not want everything out there, but it is primarily with liquor stores. City Council acts as a body and even though it may be a 4-3 vote, the majority acts as Council.

Mr. Cromartie felt good discussion was taking place, and as Mr. Spencer is representative of Council that he work with staff to facilitate some better discussion between the two bodies, so better service can be provided by both bodies to the City and citizens of Columbia.

Ms. Durkin commented that the Board of Zoning Appeals is appointed by City Council, and she does not understand why he was sent to this meeting.

Mr. Cromartie asked if there was anyone else to speak in opposition or favor of the application.

Steve Nelson, resident, spoke in favor of the store.

Patricia Brown, president of North Wood Hills Neighborhood Association, voiced concerns with the application.

Pearl Allen, neighborhood resident, voiced opposition to the request.

Christy Savage, President of the Eau Claire Community Council, said they are opposed to another liquor store so close in proximity to one another, and requested denial of the request for special exception.

Cindy Rhodes, Eau Claire resident, is opposed to the request

Catherine Hartley, Columbia Police Department, addressed the citizens, concerns regarding the locations of liquor stores in the area, and with crime regarding liquor stores.

Andreas Ganotakis, applicant, regarding advertisement, he does have signage to promote his business as required, and will remove the extra signage.

Mr. Cromartie voiced concerns of one of the citizens and himself with the image of making alcohol attractive to young minds. He is aware of marketing and advertisement, and asked the applicant to speak regarding the signage for the business.

Mr. Ganotakis said the signage is very small and is inside the building. As the building is glass, it is visible from outside. He does have other advertisement for cigarettes and lottery, but will remove whatever he must for each business.

Testimony closed for Board discussion.

Mr. Young does not like the location to the school; there are many kids and single parents in the area, and there are several walking areas in the neighborhood. The other liquor store has been there for a number of years, and he is familiar with that store which was even an auto parts store in the past. The initial testimony of the applicant stated that when it was a convenience store only, business was bad; so he added a liquor store without approval from the City, and when he put in the liquor store, business picked up. His main concern is with the proximity to the school, but it is also dangerous street to cross over which is an impact on vehicular and pedestrian safety.

Mr. Cromartie said one difference with this application is that the state has already approved this liquor store as required, so certain state requirements have already been met such as the distance from other the liquor store and from the school. More information has been provided than needed, and thus exceeds Board jurisdiction. Unless the Board can change state law, he can see no grounds to deny the request as presented.

Mr. Young understood but still felt it was a safety issue regardless of the type of business and affected public interest saying the state criteria are very different from the criteria the Board of Zoning Appeals must look at.

Mr. McMeekin said if it is a dangerous street that is not due to the liquor store, but is something that needs to be addressed by SCDOF.

Mr. Hubbard said with regard to the distance requirement to the school, it does meet state requirements, but he is bothered by the proliferation of these businesses. C-3 zoning discusses concerns of depreciation of property values which is one thing that can be looked at. It is a shame there is not better police data but understands when there are not enough resources to connect with it. He does not feel that anyone can say the store is a positive by the photograph introduced, and there do not seem to be any shortages for wine, beer, food or hard liquor in the community.

He referenced the criteria language about intent and purposes as quoted by the City Council representative regarding depreciation of property values adversely impacting public interest. It cannot be proved that one of these businesses will kill a neighborhood, but if you put them all together it will. In terms of the aesthetic character, he does not feel that can be fixed. An empty building would be preferable.

Motion by Mr. Hubbard to deny the request for special exception for 5050 Fairfield Road to establish a liquor store; seconded by Mr. Young. Denial granted 4-2 with Ms. Durkin and Mr. McMeekin in opposition.

Mr. Cromartie asked staff to work with the applicant regarding the transition for an existing business.

*Meeting adjourned at 1:00 pm for short break and resumed at 1:15 pm
Mr. Hubbard left at 1 pm for the remainder of the meeting*

8. 13-042-SE Dist. 4 4963 Ft. Jackson Boulevard (TMS# 16507-01-02) Special
Exception to establish a tattoo facility (5 Brand Ink, Inc.)(C-3, -FP)

Stan Hudgins, owner of 5 Brand Ink, Inc. opened the first tattoo facility in the state and owns 27 shops nationwide. He gave background on the business which is considered a small artistic studio by the industry. Hours of business will be 10am – 10pm.

John Cavanaugh, board member with the Kings Grant subdivision, voiced opposed as he feels any impact on traffic will have an effect on the neighborhood.

Mr. Hudgins spoke to Kings Grant and the children are in a protected area. He said they have met criteria for special exception.

Ms. Durkin said she is familiar with the area. Tattoing is a very popular business and becoming more increased. Many people have tattoos and she sees no issue with the request. Kings Grant is a gated community and closed.

Mr. McMeekin said this is an open area and the gate is open from 6am to 6pm, which Mr. Cavanaugh confirmed. He voiced opposition to the request.

Mr. Cromartie visited the property and said it is an absolute minute portion of the building as it is the smallest of the three suites that face Jackson Boulevard. He does not see a traffic issue because even if the business is a barbershop or nail salon, it would require at least one hour or longer. If this was a larger business, it may be a traffic issue; but with only two spots, he does not see it as a traffic issue.

Mr. McMeekin said that intersection begs for a traffic light.

Ms. Durkin feels that is an issue for SCDOT

Motion by Ms. Durkin to approve the request for special exception for 4963 Ft. Jackson Boulevard to establish a tattoo facility based on findings that there will be no impact upon traffic; there will be no impact upon vehicular or pedestrian safety; no impact upon noise/lights/fumes, or obstruction of air flow upon adjoining property; no impact upon the aesthetic character of the environs; no impact in terms of orientation and spacing of improvements or buildings; and the proposal will not adversely affect public interest; seconded by Mr. Young. Request approved 5-0.

Meeting adjourned at 1:40 pm for break and resumed at 2:03 pm

Mr. Cromartie thanked everyone for the patience and commitment to issues of importance to them and for attending the meeting for the better part of this day.

Motion by Mr. Cromartie to go into Executive Session to allow the Board to consult with legal counsel at 2:04 pm. Once this is completed, the Board will return and address the issue being presented. Motion seconded by Mr. McMeekin. Motion approved 5-0.

Due to public request and questions, Mr. Cromartie took the Board out of Executive Session to resume meeting.

Motion by Mr. Cromartie for the Executive Session to not exceed 30 minutes, at which time a recess will be taken to allow Board members to meet with legal counsel and receive legal advice; the meeting will resume at 2:30 pm. *Motion seconded by Mr. McMeekin. Motion approved 5-0.*

Meeting resumed at 2:37 pm

Mr. Cromartie resumed the June 11, 2013 Board of Zoning Appeals meeting.

Motion by Mr. Young to close Executive Session and resume the regular session. **Motion approved 5-0,** and regular session resumed at 2:28 pm.

9. 13-044-SE Dist. 2 1315 Calhoun Street (TMS# 09016-10-18) Special Exception to establish a residential care facility (Tobias G. Ward for Bannum Inc.) (C-4, -DD)

Xavier Starks, along with Toby Ward, represented Bannum, Inc. and family members of the building owners.

Toby Ward, attorney for the applicants, said Bannum Inc. clearly feels the project meets the criteria required for special exception. The property was a former parts store with 20 parking spaces available. A residential re-entry facility is a program operated for the federal government Department of Justice by private contractors that serves as a transition for non-violent offenders who are scheduled to be released from custody. This has been seen as a way to transition them for normal life as opposed to institutional life. He reviewed the criteria for special exception.

Mr. Cromartie said with regard to traffic, it must be looked at in a broader prospective than the 46 residents and those manning the facility.

Mr. Ward said Mr. Brian Harr and Ms. Catherine Brown work for the Bannum Corporation in Greenville and could address how that operates.

Mr. Cromartie was very interested in speaking to people who will work on the grounds, speak to the turnover rate of the 46 residents, and speak to the foot traffic which is criterion 1. He also wanted to know more about the daily activities as Mr. Ward stated the residents will not be continually in the facility during the day. He wanted to know the standards of the program, and the rules and regulations placed on residents.

Gretchen Dawson, property owner, spoke on her family history, the history of the property and how her husband, Bill, started the business.

Brian Harr, assistant director of the facility in Greenville, represented Bannum, Inc. Mr. Harr provided history and background of Bannum, a residential re-entry facility.

Catherine Brown, Social Service/employment specialist with Bannum in Greenville, provided the day-to-day schedule for a resident when they plan to go out for a job search.

Mr. Cromartie questioned the size of the Greenville facility, and asked if Ms. Brown could provide the number of residents that came through the door in 2012. He is trying to find out how many new bodies will touch that parcel on a regular basis because that constitutes traffic.

Ms. Brown said the size is 47 beds. She did not know the number of residents for 2102 but did have it documented and could provide that information.

Mr. Harr said for the month of June they had 17 new residents, and will have released nine. The number fluctuates from month to month. April was significantly higher, while May was low.

IV. OTHER BUSINESS

Approve May 14, 2013 Minutes

Motion by Mr. McMeekin to approve the May 14, 2013 minutes; seconded by Mr. Cromartie. Minutes approved 5-0.

V. ADJOURNMENT

There being no further business, motion to adjourn the June 11, 2013 meeting at 4:58 p.m. by Mr. Cromartie.

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



SOUTH CAROLINA DEPARTMENT OF REVENUE

ABL-567

(Rev. 8/9/10)

4282

PRL

RETAIL LIQUOR STORE

16

ACABL 5221211008



SEVEN DAYS FOOD MART LLC
5050B FAIRFIELD RD
COLUMBIA SC 29203

LICENSE NO: 320598501
FILE NO: 32059850-1
DATE ISSUED: 07-21-2014
STIPULATIONS: 03

SEVEN DAYS FOOD MART
5050B FAIRFIELD RD
COLUMBIA, SC 29203

START DATE: 09/01/2014
END DATE: 08/31/2016
START TIME: 00:00
END TIME: 00:00

THIS LICENSE IS NOT TRANSFERABLE

OFFICE

***** You may not transfer this permit or license to another location or to another person. *****
If you sell all or a portion of your business, before the buyer can legally sell beer, wine or liquor, he or she MUST obtain his/her own permit or license. You can be held financially responsible for any violations of the law that take place by any person using your permit and/or license. You may be held financially responsible for injuries due to the negligent sale of these beverages by someone using your permit or license.

***** POST THIS IN A CONSPICUOUS PLACE *****

INSTRUCTIONS

This is your new license. Please fold on the above perforation mark and display in a conspicuous place. If you have any questions concerning this license, please call the SC Department of Revenue ABL section at (803) 898-5864.

You may not transfer this permit or license to another location or to another person. If you sell the business or change ownership name or business address, you MUST apply for a new ABL license.



42821017

GANOTAKIS /BOZA

06/11/13

TRANSCRIPT

BOZA: (1:47:25) At this time we will resume the June 11, 2013 meeting of the CoC/BOZA and staff will direct us to the next case.

The next case before us is 5050 Fairfield Rd. TMS # 11701-02-20 and this is a special exception to establish a liquor store. Basically in September of last year a business license was issued for a convenience store at this location and subsequently a liquor store was opened in January of this year and so now the applicant is seeking a special exception to bring the liquor store in compliance with the zoning order. I believe the applicant is present and can bring additional testimony.

BOZA: So the current use is not in compliance and hasn't been since January.

STAFF: That is correct.

GANTOTAKIS: My name is Andreas Gantotakis and I am the owner of the convenience store/liquor store. I started this business last year around October. I leased the property that was an empty building. I leased the building and asked that they give me a license for beer and wine and liquor. I have a protest from the neighbors and we have been in court. In January they gave me a license for beer and liquor. About a month ago they came out and asked me if I have a special license, a special exception license for liquor and I told them no, I didn't have it, I didn't know and I asked the person from revenue what the next step. They told me to go ahead and open the liquor store and sell and they came and inspected the building and I start the business. Right now I am doing the business. I am selling beer and liquor partial A and B. The convenience store is A and the liquor is B. I don't have any problem, the parking space and the neighbors a lot of people like what I do. The business when I had the building it was empty, nothing there and I painted the building, I remodeled inside and out, I got lights all over the building. Street lights and everything and everything is there and I am asking special exception for my liquor license.

BOZA: So you have already been approved to run a package store consisting with State law?

GANTOTAKIS: Yes sir.

BOZA: And the community was present at that interim hearing?

GANTOTAKIS: Yes sir.

BOZA: How did you wind up doing something you were not approved to do? As indicated by the chair, you are doing something now that is not approved. Is that correct? I am not sure I understand this. You had no approval by the City. The City had approved beer and wine, but not liquor.

GANTOTAKIS: (1:52:05) No. I am just asking. I didn't know that I have to go zoning for special exception. When I asked the Dept. of Revenue what the next road, they told me your building has been inspected, so you are good to go. So I ordered the liquor.

BOZA: You didn't know you needed permission? You did not know you had to come to the City for permission?

GANTOTAKIS: No. Even when I asked the first time when I applied for the liquor in September for beer and wine license for the convenience store, nobody told me I had to go to zoning. So I was continually

doing business. I opened my convenience store without beer. I was struggling until I got the beer license. Since January the business has been building, so for the future I am probably giving job opportunity for the neighbors. (1:53:05)

BOZA: Is it roughly a summary? Basically what he is approval for in September 2012, was the convenience store, subsequent to that he applied for a liquor license with the State and was approved but did not get the special exception license with zoning, so that's why we are here today. We king of cam upon it after the fact.

GANTOTAKIS: Let me tell you what's on my mind. Can we do something in the future for those who come forward to the City for a business license for a convenience store point out the fact that if they want a liquor license, there is an addition application process. It might be an easy fix to ask and that might be the way to handle it if they want to comply. If you want a liquor store, you have to do this, so this doesn't repeat itself and maybe we could handle it like that.

BOZA: If you would sir, would you please speak to the impact of your continued use of the building upon traffic, vehicular and pedestrian safety, noise, lights, views, the esthetic character of the environment and the orientation spacing improvements regarding your building?

GANTOTAKIS: About the traffic. The traffic is located on four way highway and there is a train on the left and right. I've got a big parking space. You can probably park 26 cars across there. You can turn an 18-wheeler there. I don't have any problem there. I don't have any noise there. I keep it clean. Everybody likes it. If you look inside, it is very clean inside the store. Most people around like it. About the liquor store, it's the same thing. We keep it very clean for the neighbors and the best price for that area.

BOZA: So when you took over the property, you improved the property, is that correct?

GANTOTAKI: I did everything inside and out. I painted and put up lights. There is a lot of signs around the building. I already talked to Mr. Ariel and I have to move some signs. I already moved a couple of them, but there are a couple of them left. Since that, I do my best to clean all around. Nobody sits around there and I just clean around there for the neighbors.

BOZA: Is there anyone who has questions for this applicant? If there anyone who wishes to speak for or against this applicant?

BOZA: I do have a question. Can you tell me about the area around your store? Are there other places to buy liquor nearby?

GANTOTAKIS: Yes, right there on the Food Lion parking lot there is one.

BOZA: There is already one?

GANTOTAKIS: Yes. Been there for a long time.

BOZA: Is there anyone here to speak in favor for or to opposition of this application? If so, please come forward to the podium.

RHODES: (1:57:11) My name is David Rhodes and I represent the Cabb Island Community neighborhood which is directly behind the liquor store on Fairfield Road behind the cemetery. There is a cut-through there on Villa Hermosa which is supposed to be a secure area. There is a fence on both sides, but the gate is broken so they cut through right there, right beside my house and into the area. We don't need another liquor store for or in the Eau Claire area. I have been living here for about 8 years now and seen a lot of money spent on N. Main Street in businesses and the only thing that I have

seen are convenience stores and you can literally stand on any corner around here and throw a rock and hit one. Beer stores are all over the place and we have grocery stores that need upgrading and they won't do it because the community is not moving fast enough and a liquor store is not going to help this. There are already liquor stores here. We don't need it. If you go back to those pictures that you saw there, the one thing that you don't see is the proximity to Alcorn Middle School which is less than ½ mile up the road, or the proximity to Eau Claire High School which is over there also and a lot of kids in this neighborhood, they walk to school. They walk up Fairfield Road, they walk down N. Main Street, and they walk right in front of that place, and that place will be open in the afternoons. You have to look at traffic. What it's going to do the kids as they are walking down the street; the type of people that you're going to have hanging out at those places in the afternoons. We just don't need another liquor store. We need family oriented businesses in this area and it's not getting it. Approving another liquor store for this area is only going to be a deterrent to this neighborhood. Thank you. (1:59:11)

BOZA: Excuse me, I have a question for you. Have there been any incidents around this location?

RHODES: Not yet. He hasn't been open that long, but what I have seen is where the cut-through is at the Villa Hermosa Apartments right there, you see a lot of pint and half-pint bottles. There have been people who go behind my house and behind Villa Hermosa and in those woods and in that creek area that runs along- side his property. They go over there to drink and they will toss the bottles, and that's where they stay at. The police, I have had to call at least twice and have the police come down for people who were back there drinking and raising cane. Back there in the back, talking all loud and being really loud and obnoxious. (1:59:55)

BOZA: And you know these people came from this store with their purchases.

RHODES: I have no idea where they came from. I know if they came from that area. I don't have cameras that can visualize all of that. I doubt very seriously that you've got cameras too, but the Eau Claire area really needs positive type businesses here and a liquor store is not going to be that type of business. (2:00:19)

SPENCER: (2:00:31) Good afternoon. I am Chaplin Spencer and I'm here representing the City of Columbia in opposition. I know you're all looking at me a little bit strange representing the City, but they are separate and distinct. You are an independent board. You are the decision maker, but they do have concerns. They have concerns about areas being inundated with liquor stores.

BOZA: Before we get started, can you tell me more about representing the City?

SPENCER: Yes, City Council authorized me to represent them.

BOZA: The City Council?

