

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III

Civil Action No.: 2012-CP-07-01394
Appellate Case No.: 2016-000687

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SC Court of Appeals

GRAYS HILL BAPTIST CHURCH.....Respondent

-VS-

BEAUFORT COUNTY, AND THE BEAUFORT COUNTY ZONING BOARD OF
APPEALS, DEFENDANTS

AND

THE UNITED STATES OF AMERICA, DEFENDANT – INTERVENOR

OF WHICH BEAUFORT COUNTY AND THE UNITED STATES OF AMERICA
ARE THE.....Appellants

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
GRAYS HILL BAPTIST CHURCH,
Appellant-Plaintiff,

vs.

BEAUFORT COUNTY, and THE
BEAUFORT COUNTY ZONING
BOARD OF APPEALS,
Defendants,

and

THE UNITED STATES OF AMERICA,
Defendant-Intervenor.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Case Numbers: 2008-CP-07-1114 and
(consolidated) 2010-CP-07-04844

ORDER GRANTING
MOTION TO INTERVENE

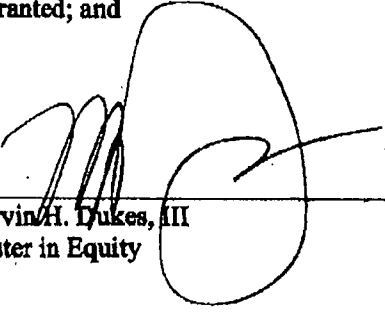
JERRI A. HARRIS
BEAUFORT COUNTY, S.C.
CLERK OF COURT

2011 JUN 30 AM 10:19

This matter came to be heard on Motion of David M. Wunder, Esq., attorney for the United States of America (hereinafter "United States"), to intervene in the above-captioned, consolidated actions pursuant to Rule 24, *South Carolina Rules of Civil Procedure*. Said Motion was filed on or about May 20, 2011 and properly served on all parties. The Court having reviewed the Motion to Intervene finds that the United States, is now, and was at all times, a right and proper party to the above-captioned, consolidated actions; that the United States has demonstrated a substantial interest in the subject actions; and that good cause exists for the granting of such Motion.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion to Intervene of the United States is hereby granted; and

IT IS SO ORDERED.


Marvin H. Dukes, III
Master in Equity

Beaufort, South Carolina
June 29, 2011

000001

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

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

GRAYS HILL BAPTIST CHURCH,
Appellant-Plaintiff,

vs.

BEAUFORT COUNTY and THE
BEAUFORT COUNTY ZONING
BOARD OF APPEALS,

Respondents-Defendants.

And,

UNITED STATES OF AMERICA,

Intervenor.

ORDER OF JUDGMENT
(REMAND)

2011 JUL 25 PM 4:00
BEAUFORT COUNTY S.C.
CLERK OF COURT

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

After due consideration of this matter, I find and conclude that this case should be remanded to the Beaufort County Planning Commission for a new hearing.

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L. PROCEDURAL HISTORY

A. DEVELOPMENT PERMIT

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

a. The County failed to acknowledge and recognize that it has already granted to the Church permission to construct the Fellowship Hall when it approved the master plan for the subject real property and gave permission to construct the subject improvement in Permit No. 3057, issued by the County on January 1, 1997.

b. The County failed to recognize the grandfathered status of the subject property, the Fellowship Hall, in Permit No. 3057.

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

d. Even if a new development permit was required, so that the Ordinance applicable

to the Airport Overlay District properly applied to this project, the County applied the incorrect standard pursuant to Appendix A1, Section 7(a)(6) and Table 106-9 of the Airport Overlay District Ordinance, the appropriate standard for expansion is up to 15% of the preexisting Adisturbed area, while the County improperly applied a standard limiting expansion to 15% of the preexisting buildings.