SPENCER: The City of Columbia, the City Council. Yes, and that's why I stated it was a bit strange, it does happen. Liquor stores are legal but they are regulated. You have to have a special exception. It's under zoning. Then you go to look why do we have zoning. What is the purpose of zoning? So I look to the S.C. coding that authorizes municipalities to impose zoning regulations. The purpose of zoning is to enable municipalities to preserve and enhance their present advantages. To overcome their present handicaps and to prevent or minimize such future problems as may be foreseen. That code section goes on to state that zoning regulations are necessary and proper to promote the health and safety, the appearance, the convenience, the prosperity of local entities, municipalities. Some areas are appropriate for some uses, others are not. That what zoning is about. Special exception is for you to look at this particular area and see if this parcel is appropriate for a liquor store. With a special exception, like a variance, the applicant is going to have the burden of proof. When you are doing this, what are your duties? Well your code provides that under special exceptions, you have a duty to deny special exceptions when not in harmony with the intent and purpose of the zoning code. What do we

get with the intent and purpose: preserve, enhance and overcome present handicaps and minimize future problems. You can also prescribe appropriate conditions. I am not going to get into very much detail about facts, because there are going to be other people. So I am going to be brief. There is a lot on your agenda. It is undisputed that this area is very close to a school, Alcorn Middle School. It is also located across the street from a cemetery and residential areas. I'll hand you a map that shows this is literally hundreds of feet down the street from another liquor store which I think is important material. Unfiltered penetration of liquor stores is a problem. It can cause blight in the areas. They start, they come on, they are not good for the community. There is another liquor store that is close by. Unlike that one, this one is bright, it has the big polka dots, it has a lot of signs, posters, it is screaming, come here. You get kids across the street who are biking to school, walking to school. In accordance with public policy both on a federal and state level, you need to build sidewalks to get children to walk. You can look at that with some of the conditions if you were to grant this which I oppose. I'll hand you another picture which shows the difference between this other liquor store that is just a few hundred feet down the street. Its tucked away. It is not out there screaming to the community. So now let's look at the facts in this one, traffic. It's a liquor store. Liquor stores are a quick in and out. You are going to have a lot more traffic from a liquor store than some other users such as an office or a restaurant. Pedestrian safety. We already hit on that briefly. This is right by a middle school where you want kids on bikes, you want them walking. They are going to be adversely affected. (2:05:13) Aesthetic character. You got more pictures of this building. It's not going to look good and I believe if you look at these facts, it is not going to help this community. Adversely affecting the public interest. Another liquor store, this close to a school, in an area that needs a little help, is not going to help the public. Public interest is to help protect citizens and property. It is not to allow undesired development. Another element I hit on is harmony, which is in your code. Inundating an area with liquor stores is not going to keep in harmony, which is in your code. You have the ability to regulate. On behalf of the CoC, I request that you deny this special exception and if that is not the case, please look into putting some special conditions on the exterior of the building, the façade. The number of posters they can have; the size of these posters. Do anything to help regulate, to help this community a little bit. I do believe it is in the best interest to deny it because of its proximity to other stores, schools and residential area across the street. Thank you. (2:06:31)

BOZA: I want to state several things. We, of course, appreciate the service of the City Council and are glad that they thought to provide a representative with respect to this application. I find it very informative that you have listed as one of the reasons why you feel this should be opposed is the proximity to another liquor store and to the number in one community. That issue has come up twice before to separate issues, not liquor stores. One was recently a convenience store/gas station and so I would like to ask you as a representative, that you might be able to communicate to those that actually provide us with the criteria for making a decision. That may be something you want to take a look at in working with staff and may be able to avoid some of the appeals. The issues that you raised on behalf of the council can be of direct interest in our decision making.

SPENCER: I understand your point and I do hear you. Its duly noted. I think that you do have the authority to look at those as a whole with all of the zoning abilities that you have because it is a special exception, so you do get to look at all that applies. But you are looking for something more specific and I hear you and I will see what we can do to provide you with some more tools in your chest. (2:08:07)

BOZA: Can you give me some specifics you think would help minimize the impact of this use, if it were to be approved?

SPENCER: One of the things I saw some pictures, and some other people are going to give more factual testimony, so I tried to stay away from that, but there were some large posters and you see those and in some liquor stores you see them and in other you don't. They are large pictures and in some of them you see scantily dressed people in the advertisement. They are bright colors. Come by for this sale price on this certain type of liquor. Maybe just a certain number. You don't want to prevent a lawful business if you were to allow the use from making a living, but maybe a certain number, maybe 3, 4, 5 or

6. But some of these and I think this one, the whole front was covered with these pictures. It doesn't look good. It doesn't look good for the community and I think if you limit maybe the color, the appearance, or the size, maybe 12 x 24. (2:09:25)

BOZA: But these are on the exterior.

SPENCER: A lot of them are on the interior on the windows, so they tape them from the inside so you can see them from the exterior. They look like exterior signs as your riding by. (2:09:39)

BOZA: I have a question for staff. What about our limits on the size of signage?

STAFF: No actually a sign visible from the right of way has a size limit and a number of signs limit.

BOZA: So its already there.

STAFF: Admittedly a bit hard to enforce because these tend to be temporary signs and they come down and go up quite easily.

BOZA: If you see a pattern can you deal with it as a pattern?

STAFF: Yes.

SPENCER: It would be an enforcement issue, but if you could have something in addition to the conditions. I understand that and the problem is some of these are weekly specials so they have a tendency to come up and down, by the time there is a complaint, you get a code officer out there. (2:10:38)

BOZA: There is another liquor store directly across the street. I don't understand how we can with any kind of legality, but I guess enforcement is enforcement. Enforcement needs to be equal. I want to make certain we don't treat businesses differently because they may be painted a different color or they may have something outward that someone may find offensive that someone else might not. I just struggle with that. My only other question is that, when you say you represent the City, so City Council, everyone on City Council opposes this application?

SPENCER: I am not going to speak individually but City Council as a whole has authorized me and our firm to look into these liquor store applications and those that protect the public interest and I know they act as a whole, as a group and I wasn't there on those type of discussions and communication so I can't get into that. (2:12:15)

BOZA: If someone says they speak for the City, I know you may not have that factual information, but its like when someone comes up and says I speak for such and such neighborhood association and someone else comes up and says they might but I don't speak for me and I live in that neighborhood. I am just trying to get my head around, so everyone council where I guess a majority of council has engaged your firm. Is it just liquor stores because I think what chair has said, is it just liquor stores or is it gas stations? What exactly that council has engaged your firm to do?

SPENCER: I don't want to get too far with the attorney/client privilege about what all they want me to do, and I am not trying to be coy, but they may not want everything out there, but it is primary with the liquor store. (2:13:12)

BOZA: That would be open under FOIA wouldn't it? I am just trying to make certain sir, you speak for City Council.

SPENCER: Yes and I do believe there was an overwhelming majority, but I am not going to get into specifics, but also City Council if there wasn't, they act as a body, they act as a whole. So if was a 4-3, it would be the action of the City Council. (2:13:40)

BOZA: The majority of the forum has taken this position.

SPENCER: Correct.

BOZA: One thing that I want to respond to is the idea of equal treatment. Whenever you have distance requirements you run into equal treatment. If you the first one there, the next one has to be x distance from that one and so to the extent that the concern is the concentration of a particular kind of thing in that area. Its not unfair its just that is the way distance requirements are done.

My concern is that we have this come up regularly where people go and apply for a license. Ignorance is not a defense but many times there seems to be not a lot of coordination to prevent these types of cases from coming before us.

SPENCER: I find it odd too that they were able to get a permit but they did. They still have to comply with the law. I think that there are measures being taken to try and . . . (2:14:58)

BOZA: I am not sure they had a permit to do what being done. We are back to this thing. What is a City Council, what is a permit. We got a permit for something but not the something at issue today.

SPENCER: Correct and they still have to get a special exception to legally operate and that is the issue, and they don't have one.

BOZA: Maybe this is for a different forum, but it isn't about just preserving and enhancing. There is a part of capitalism where the City is not always easy to deal with. What I would encourage is more coordination so we don't have these types of cases coming before us as frequently as we do.

SPENCER: Request de-mark criteria.

BOZA: (2:15:12) How about just more coordination. How hard is it for DOR with the liquor licenses to communicate with the City and vice versa? Somebody comes to apply for a permit let them know the steps. I know in my business you have to lead the people to let them know the steps that are coming so that they can prepare.

SPENCER: I agree and we are trying to address that with more communication. Once an application gets in, we have discussed that, being more proactive. Should have been put on the notice, but evidently things did slip through.

BOZA: This is what I am going to do. This is a big of discussion and I think it is important. I am going to ask since you are a representative of Council that maybe you work with staff to facilitate better discussion between the two bodies so that we can better serve both bodies the City and the citizens of Columbia. Also I am going to ask for anyone else that is in opposition or in favor of the application so that we can keep the proceedings moving forward.

SPENCER: Thank you.

BOZA: I was just going to say that I agree with that and since we are appointed by City Council and for them to send you to this to represent them, it kind of irks me.

SPENCER: I can understand and that's why I said this is a little different thing and I smiled when I said I was here representing, because I knew I was going to get comments. I think they were just trying to

and perhaps we can do it a better way but they wanted to make sure everything was put on the table and all the standards were there . We will work with that and I understand your concerns. (2:17:20)

BOZA: Anyone else in opposition or in favor to this application, please come forward.

NELSON: (2:17:46) Good morning. Can you hear me? My name is Steve Nelson and I'm a 25 year combat veteran. Its funny I served on Richland County Zoning Management Board for 3 years. I was listening to the comments and this gentleman runs a first rate convenience store/liquor store. He has cameras, it is clean. He doesn't have lottery *(he is really saying loitering) at his store. I have been there 6 times. I was listening to one gentleman who was saying somebody taking short cuts and kids going to Alcorn. That's not true. There are no kids walking up and down that street. I live in 29203, I own several properties, I have no financial interest in this store. I go there and my wife goes there and we feel perfectly secure. He has cameras. One gentleman said about the pictures. What do they have on billboards all over the City. He runs a first class business, he has cameras and he is going to hire local people. He has a lot of money invested. I used to own a business so I understand. He is going to hire local people once he gets going. I ask you Mr. Chairman and board members to approve this special exception.

BOZA: You understand today we are not talking about the convenience store. Today we are not considering whether it is a good convenience store. We are not considering anything about beer and wine. All we are considering is her today is just the one narrow point of hard alcohol liquor being sold there.

Nelson: I understand Mr. Chairman. I understand. The gentleman is already selling alcohol. I ask that you guys grant him special exceptions. I use to sit where you sit. I understand the proceedings. (2:19:57)

BOZA: Anyone else in opposition or in favor to this application.

Brown: (2:20:09) Hello, my name is Patricia Brown and I am the president of the Northwood Hills Neighborhood Association and I come before you because I have 6 concerns. No. 1. We want walking in our neighborhood and people do walk in that area on Fairfield Rd. and people tend not to be comfortable walking in an area where there is a liquor store due to the fact of loiterers and possible harassment so that is one concern. Another concern is that I have talked to presidents in the neighborhood associations in the Eau Claire community and I tried to talk to all of them. I did not talk to all of them but I left messages for some but the ones I did talk to talked to me about their concerns about their neighborhoods and how there seems to be a proliferation of liquor stores. That they are having more than one in their area and they think that should be reconsidered. One store in the area is entrepreneurship, but when you have a proliferation of liquor stores in a family community, in our opinion, that begins blight. We want to know can you do anything about limiting the advertisement and its visual effects on people walking and people passing by. No. 5. We want to revitalize the Eau Claire community and encourage young families to choose this neighborhood but with multiple liquor stores young mothers have a real concern about is this the neighborhood I want my family in. Young families tend to not to gravitate towards those communities. We want to do things that are going to make our community, when people are looking for a home they will choose us. No. 6. We have been designated in Columbia 29203 as the area with the most concentration of health problems. Healthy Columbia/ Eau Claire Cooperative Health Centers is trying to improve the health of our neighborhood. High liquor sales does not contribute to the physical health of a neighborhood. We are not opposed to entrepreneurship. We do not want to do anything to stop the proprietors from making a living. We simply want you to consider is there something you can do to look at, when you are considering approving a liquor license, can you do something about the proliferation in the community? Can you do something about limiting the number that are there in a designated small area? Thank you. (2:23:22)

Brown: Excuse me madam. I was trying to write down 1-6 but all of a sudden I seemed to have missed one. (2:23:31)

Brown: The first one I said is we want people walking. Sometimes people get concerned about walking past liquor stores. No. 2 was other neighborhood presidents listed their concerns. No.3 is one store is entrepreneurship and multiple liquor stores in an area tends to be blight. No. 4 is can you limit the visual effects of the advertisement and 5 is we want to revitalize the Eau Claire community so young families come because we are an aging community and we need to bring in young people if our neighborhood is to survive and No. 6 was we have been designated as the most unhealthy neighborhood in Columbia. (2:24:29)

BOZA: Anyone else in opposition or in favor to this application

ALLEN: (2:24:54) My name is Pearl Allen and I am a resident of Northwood Hills. I built my home there in the middle 60's and I am also a retired teacher of Richland One. My concern is and I am going to be very specific. This store is already in operation and selling alcohol and I went by there this morning because I have not been inside and as I approached the front door, I notice it is padlocked. I looked through and you can see the double doors and if you open the right hand side you go into the convenience store and the left hand side you go into the liquor store. Ok I am a middle school student and I am right here in front of the door and I've got to make a choice. It's a bad choice to make for anybody. Inside is just a partisan I can see the wooden dividers, but the partisan is not complete. It seems to me a poor arrangement for any kind of store. I think you have a map of the layout of the store in your packet. Some of the other things that concern me are the proximity to the other liquor store in the Food Lion shopping center of which this other liquor store has been a part for many years. You can see if your camera will focus you can actually see from one liquor store to the next across the parking lots. Also the cemetery across the street and up the road very slightly has been a place where burglars have stolen property from the homes and then hid them in the cemetery to come and pick up later. I don't want the cemetery to become a place where alcohol is consumed at night. Bottles get thrown and noise at night. The nearness to the school is another issue. You may say it does meet measurements provided by law, but it barely meets the measurements provided by law for distance from a school. You can see from one to the other and you can cross the street, the children cross the street as they walk. These are the major concerns I have. I am sure there will be some mentioned by other speakers (2:28:33)

BOZA: Anyone else in opposition or in favor to this application. Outside of the woman who is at the podium now, who else is here to speak in favor or opposition of this application. Would the two of you please queue behind this woman at the podium. I would ask that those of you who wish to speak in favor or in opposition bring different points than those that have already been brought and/or speak to the criteria which were are tasked to make this decision and if there are none others to speak in favor or in opposition I would ask the applicant to take his position at the end of that queue to proceed with his testimony.

SAVAGE: (2:29:30) Good afternoon my name is Christy Savage and I am the president of the Eau Claire Community Counsel which is the umbrella agency for approximately 40 neighborhoods in this area. I am the immediate past president of the Northwood Hill Neighborhood Association. We are opposed to another liquor store. I hold in my hand a photograph of the liquor store and if you look at the red dot in the corner you can see the proximity to the other liquor store that has been there approximately 30 years. I will not be redundant but I will emphasize that we live in a community that is attempting to make this area a better place. We fought hard for the street-scaping on Fairfield and North Main and the light there because we were concerned about safety issues. The City has spent a lot of money there. We want entrepreneurs in the area. We want business that is going to enhance the community. In addition to the 2 things that I mentioned, I coordinate a program that initiates health in Eau Claire. I have so many things Eau Claire. Eau Claire Cooperative Health. We are focusing on things that create health issues for people in this area like asthma, diabetes, HPB, cancer, strokes and all of those things

that impact those areas so we want to make this a healthier place to live so a preponderance of liquor stores does not do anything to enhance that. My experience has been, not only in this area but areas, and I have lived in other places in North Carolina and Syracuse, NY, is that when you have a concentration of businesses like that it does not contribute to the community. It tends to bring the community down because it attracts a certain kind of clientele. I respectfully ask that you deny the special exception for the liquor store but I want you to understand the close proximity to the other store that is there. It has served us well. The particular store is across the street from Alcorn. You can throw a rock almost to the next liquor store so we do not need another liquor store in that area. Thank you. (2:32:39)

BOZA: I would like to make a comment about this picture. I'm sure the others might want to notice. Counting, I see we have 9 red dots as opposed to whatever. I would like the staff to look at this picture and decide if it complies with our sign ordinance. Finally, I do see a sign here that denotes he sells lottery tickets. Earlier a witness said that they do not sell lottery ticket but there is at least a sign saying that they do.

SAVAGE: Are you able to see the red dot store that I pointed out?

BOZA: The one in the distance.

SAVAGE: Yes.

BOZA: The one in the shopping center. Yes. I had to take my glasses off but I see it.

RHODES: (2: 33:25) Good afternoon. My name is Cindy Rhodes and I live in the Eau Claire area and I moved there about 8 years ago. We relocated to Columbia because we wanted to be a part of the revitalization of downtown and we have contributed. I usually walk the neighborhood with my dog and when I see my neighbors I try to share what has been going on. I have notice several men lingering around the neighborhood. I don't go far distances. I only walk a 2 block radius of my house. I have seen 1 man being there. I have seen him go in and out of the neighbors houses when the people are not home. I said to myself the next time I am calling the cops. This is the kind of stuff that attracts people like that. When I go for a walk in the mornings I can see where people have sat and drank 2 or 3 beers leaving their cans and trash and don't pick up. These are simple things but to you this may not sound like a big deal. To anyone else this may not be a big deal but I live there and I want it to be clean. Not just trash clean but business clean. I was surprised to hear a man say he doesn't go to the Obama Station to get gas. I don't go to that one, I don't even go to the corner gas station. The lady who was talking about putting in a gas station, I will drive 5 miles to get gas just to be safe. I want to live in a safe community. This does not make it a safe community. I want to shop in my neighborhood. I don't shop in my neighborhood. I won't go in there if I want liquor I'll go to Fort Jackson. I'm a veteran too. Seriously. That is how I feel about it and I want to thank you for your time and I hope that you will vote in our favor. (2:35:39)

HARTLEY: (2:35:45) Good morning I am Inspector Hartley of the Columbia Police Department. I'd like to address the concerns of citizens that brought up the proximity of the businesses selling alcohol to each other as well as Alcorn Middle School on pages 4 and 6 and also the concerns of safety in the area with this type of store attracting a certain type of clientele. As you can see on page 4 there are approximately 15 businesses in the proximity of Alcorn Middle School that sell alcohol of some variety. Four of those locations sell liquor. That is including 5050 Fairfield as they are actively selling it. The other locations sell simply beer and wine. All the business that is in question here are within visual distance to the liquor store inside the Food Lion Shopping Center. It is not the closest in proximity by law regarding its distance to Alcorn Middle School and that is demonstrated on page 6. Statistically speaking the 2 liquor stores are within ½ mile of Alcorn Middle School and are not a crime problem if you have had an opportunity to look at pages 9 -13 in the packet I just gave you, you will see the crime

statistics for convenience stores, liquor stores and other businesses in the Food Lion Shp. Ctr. for last year and this year in a comparisons table. (2:37:40)

BOZA: Let me interrupt you and ask a question. In respect to Seven Days Food Store which is the application before us what information do you have for crime stats that have taken place on that property. (2:37:57)

HARTLEY: We evaluated the first 5 months of this year on comparison to the first 5 months of last year when they weren't there but in our evaluation of this year we were able to determine they have only had 1 crime on the convenience store side of the business was victim to a burglary.

BOZA: So there is 1 crime to the convenience store and there is no crime to the liquor store and the application before us is for the liquor store is that correct?

HARTLEY: Yes.

BOZA: It takes a while to adjust all this up. We are trying to catch up her but looking at the tabulations starting on page 9, would it be fair to say that this idea of concentration and even though you can't say a particular store is the problem, that the sheer number of them so close together creates the problem.

HARTLEY: Statistically speaking we cannot point to any variety or type of business that is creating or not creating a problem but I can tell you that in 2012 the first 5 months of the year that this liquor store was not open and with that liquor store not being open crime actually went down in that area. There was no increase in crime with the addition of a liquor store.

BOZA: So your data does not support any sort of idea of cause. Your data does not support a claim that they cause crime.

HARTLEY: Rather than going through a hypothetical situation saying that they should or should not we actually had an opportunity to evaluate what has happened because they have been selling liquor for the last 5 months and in the 5 month comparatively speaking crime has gone down.

BOZA: I am not sure you understand my question. The objection of the neighborhood and the concern of the City as well is the concentration. They are trying to say there is something unique about these stores and so obviously if you have just arrived you haven't caused it. I understand they had not been there and tracking over time you can have things go up and down along the graph but as to these stores and their concern of the concentration.

HARTLEY: If you look at page 11 and considering the fact that of the 15 stores, 12 of them sell beer and wine the crime stat for a convenience store that sell beer and wine is higher than that of a store that sell liquor. So if you are looking for concentration in both sheer numbers and crimes per location your convenience stores that sell beer and wine would be more of a concern than the liquor store. This is just numbers I am not saying that its not a contributing factor, I am just simply stating statistics.

BOZA: I have a question. Please help me. You put this together for, what is your bottom line presentation with these numbers. What are you trying to tell us.

HARTLEY: I am only addressing the concerns of the citizens regarding the concentration. I am just giving a visual of the proximity of the liquor and beer and wine sales in the area within that one mile of Alcorn and to address the crime based on liquor stores and that liquor stores do not statistically speaking to cause or be an instigator of crime in the general area.

BOZA: I am looking at this picture and it doesn't seem to be a densely populated area. The homes are pretty far apart. I know they are close to a school but I am just speaking of the picture I am looking at or do I not have the total picture.

HARTLEY: If you will look at the picture on the front of my packet you will see . . .

BOZA: So this is the actual. Ok I got you.

HARTLEY: (2:42:14) You will see the neighborhood is behind the Food Lion pkg. lot and also behind the 50/50 liquor store and I have also included the residential neighborhood across the street. Like I said, the police department, we are not in opposition or support of this we are just trying to provide information regarding proximity and crime data.

BOZA: We wrestled with the nature of these statistics with another one and for example the 1 crime in Seven Days they were the victim.

HARTLEY: Yes sir.

BOZA: Let me ask you some questions based on the numbers and I am not asking you to reach a conclusion, I am just asking questions based on numbers. Does the data support or does the data show a correlation between the increase of liquor stores and the increase of crime.

HARTLEY: Specific to liquor stores it does not support an increase in crime.

BOZA: Alright, thank you. You have got on page 13, other businesses.

HARTLEY: Yes sir, these are business types inside the Food Lion shp. Ctr. and at the intersection of Fairfield and N. Main. You have gas stations, general merchandise, clothing stores, restaurants and the additional stand-alone liquor store. Based on an analysis between January –May 2012 and January – May of this year, in 2012 the general merchandise store and the gas station that sells beer and wine had the highest rates of crime and in 2013 they reversed with the gas station having the highest rate of crime and the general merchandise store having the second highest rate of crime, the liquor stores for each of those years has 0 or 1 instance of crime for the 5 months we analyzed .

BOZA: One more question. Numbers are numbers. We add them, subtract them but experience is something that is also important. If you would could you tell me what your experience with the Columbia Police Dept. tells you with respect to liquor store concentration and crime.

HARTLEY: The perception of the community is that liquor store increase crime. From the police department stand point, from an administrative stand point and I use to work the Eau Claire area, from an administrative stand point, they do not increase crime. I know that the public perception is that they do and it would be up to Capt. Kelly or someone from Northwood to determine if the perception from the community that this location would be problematic.

BOZA: Thank you. At this time I would have the applicant come forward and after the applicant speaks I will close testimony on this matter and it will go on to the board for special review.

GANTOTAKIS: (2:45:55) I would like to just mention about the advertisement on the building. I think there are requirements for my type of business. Mr. Andrea told me about that so whatever is extra, I will remove them and as far as the lottery sign from the commission, I have lottery. With the entrance having left and right, 95% of my customers drive in, most of my customers drive in so I am trying to improve my business, I do my best to have better quality service for my neighbors. **(2:46:51)**

BOZA: (2:46:52) One thing that was brought up by a citizen and is a concern for me is the image of making beer and wine attractive and I know that you have business you have to market and advertise, and there are signage regulations, but could you speak to some of the signs in the windows. Can you speak to making vodka attractive to your clientele. I imagine a liquor store is somewhat of a destination location, and it is liquor and I get that, so I am concerned about the image of alcohol being made attractive to young minds that may be walking up and down that street. Your business is your business and you have a right to have your business and I respect that, but I don't like the idea of young minds seeing a vodka bottle next to a scantily clad male or female thinking that if I drink this I will be cool. Could you speak to that imagery in your window at your location.

GANTOTAKIS: The pictures I have are very small pictures for advertisement for liquor like Seagram Gin or whatever. They are inside the building. The building is glass, so you can see them from the outside but most of them are inside. The other advertisement is like cigarettes and lottery and all that so I am going to remove whatever they told me to remove for each business. I do not think I have big advertisement for liquors. **(2:49:00)**

BOZA: Are there any other questions for this applicant. At this time I am going to move to close and forward this for discussion.

BOZA- Mr. Young: (2:49:17) I will go first. I think there are several things on this that kind of bothers me. One, I definitely don't like the location in regards to the school. I am very familiar with the area. I know there are kids and single parents walking up and down that street not to mention the school traffic from the kids. The other liquor store, Calvin mentioned concern about that, a while back we have a business in that plaza for 18 plus years and that liquor store was there then probably before special exception were required in C-3 zoning so that's how that one was there but this location years back I remember when it used to be an auto store so I am very familiar with the area. There are several walking trails behind the plaza that people walk back and forth all day and night, but that proximity to that school is a major concern and there is no way I can feel comfortable with that store operating there. I will go back to the original testimony of the applicant that when he had just the convenience store only going, business was bad so he saw another way and went ahead and took it upon himself, no permits or anything to just section off part of the building and do a liquor store. Business picked up. I am not even sure with the way its set up that it qualifies to meet a separate entrance into the location. Those same double doors are used as just a patrician separating one side from the other. So a lot of things kind of bother me, but the main thing is that location to the school. **(2:50:54)**

BOZA-Mr. Cromartie: (2:50:57) I hear that concern. I understand that concern, but one thing that is different from other applications of liquor stores is that the State has already approved this. The State has a requirement that it be a certain number of feet from schools, playgrounds, churches, etc. Although this came to us in an improper format, it comes to us with more information than we generally have when we have this decision in front of us. We know that there are certain State requirements that have already been met. We know that is not an issue by that it exceeds our jurisdiction for decision making. We can dislike it, but unless we change State law or go beyond our authority I don't know if we can look to that as grounds for denying the use as it has been presented. **(2:52:05)**

BOZA-Mr. Young: (2:52:06) I agree with that but basing it on our criteria there are a couple of different things that stand out. No. 2 proposal on vehicular and pedestrian safety, I would say that that would, I am not a traffic engineer but being very familiar with that area that being a 4 lane road with no median just 2 yellow lines its very difficult and people cross that street all the time. I have witnessed accidents. That is a tough stretch of road to cross in that corridor. The only cross walk would be now at the new multi-million dollar intersection at N. Main and Fairfield Rd. and up in front of the main entrance to the school there is the new intersection. But other than that it is probably a ½ mile or more stretch with a plaza, residence and school that there is no real intersection and folks do cross the street. That is a pretty dangerous stretch of corridor. So notwithstanding the State's requirement they looked at a distance, a number not like our criteria no. 5, not no. 5 but the one that effects public interest. I think

that far outweighs the State having a number on a distance requirement. So not even considering their requirements they have their criteria and I feel we have ours. (2:53:39)

BOZA-Mr. McKeekin: (2:53:40) I guess for me it comes down to the public interest, because if that is a dangerous street that does not have anything to do with the liquor store. That is something that the DOT ought to address . . . if you are going to hinge, I mean I appreciate both what Ernest and Preston proffer but again if it's the public interest, it's the public interest, but if it's a busy road and people cross it that doesn't have anything to do with my line with a particular kind of business. (2:54:12)

BOZA-Mr Young: . . . (2:54:13) I was just looking at no. 2, the impact. I think if anything where traffic comes out and pedestrian safety is affected, that is why I related it to that. I think anything along that corridor affects it. I think the existence of that there affects it, so . . . (2:54:28)

BOZA-Mr. Cromartie: (2:54:30) Do we have any other comments or discussion regarding this matter. : (2:54:35)

BOZA-Mr. Hubbard: : (2:54:37) I hear the language of the distance requirement in terms of schools. They do satisfy the State apparently. I am not sure we are preempted from dealing with it in a different way. Maybe we can consider that but I am bothered more by the ideal of proliferation. There is a way that that a community can die or suffer, have trouble by way of the image of death by 1000 cuts. (2:55:09) No one of them does anything but you get to many of them and pretty soon you get a severe bleeding going on and we have been dealing with N. Columbia for a long time now and we will continue I am sure, but it does seem to be an area where the metaphor is unusually apt perhaps. If you look up the discussion of C-3 zoning they have a long list of various things, and one of the things we are talking about is depreciation, a concern with the depreciation of property and property values. So that is one concern. We could look at that. I am sorry we don't have better data from the police department but I understand the problem. It is hard to have enough resources to know to what extent we can connect with it. I found the photograph that was introduced , quite frankly, kind of interesting. I don't see how anybody can say that store is really a positive. There seems to be no shortage of its services either for wine or food or hard liquor in the community. So in terms of looking at the public, first going back to the reasons of Bob McKeekin in terms of our criteria, the reference to the language of special exceptions 17-112(2) about intent purposes as quoted by the representative of council regarding C-3, that is why I am going back to the language of depreciation of property values. That is the reason we thing about zoning. Again that adversely affects public interest. We have been talking about that for years and I think it is pretty clear that at some point we need to say, you can't have yet another one, because this one is not the one that's killing the neighborhood. It doesn't mean we should say yes. We will never be able to approve another one of these is killing the neighborhood, yet everyone knows that if you put them all together, you've got a problem. So I guess I am coming down with you based on those, and also I don't know how to fix it in terms of the aesthetic and character of no. 4. Again the picture the woman introduced, now think about it, what is that doing for the neighborhood. Everybody saw it. One would almost prefer an empty building compared to the types of signs, the way it was advertised. I think there are just too many problems with granting a special exception and I would for that reason move to deny it. : (2:57:48)

BOZA: (2:57:49) Is that a motion? That's a motion. I second it. We have a motion by Mr. Hubbard we have a second by Mr. Young. All in favor for the motion to deny, say aye. Aye. Any opposed? Opposed. The motion to deny the special exception passes. (2:58:18)

Sec. 17-112. - Powers and duties of the board of zoning appeals.

The board of zoning appeals shall have the following powers and duties:

- (1) **Administrative review.** The board of zoning appeals shall hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article, provided that those appeals must be taken within 30 days after the order, requirement, decision or determination which is alleged to be in error is made.
- (2) **Special exceptions.**
 - a. **Duties.** Duties of the board are as follows:
 1. Hear and decide only the applications for special exceptions as the board of zoning appeals is specifically authorized to pass upon by terms of this article;
 2. Decide the questions as are involved in determining whether special exceptions should be granted;
 3. Prescribe appropriate conditions and safeguards in conformity with this article; and
 4. Deny special exceptions when not in harmony with the intent and purpose of this article.
 - b. **Procedures in consideration of special exception applications.**
 1. A written application for a special exception shall be submitted indicating the section of this article under which the special exception is sought and stating the grounds on which it is requested.
 2. Notice of public hearing shall be posted on the property for which special exception is sought and shall be published at least 15 days prior to the public hearing in a newspaper of general circulation in the city.
 3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
 4. The board of zoning appeals shall make a finding that it is empowered under the section of this article described in the application to grant the special exception and that the special exception will not adversely affect the public interest.
 5. The board of zoning appeals shall not vary the conditions and/or provisions of sections 17-259 through 17-274 that establish specific standards that must be met prior to the establishment of several principal uses that require a special exception.
 6. The board of zoning appeals may prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both.
 - c. **Criteria for special exceptions.** In addition to definitive standards in this article, the board of zoning appeals shall consider the following:
 1. Traffic impact;
 2. Vehicle and pedestrian safety;
 3. Potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property;

CERTIFIED
A TRUE COPY
CITY CLERK

4. Adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and
5. Orientation and spacing of improvements or buildings.

d. *Effect of failure to meet conditions.*

1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which a special exception is granted, shall be deemed a violation of this article, punishable under the penalties established in this article.
2. Failure to begin or complete, or begin and complete, an action for which a special exception is required, within the time limit specified, when such time limit is made a part of the terms under which the special exception is granted, shall void the special exception.

(3) *Variances.*

a. *Duties.* Duties of the board are as follows:

1. It shall be the duty of the board to authorize upon appeal in specific cases a variance from the terms of this article as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in unnecessary hardship, so that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of appeals that the conditions listed under subsection (3)b. of this section have been met.
2. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts, shall be considered grounds for the issuance of a variance.
3. In granting any variance, the board may prescribe conditions and safeguards in conformity with this article.

b. *Procedures in consideration of request for variance.*

1. A written application for a variance shall be submitted demonstrating that:
 - (i) There are extraordinary and exceptional conditions pertaining to the piece of property;
 - (ii) These conditions do not generally apply to other property in the vicinity;
 - (iii) Because of these conditions, the application of this division to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
 - (iv) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.
2. The board may not grant a variance the effects of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably should a variance be granted, may not be considered grounds for a variance.
3. Notice of public hearing shall be given as described in subsection (2)b.2. of this section.

CERTIFIED
A TRUE COPY
W. D. H. H. H.
CITY CLERK

4. The hearing shall be held. Any party may appear in person, or by agent or by attorney.
 5. The board of zoning appeals shall make findings that the requirements of subsection (3)b.1. of this section have been met by the applicant for a variance.
 6. The board of zoning appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
 7. The board of zoning appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 8. The board of zoning appeals may prescribe a time limit within which the action for which the variance is requested shall be begun or completed, or both.
- c. *Effect of failure to meet conditions.*
1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article, punishable under penalties established in this article.
 2. Failure to begin or complete, or begin and complete, an action for which a variance is granted, within the time limit specified, when such time limit is made a part of the terms under which the variance is granted, shall void the variance.
- (4) *Joint applications for special exception and variance(s).* Whenever in conjunction with an application for special exception, an applicant files an application for variance, the board of zoning appeals may combine the applications and consider them simultaneously, provided that the procedures established for special exceptions and variances within this section 17-112 shall not be varied.

(Ord. No. 2012-096, 10-16-12)

CERTIFIED
A TRUE COPY
CITY CLERK

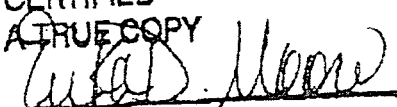


Sec. 17-240. - C-3 general commercial district.

The C-3 district is intended to accommodate a variety of general commercial and nonresidential uses characterized primarily by retail, office and service establishments and oriented primarily to major traffic arteries or extensive areas of predominantly commercial usage and characteristics. Certain related structures and uses are permitted outright or are permissible as special exceptions subject to restrictions and requirements intended to best fulfill the intent of this article. It is not the intent of this article to encourage the development of long, narrow strips of commercial development fronting on major arteries, often referred to as strip commercial areas. Such development is often incompatible with adjacent uses and may lead to the eventual formation of commercial slums, damage the traffic-carrying capacities of streets, increase congestion, lead to depreciation of property values in adjacent areas, encourage undue dispersion of commercial facilities to the inconvenience of the public, and create disproportionate costs in the provision of governmental services.

(Code 1979, § 6-3088)

CERTIFIED
A TRUE COPY


CITY CLERK

which do not complement or promote the high-intensity mixed use character of the area. It is also the intent that new developments within the -PD area are coordinated to ensure that the land use, pedestrian environment, urban design, open space, signs, streetscape and traffic circulation are sensitive to and implement the overall objectives and concept of the applicable redevelopment plan.

(Code 1979, § 6-3082)

Sec. 17-255. -CS collector street (minor thoroughfare) sign overlay district.

The -CS overlay district is intended to provide for the commercial promotion of business enterprises and/or presentation of public service information along appropriate, designated collector (minor thoroughfare) streets in the City of Columbia's zoning jurisdiction.
(Ord. No. 2000-024, § 3, 3-29-00)

Sec. 17-256. -AS arterial street (major thoroughfare) sign overlay district.

The -AS overlay district is intended to provide for the commercial promotion of business enterprises and/or presentation of public service information along appropriate, designated arterial (major thoroughfare) streets in the City of Columbia's zoning jurisdiction.
(Ord. No. 2000-024, § 3, 3-29-00)

Sec. 17-257. -FS freeway sign overlay district.

The -FS overlay district is intended to provide for the commercial promotion of business enterprises and/or presentation of public service information along appropriate, designated interstate system and freeway class highways in the City of Columbia's zoning jurisdiction.
(Ord. No. 2000-024, § 3, 3-29-00)

Sec. 17-258. Table of permitted uses.

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

(1) Symbols used in table 1 are as follows:

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

PLANNING, LAND DEVELOPMENT AND ZONING

§ 17-258

- g. "c" means that the indicated use is permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article.
 - h. "o" means indicated use is permitted in the indicated district as office only.
 - i. "a/c" means that the indicated use is permitted as an accessory use in indicated districts, but is also permitted as a primary use provided the owner and/or tenant complied with the associated conditions set forth in this article.
- (2) Any use not permitted in a district is expressly prohibited.
 - (3) In residential districts, the following uses are prohibited:
 - a. Storage in connection with a trade;
 - b. Storage or long term parking of commercial vehicles or industrial storage in excess of one day; and
 - c. Storage of building materials except in connection with active construction.
 - (4) A section number following the use category means that the use is allowed but must meet the conditions and requirements set forth in the referenced section.
 - (5) The zoning administrator may utilize the Standard Industrial Classification Manual to determine the appropriate classification of land use.
 - (6) Any drive-through facility shall require review and approval by the board of zoning appeals as a special exception.
 - (7) Temporary vendors are prohibited, except where the vendor is:
 - a. A person located upon land owned or otherwise controlled by the City of Columbia and operating with the written permission of the parks and recreation department, city manager, or city council. For the purpose of this exception a. to this subsection (7), land includes private property and/or right-of-way.
 - b. A sidewalk vendor for which city council has approved an ordinance granting a franchise.
 - c. A person who collects fees for permitted parking.
 - d. A corporation, foundation, fund, association, or club that is formally organized and operated exclusively in a not-for-profit manner or for religious, charitable, scientific, literary, artistic, or educational purposes.
 - e. A person participating in a fair, festival, exhibition, bazaar, show, or other like infrequent event sponsored by a corporation, foundation, fund, association, or club that is formally organized and operated exclusively in a not-for-profit manner or for religious, charitable, scientific, literary, artistic, or educational purposes.
 - f. A person participating in a fair, festival, exhibition, bazaar, show, or other like event at and approved by the South Carolina State Fair.

- g. A concessionaire operating with the authority of the sponsor of the event for which concessions are to be provided.
- h. A person participating in a garage sale for which a garage sale permit has been issued.
- i. A person selling only seasonal merchandise, such as fireworks, pumpkin stands, and Christmas trees, provided that the person:
 - i. Locates within a zoning district which would otherwise permit the business;
 - ii. Receives a zoning permit prior to operating, the application for which shall include (a) a site plan showing that the person would not be located within a setback or within a required parking space, and (b) the written permission from the private property owner or authorized lease holder of the private property;
 - iii. Conspicuously posts his zoning permit during all hours of operation at a location visible from the right-of-way and in a manner protected from the elements; and
 - iv. Operates only within 45 days of the associated holiday and for a total period of no more than 45 days.
 - v. For the purpose of this exception i. to this subsection (7), seasonal merchandise does not include food, produce (not including pumpkins), flowers, balloons, and general retail items detailed with holiday accents, decorations, or other accessories.
- j. A person operating a food truck on private property provided that the person:
 - i. Locates within a zoning district which would otherwise permit the business;
 - ii. Locates at least 100 feet from the door of a lawfully established eating place unless the owner of the eating place provides a letter of consent, a copy of which shall be kept within the food truck;
 - iii. Maintains within the food truck proof of written permission from the private property owner or authorized lease holder of the private property of each vending location;
 - iv. Receives annually a zoning permit to operate a food truck, a copy of which shall remain in the food truck during operation;
 - v. Operates for no more than ten consecutive hours within a calendar day and at all other times removes from the parcel all materials associated with the business. No temporary vendor shall operate between the hours of 9:00 p.m. and 9:00 a.m. if the parcel upon which the vendor is located is within 400 feet of a parcel zoned residentially.