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

B. VARIANCE REQUEST

The second appeal, Case Number 2010-CP-07-4844, is an appeal from the Beaufort County Zoning Board of Appeals (ZBOA). In this appeal, the Appellant contends that the Zoning Board of Appeals wrongfully denied the Church's application for a variance allowing it to build its Fellowship Hall. More specifically, the Church in this second appeal contends that the decision by the ZBOA was controlled by errors of law inasmuch as the members of the ZBOA were motivated to vote against the requested variance based upon erroneous legal conclusions, to-wit:

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

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property which did not relate to the physical characteristics of the property; and

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

II. STANDARD OF REVIEW

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

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

III. FINDINGS OF FACT

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

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

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

4. On January 7, 1997, the Church received a development permit from Beaufort County to develop its 9.35 acre parcel of property as shown on the aforesaid development plat. See Development Permit No. 3657.

5. The Development Permit contains the following language:

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

6. On February 26, 1997, Beaufort County issued to the Church a construction permit to construct the improvements as shown on the aforesaid development plat. See Permit No. 970320.

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

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

9. The Development Permit, on the other hand, has never expired since substantial improvement to the development had occurred.

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

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

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

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

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

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

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

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

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

Applicant cannot expand more than 15% of the building, if the Applicant wishes to expand over 15%, a variance would be required, Applicant would be required to seek a variance from the Zoning Board of Appeals (ZBOA).

18. In making this preliminary decision, the DRT was relying upon Section 7(a)(6) of the Airport Overlay District Ordinance. At the time the Church applied for the new

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development permit, and at the time the Church's application was heard by the DRT on March 7, 2007, this Section allowed nonconforming places of assembly and worship to be expanded by up to 15% of the disturbed area provided the expansion did not increase the occupant load of the building. The disturbed area of the Church's development is 184,785 square feet, while the proposed Fellowship Hall is 10,000 feet. The Fellowship Hall, accordingly, is only 5.45% of the disturbed area, well below the 15% threshold. The decision of the DRT denying the Church's development permit application, as made by the DRT at its March 7, 2007 meeting, and as communicated in writing to the Church on June 29, 2007 tracks the language of a proposed amendment to the Airport Overlay District Ordinance which was being considered at the time by Beaufort County Council. This Ordinance was not enacted, however, until the following year, on February 25, 2008. This amendment altered Section 7(a)(6) so as to eliminate the reference to Table 106.9, and thereby eliminate the allowance of an expansion of up to 15% of the disturbed area, and instead ~~fla~~ provide that nonconforming places of assembly and worship may be expanded by up to 15% of the existing floor area provided that the expansion does not increase the occupant load of the building. The amendment also added this sentence: AOnly minor expansions to accommodate bathrooms, storage space, kitchens and office space may be permitted.

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

20. The Church appealed the decision of the DRT to the Beaufort County Planning

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Commission. The Planning Commission heard the Church's appeal on December 3, 2007. There is no record of this hearing.

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

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

23. On April 26, 2010 the Church applied to the Beaufort County Zoning Board of Appeals for a variance. As previously noted, as a result of the amendments to the Airport Overlay District Ordinance in February of 2008, the current Ordinance provides that nonconforming places of assembly and worship may be expanded by up to 15% of the existing floor area provided that the expansion does not increase the occupant load of the building. The 10,000 foot Fellowship Hall accordingly required a variance under the new statute, inasmuch as it would be larger than a 15% expansion of the existing floor area.

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

25. The ZBOA met on May 27, 2007 to consider the Church's application for a variance. The Board decided to continue the hearing in order to allow a representative from the

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Marine Corps Air Station more time to prepare. In the meantime, the Board asked the Church to submit to it a written document addressing the criteria for granting a variance as set forth in Section 106-522 of the ZDSO. This document was prepared and submitted to the Board members.

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

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

CONCLUSIONS OF LAW

1. This Court has jurisdiction over these appeals from the Beaufort County Planning Commission and Zoning Board of Appeals. Venue is proper in this Court.