- k. Any other person upon private property provided that the person:
 - i. Locates within a zoning district which would otherwise permit the business;
 - ii. Receives a zoning permit for each location prior to operating, the application for which shall include (a) a site plan showing that the person would not be located within a setback or within a required parking space, and (b) the written permission from the private property owner or the authorized lease holder of the private property authorizing the temporary vendor;
 - iii. Conspicuously posts his zoning permit during all hours of operation at a location visible from the right-of-way and in a manner protected from the elements; and
 - iv. Operates for no more than ten consecutive hours within a calendar day and at all other times removes from the parcel all materials associated with the business. The Zoning Administrator shall approve the hours of operation, which shall be posted on the zoning permit. No temporary vendor shall operate between the hours of 9:00 PM and 9:00 AM if the parcel upon which the vendor is located is within 400 feet of a parcel zoned residentially.
- l. Any temporary vendor existing upon the effective date of this ordinance shall have 180 days from the effective date of this ordinance to either cease operation or fully comply with all provisions of this subsection (7).

TABLE 1. TABLE OF PERMITTED USES

§ 17-268

COLUMBIA CITY CODE

LEGEND:																					
x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use; a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements; "c" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article; "o" = Permitted in the indicated district as office only. "a/e" = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article																					
Principal Uses	Zoning Districts																			Off-Street Parking Requirements	
	D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-2	RO-1	RO-1A	RO-2	RO-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2		
DIVISION A. AGRICULTURE, FORESTRY AND FISHING																					
1 Agricultural production—Crops																					
15 Horticultural specialties	x																				
151 Ornamental floriculture and nursery products	x																			2 spaces per acre and 1 space per 1,000 square feet of office and/or retail	
152 Food crops grown within a covered enclosure	x	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	x	x	a/e	a/e	a/e		
153 Aquaponics	a																				
16 General farms, primarily crop	x	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	No requirement	
2 Agricultural production—Livestock	x																				
7 Agricultural services																					
74 Veterinary services (section 17-259)																					
741 With indoor kennels																				8 for each 1,000 square feet of gross floor area	
742 With outdoor kennels																					
78 Landscape and horticultural services																					
781 Landscape counseling and planning																				8 for each 1,000 square feet of gross floor area	
782 Lawn and garden services																					
788 Ornamental shrub and tree services																				1.7 for each 1,000 square feet of gross floor area	
8 Forestry	x																			No requirement	

CITY CLERK
 TRUE COPY
 CERTIFIED

LEGEND:
 x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
 a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
 "o" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
 "o" = Permitted in the indicated district as office only.
 "a/c" = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

with the associated conditions set forth in this article																				
Principal Uses	Zoning Districts																			Off-Street Parking Requirements
	D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-3	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	
6812	Bating places							B	X	X	X	X	X	X	X			X	X	8 for each 1,000 square feet of gross floor area
6813	Drinking places (alcoholic beverages) (section 17-289)							e	e	e	e	X	X	e	X			e	e	12 for each 1,000 square feet of gross floor area
69	Miscellaneous retail																			
691	Drugstores and proprietary stores							e	X	X	X	X	X	X	X			X	X	8.5 for each 1,000 square feet of gross floor area
692	Liquor stores								e	e	e	e	e	e	e			e	e	
6921	Used merchandise stores with weapons									e	e	e	e	e	e	e		e	e	
6922	Used merchandise stores without weapons (17-87)									c	c	c	c	c	c	c		c	c	
6923	Pawn shops									e	e	e	e	e	e	e		e	e	
694	Miscellaneous shopping goods stores							X	X	X	X	X	X	X	X			X	X	
696	Non-store retailers																			
6961	Mail order house							X	X	X	X	X	X	X	X			X	X	8 for each 1,000 square feet of gross floor area
6962	Automatic merchandising machine operators									X	X				X					
698	Fuel and ice dealers																			
6982	Fuel and ice dealers, except fuel oil dealers and bottled gas dealers									X		X			X					8.5 for each 1,000 square feet of gross floor area
6983	Fuel oil dealers									e					X	X				1.7 for each 1,000 square feet of gross floor area
6984	Liquefied petroleum gas (bottled gas) dealers									e					X	X				
699	Retail stores, not elsewhere classified																			

CITY CLERK

CERTIFIED
 A TRUE COPY
 [Signature]

LEGEND:

x = Permitted use in the district; e = Special exception by board of zoning appeals a = Permitted accessory use;
a/e = Permitted as an accessory use or as a principal use by special exception; nr = No requirements;
"o" = Permitted in the indicated district, provided the owner and/or tenant complies with the associated conditions set forth in this article;
"o" = Permitted in the indicated district as office only.
"o/o" = Permitted in the indicated district as an accessory use but is also permitted as a primary use provided the owner and/or tenant complies with the associated conditions set forth in this article

Principal Uses	Zoning Districts																			Off-Street Parking Requirements
	D-1	RS-1 RS-1A RS-1B RS-3	R-D RD-3	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	
5992 Florist								e	x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
5993 Cigar store and stands								e	x	x	x	x	x	x	x			x	x	
5994 News dealers and newsstands								e	x	x	x	x	x	x	x				x	
5999 Miscellaneous retail stores, not elsewhere classified								e	x	x	x	x	x	x	x			x	x	
DIVISION H. FINANCE, INSURANCE AND REAL ESTATE (60-67)																				
6141 Non-depository personal credit institutions (pay day loan and/or title loan establishments (section 17-294)								x	x	x	x	x	x	x	x	x	x	x	x	8 for each 1,000 square feet of gross floor area
6162 Banquet hall											e	e	x	x	x	x		e	x	
6563 Cemetery subdividers and de- velopers	e	e	e	e	e	e	e	x	x	x	x	x	x	x	x	x	x	o	o	3 for each 1,000 square feet of gross floor area
DIVISION I. SERVICES																				
70 Hotels, roominghouses, camps and other lodg- ing places																				1 for each bedroom
701 Hotels, motels and tourist courts											x	e	x	x	x			x	x	
701.1 Suite hotel (section 17-372)										e	x		x	x	x	x		x	x	
701.2 Bed and breakfast hotel (section 17- 271)			e							e	x		x	x	x	x		x	x	
702 Roominghouses and boardinghouses					e		e	e												
703 Camps and trailering parks	e																			
704 Organization hotels and lodginghouses, on membership basis					e		x	x	x		x	x	x				x	x	No requirements	
72 Personal services																				1 for each 3 beds

CITY CLERK

CERTIFIED
TRUE COPY
CITY CLERK

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2013-CP-40-4051

Andreas Ganotakis, d/b/a Seven Days Food Mart, LLC,.....Appellant,

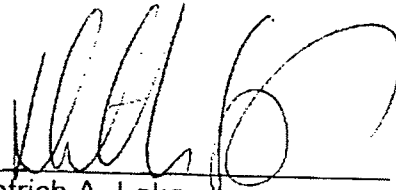
v.

City of Columbia Board of Zoning Appeals,.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant hereby certifies that the
Record on Appeal contains all material proposed to be included by any of
the parties and not any other material.

Respectfully submitted,



Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
(803) 750-8311
Attorney for Appellant

RECEIVED

FEB 05 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2013-CP-40-4051

Andreas Ganotakis, d/b/a Seven Days Food Mart, LLC, ...Appellant,

v.

City of Columbia Board of Zoning Appeals, ...Respondent.

FINAL BRIEF OF APPELLANT

Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
(803) 750-8311
Attorney for Appellant

RECEIVED

FEB 17 2015

SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities.....	i
Statement of the Issues on Appeal.....	1
Statement of the Case.....	1
Statement of the Facts.....	3
Arguments	6
I. The trial court erred in determining that the Respondent's decision to deny the Appellant's request for a special exception to operate a liquor store was not arbitrary and capricious where the Respondent did not adhere to its own criteria for granting special exceptions.....	6
II. The trial erred in determining that the appellant was not prejudiced by a conflict of interest between the Respondent, the City of Columbia, and private counsel when the City of Columbia, a municipality, hired private counsel to argue before the Respondent which is an administrative agency of the City of Columbia	15
Conclusion.....	24

TABLE OF AUTHORITIES

CASES

<i>Bannum v. City of Columbia</i> , 335 S.C. 202, 516 SE2d. 439 (1999).....	11,12
<i>Vulcan Materials Co. v. Greenville County Board of Zoning Appeals</i> , 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000).....	12,13
<i>Windham Enterprises v. The City of North Augusta</i> , 735 S.E.2d 659 (S.C.App. 2012).....	12,14

STATUTES

S.C. Ann. § 6-29-340.....	7
S.C. Ann. § 6-29-800.....	7,19
S.C. Ann. §8-13-70.....	17,21

ORDINANCES

Sec. 2-115 of the City of Columbia Code of Ordinances.....	5,16,20
Sec. 2-128 of the City of Columbia Code of Ordinances.....	16
Sec. 2-151 of the City of Columbia Code of Ordinances.....	15,16
Sec. 17-81 of the City of Columbia Code of Ordinances.....	5,17,19,22
Sec. 17-112 of the City of Columbia Code of Ordinance.....	7,8,9,19
Sec. 17-240 City of Columbia Code of Ordinances.....	6
Sec. 17-258 of the City of Columbia Code of Ordinances.....	6

RULES

Rule 1.7 of the SCRPC.....	18
----------------------------	----

OTHER AUTHORITIES

<i>Wikipedia, Conflict of Interest</i> , http://en.wikipedia.org/wiki/Conflict_of_interest (as of June 13, 2013 at 14:32).....	15
--	----

STATEMENT OF THE ISSUES ON APPEAL

- I. Did the trial court error in affirming the Respondent's decision to deny the special exception to the Appellant when the Respondent's decision to deny the request for a special exception was arbitrary and capricious and where the Respondent did not adhere to its own criteria for granting special exceptions.
- II. Did the trial court error in determining that the Appellant was not prejudiced by a conflict of interest between the Respondent, City Council, and private counsel when City Council hired private counsel to argue before the Respondent which is an administrative agency of the City of Columbia.

STATEMENT OF THE CASE

The Respondent's denial of the Appellant's request for a special exception to open a liquor store was arbitrary and capricious; furthermore, the Respondent did not follow its own guidelines for granting special exceptions for liquor stores in C-3 districts. The City of Columbia unlawfully hired private counsel to argue interpretation and/or enforcement of laws on zoning board issues before the Respondent which is an agency of the City of Columbia. The City of Columbia hired private counsel to influence the Respondent's decision to deny the Appellant's request for a special exception only because the Appellant's business was a liquor store.

The Appellant filed a letter of agency and an application for a special exception for a liquor store located at 5050 Fairfield Road, Columbia, South Carolina on May 15, 2013. [R. pp. 087-088.] The application summary lists the case number as 13-041-SE and states that the building is located in a C-3 (General Commercial) zoning district. [R.

p. 083.] Notice of the Appellant's public hearing was posted on the property and published in a newspaper.

A hearing was held before the Respondent on June 11, 2013, to consider the Appellant's request for a special exception to operate a liquor store. The Respondent heard oral arguments from the parties against and in favor of granting the request for a special exception to operate a liquor store. [R. pp. 114 -126; BOZA Video filed separately.] The Respondent heard from Chaplin Spencer, private counsel hired by the City Council, and several other witnesses opposing the request for special exception. [R. p. 116, line 26 – p. 120, line 2.] The Appellant never received notice nor did the Appellant have any knowledge that Chaplin Spencer would appear on behalf of the City Council and argue against granting the special exception. At the conclusion of the hearing, the Appellant's request for a special exception was denied. [R. pp. 001-002; 064-065.]

By letter dated July 12, 2013 to the Circuit Court, the Appellant timely filed his appeal of the Respondent's Order with a case number of 2013-CP-40-4051. [R. p. 037.] The Respondent filed its' Return on August 22, 2013. [R. pp. 028-029.]

A hearing involving the Appellant and Respondent was held in a Richland County court on March 7, 2014, before the Honorable Eugene C. Griffith, Jr. The Appellant presented a brief and the Respondent provided the court with Memorandum of Law in Opposition to Petition for Appeal for the court's review. [R. pp. 014-027; 030-034.] In addition, counsel for the Appellant presented oral arguments to the court regarding the facts and law in favor of reversing the Respondent's decision and granting the special exception; counsel for the Respondent presented oral arguments in opposition to

affirming the Respondent's decision and denying the Appellant's special request. [R. pp. 040-062]. On June 4, 2014, the Circuit Court issued an Order affirming the Respondent's decision to deny the special exception to the Appellant. [R. pp. 003-011.]

The Appellant timely filed his Motion for Reconsideration on June 11, 2014. [R. pp. 035-036.] The Appellant's Motion for Reconsideration was denied by Order of July 30, 2014. [R. pp. 012-013.] The Appellant filed his Notice of Appeal on August 25, 2014. [R. pp. 038-039.]

STATEMENT OF THE FACTS

The Appellant opened Seven Days Food Mart LLC, a convenience store located at 5050 Fairfield Road, Columbia, South Carolina. The Appellant leases the building from the property owners Vicken and Zozete Baklayan. [R. p. 089.] The business license application for the convenience store was approved on September 21, 2012. Appellant applied for and received a license to sell beer, wine, and liquor on or about January 17, 2013 from the South Carolina Department of Revenue. [R. p. 113.] The liquor store encompassed 464 square feet in the 5950 square feet building located at 5050 Fairfield Road, Columbia, South Carolina. The Appellant contracted, at his own expense, to have a wall separating the convenience store area from the liquor store. The Appellant learned after he had invested large sums of money in the remodeling of the building and opening of the liquor store that a special exception was required to operate the liquor store in the C-3 district. [R. p. 114, line 10 – p. 115, line 3; BOZA Video filed separately.] The Appellant made application for a special exception to open the liquor store on or about May 15, 2013. [R. pp. 081-088.] C-3 districts are residential

areas within the city limits of Columbia which allow a variety of commercial and nonresidential uses within that area. [R. p. 130.]

Notice of the public hearing was posted on the property and was published in the newspaper no less than fifteen (15) days before the hearing. A public hearing was held on the matter of the special exception on June 11, 2013. [R. pp 103 – 105.] The Appellant testified in favor of granting the special exception for the liquor store and also testified that he would comply with any additional requirements made by the Respondent to secure the special exception. The Appellant further testified that he expended a large sum of money to improve and enhance the store in anticipation of obtaining the special exception to keep open the liquor store. In addition, one party spoke in favor of granting the special exception for the liquor store. [R. p. 114, line 1 – p. 115, line 33; p. 120, lines 4-21; p. 124, line 35 – p. 126, line 14; BOZA Video filed separately.]

The City of Columbia is a municipality in the State of South Carolina. City Council hired private counsel to influence the Respondent and to oppose granting the special exception. The Respondent is an administrative agency of the City of Columbia charged with the independent duties of granting special exceptions and hearing and deciding appeals when it is alleged that there is an error in law of a decision made by the zoning administrator in the enforcement of the provisions of the Zoning Ordinance. [R. pp. 127 – 129.] City Council has no power to conduct hearings or to decide questions of interpretation and enforcement arising out of board of zoning appeals; however, the City Council violated this city ordinance when it hired Chaplin Spencer, a

private attorney, to argue interpretation of the special exceptions in the Appellant's case before the Respondent. *Sec. 17-81 of the City of Columbia Code of Ordinances.*

The city attorney is the chief legal counsel to the City of Columbia, to the mayor, to city council, to the city manager, and to all other officers and department heads of the city. The city attorney is required to appear on behalf of the City of Columbia or City Council in all matters unless the city attorney has designated or employed a party to perform duties on behalf of the city attorney. *Sec. 2-115 of the City of Columbia Code of Ordinances.* The city attorney did not appear on behalf of the City of Columbia or City Council before the Respondent in this zoning board appeal involving the Appellant's appeal nor is there any evidence that the city attorney designated Chaplin Spencer to appear on the city attorney's behalf before the Respondent.

Chaplin Spencer appeared before the Respondent and requested that the Respondent deny the Appellant's request for a special exception based upon its proximity to schools, residences, and other liquor stores. Mr. Spencer asserted that he was acting under the authority of the City Council and that his firm's job was to examine and to only oppose granting special exceptions to liquor stores. [R. p. 116, line 26 – 34; BOZA Video filed separately.]

Several parties testified before the Respondent stating their objections to granting the special exception to the Appellant; however, none of these parties testified as to any specific incidents or injuries to their own specific property nor did they provide competent testimony on how the Appellant's liquor store would negatively affect the value of their own specific property. [R. p. 115, line 36 – p. 124, line 32; pp. 067 -082, 084-086, 090 -094; BOZA Video filed separately.]

By order dated June 24, 2013, the Petitioner's request for a special exception to open a liquor store was denied. [R. pp. 001-002; 064-065.]

ARGUMENT

I.

THE TRIAL COURT ERRED IN DETERMINING THAT THE RESPONDENT'S DECISION TO DENY THE APPELLANTS REQUEST FOR A SPECIAL EXCEPTION TO OPERATE A LIQUOR STORE WAS NOT ARBITRARY AND CAPRICIOUS WHERE THE RESPONDENT DID NOT ADHERE TO ITS OWN CRITERIA FOR GRANTING SPECIAL EXCEPTIONS.

The Appellant's convenience and liquor store is located in what is considered a general commercial district. *Sec. 17-240 of the City of Columbia Code of Ordinances* states the following:

The C-3 district is intended to accommodate a variety of general commercial and nonresidential uses characterized primarily by retail, office and service establishments and oriented primarily to major traffic arteries or extensive areas of predominantly commercial usage and characteristics. Certain related structures and uses are permitted outright or are permissible as special exceptions subject to restrictions and requirements intended to best fulfill the intent of this article. It is not the intent of this article to encourage the development of long, narrow strips of commercial development fronting on major arteries, often referred to as strip commercial areas. Such development is often incompatible with adjacent uses and may lead to the eventual formation of commercial slums, damage the traffic-carrying capacities of streets, increase congestion, lead to depreciation of property values in adjacent areas, encourage undue dispersion of commercial facilities to the inconvenience of the public, and create disproportionate costs in the provision of governmental services.

§17-258 of the City of Columbia Code of Ordinances indicates that the operation of a liquor store in a C-3 District requires approval and the granting of a special exception by the Respondent.

The *South Carolina Local Government Comprehensive Planning Enabling Act of 1994* provided powers to the local governmental agencies "to undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction." *S.C. Ann. § 6-29-340 of the South Carolina Code of Laws.*

S.C. Ann. § 6-29-800 generally provides zoning appeal boards with the following exclusive powers applicable to this case:

1. To hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship;
2. To permit uses by Special Exception when designated within the zoning code;
3. To hear and decide appeals where it is alleged there is an error in an order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance ...

The City of Columbia created the Respondent for such a purpose as stated above. The Board of Zoning Appeals has the power to grant special exceptions in C-3 general commercial districts. The powers enumerated under *Sec. 17-112 of the City of Columbia Code of Ordinances* are as follows regarding special exceptions:

... (2) *Special exceptions.*

a. *Duties.* Duties of the board are as follows:

1. Hear and decide only the applications for special exceptions as the board of zoning appeals is specifically authorized to pass upon by terms of this article;

2. Decide the questions as are involved in determining whether special exceptions should be granted;
 3. Prescribe appropriate conditions and safeguards in conformity with this article; and
 4. Deny special exceptions when not in harmony with the intent and purpose of this article.
- b. *Procedures in consideration of special exception applications.*
1. A written application for a special exception shall be submitted indicating the section of this article under which the special exception is sought and stating the grounds on which it is requested.
 2. Notice of public hearing shall be posted on the property for which special exception is sought and shall be published at least 15 days prior to the public hearing in a newspaper of general circulation in the city.
 3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
 4. The board of zoning appeals shall make a finding that it is empowered under the section of this article described in the application to grant the special exception and that the special exception will not adversely affect the public interest.
 5. The board of zoning appeals shall not vary the conditions and/or provisions of sections 17-259 through 17-274 that establish specific standards that must be met prior to the establishment of several principal uses that require a special exception.
 6. The board of zoning appeals may prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both.
- c. *Criteria for special exceptions.* In addition to definitive standards in this article, the board of zoning appeals shall consider the following:
1. Traffic impact;
 2. Vehicle and pedestrian safety;
 3. Potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property;
 4. Adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and
 5. Orientation and spacing of improvements or buildings.
- d. *Effect of failure to meet conditions.*
1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms

under which a special exception is granted, shall be deemed a violation of this article, punishable under the penalties established in this article.

2. Failure to begin or complete, or begin and complete, an action for which a special exception is required, within the time limit specified, when such time limit is made a part of the terms under which the special exception is granted, shall void the special exception. [R. pp. 127 – 129.]

The Respondent, in its Order, found that granting the special exception would adversely affect the public interest of the area due to the proximity to a school, that this "proliferation of liquor stores" would result in a depreciation in homes values in the surrounding area, that would create vehicular or safety problems for that street, and that it would impact the aesthetic character of the area. To the Appellant's favor, the Respondent determined that granting the special exception would not negatively impact traffic circulation or would not create noise, lights, fumes, or otherwise cause any obstructions to the detriment of adjoining properties or would negatively impact the orientation or spacing of improvements. [R. pp. 001-002; 064-065.]

There is no credible evidence that the Appellant's store would adversely affect the public interest due to the proximity to a middle school nor is there any evidence that there is a "proliferation of liquor stores in the area." The board references how the Petitioner's liquor store would adversely affect the middle school and how a "proliferation of liquor stores in the area" would contribute to depreciation in home values; however, this assertion by the board is merely opinion and conjecture and not supported by any evidence in the record. The record clearly shows that there is one liquor store (Northway Package Store) directly in front of Alcorn Middle School; however, the record shows no "proliferation" of liquor stores as there are no other liquor stores on Fairfield Road within one-mile proximity of Alcorn Middle School. [R. pp. 067 –

068, 070 – 076.] In fact, nine (9) out of the fifteen (15) stores that the residents testified to as selling alcohol (as part of their evidence at the hearing) were not even located on Fairfield Road. [R. p. 073.] The record reflects that nine (9) of the stores were gas stations, two (2) were grocery stores, two (2) were drug stores, and only two (2) other businesses were sole liquor stores; Northway Package Store is located on Fairfield Road and the other sole liquor stores was located on North Main Street. [R. p. 074.]

The Respondent placed undue weight on the testimony of the residents as there was no testimony as to any specific incidents involving either the Appellant's store or Northway Package store which positively or negatively impacted the middle school or no testimony as to any specific incidents which caused the depreciation of any home values for any resident that testified at the hearing. The residents testified and presented crime statistics for the area and it only showed that the Appellant's business was burglarized once over a one year period. [R. pp. 078 – 080.] In addition, these same statistics showed no crime occurred at either the Food Lion or the Northway Package liquor store and both are located across from Alcorn Middle School; both of these businesses also sell alcohol and are next to the Appellant's place of business. [R. p. 082.] The residents' testimony relied upon data incorporating stores and businesses not located on Fairfield Road and near Alcorn Middle School. It should be noted that when the Respondent asked the residential witness Rhodes if there had been any incidents around the Appellant's location, the witness' response was "not yet." [R. p. 115, line 35 – p. 116, line 14; BOZA Video filed separately.] Furthermore, when the law enforcement Officer Hartley was asked specifically whether " the data shows a correlation between the increase of liquor stores and the increase of crime, her

response was, "Specific to liquor stores it does not support an increase in crime." [R. p. 124, lines 13 – 32; BOZA Video filed separately.] These statements illustrate that the witnesses were speculating about potential problems when they testified at the hearing; however, none of the witnesses provided specific competent or specific factual evidence of actual injury to their respective properties nor did the witnesses provide any specific competent or specific factual evidence to the Respondent to warrant denying the special exception. [R. p. 115, line 35 – p. 124, line 32.]

In *Bannum v. City of Columbia*, 335 S.C. 202, 516 SE2d. 439 (1999), our Supreme Court reversed the decision of the zoning board based upon the finding that the board's decision was arbitrary. In *Bannum*, the applicant requested a special exception to operate a half way house in the City of Columbia. At the hearing, opposing parties testified to their objections to granting the special exception for the half way house based upon traffic concerns, foot traffic, and a study indicating that these individuals living in the half way house are likely to repeat committing crimes. The City of Columbia's zoning board denied the request for a special exception based upon this testimony. Our Supreme Court determined that there was no "concrete" evidence to support the opposing parties' views and opinions; furthermore, the Supreme Court determined that the board ignored all evidence offered by the applicant to show satisfaction of the exceptions to the ordinance requirements. The court concluded that the board's decision was based on the unsubstantiated concerns and testimony of the neighboring residents rather than on the requirements for a special exception set out in the ordinance.

In *Windham Enterprises v. The City of North Augusta*, 735 S.E.2d 659 (S.C.App. 2012), the Court of Appeals reversed the decision of the zoning board based upon the finding that the board's decision was arbitrary and capricious and reaffirming the decision in *Bannum*. In the *Windham Enterprises* case, the applicant sought a special exception to operate a fireworks store. At the hearing for the special exception, residents testified as to their objections to granting the special exception for the fireworks store based upon traffic concerns, a concern that the store would cause a decline in property value, and based upon the negative effect the store would have on the community. The zoning board denied the special exception due to the concerns of the residents. The Court of Appeals reversed this decision and held that the board's decision must be supported by competent, substantial, and material evidence. The Court of Appeals determined that the testimony of the residents did not meet that competent standard because the residents did not testify as to any specific injury to their own property nor did the residents sufficiently articulate how the fireworks store would either depreciate their individual property or stand in contrast to other commercial businesses in the area that did not need to seek a special exception.

The general rule is that reviewing courts will not disturb the findings of the zoning boards unless such findings or decisions resulted from action of the board which is arbitrary, an abuse of discretion, illegal or in excess of lawfully delegated authority; furthermore, the board must apply the criteria imposed by the zoning ordinance in either granting or denying a request for a special exception. See *Bannum*. The Respondent cites *Vulcan Materials Co. v. Greenville County Board of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000) for its proposition that the zoning board's findings of

facts equates to jury findings; but, *Vulcan* also states that "the decision of the zoning board will not be upheld where it is based on errors of law, . . . or where there is no legal evidence to support it, or where the board acts arbitrarily or unreasonably, . . . or where, in general, the board has abused its discretion." In this case, the Respondent has acted arbitrarily and there is no evidence to support its conclusions.

The testimony of the residents in opposition of the special exception was based upon pure speculation and opinion with no definitive standard as required by law. This speculation encompassed a decline in property values, an increased risk of vehicular or pedestrian safety problems, an increase in crime, and a negative impact on the aesthetic character of the area. The Respondent placed undue weight on this speculative testimony and failed to consider that there was no credible or competent testimony which distinguished the effect of the Appellant's liquor store from the effects of either the Food Lion selling alcohol at its store or the Northway Package store selling liquor across from the Alcorn Middle School. In addition, there was no competent evidence to support that the Appellant's liquor store would create vehicular or pedestrian safety problems. There was no testimony or evidence of increased accidents or pedestrian problems before the Appellant's application for the special exception nor was there any testimony or competent evidence presented which distinguishes why the Appellant's store would pose a greater risk than either Food Lion or Northway Package since all of these stores are all located on the same side of the road and within close proximity to each other. The fact remains that the location where the Appellant's business is located housed many previous commercial businesses before the Appellant opened his store and there was no testimony as to prior problems

with vehicle or pedestrian safety when the previous tenants operated at the same location as the Appellant's store.

In addition, The Respondent arbitrarily sites a proliferation of signs as a reason for denying the special exception; however, the Appellant offered to make any corrections so as to not affect the aesthetic character of the area. The Appellant had a limited number of signage on the building itself and offered to remove any signage to comply with any conditions the Respondent could have prescribed in lieu of denying the special exception. [R. p. 124, line 35 – p. 125, line 14; BOZA Video filed separately.] The Respondent refused to offer the Appellant the opportunity to remove some signage though it was within the Respondent's power to do so and again reaffirming that the Respondent's decision was arbitrary and capricious.

The Appellant's position is identical to the fireworks store owner's position in *Wyndham Enterprises*. In this case as well as *Wyndham Enterprises*, residents testified as to concerns about increased traffic, concerns about decreased home and property values, and concerned about the aesthetics of the business. In this case as well as *Wyndham Enterprises*, witnesses testified exclusively on conjecture and general opinion with no competent testimony as to any specific injuries to their respective property. In this case as well as *Wyndham Enterprises*, the Respondent's decision was arbitrary and capricious and "was not supported by competent, substantial, and material evidence."

The Respondent's decision to deny the Appellant's request for a special exception to open a liquor store was arbitrary and capricious and not supported by any factual evidence to support its decision. The Respondent's decision was based upon opinion and conjecture with no competent evidence to support the testimony of the

witnesses in opposition of granting the special exception; therefore, the decision of the Court affirming the Respondent's decision to deny the request for a special exception to open a liquor should be reversed and the special exception should be granted to the Appellant.

ARGUMENT

II.

THE TRIAL COURT ERRED IN DETERMINING THAT THE APPELLANT WAS NOT PREJUDICED BY A CONFLICT OF INTEREST BETWEEN THE RESPONDENT, CITY COUNCIL, AND PRIVATE COUNSEL WHEN CITY COUNCIL HIRED PRIVATE COUNSEL TO ARGUE BEFORE THE RESPONDENT WHICH IS AN ADMINISTRATIVE AGENCY OF THE CITY OF COLUMBIA.

A conflict of interest has been generally defined as a set of circumstances that creates a risk that professional judgment or actions regarding a primary interest will be unduly influenced by a secondary interest. *Wikipedia, Conflict of Interest*, http://en.wikipedia.org/wiki/Conflict_of_interest (as of June 13, 2013 at 14:32).

Pursuant to Sec. 2-151 of the City of Columbia Code of Ordinances, the city created the following departments:

(a) The following departments of the city are created:

- (1) City clerk;
- (2) Information technology;
- (3) Finance;
- (4) Legal;
- (5) Human resources;
- (6) Municipal court;
- (7) Police;
- (8) Fire;
- (9) Public works;
- (10) Utilities and engineering;
- (11) Community development;
- (12) Parks and recreation;
- (13) General services;

- (14) Economic development;
 - (15) Zoning, inspections and planning;
 - (16) Construction management;
 - (17) Public relations;
 - (18) Communications (911/311).
- (b) The head of each department shall be a director, who shall be an officer of the city and shall have supervision and control of his department, subject to the city manager. The city manager may serve as director of one or more departments or divisions within any department.
 - (c) Each department head shall be responsible for preparation of departmental and administrative regulations and procedures subject to the review and approval of the city manager.

Sec. 2-115 of the City of Columbia Code of Ordinances addresses the role of the City Attorney within City of Columbia management and states:

City attorney.

- (a) *Appointment.* The city council shall appoint a city attorney and labor counsel, who shall serve at its pleasure.
- (b) *Duties.* The city attorney shall be the chief legal counsel to the city, the mayor and members of the council and the city manager and to the officers and department heads of the city. The city attorney shall prosecute and defend the city in all actions and appear on behalf of the city and its officers in legal proceedings. The city attorney shall prepare or supervise the preparation of all legal documents and instruments of the city and shall approve all ordinances, resolutions, contracts and related documents as to form. The city attorney may employ assistant city attorneys and legal assistants as necessary for the performance of his duties, when such positions are provided for in the city budget. When requested the city attorney shall attend meetings of the council, render legal opinions, represent the city at meetings and conferences and perform such other duties as prescribed by law and by the city council.

Sec. 2-128 of the City of Columbia Code of Ordinances addresses the role of the Director of Zoning and States as follows:

Director of zoning, inspections and planning.

The director of zoning, inspections, and planning, subject to the city manager, shall have administrative supervision over the activities relating to zoning, building codes, building inspections and property maintenance codes, and planning, and shall perform such additional duties as may be assigned to him by the city manager.

Sec. 17-81 of the City of Columbia Code of Ordinances addresses the responsibilities of the zoning administrator in its relationship with the City Counsel and states as follows:

Responsibility for administration.

- (a) *Zoning administrator.* A zoning administrator designated by the city manager shall administer and enforce this article. The zoning administrator may be provided with the assistance of such other persons as the city manager may direct. It is the intent of this article that all questions of administration and enforcement shall first be presented to the zoning administrator and that such questions shall be presented to the board of zoning appeals only upon reference by, or appeal from, the zoning administrator, and that recourse from the decisions of the board of zoning appeals shall be to the courts as provided by law.
- (b) *City council.* It is further the intent of this article that the function of the city council under this article shall not include hearing and deciding questions of interpretation and enforcement which may arise, but that the city council shall have only the responsibility for acting on proposals for amendment or repeal of this article, and for establishing a schedule of fees and charges as provided in this article.

Conflict of interest has been defined in our South Carolina Code of Laws and in the South Carolina Rules of Professional Conduct. Specifically to this case, §8-13-70 of the South Carolina Code of Laws addresses the issue of representation of another by a public official, member, or employee before a governmental entity. Subsection (A)(5) and (6) state the following:

- 5. A public official, public member, or public employee of a municipality may not knowingly represent a person before

any agency, unit, or subunit of that municipality for which the public official, public member, or public employee has official responsibility except as required by law.

6. A public employee, other than those specified in items (4) and (5) of this subsection, receiving compensation other than reimbursement or per diem payments for his official duties, an individual with whom he is associated, or a business with which he is associated may not knowingly represent a person before an entity on the same level of government for which the public official, public member, or public employee has official responsibility except:

- (a) as required by law;
- (b) before a court under the unified judicial system; or
- (c) in a contested case, as defined in Section 1-23-310, excluding a contested case for a rate or price fixing matter before the South Carolina Public Service Commission or the South Carolina Department of Insurance, or in an agency's consideration of the drafting and promulgation of regulations under Chapter 23 of Title 1 in a public hearing.

Rule 1.7 of the South Carolina Rules of Professional Conduct states: (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

1. the representation of one client will be directly adverse to another client; or
 2. there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.

Rule 1.7 (l) of the South Carolina Rules of Professional Conduct goes on to state the following:

In any adversarial proceeding, a lawyer shall not serve as both an advocate and an advisor to the hearing officer, trial judge or trier of fact ...

In this case, it is clear that City Council has sought to do something that it could not do lawfully. First, City Council sought to unduly influence the Respondent when the City Council's sole "function under this article shall not include hearing and deciding questions of interpretation and enforcement which may arise..." Second, City Council sought to circumvent this rule by hiring private counsel to assert its interpretation and influence before the Respondent. There was a conflict of interest between the Respondent, City Council, and private counsel.

The City of Columbia has a city attorney who is empowered with the sole duties to appear on behalf of the city and all of the city's departments and/or to approve all documents and contracts related to the City of Columbia's daily business; however, the city attorney for the City of Columbia did not appear at the hearing to argue the City of Columbia's position in this matter. The city attorney could not appear because of the obvious and inherent conflict of litigating a matter where the city attorney represents both the interests of City Council and the interests of the Respondent and where the city attorney would be unlawfully attempting to influence the Respondent on behalf of City Council. The city attorney was well versed in the law that the Respondent has the sole power to grant special exceptions in C-3 general commercial districts and that City Council is required to play absolutely no role in either interpreting or influencing the decisions of the Respondent. See *S.C. Ann. § 6-29-800, Sec 17-112; Sec. 17-81*. There is no evidence in the record that the city attorney authorized or employed private counsel to represent the interests of the City of Columbia or City Council in opposing the granting of the special exception in this case which is the sole duty of the city

attorney. See Sec. 2-115. The question that this appellate court should consider and require the Respondent to answer is whether or not the city attorney for the City of Columbia could have appeared before the Respondent to argue against granting the special exception to the Appellant. The Appellant would contend that if the answer to that question is "no," then a conflict of interest existed at the time of this hearing which warrants reversal of the reversal of the Respondent's decision to deny the special exception to the Appellant. The Appellant was prejudiced by this conflict which resulted in the denial of his request for a special exception.

The reversal of the Respondent's decision to deny the special exception to the Appellant due to a conflict of interest between the Respondent, City Council, and private counsel is the proper remedy of this matter; this conflict of interest caused undue influence and prejudice in the Respondent's decision making process. The Appellant was prejudiced by City Council's decision to hire private counsel to oppose only his special exception to open a liquor store before the Respondent. City Council influenced the Respondent by sending a "public employee" of the City of Columbia or City Council to appear before the Respondent knowing full well that City Council appoints all the members of the Respondent's independent board. Chaplin Spencer made it very clear that he knew was representing City Council, that he knew he was speaking on the City's behalf, and that he knew the Respondent was an independent board; Mr. Spencer was not speaking for the public. [R. p. 116, line 26 – p. 120, line 2; BOZA Video filed separately.] In fact, Mr. Spencer never stated that he was a resident of the community where the Appellant's store was located; therefore, any public testimony on his part should have carried no weight since he was not an interested property owner in the

community where the Appellant's store was located. It appears that §8-13-70 (A) (5) or (6) was violated when Chaplin Spencer appeared before the Respondent to represent City Council. As a public employee counsel, much like the city attorney, Mr. Spencer could not appear before the Respondent to argue on behalf of City Council because of a conflict of interest; Mr. Spencer had an official responsibility to counsel both agencies as a public employee. The conflict of interest is further evident when Mr. Spencer would not fully disclose the scope of his representation of City Council even though he actually owed a duty to both parties at and during the hearing. [R. p. 118, line 18 – p. 119, line 5; BOZA Video filed separately.] The violation of the state conflict of law statute warrants reversal of the Respondent's decision to deny the Appellant's request for a special exception to open a liquor store.