2. On appeal, the Circuit Court will not disturb the findings of a County Board such as the Planning Commission or the ZBOA unless such finding or decision resulted from Board action which is arbitrary, an abuse of discretion, illegal, or in excess of lawfully delegated authority. *Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 516, S.E.2d 439 (1999). An abuse of discretion occurs if the Board's findings of fact have no evidentiary support, or are based upon an error of law. *Charleston County Parks and Recreation Commission v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). See also *Grant v. City of Folly Beach*, 346 S.C. 74, 83, 551 S.E.2d 229, 233 (2001).

3. There is no record of the hearing held before the Planning Commission. A key factual and legal issue in the appeal from the Planning Commission is whether the proposed action will increase the "occupant load." Without a record, it is impossible to determine if the Commission's finding is adequately supported or properly determined. I accordingly find that

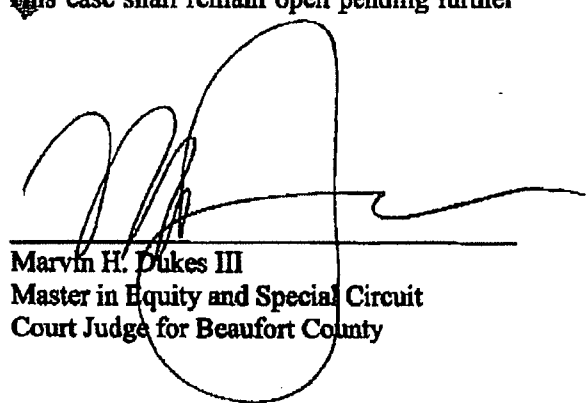
this matter should be remanded to the Planning Commission for a new hearing. I note that one of the appellate issues raised by the Church is that it was not allowed to fully participate at the last hearing, and this remand also resolves that issue.

4. Since the remaining issues, including the denial of the variance request, could be rendered moot by the decision of the Planning Commission on remand, I need not address them at this time, but retain the authority to do so.

IT IS, THEREFORE, ORDERED:

That this matter shall be and is hereby remanded to the Beaufort County Planning Commission to hear and consider evidence as to whether the permitting and construction of the subject facility will increase the "occupant load" as that phrase is used in Appendix A1 Section 7(a)(6) of the Beaufort County Airport Overlay Ordinance as it existed at the time in question. This shall be a *de novo* hearing at which the Commission is not bound by its prior decision and the record shall be fully developed and preserved. This case shall remain open pending further Order of this Court.

AND IT IS SO ORDERED.



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

Beaufort, South Carolina

Monday, July 25, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

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

GRAYS HILL BAPTIST CHURCH,)
Appellant-Plaintiff,)

vs.)

BEAUFORT COUNTY and THE)
BEAUFORT COUNTY ZONING)
BOARD OF APPEALS,)
Respondents-Defendants.)

FINAL ORDER OF JUDGMENT

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

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

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

I. PROCEDURAL HISTORY

A. DEVELOPMENT PERMIT

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

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

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

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

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the Fellowship Hall, in Permit No. 3057.

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

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

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

B. VARIANCE REQUEST

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

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

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

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

C. APPEAL AFTER REMAND

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

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

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

II. STANDARD OF REVIEW

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

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

5 of 21

III. FINDINGS OF FACT

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

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

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

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

5. The Development Permit contains the following language:

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

(emphasis added).

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

6 of 21

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No. 970320, Exhibit C, attached hereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See Exhibit H.

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

19. The decision of the DRT denying the Church's development permit application, as made by the DRT at its March 7, 2007 meeting, and as communicated in writing to the Church on June 29, 2007 (Exhibit H) tracks the language of a proposed amendment to the Airport Overlay District Ordinance which was being considered at the time by Beaufort County Council.

This Ordinance was not enacted, however, until the following year, on February 25, 2008.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(d) Is not consistent with the Comprehensive Plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

1. This Court has jurisdiction over these appeals from the Beaufort County Planning Commission and Zoning Board of Appeals. Venue is proper in this Court.