The Appellant contends that the Respondent placed a great deal of undue weight on the testimony of the Mr. Spencer who was clearly acting as a de facto city attorney for the City of Columbia. One merely needs to look at the colloquy between the Respondent and Chaplin Spencer to understand the deference the Respondent paid towards Mr. Spencer's opinions. The Respondent asked Mr. Spencer to work with City Council to "avoid some of the appeals" and stated that "the issues that you raised on behalf of the council can be of direct interest in our decision making." [R. p. 117, lines 30 - 42; BOZA Video filed separately.] The Respondent goes on to ask Mr. Spencer to "give me some specifics you think would help minimize the impact of this use, if it were to be approved." [R. p. 117, line 43 – p. 118, line 6; BOZA Video filed separately.] In addition, the Respondent goes on to ask Mr. Spencer that he "work with staff to facilitate

better discussion between the two bodies" ... [R. p. 119, lines 23 – 34; BOZA Video filed separately.]

The Appellant would point out that one board member of the Respondent did state that it did "irk" her that City Council would send someone before the Respondent to represent the city in this zoning appeal matter "since we are appointed by the City Council." [R. p. 119, line 36 – p. 120, line 3; BOZA Video filed separately.] The Appellant would contend that this statement illustrates that this board member of the Respondent recognized that there was an inherent conflict with City Council hiring private counsel to appear before the Respondent to influence the Respondent's decision.

City Council is required by law to play absolutely no role in arguing before the Respondent in these contested board hearings on zoning appeals nor should City Council hire private counsel to argue in these zoning appeal matters. It is clear that City Council's only perfunctory role in the Respondent's matters is to act on proposals for amendment or repeal of this article, and for establishing a schedule of fees and charges. See *Sec. 17-81*. The hiring of private counsel by City Council violated *Sec. 17-81*, in that private counsel, while representing the interest of the City of Columbia and City Council, was deciding "questions of interpretation and enforcement" as it applies to special exceptions in only alcohol cases. The Respondent is an independent agency with the sole and responsibility of deciding zoning appeals and variances according to the City of Columbia ordinance. City Council willfully acted outside the scope of its powers to influence the Respondent and this undue influence resulted in

prejudice to the Appellant when his request for a special exception to open a liquor store was denied.

The Appellant was also prejudiced by not receiving any notice that City Council had retained private counsel for the hearing. Mr. Spencer stated that it was unusual for him to appear before the Respondent on behalf of the City of Columbia. [R. pp. 116, lines 30 – 34; BOZA Video filed separately.] The Appellant was not aware of the conflict of interest between the Respondent, City Council, and private counsel at the time of the hearing; therefore, the Appellant did not have an opportunity to retain counsel to raise the issue of a conflict of interest between the Respondent, City Council, and private counsel, Chaplin Spencer. Furthermore, there is no evidence that the Appellant waived his right to argue that he was prejudiced by this conflict of interest that resulted in the denial of his request for a special exception to open a liquor store.

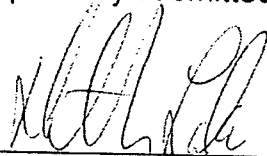
The Appellant was prejudiced by the conflict of interest between the Respondent, City Council, and private counsel which resulted in the denial of his request for a special exception to open a liquor store. The Appellant would sustain a great financial loss from his investment in the liquor store if the decision to deny this request for special exception is affirmed. City Council acted outside the scope of its powers in zoning board matters by advocating a role of interpretation and enforcement. Mr. Spencer acted as a de facto city attorney when he appeared before the Respondent; as a de facto city attorney, Mr. Spencer should not have testified before the board as counsel essentially represented both City Council and the Respondent in his role as a de facto city attorney. The Respondent placed undue weight on the testimony and counsel in the law from Mr. Spencer; however, Mr. Spencer never counseled the Respondent on

the fact that his appearance was a conflict of interest between City Council and the Respondent. The Appellant received no disclosure that City Council was retaining private counsel for this hearing, the Appellant received no notice of this conflict of interest, the Appellant did not waive his right to object to this conflict of interest between all of the parties, and the Appellant sustained prejudice and a financial loss as a result of this conflict and denial of his request for a special exception to open his liquor store; therefore, the trial courts determination that there was no conflict or prejudice was an error in law and should be reversed.

CONCLUSION

For the reasons stated above, this Court should reverse the decision of the Respondent and trial court and grant the Appellant's request for a special exception to open the liquor store.

Respectfully submitted,



Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate Circle, Ste. 201
803/750-8311 office
803/750-8312 fax
ATTORNEY FOR APPELLANT

February 11, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2013-CP-40-4051

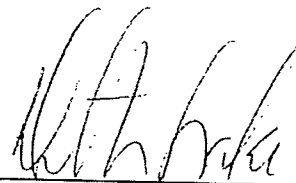
Andreas Ganotakis, d/b/a Seven Days Food Mart, LLC, ...Appellant,

v.

City of Columbia Board of Zoning Appeals, ...Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant hereby certifies that this Final Appellant's Brief is identical to the Initial Appellant's Brief, except for inclusion of references to the Record and correction of typographical errors and/or misspellings, and it otherwise complies with Rule 211 (b) SCACR.



Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
(803) 750-8311
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

C/A No. 2013-CP-40-4051

Case No. 2014-001824

Andreas Ganotakis d/b/a Seven Days Food Mart, LLC Appellant

City of Columbia Board of Zoning Appeals Respondent

BRIEF OF RESPONDENT

PETER M. BALTHAZOR
RILEY, POPE & LANEY, LLC
P.O. Box 11412
Columbia, South Carolina 29211
(803) 799-9993 - Office
(803) 239-1414 - Facsimile
peteb@rplfirm.com

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	2
Argument	5
1. The circuit court correctly found that the Board's decision to deny the special exception to operate a liquor store was supported by evidence in the record and the decision was not arbitrary and capricious.	6
2. The circuit court correctly found that there was no conflict of interest created by City Council hiring outside counsel to appear on its behalf at the Board meeting, and by finding that there was no prejudice resulting to Appellant.	14
Conclusion	20

TABLE OF AUTHORITIES

CASES

<u>Bannum v. City of Columbia</u> , 335 S.C. 202, 516 S.E.2d 439 (1999)	11
<u>Burton v. County of Abbeville</u> , 312 S.C. 359, 440 S.E.2d 396 (Ct. App. 1994)	15
<u>Clear Channel Outdoor v. City of Myrtle Beach</u> , 360 S.C. 459, 602 S.E.2d 76 (Ct. App. 2004), <i>aff'd</i> , 372 S.C. 230, 642 S.E.2d 565 (2007)	6
<u>Lucas v. Rawl Family Ltd. P'ship</u> , 359 S.C. 505, 598 S.E.2d 712 (2004)	15
<u>In re Michael H.</u> , 360 S.C. 540, 602 S.E.2d 729 (2004)	15
<u>Restaurant Row Assocs. v. Horry County</u> , 335 S.C. 209, 516 S.E.2d 442 (1999)	6, 10, 14
<u>Vaught v. A.O. Hardee & Sons, Inc.</u> , 366 S.C. 475, 623 S.E.2d 373 (2005)	6
<u>Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals</u> , 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000)	5, 6
<u>Wyndham Enters., LLC v. City of North Augusta</u> , 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012)	11, 12, 13

STATUTES

S.C. Code Ann. § 6-29-310 et seq.	17
S.C. Code Ann. § 6-29-710(A) (2004)	9
S.C. Code Ann. § 6-29-800 (Supp. 2014)	6, 17
S.C. Code Ann. § 6-29-820(A) (Supp. 2014)	17
S.C. Code Ann. § 6-29-840(A) (Supp. 2014)	5
S.C. Code Ann. § 8-13-740 (Supp. 2014)	18

RULES

Rule 208(b)(2), SCACR	5
-----------------------------	---

Rule 1.7, RPC, Rule 407, SCACR	15, 16
Rule 1.8, RPC, Rule 407, SCACR.....	16, 17

CITY CODES

City Code § 17-81	15, 16, 18
City Code § 17-112	6, 7, 13
City Code § 17-258	2, 9

STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court correctly find that the Board of Zoning Appeals did not err in denying Petitioner's request for a special exception to operate a liquor store?
2. Did the circuit court correctly find that Appellant was not prejudiced by a conflict of interest where the City of Columbia hired private counsel to appear at the Board of Zoning Appeals hearing?

STATEMENT OF THE CASE

This is a zoning case. Appellant sought to operate a liquor store in a C-3 zoning district. Use of the subject property as a liquor store was not allowed as a matter of right. In order to operate the liquor store, Appellant was required to obtain a special exception from the Board of Zoning Appeals (hereinafter the "Board" or "Respondent"). After a hearing, the Board denied the request. The main issue in this case is whether the Board properly denied Appellant's request for a special exception to operate a liquor store.

Appellant received a business license to operate a convenience store on September 12, 2012. After receiving the business license Appellant constructed a non-permitted wall to separate a liquor store business from the convenience store business in the same building. (R. p. 83). The liquor store began operation prior to obtaining a special exception for its operation. (R. pp. 103, 114). Appellant applied for a special exception on May 14, 2013. (R. 87-8)

Appellant's liquor store is located in a C-3 zoning district. (R. pp. 83, 87) Liquor stores may be operated only pursuant to a special exception in C-3 zoning districts. (R. p. 83) City Code § 17-258.

A public hearing was held on the application for a special exception on June 11, 2013. (R. pp. 99, 103-105) There were no objections to any of the presentations or arguments made to the Board. The applicant presented evidence in support of his application. In addition, at least five community residents spoke in opposition to the special exception.¹ A private attorney also spoke in opposition to the special exception.

¹ The entire Board hearing is part of the record in the form of a DVD of the proceedings, and an informal transcript typed by the undersigned counsel's legal assistant. (R. pp. 114-126) (The Board hearing starts at the 1:47:45 marker of the DVD.) In addition, the

One of the residents who spoke, Mr. Rhodes, lived in the neighborhood directly behind the proposed liquor store, and indicated that the area did not need another liquor store. (R.pp. 115-116; BOZA Hearing Video of June 11, 2013, at 1:57:11) Mr. Rhodes also testified to the proximity of the liquor store to Eau Claire High School and a middle school. (Id.) He testified that there were a lot of kids in the neighborhood that walked to school and that they would walk right in front of the liquor store. (Id.)

Patricia Brown, president of the Northwood Hills Neighborhood Association, also spoke in opposition to the special exception. (R. pp. 120-121; BOZA Hearing Video of June 11, 2013, at 2:20:09) In addition to Mr. Rhodes, she also spoke about pedestrian traffic and that people would not be comfortable walking in an area with possible loiterers. She testified to the proliferation of liquor stores in the area. She indicated that the community needed to be revitalized and that adding another liquor store would not encourage families to move to the area. In addition, she spoke about the health of the community, and that a liquor store would not promote or contribute to the physical health of the neighborhood.

Next, Pearl Allen testified. (R. p. 121; BOZA Hearing Video of June 11, 2013, at 2:24:54) Ms. Allen stated she was a resident of the Northwood Hills neighborhood and she had concerns over the proximity of the liquor store to the middle school and to another long-existing liquor store. She also testified that children walked from school in the area.

In addition, Christy Savage testified. (R. pp. 121-122; BOZA Hearing Video of June 11, 2013, at 2:29:30) Ms. Savage was the president of the Eau Claire Community

minutes of the Board proceedings are part of the record before this Court. (R. pp. 103-105)

Council, and immediate past president of the Northwood Hills Neighborhood Association. She testified about the proximity of the proposed liquor store to the other liquor store, and to the middle school. (*Id.*) She presented a photograph to the Board showing the posters, signage, and red dots on the proposed liquor store. (R. p. 69). She also spoke about the health issues facing the community, and that another liquor store would not enhance the health of the community. (R. pp. 121-122)

Finally, Inspector Hartley of the Columbia Police Department testified. (R. pp. 122-124; BOZA Hearing Video of June 11, 2013, at 2:35:45) Inspector Hartley showed that, including Appellant's liquor store, there were four liquor stores within a one mile radius of the middle school. (R. pp. 74-5, 122-23; BOZA Hearing Video of June 11, 2013, at 2:35:45) Inspector Hartley testified that Appellant's liquor store was approximately 695 feet to the closest point of entrance of the school grounds. (R. p. 76)

At the conclusion of the hearing, a Board member made a motion to deny the request for a special exception. The motion passed 4-2 and the Board issued its written order on June 27, 2013. (R. pp. 64-5, 105) The Board's written order stated, in part, that the special exception was being denied because it would "adversely affect the public interest due to the proximity to a middle school and the proliferation of liquor stores in the area" and that the proposed use would "impact the aesthetic character of the environs, especially in regards to the proliferation of signs" on the business. (R. p. 65)

Appellant timely filed his appeal from the Board's order, and on March 7, 2014 a hearing was held in the Richland County Court of Common Pleas. (R. pp. 40-62) Following the hearing, the trial court stated its decision in favor of Respondent, and requested a proposed order from Respondent's counsel. The trial court accepted

Respondent's proposed order and adopted it *in toto*. The trial court's order was filed on June 4, 2014, and Appellant timely filed a notice of appeal with this Court. (R. pp. 3-11, 38)

Respondent objects to certain portions of Petitioner's Statement of the Case.² The first paragraph of Petitioner's statement is argumentative and contains a restatement of the issues on appeal. Respondent also takes exception to Appellant's statement that Appellant never received notice or had knowledge that private counsel would appear and argue against the granting of the special exception. (Appellant's Initial Br. at p. 2). This statement is also argumentative, and is not relevant to this appeal. For public hearings such as the one held in this matter, there is no requirement that parties be provided notice of opposition. In practice, a zoning board and zoning staff are unlikely to know who might appear at a hearing for or against a particular issue.

ARGUMENT

In zoning cases, a reviewing court's standard of review is governed by S.C. Code Ann. § 6-29-840(A) (Supp. 2014). This section provides, in part, that "[t]he findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. . . . In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." *Id.*

Section 6-29-840 is very deferential to a zoning board's findings of fact as it equates them to a jury's findings. Vulcan Materials Co. v. Greenville County Bd. of

² See Rule 208(b)(2), SCACR (stating a respondent need not include a statement of the case unless dissatisfied with the statement of the case by the appellant, and that respondent shall be bound by the appellant's statement unless respondent includes his own statement).

Zoning Appeals, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000). In other words, the court must not disturb the board's findings of fact unless there is no evidence reasonably supporting the board's decision. See Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 479-480, 623 S.E.2d 373, 375 (2005) (“[A] factual finding of the jury will not be disturbed unless a review of the record discloses there is no evidence which reasonably supports the jury's findings.”).

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

1. **The circuit court correctly found that the Board's decision to deny the special exception to operate a liquor store was supported by evidence in the record and the decision was not arbitrary and capricious.**

A zoning board has the power “to permit special exceptions subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance” S.C. Code Ann. § 6-29-800(A)(3) (Supp. 2014). Pursuant to this statute, the City of Columbia Zoning Ordinance (“City Code”) contains substantive provisions, i.e., terms and conditions, relating to the grant or denial of a special exception.³ See City Code § 17-112(2). One of these provisions, section 17-112(2)b.4., states that the Board “shall make a finding that it is empowered under the section of this article described in the application to grant the special exception and that the special exception will not adversely affect the

³ At the circuit court hearing, Respondent entered into the record, without objection, certified copies of applicable City Code sections. (R. pp. 41, 127-137).

public interest.” Pursuant to the City Code, the Board must address the public interest of the proposed use. Therefore, if the Board is unable to make this specific finding regarding public interest the special exception must be denied.

The City Code also contains specific criteria for special exceptions in section 17-112(2)c. This section states that the Board “shall consider the following: (1) traffic impact; (2) vehicle and pedestrian safety; (3) potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property; (4) adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and (5) orientation and spacing of improvements or buildings.” City Code § 17-112(2)c. Section 17-112(2)a.1., also places a duty on the Board to “[d]eny special exceptions when not in harmony with the intent and purpose of this article.”

The Board evaluated the special exception request in this case under each of the above substantive rules governing special exceptions and denied the application for a special exception. (R. pp. 64-5) The Board, pursuant to section 17-112(2)b.4., found that granting the special exception “would adversely affect the public interest due to the proximity to a middle school and the proliferation of liquor stores in the area.” (R. p. 65).

A liquor store is not a use by right in the applicable zoning district. By requiring a special exception for such a use, City Council has clearly said that the use must be in the public interest, and that the Board should deny the request if the use would be adverse to the public interest. See City Code § 17-112(2)b.4 (stating that the Board must find that a special exception “will not adversely affect the public interest.”).

There is evidence in the record to support the Board’s determination that the public interest would be adversely affected. First, the Board heard evidence and

considered the liquor store's location and proximity to schools and children. The Board found that if the special exception was granted it "would adversely affect the public interest due to the proximity to a middle school." (R. p. 65). Others may disagree with the conclusion reached by the Board, but the facts underlying the Board's decision are undisputed and concrete. It is undisputed that a middle school is located across the street from the proposed liquor store, and a residential neighborhood is also across the street. (R. pp. 67-8, 70, 72, 84-5, 116-7) The Board heard testimony that kids from the neighborhood walk to school and will walk right past the liquor store. (R. p. 116) The proximity of a liquor store to schools, children and neighborhoods is certainly a valid consideration in determining whether a use is appropriate for a particular location, and whether that use would adversely affect the public interest.

Next, the Board heard evidence and considered the number of liquor stores in the area in its evaluation of public interest. The Board found that if the special exception was granted it "would adversely affect the public interest due to the . . . proliferation of liquor stores in the area." (R. p. 65). The number of liquor stores in a particular area is also a real and valid concern in the zoning context. There is no reason that a zoning board cannot consider the number of a particular type of use in its evaluation to determine whether the granting of a special exception will adversely affect the public interest. The Board heard evidence of the number of liquor stores in the area and decided that such number would adversely affect the public interest. The evidence presented at the hearing showed that another liquor store was already located on the same side of the road and within view of the Appellant's store. (R. pp. 67-8). In addition to that store, at least two other liquor stores are located within one mile of the middle school. (R. pp. 73-5) Had

the special exception been granted, a total of four liquor stores would have been located within a one-mile radius of the middle school.

In addition to the physical evidence of the number and location of existing and proposed liquor stores, the Board also heard testimony from a neighborhood association president and a nearby neighborhood resident concerning the concentration and proliferation of liquor stores. (R. pp. 115-6, 120-1; BOZA Hearing Video of June 11, 2013, at 1:57:11 [David Rhodes] and at 2:20:09 [Patricia Brown]). One witness stated that the area had plenty of liquor stores and another liquor store would not help family-oriented investment in the area. (R. p. 116). This witness stated that he had lived in the area for 8 years and had not seen any new business other than convenience stores and liquor stores. (R. pp. 115-6) This testimony supplements and enhances the other testimony heard by the Board concerning the concentration of liquor stores in the area, and this testimony demonstrates the purpose of zoning ordinances and special exceptions.

The purpose of a zoning ordinance is to guide development “in accordance with existing and future needs and [to] promot[e] the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare.” S.C. Code Ann. § 6-29-710(A) (2004). To this end, zoning ordinances should “facilitate the creation of a convenient, attractive, and harmonious community . . . [and] regulate the **density and distribution** of . . . the uses of buildings, structures and land for trade, industry” S.C. Code Ann. § 6-29-710(A)(3) and (4) (2004) (emphasis added). The City Code has attempted to do this by allowing for liquor stores only by special exception in certain zoning districts. See City Code § 17-258, Table of Permitted Uses. At some point, if the facts support the decision, as in this matter, the Board can say “enough is enough” by

denying a special exception that would not be in the public interest. That is exactly what the Board did in this case when it relied on concrete, competent facts concerning proximity and proliferation to conclude that the special exception would not be in the public interest. It is entirely permissible for the Board to take into account the problem of cumulative impact of such use, and to make a decision to regulate the density and distribution of such use. Testimony heard by the Board regarding the cumulative impact showed that the cumulative impact would not promote a family-oriented community, and would not enhance the health and livability of the community. (R. pp. 120-22; BOZA Hearing Video of June 11, 2013, at 2:20:09, and 2:29:30) Appellant has not cited any authority that a zoning board cannot consider the number or concentration of a particular type of use in its evaluation to determine whether a special exception will adversely affect the public interest.