2. On appeal, the Circuit Court will not disturb the findings of a County Board such as the Planning Commission or the ZBOA unless such finding or decision resulted from Board action which is arbitrary, an abuse of discretion, illegal, or in excess of lawfully delegated authority. *Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 516, S.E.2d 439 (1999). An abuse of discretion occurs if the Board's findings of fact have no evidentiary support, or are based upon an error of law. *Charleston County Parks and Recreation Commission v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). See also *Grant v. City of Folly Beach*, 346 S.C. 74, 83, 551 S.E.2d 229, 233 (2001).

3. The Planning Commission committed an error of law when it affirmed the Zoning and Development Department's decision not to honor Development Permit No. 3057, which had been issued on January 7, 1997 and instead required the Church to seek a new Development Permit as a prerequisite to requiring a construction permit for the Fellowship Hall. The

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

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

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

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

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

IT IS, THEREFORE, ORDERED:

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

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

AND IT IS SO ORDERED.



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

Beaufort, South Carolina

Date: _____

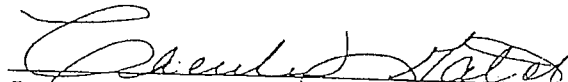
9/19/13

Beaufort County, South Carolina
DEVELOPMENT PERMIT
 Zoning and Development Administration

Permit Number 3057 Zone: GCD Date Issued: 1/7/97
 Development Name: GRAY'S HILL BAPTIST CHURCH
 Development Address: HWY 21, BEAUFORT
 District/Map/Parcel Number: 100/20/18C Acreage: 9.35
 Type of Development: INSTITUTIONAL

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

By:


 Zoning and Development Standards Administrator

Conditions of Permit Approval:

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

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

EXHIBIT B

PMT7A PERMIT FOR CONSTRUCTION IN BEAUFORT COUNTY, SOUTH CAROLINA
Department of Inspections

PERMIT FEE: 91,910.00

PERMIT NUMBER: 0000970320 - 00

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

LOCATION OF LOT BLOCK SUBDIVISION GRAYSHILL
BUILDING STREET 2749 TRASK PKWY
FLOOD ZONE C ELEVATION REQUIRED 6 MSI

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

COST DATA

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

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

INSPECTIONS REQUIRED

TS ☐ FT ☐ RP ☐ FL ☐ SL ☐ FR ☐ PL ☐
BL ☐ RV ☐ IN ☐ PS ☐ OTHER ☐ CO. ☐

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

EXHIBIT C

SIGNATURE

Steve Blankenship

APPENDIX A1.

AIRPORT OVERLAY DISTRICT/MCAS--BEAUFORT*

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

Sec. 1. Purpose.

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

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

(Ord. No. 2006/27, § 1, 12-11-2006)

Sec. 2. Accident potential zones (APZ).

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

(Ord. No. 2006/27, § 2, 12-11-2006)

Sec. 3. Noise zones.

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

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

EXHIBIT D

Noise zones are shown on the map in section 9. Noise zone 1 covers that portion of the county that lies outside of the airport overlay district. Properties within noise zone 1 are exempt from the requirements of this appendix.
(Ord. No. 2006/27, § 3, 12-11-2006)

Sec. 4. Notification.

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

Airport Overlay Disclosure Form

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

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

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

CERTIFICATION

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

Dated this _____ day of _____, _____.

Witness _____ Owner _____

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

Dated this _____ day of _____, _____.

Witness _____ Purchaser _____

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

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

Airport Overlay Disclosure Statement

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

Accident Potential Zone: _____

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

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

Sec. 5. Use limitations.

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

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

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

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

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

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

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

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

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

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

Sec. 6. Noise attenuation.

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

Additional Construction Standards

DNL 65--70: 25 dB reduction required.

DNL 70--75: 30 dB reduction required.

DNL 75 and above: 35 dB reduction required.

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

Airport Noise Zone Disclosure Statement

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

Dated this _____ day of _____, _____.

Witness _____ Owner _____

(Ord. No. 2006/27, § 6, 12-11-2006)

Sec. 7. Nonconforming uses and structures.

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

(a) *Nonresidential uses and structures.*

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

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

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

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

Sec. 8. Variances.

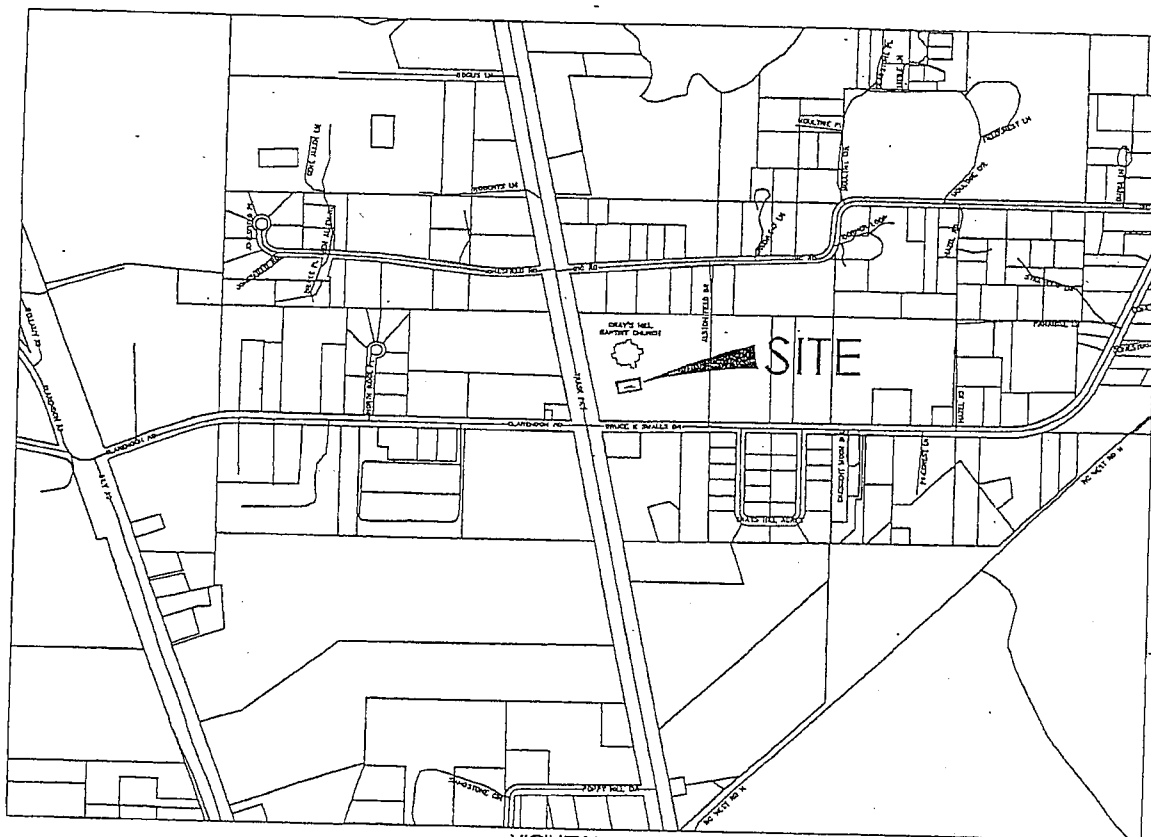
The Beaufort County Zoning Board of Appeals (ZBOA) shall not act upon a request for a variance from this section affecting lands within the AO District until they have received an advisory opinion from MCAS--Beaufort. If an advisory opinion is not received within 30 days of notification, the ZBOA may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

(Ord. No. 2006/27, § 8, 12-11-2006)

Sec. 9. Official map.