The testimony concerning the proximity of the proposed liquor store to a school and the number of liquor stores in the area is not speculation or conjecture. The Board heard this evidence and determined, in its view, that the location of the proposed liquor store and the number of liquor stores in the area would adversely affect the public interest. Appellant seeks to have this Court take a different view of the evidence and make a different decision than that reached by the Board. However, a reversal of the Board's determination that the special exception would adversely affect the public interest would be substituting this Court's judgment for that of the Board. See Restaurant Row Assocs., 335 S.C. at 216, 516 S.E.2d at 446 (stating that a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision). It is certainly acknowledged that others viewing the same facts may come to a

different conclusion than that reached by the Board. For instance, a different board, just like a different jury, may have viewed the facts differently and applied the facts differently. But, this Board took the facts concerning proximity to a school and the proliferation of liquor stores and applied those facts to the concept of public interest, which it was required to do pursuant to the City Code. Based on the record, evidence was presented by which the Board could reasonably conclude that the special exception would adversely affect the public interest.

Appellant cites to Bannum v. City of Columbia, 335 S.C. 202, 516 S.E.2d 439 (1999) for the proposition that the Board's decision was arbitrary. As Appellant correctly points out, the Supreme Court determined there was no "concrete evidence" to support the neighboring residents' view that the halfway house would increase traffic. Id. at 206, 516 S.E.2d at 441 (stating that the residents "felt" the halfway house would increase traffic). However, contrary to Appellant's view, in the present case, the Board relied on concrete evidence that the liquor store was in close proximity to a school, and that the liquor store would have been the fourth one in a one-mile radius of the school. The Board applied these concrete facts to determine that the special exception would adversely affect the public interest.

Appellant also argues that his position is identical to the applicant's position in Wyndham Enters., LLC v. City of North Augusta, 401 S.C. 144, 735 S.E.2d 659 (Ct. App. 2012). In Wyndham, the board denied a special exception request to operate a costume/fireworks store. The criteria used by the board, in pertinent part, in evaluating the request required the board to find: "2. That the special exception will be in substantial harmony with the area in which it is to be located. 3. That the special exception will not

discourage or negate the use of the surrounding property for use(s) permitted by right.” Id. at 148, 735 S.E.2d at 662. The applicable city code also required the board’s decision to be supported by “competent, substantial, and material evidence.” Id. The board heard concerns about an increase in traffic, a decline in property values, and detrimental impact on the character of the surrounding area. The court of appeals held that the “testimony proffered was based on speculation and opinion.” Id. at 150, 735 S.E.2d at 662. Therefore, the court of appeals reversed the board’s decision, finding the decision was arbitrary and capricious.

The present case is readily distinguishable from the matter considered by the board in Wyndham. The zoning board in Wyndham was not called upon to determine whether the special exception would adversely affect the public interest. In Wyndham, this Court was concerned with the basis of the testimony relied upon by the board. It found the “**testimony** proffered was **based** on speculation and opinion.” Id. at 151, 735 S.E.2d at 662 (emphasis added). In the present case, the Board was required to make a determination regarding the public interest. The testimony relied upon by the Board was not based on speculation or opinion and there should be no concern about the basis of the testimony provided to the Board concerning proximity or concentration. The Board determined that the public interest would be adversely affected by the location of the proposed liquor store and because of the number of liquor stores in the area. The testimony that formed the basis of the Board’s determination regarding the public interest was not based upon speculation or conjecture.

Appellant seems to argue, pursuant to Wyndham, that that the Board could not deny the special exception request without hearing evidence from residents concerning

specific injuries to property or competent testimony on how the liquor store would negatively impact the value of residents' property.⁴ (Appellant's Initial Brief at pp. 5, 11, 14). This type of testimony was not necessary for the Board to deny the special exception request in the present case. Wyndham does not stand for the proposition that this type of testimony is necessary in every case. Wyndham simply declares that if a zoning board is going to rely on such testimony that the testimony must be competent.

The City Code also contains other criteria for special exceptions in section 17-112(2)c. This section states that the Board "shall consider the following: (1) traffic impact; (2) vehicle and pedestrian safety; (3) potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property; (4) adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and (5) orientation and spacing of improvements or buildings."

In addition to its evaluation of the adverse effect of the public interest, BOZA evaluated the special exception application in this case under each of the above substantive rules governing special exceptions and, under the fourth criteria, found that the special exception use would "impact the aesthetic character of the environs,

⁴ It is true that the Board's order made reference to a depreciation of property values in adjacent areas. (R. p. 65). However, this conclusion was made in relation to whether the special exception would be in harmony with the intent of a C-3 zoning district. See City Code § 17-112(2)a.1. (stating the Board must "[d]eny special exceptions when not in harmony with the intent and purpose of this article"). Regardless of whether this conclusion was substantiated by the evidence, it would not diminish the Board's separate conclusion, pursuant to City Code § 17-112(2)b.4., that "the special exception would adversely affect the public interest due to the proximity to a middle school and the proliferation of liquor stores in the area."

especially in regards to the proliferation of signs”⁵ (R. p. 65) In this regard, one of the witnesses introduced a photograph depicting the signage and posters on the outside of the building. (R. pp. 69, 121-2 [Savage testimony]) One of the Board members commented that the signage on the outside of the building contained “9 red dots”. (R. p. 122). When questioned about signage, Appellant admitted that he had advertisements for liquor, cigarettes, and the lottery.⁶ (R. p. 125) The Board determined, in its judgment, that the signage and posters impacted the aesthetic character of the environs. These concerns about the impact of the aesthetic character certainly find support in the record. Ms. Brown testified about her concern with the signage and its visual effects on passersby, in addition to the photograph of the signage presented by Ms. Savage. (R. pp. 69, 120) This court cannot substitute its judgment for that of the Board where evidence is in the record supporting the Board’s decision. Restaurant Row, supra.

Therefore, based on the reasons stated above, the Board did not act arbitrarily in denying the application for special exception, and the circuit court correctly found that the Board’s decision was supported by evidence in the record.

- 2. The circuit court correctly found that there was no conflict of interest created by City Council hiring outside counsel to appear on its behalf at the Board meeting, and by finding that there was no prejudice resulting to Appellant.**

⁵ The Board also found that the use would not negatively impact traffic circulation, would not create noise, lights, fumes, or otherwise obstruct air flow, and that it would not negatively impact the orientation or spacing of improvements or buildings. (R. p. 65)

⁶ Appellant offered to remove any signage, but City staff indicated that sign regulations were tough to enforce because signage can be removed and reinstalled. (R. p. 118). The Board was not required to accept Appellant’s offer to remove signage. The evidence presented to the Board showed that at the time of the hearing, the use of the building, as depicted in the photograph, would adversely impact the aesthetic character of the environs.

Appellant argues that a conflict of interest was created by the appearance at the Board hearing of a private attorney retained by City Council.⁷

In his brief, Appellant characterizes the conflict of interest as being between the Respondent, the City of Columbia, and private counsel. Respondent respectfully asserts that Appellant has mischaracterized and misunderstood the concept of a conflict of interest in this matter. First, Appellant argues there was a conflict because the “City of Columbia sought to unduly influence the Respondent when the City of Columbia’s sole ‘function under this article shall not include hearing and deciding questions of interpretation and enforcement which may arise [quoting City Code § 17-81(b)]’” [App. Initial Br. at p. 19] This statement does not describe a conflict of interest between the Respondent, the City, and private counsel. As Appellant points out, Rule 1.7, RPC, Rule 407, SCACR, defines a concurrent conflict of interest. In simple terms, Rule 1.7 prohibits an attorney’s representation of Client A if that representation would be directly adverse to Client B. Appellant does not explain how this rule applies to the Board, or how the Board created a conflict of interest. It is undisputed that the Board did not hire outside counsel, and that outside counsel was engaged by City Council. This is not a

⁷ Appellant recognizes that he did not raise the issue of a conflict of interest in the hearing before the Board. (Appellant’s Initial Br. at p. 23). Had he done so, the Board may have had occasion to remedy the situation at that time. By not raising this issue at the earliest opportunity, Appellant has waived this issue for appellate review. See Burton v. County of Abbeville, 312 S.C. 359, 440 S.E.2d 396 (Ct. App. 1994) (stating an issue was not preserved for appeal where it was not addressed by the Board of Zoning Appeals); In re Michael H., 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004) (“In order to preserve an issue for appeal, it must be raised to and ruled upon by the trial court.”); Lucas v. Rawl Family Ltd. P’ship, 359 S.C. 505, 510–11, 598 S.E.2d 712, 715 (2004) (“It is well settled that, but for a very few exceptional circumstances, an appellate court cannot address an issue unless it was raised to and ruled upon by the trial court.”).

situation envisioned by Rule 1.7 where a lawyer represents two adverse clients. There is no evidence that outside counsel was engaged by, or was representing, the Board.

Next, Appellant argues that a conflict existed because the “City of Columbia sought to circumvent [City Code § 17-81(b)] by hiring private counsel to assert its interpretation and influence before the Respondent.” [App. Initial Br. at p. 19] Again, this argument does not describe a conflict of interest. Appellant may be upset and may feel that City Council should not have hired private counsel to appear at the hearing in opposition to the application, but the facts in the record and Appellant’s argument do not point to a conflict of interest.

Appellant also cites Rule 1.8(l), RPC, Rule 407, SCACR, as authority for the existence of a conflict of interest. However, Appellant does not explain how this rule applies in the context of these facts. Rule 1.8(l) states that, “In an adversarial proceeding, a lawyer shall not serve as both an advocate and an advisor to the hearing officer, trial judge or trier of fact.” Id. “This rule prohibits a lawyer who has served or is serving as an advisor [to a public administrative body] on a particular matter from also prosecuting or defending that particular matter.” Comment [19], Rule 1.8, RPC, Rule 407, SCACR. There are no facts in the record that outside counsel served as an advisor to the Board, while at the same time appearing at the hearing.

Appellant also suggests that the City Attorney’s office had a conflict of interest and could not appear at the Board hearing. If Appellant is correct that the City Attorney’s office had a conflict prohibiting it from appearing at the hearing, while at the

same time representing and advising the Board,⁸ any conflict was certainly remedied by the City Council hiring outside counsel who, undisputedly, did not represent both the interests of the City Council and the interests of the Board.

It is apparent from Appellant's arguments that there would be no circumstance under which the City Council could appear through counsel at the Board hearing. Appellant says the City Attorney's office cannot appear on behalf of City Council, and also that private outside counsel cannot appear on behalf of City Council. Appellant couches his argument in terms of a conflict of interest, but it is clear that the situation encountered by Appellant at the hearing was not one where a conflict of interest existed.

Appellant does not cite any authority prohibiting a councilmember from appearing at a public hearing. Zoning board hearings are advertised by public notice and are open to the public. S.C. Code Ann. § 6-29-800(D) (Supp. 2014). Likewise, Appellant does not cite any authority prohibiting a municipal body from engaging outside counsel to appear on its behalf at a public hearing. In fact, the Local Government Comprehensive Planning Enabling Act (S.C. Code Ann. § 6-29-310 et seq.) specifically allows "an officer or agent of the appropriate governing authority" to appeal a decision of a zoning board to the circuit court. S.C. Code Ann. § 6-29-820 (A) (Supp. 2014). In other words, this statute allows a municipal body to take an adverse position to that of a zoning board. Ostensibly, this would be done by engaging an attorney employed directly by the local governing body, or by engaging outside counsel.

⁸ Respondent does not believe that a conflict of interest would have existed in this situation. See Comment [19], Rule 1.8, RPC, Rule 407, SCACR (stating the rule "does not prevent one lawyer from prosecuting an administrative matter in which another lawyer in the same office serves as an advisor to the hearing body, as long as the lawyers do not communicate with one another or share information about the particular case").

Appellant cites numerous City Code sections that spell out the responsibilities of the zoning administrator, City Council, and the City Attorney. The City Code sections cited by Appellant do not prevent the City Council from hiring outside counsel. Appellant argues that these code sections were violated because the City Council's responsibilities do not include "hearing and deciding questions of interpretation and enforcement." City Code § 17-81. There is no evidence in the record that the City Council, through outside counsel, was "deciding questions of interpretation and enforcement." City Code § 17-81.

For the first time, in this appeal, Appellant cites to section 8-13-740 of the South Carolina Code of Laws, as authority for the proposition that there existed a conflict of interest.⁹ In order to attempt to fit outside counsel into the application of this statute, Appellant refers to outside counsel as a "public employee" and states that outside counsel "had an official responsibility to counsel both agencies as a public employee."¹⁰ [Appellant's Initial Br. at pp. 20-21] Appellant also asserts that outside counsel "represented both parties at the hearing." These statements are unsubstantiated by the record. Outside counsel clearly indicated that he had been retained by City Council. [R. pp. 116, 118] There is no evidence that outside counsel represented the Board, or that outside counsel was a public employee simply because he was retained by City Council for the limited purpose of appearing at the Board hearing. Even assuming outside counsel could be considered a public employee, there is no evidence that outside counsel has official responsibility for the Board. See S.C. Code Ann. § 8-13-740(A)(5) and (6)

⁹ Section 8-13-740 was neither raised to nor ruled upon by the circuit court, and cannot be raised for the first time here on appeal.

¹⁰ Prior to taking this position that outside counsel is a "public employee", in his brief Appellant repeatedly refers to outside counsel as "private counsel".

(Supp. 2014) (prohibiting a public employee from representing a person before an agency or entity for which the public employee has official responsibility).

What is also abundantly clear in this matter is that the Board had no part whatsoever in creating any perceived conflict of interest. The Board is the only respondent identified in this appeal. Given that the Board did not create any perceived conflict of interest, the Board's decision should not be reversed for actions over which it had no control.

Appellant also asserts that the alleged conflict of interest prejudiced him in this matter. Appellant apparently argues that the conflict of interest in turn created a situation of undue influence on the Board members. Appellant's argument of undue influence and prejudice does not stand alone – it is dependent first on a finding of a conflict of interest. Therefore, Respondent asserts that if there was no conflict of interest, then there would be no prejudice.

In any event, Appellant has not explained how he was prejudiced by a conflict of interest, other than being denied the special exception. Instead, Appellant seems to argue, in a conclusory fashion, that private counsel somehow unduly influenced the Board. There is no evidence, and Appellant has not pointed to any evidence, demonstrating that any board member voted a certain way because of the alleged conflict of interest. Appellant's examples of undue influence are nothing more than speculation and conjecture. For example, Appellant takes issue with the simple fact that the Board engaged in some colloquy with outside counsel.

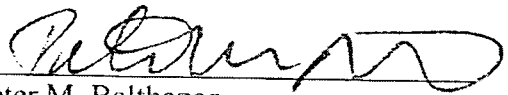
Therefore, based on the arguments presented here, Respondent asserts that there was no conflict created by City Council hiring private counsel to appear at the Board

hearing. Further, Appellant was not prejudiced by an attorney appearing on behalf of City Council at the hearing.

CONCLUSION

For the reasons stated herein, the circuit court's decision to affirm the denial of the special exception should be affirmed.

RILEY POPE & LANEY, LLC



Peter M. Balthazor
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
Telephone: (803)799-9993
Facsimile: (803) 239-1414
Attorneys for Respondent

Columbia, South Carolina

February 16, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

C/A No. 2013-CP-40-4051

Case No. 2014-001824

Andreas Ganotakis d/b/a Seven Days Food Mart, LLC Appellant,

v.

City of Columbia Board of Zoning Appeals..... Respondent.

CERTIFICATE OF COUNSEL

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

February 16, 2015



PETER M. BALTHAZOR
RILEY, POPE & LANEY, LLC
P.O. Box 11412
Columbia, South Carolina 29211
(803) 799-9993 – Office
(803) 239-1414 – Facsimile
peteb@rplfirm.com
Attorneys for Respondent

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

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

Andreas Ganotakis d/b/a Seven Days Food Mart, LLC,
Appellant,

v.

City of Columbia Board of Zoning Appeals, Respondent.

Appellate Case No. 2014-001824

Appeal From Richland County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2016-UP-153
Submitted December 1, 2015 – Filed March 30, 2016

AFFIRMED

Dietrich A. Lake, of The Lake Law Firm, of Columbia,
for Appellant.

Peter M. Balthazor, of Riley Pope & Laney, LLC, of
Columbia, for Respondent.

PER CURIAM: Andreas Ganotakis d/b/a Seven Days Food Mart, LLC (Food Mart) appeals the circuit court's decision affirming the decision of the Board of Zoning Appeals (the Board) to deny Food Mart's request for a special exception to operate a liquor store in a C-3 zoning district. Food Mart argues the circuit court

erred in determining (1) the Board's decision to deny Food Mart's request for a special exception was not arbitrary and capricious when the Board did not adhere to its own criteria for granting special exceptions, and (2) Food Mart was not prejudiced by a conflict of interest between the Board, City Council, and private counsel. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in determining the Board's decision to deny Food Mart's request for a special exception was not arbitrary and capricious: S.C. Code Ann. § 6-29-840(A) (Supp. 2015) ("The findings of fact by [the Board] . . . must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence."); *Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999) ("A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision."); *id.* ("However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion."); S.C. Code Ann. § 6-29-800(A)(3) (Supp. 2015) (stating the Board has the power "to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance"); Columbia City Code § 17-112(2)(b)(4) (2013) (stating the Board "shall make a finding that it is empowered under the section of this article described in the application to grant the special exception and that the special exception will not adversely affect the public interest"); Columbia City Code § 17-112(2)(c) (2013) ("[The Board] . . . shall consider the following: (1) [t]raffic impact; (2) [v]ehicle and pedestrian safety; (3) [p]otential impact of noise, lights, fumes, or obstruction of air flow on adjoining property, (4) [a]dverse impact of the proposed use on the aesthetic character of the environs . . . ; and (5) [o]rientation and spacing of improvements or buildings.").

2. As to whether the circuit court erred in determining Food Mart was not prejudiced by a conflict of interest between the Board, City Council, and private counsel: Rule 1.7(a), RPC, Rule 407, SCACR ("A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."); Rule 1.8(l), RPC,

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

Rule 407, SCACR ("In any adversarial proceeding, a lawyer shall not serve as both an advocate and an advisor to the hearing officer, trial judge or trier of fact.").

AFFIRMED.

HUFF, A.C.J., and WILLIAMS and THOMAS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2013-CP-40-4051

RECEIVED

APR 08 2015

SC Court of Appeals

Andreas Ganotakis, d/b/a Seven Days Food Mart, LLC, ...Appellant,

v.

City of Columbia Board of Zoning Appeals, ...Respondent.

PETITION FOR REHEARING

Dietrich A. Lake
The Lake Law Firm
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
(803) 750-8311
Attorney for Appellant

The Appellant respectfully requests a rehearing in this matter pursuant to Rule 221, SCACR. The specific supporting grounds for this petition are set forth and discussed below.

STATEMENT OF THE CASE

The Respondent's denial of the Appellant's request for a special exception to open a liquor store was arbitrary and capricious; furthermore, the Respondent did not follow its own guidelines for granting special exceptions for liquor stores in C-3 districts. The City of Columbia unlawfully hired private counsel to argue interpretation and/or enforcement of laws on zoning board issues before the Respondent which is an agency of the City of Columbia. The City of Columbia hired private counsel to influence the Respondent's decision to deny the Appellant's request for a special exception only because the Appellant's business was a liquor store.

The Appellant filed a letter of agency and an application for a special exception for a liquor store located at 5050 Fairfield Road, Columbia, South Carolina on May 15, 2013. [R. pp. 087-088.] The application summary lists the case number as 13-041-SE and states that the building is located in a C-3 (General Commercial) zoning district. [R. p. 083.] Notice of the Appellant's public hearing was posted on the property and published in a newspaper.

A hearing was held before the Respondent on June 11, 2013, to consider the Appellant's request for a special exception to operate a liquor store. The Respondent heard oral arguments from the parties against and in favor of granting the request for a special exception to operate a liquor store. [R. pp. 114 -126; BOZA Video filed separately.] The Respondent heard from Chaplin Spencer, private counsel hired by the

City Council, and several other witnesses opposing the request for special exception. [R. p. 116, line 26 – p. 120, line 2.] The Appellant never received notice nor did the Appellant have any knowledge that Chaplin Spencer would appear on behalf of the City Council and argue against granting the special exception. At the conclusion of the hearing, the Appellant's request for a special exception was denied. [R. pp. 001-002; 064-065.]

By letter dated July 12, 2013 to the Circuit Court, the Appellant timely filed his appeal of the Respondent's Order with a case number of 2013-CP-40-4051. [R. p. 037.] The Respondent filed its' Return on August 22, 2013. [R. pp. 028-029.]

A hearing involving the Appellant and Respondent was held in a Richland County court on March 7, 2014, before the Honorable Eugene C. Griffith, Jr. The Appellant presented a brief and the Respondent provided the court with Memorandum of Law in Opposition to Petition for Appeal for the court's review. [R. pp. 014-027; 030-034.] In addition, counsel for the Appellant presented oral arguments to the court regarding the facts and law in favor of reversing the Respondent's decision and granting the special exception; counsel for the Respondent presented oral arguments in opposition to affirming the Respondent's decision and denying the Appellant's special request. [R. pp. 040-062]. On June 4, 2014, the Circuit Court issued an Order affirming the Respondent's decision to deny the special exception to the Appellant. [R. pp. 003-011.]

The Appellant timely filed his Motion for Reconsideration on June 11, 2014. [R. pp. 035-036.] The Appellant's Motion for Reconsideration was denied by Order of July 30, 2014. [R. pp. 012-013.] The Appellant filed his Notice of Appeal on August 25, 2014. [R. pp. 038-039.]

ARGUMENT

Arbitrary and Capricious Determination

The Appellant contends that the Respondent's decision to deny the Appellant's request for a special exception to open a liquor store was arbitrary and capricious and not supported by any factual evidence. Furthermore, the Appellant contends that the Respondent did not follow its own criteria for granting special exceptions for liquor stores in that mixed use district.

Pursuant to powers enumerated under *Sec. 17-112 of the City of Columbia Code of Ordinances*, The Board of Zoning Appeals has the power to grant special exceptions in C-3 general commercial districts considering only the following criteria:

1. Traffic impact;
2. Vehicle and pedestrian safety;
3. Potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property;
4. Adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and
5. Orientation and spacing of improvements or buildings

In addition, the powers enumerated under *Sec. 17-112 of the City of Columbia Code of Ordinances* 2 (b)(5)(6) states that the zoning board "shall not vary the conditions and/or provisions of sections 17-259 through 17-274 that establish specific standards that must be met prior to the establishment of several principal uses that require a special exception; and the board of zoning appeals may prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both. [R. pp. 127 – 129.]

The Respondent, in its Order, found that granting the special exception would adversely affect the public interest of the area due to the proximity to a school, that a

"proliferation of liquor stores" would result in a depreciation in homes values in the surrounding area, that the liquor store would create vehicular or safety problems for that street, and that the liquor store would impact the aesthetic character of the area.

Favorably, the Respondent determined that granting the special exception would not negatively impact traffic circulation or would not create noise, lights, fumes, or otherwise cause any obstructions to the detriment of adjoining properties or would negatively impact the orientation or spacing of improvements. [R. pp. 001-002; 064-065.]

There was no credible evidence in the record that the Appellant's store would adversely affect the public interest due to the proximity to a middle school nor is there any evidence that there is a "proliferation of liquor stores in the area;" neither of these two are listed in the criteria for granting special exceptions. The Respondent referenced how the Petitioner's liquor store would adversely affect the middle school and how a "proliferation of liquor stores in the area" would contribute to depreciation in home values; however, the record clearly showed that there is one liquor store (Northway Package Store) directly in front of Alcorn Middle School; however, the record shows no "proliferation" of liquor stores as there are no other liquor stores on Fairfield Road within one-mile proximity of Alcorn Middle School. [R. pp. 067 – 068, 070 – 076.] In fact, nine (9) out of the fifteen (15) stores that the residents testified to as selling alcohol (as part of their evidence at the hearing) were not even located on Fairfield Road. [R. p. 073.] Furthermore, the record reflected that nine (9) of the stores were gas stations, two (2) were grocery stores, two (2) were drug stores, and only two (2) other businesses were sole liquor stores. The Respondent's assertion of a proliferation of liquor stores was merely opinion and conjecture and not supported by any evidence in the record.

No witnesses provided specific competent or specific factual evidence of actual injury to their respective properties to the Respondent to warrant denying the special exception. [R. p. 115, line 35 – p. 124, line 32.] The residents presented crime statistics for the area and it only showed that the Appellant's business was burglarized once over a one year period. [R. pp. 078 – 080.] In addition, these same statistics showed no crime occurred at either the Food Lion or the Northway Package liquor store and both are located across from Alcorn Middle School; both of these businesses also sell alcohol and are next to the Appellant's place of business. [R. p. 082.] Officer Hartley was asked specifically whether " the data shows a correlation between the increase of liquor stores and the increase of crime, her response was, "Specific to liquor stores it does not support an increase in crime." [R. p. 124, lines 13 – 32; BOZA Video filed separately.]

In *Bannum v. City of Columbia*, 335 S.C. 202, 516 SE2d. 439 (1999), our Supreme Court reversed the decision of the zoning board based upon the finding that the board's decision was arbitrary. In *Bannum*, the applicant requested a special exception to operate a half way house in the City of Columbia. At the hearing, opposing parties testified to their objections to granting the special exception for the half way house based upon traffic concerns, foot traffic, and a study indicating that these individuals living in the half way house are likely to repeat committing crimes. The City of Columbia's zoning board denied the request for a special exception based upon this testimony. Our Supreme Court determined that there was no "concrete" evidence to support the opposing parties' views and opinions; furthermore, the Supreme Court determined that the board ignored all evidence offered by the applicant to show

satisfaction of the exceptions to the ordinance requirements. The court concluded that the board's decision was based on the unsubstantiated concerns and testimony of the neighboring residents rather than on the requirements for a special exception set out in the ordinance.

In *Windham Enterprises v. The City of North Augusta*, 735 S.E.2d 659 (S.C.App. 2012), the Court of Appeals reversed the decision of the zoning board based upon the finding that the board's decision was arbitrary and capricious and reaffirming the decision in *Bannum*. In the *Windham Enterprises* case, the applicant sought a special exception to operate a fireworks store. At the hearing for the special exception, residents testified as to their objections to granting the special exception for the fireworks store based upon traffic concerns, a concern that the store would cause a decline in property value, and based upon the negative effect the store would have on the community. The zoning board denied the special exception due to the concerns of the residents. The Court of Appeals reversed this decision and held that the board's decision must be supported by competent, substantial, and material evidence. The Court of Appeals determined that the testimony of the residents did not meet that competent standard because the residents did not testify as to any specific injury to their own property nor did the residents sufficiently articulate how the fireworks store would either depreciate their individual property or stand in contrast to other commercial businesses in the area that did not need to seek a special exception.

In support of its conclusion on this issue, this court cited *Rest. Row Assoc. v. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). Yet, this case allows the appellate court to address the Respondent's finding of facts when it is "arbitrary or

clearly erroneous." The issue in *Rest Row* surrounded whether the appealing party proved an unnecessary hardship at the zoning board hearing to obtain a hardship. In *Rest Row*, the appealing party had the sole burden of proof of unnecessary hardship to establish the variance because an "adult" store by rule was not allowed in the district. The zoning board determined that the appealing party had not met its burden and therefore the board's findings of facts were conclusive.

The Appellant's case presents no similar issue as was stated in *Rest Row*. The Appellant had no such burden of proof because liquor stores are allowed in the district so long as the criteria was followed and met. In addition, Columbia city's ordinance allows a party to conform and/or modify the business to allow the business an opportunity to meet the criteria. The Appellant offered to remove any signage and agreed to comply with any conditions the Respondent would have prescribed to obtain the special exception. There were other alternatives available to Respondent since the Appellant already sold beer and wine at that business location; however, the Respondent chose to ignore them.

The general rule is that reviewing courts will not disturb the findings of the zoning boards unless such findings or decisions resulted from action of the board which is arbitrary, an abuse of discretion, illegal or in excess of lawfully delegated authority; furthermore, the board must apply the criteria imposed by the zoning ordinance in either granting or denying a request for a special exception. See *Bannum. Vulcan Materials Co. v. Greenville County Board of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000) states that "the decision of the zoning board will not be upheld where it is based on errors of law, . . . or where there is no legal evidence to support it, or where

the board acts arbitrarily or unreasonably, . . . or where, in general, the board has abused its discretion."

In this case, the Respondent acted arbitrarily as there was no evidence to support its conclusions. The witness testimony was speculative, there was no competent evidence to support that the Appellant's liquor store would create vehicular or pedestrian safety problems, and there was no testimony or evidence of increased accidents or pedestrian problems before the Appellant's application for the special exception nor was there any testimony or competent evidence presented which distinguishes why the Appellant's store would pose a greater risk than either Food Lion or Northway Package since all of these stores are all located on the same side of the road and within close proximity to each other. In fact, the Appellant's business sells beer and wine already at that location and there was no testimony about prior problems with vehicle or pedestrian safety.

The Appellant would remind this appellate court that the Appellant's position is identical to the fireworks store owner's position in *Wyndham Enterprises* which this court has already decided. In this case as well as *Wyndham Enterprises*, residents testified as to concerns about increased traffic, concerns about decreased home and property values, and concerned about the aesthetics of the business. In this case as well as *Wyndham Enterprises*, witnesses testified exclusively on conjecture and general opinion with no competent testimony as to any specific injuries to their respective property. In this case as well as *Wyndham Enterprises*, the Respondent's decision was arbitrary and capricious and "was not supported by competent, substantial, and material evidence."

The Respondent's decision to deny the Appellant's request for a special exception to open a liquor store was arbitrary and capricious and was not supported by any factual evidence to support its decision. The Respondent's decision was based upon opinion and conjecture with no competent evidence to support the testimony of the witnesses in opposition of granting the special exception. The trial court failed to consider all the factors that illustrated that the Respondent's decision was arbitrary and capricious; the trial judge abused his discretion. Therefore, this Court also erred in affirming the trial judge's based upon the *Rest Row* case. This Court also erred by not considering previous rulings on the issue of arbitrary and capricious decisions by a board as set forth in *Bannum* and *Wyndham Enterprises*. While this Court cannot substitute its own judgment for that of the trial judge, this Court it has the power to do so when the trial judge's decision was erroneous. Accordingly, this Court should grant a rehearing, reverse on this issue, and grant the Appellant's request for a special exception.

Conflict of Interest

The Appellant contends that there was a conflict of interest between the board, city council, and private counsel. In addition, the Appellant contends that city council violated its own ordinance in by influencing the board in the board's decision making role through private counsel. City's council's influence was a contributing factor in the board's decision to deny the Appellant's request for a special exception; the denial of this special exception was actual prejudice to the Appellant.

In affirming the trial court's decision, the Court does not address whether there was in fact a conflict of interest between the parties; furthermore, this Court does not

address whether City Council violated its own ordinance by sending private counsel to influence the board in the board's zoning decision.

Sec. 17-81 of the City of Columbia Code of Ordinances addresses the responsibilities of the zoning administrator in its relationship with the City Counsel and states as follows:

Responsibility for administration.

- (a) *Zoning administrator.* A zoning administrator designated by the city manager shall administer and enforce this article. The zoning administrator may be provided with the assistance of such other persons as the city manager may direct. It is the intent of this article that all questions of administration and enforcement shall first be presented to the zoning administrator and that such questions shall be presented to the board of zoning appeals only upon reference by, or appeal from, the zoning administrator, and that recourse from the decisions of the board of zoning appeals shall be to the courts as provided by law.
- (b) *City council.* It is further the intent of this article that the function of the city council under this article shall not include hearing and deciding questions of interpretation and enforcement which may arise, but that the city council shall have only the responsibility for acting on proposals for amendment or repeal of this article, and for establishing a schedule of fees and charges as provided in this article.

The Appellant contends there was a conflict of interest between the Respondent, City Council, and private counsel. Private counsel appeared to serve as both an advocate for City Council and an advisor to the zoning board in this adversarial hearing to the detriment of the Appellant. City Council was clearly aware that it could not send the city attorney to argue council's position before the board, so it sought to circumvent their own ordinance by hiring and sending private council down on council's behalf.

This Court appears to ignore the fact that the city attorney never appeared before the zoning board to state City's Council's behalf even though the city attorney's sole duty is to appear on behalf of the city and all of the city's departments and/or to approve all documents and contracts related to the City of Columbia's daily business. The Appellant contends the city attorney could not appear because of the obvious and inherent conflict of litigating a matter where the city attorney represents both the interests of City Council and the interests of the Respondent and where the city attorney would be unlawfully attempting to influence the Respondent on behalf of City Council. The city attorney clearly knew that the Respondent had the sole power to grant special exceptions in C-3 general commercial districts and that City Council was required to play absolutely no role in either interpreting or influencing the decisions of the Respondent. See S.C. Ann. § 6-29-800, Sec 17-112; Sec. 17-81. This Court appears to never consider the question as to whether or not the city attorney for the City of Columbia could have appeared before the Respondent to argue against granting the special exception to the Appellant. The Appellant would contend that if this Court was to answer "no" to this above stated question, then a conflict of interest existed with private counsel at the time of this hearing which warrants reversal of the Respondent's decision to deny the special exception to the Appellant. The Appellant was prejudiced by this conflict which resulted in the denial of his request for a special exception.

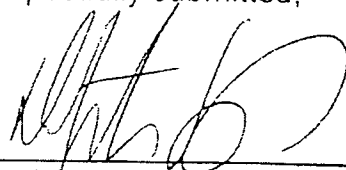
There is no indication that the trial judge considered whether there was a conflict between City Council, the board, and private counsel before the trial court made its decision. Furthermore, there is no indication that the trial judge considered whether City Council violated the city's ordinance in hiring private counsel to influence a zoning board

decision. The Appellant contends City Council willfully acted outside the scope of its powers to influence the Respondent and this undue influence resulted in prejudice to the Appellant when his request for a special exception to open a liquor store was denied. The trial court's decision that there was no conflict of interest was erroneous because it did not consider the above-stated facts; therefore, the trial court's decision was reversible based upon an abuse of discretion. By failing to address these issues in its decision, this Court overlooked clear evidence of a conflict of interest and prejudice to the Appellant from the denial of this special exception. While this Court cannot substitute its own judgment for that of the trial judge, this Court it has the power to do so when the trial judge's decision was erroneous. Accordingly, this Court should grant a rehearing, reverse on this issue, and remand with instructions that a conflict of interested existed between the parties and that the Appellant was prejudiced by the conflict.

CONCLUSION

Based on the arguments and authorities set forth above, as well as those contained in the Appellant's Brief, the Court should grant the petition, conduct a rehearing in this matter, and reverse the result below.

Respectfully submitted,



Dietrich A. Lake #69649
The Lake Law Firm
1034 Briargate Circle, Ste. 201
803/750-8311 office
803/750-8312 fax
ATTORNEY FOR APPELLANT

April 8, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 08 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2013-CP-40-4051

Andreas Ganotakis, d/b/a Seven Days Food Mart, LLC, ...Appellant,

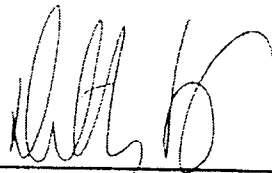
v.

City of Columbia Board of Zoning Appeals, ...Respondent.

PROOF OF SERVICE

The undersigned counsel for the Appellant hereby certifies hereby certifies that the Petition for Rehearing was served and delivered upon counsel for the Respondent by U.S. mail to: Peter M. Balthazor, Riley Pope & Laney, LLC, P.O. Box 11412, Columbia, SC 29211.

April 8, 2016



Dietrich A. Lake
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
803-750-8311
Attorney for Appellant

The South Carolina Court of Appeals

Andreas Ganotakis d/b/a Seven Days Food Mart, LLC,
Appellant,

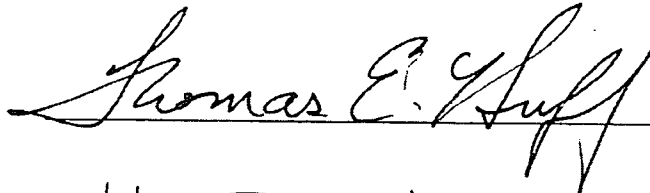
v.

City of Columbia Board of Zoning Appeals, Respondent.

Appellate Case No. 2014-001824

ORDER

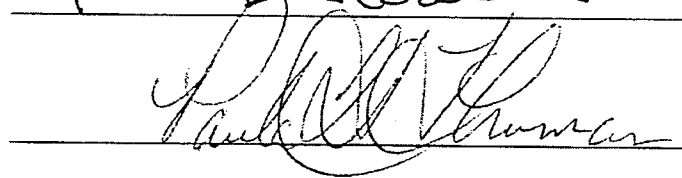
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



A.C.J.



J.



J.

Columbia, South Carolina

FILED

May 20, 2016

cc:

Dietrich Andre' Lake, Esquire

Peter M Balthazor, Esquire

The Honorable Eugene C. Griffith, Jr.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2013-CP-40-4051

RECEIVED

JUL 25 2016

Andreas Ganotakis, d/b/a Seven Days Food Mart, LLC,.....Petitioner,

SC SUPREME COURT

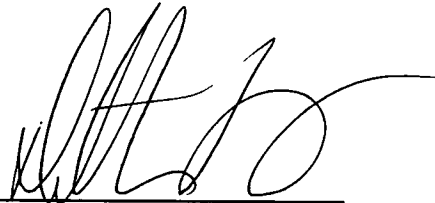
v.

City of Columbia Board of Zoning Appeals,.....Respondent.

PROOF OF SERVICE

The undersigned counsel for the Petitioner hereby certifies hereby certifies that Amended Appendix cover was served and delivered upon counsel for the Respondent by U.S. mail to: Peter M. Balthazor, Riley Pope & Laney, LLC, P.O. Box 11412, Columbia, SC 29211.

July 25, 2016



Dietrich A. Lake
1034 Briargate Circle, Ste. 201
Columbia, SC 29210
803-750-8311
Attorney for Appellant