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

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



VICINITY MAP
SCALE: 1"=300'

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

3 DAYS BEFORE BIDDING IN SOUTH CAROLINA
CALL 1-800-721-7877
PALMETTO UTILITY PROTECTION SERVICE

APPROXIMATE LOCATION OF SITE:

LONGITUDE: 82°-44'-28"
LATITUDE: 32°-25'-37"

DEVELOPER NAME:

STEVE BLANKENSHIP
GRAY'S HILL BAPTIST CHURCH
PO BOX 333
BURTON, SC 29540
PHONE 1

PROJECT DATA INFORMATION:

PROJECT NAME: Gray's Hill Baptist Church Fellowship Hall
DISTRICT # 100
MAP # 250
PARCEL # 10-02
PROJECT ZONING: AIRPORT OVERLAY DISTRICT
ZONING REQUIREMENTS:
FEMA FLOOD ZONE C

PHONE #:

BLANKENSHIP 843.887.9290
BLANKENSHIP 843.882.3345
BLANKENSHIP 843.744.2858
BLANKENSHIP 843.824.7245
BLANKENSHIP 843.825.7712
PAL. ELEC. 843.205.8512

PERMIT #:

APPROVED FOR CONSTRUCTION

BY: _____ DATE: ____/____/____

Andrews & Burgess Inc.
Engineering & Surveying
10A Shanksin Road
Spartanburg, SC 29596
843.466.0310
Fax 843.466.0309



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EXHIBIT F

000043

INDEX OF DRAWINGS

SHEET #	DESCRIPTION
1	TITLE OVERALL SITE PLAN

DRAWING RELEASED FOR:

☐ PLAN REVIEW	____/____/____
☐ PERMIT DRAWINGS	____/____/____
☐ CONSTRUCTION DRAWINGS	____/____/____
☐ BID SET	____/____/____
☐ RECORD DRAWINGS	____/____/____
☐ OTHER	____/____/____

PLAN REVISIONS

NO.	DESCRIPTION	DATE	BY
1	CONCEPTUAL ART SUBMITTAL	09/25/07	RL
2			
3			
4			
5			
6			
7			
8			



COUNTY COUNCIL OF BEAUFORT COUNTY

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

June 29, 2007

Mr. Steve Blankenship
c/o Grays Hill Baptist Church
2749 Trask Parkway
Beaufort, SC 29906

Re: Staff Discussion -- ACUIZ, Expansion of Church

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

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

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

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

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

Sincerely,

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

Cc: DRT Members

EXHIBIT H

000045

2008/8

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

- ARTICLE I. IN GENERAL; SEC. 106-8. EXEMPTION FROM SUBDIVISION REVIEW: TO REQUIRE BASE SITE AREA CALCULATION FOR MINOR SUBDIVISIONS

- ARTICLE I. IN GENERAL; SEC. 106-18. DEFINITIONS: AMEND THE DEFINITION OF "SUBDIVISION" TO CORRESPOND WITH STATE STATUTES

- ARTICLE IV. ZONING DISTRICTS; SEC. 106-926. DEVELOPMENTS IN MORE THAN ONE ZONING DISTRICT: TO PROHIBIT USES IN THE "LOWER-INTENSITY" DISTRICT THAT ARE NOT OTHERWISE ALLOWED IN THAT DISTRICT

- ARTICLE VI. OPEN SPACE AND DENSITY, LOT AND BUILDING INTENSITY, BUFFERYARDS AND LANDSCAPING, EXTERIOR STORAGE AND ILLUMINATION; SEC. 106-1526. TABLE EXPLANATION: TO CLARIFY EXPLANATION OF TERMS

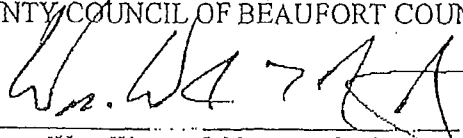
- APPENDIX AI. AIRPORT OVERLAY DISTRICT / MCAS-BEAUFORT; SEC. 7. NONCONFORMING USES AND STRUCTURES: TO CLARIFY ALLOWED EXPANSIONS TO NONCONFORMING PLACES OF ASSEMBLY AND WORSHIP

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

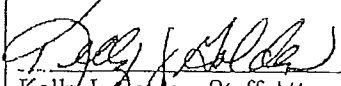
Adopted this 25th day of February, 2008.

COUNTY COUNCIL OF BEAUFORT COUNTY

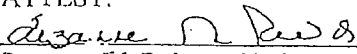
BY:


Wm. Weston J. Newton, Chairman

APPROVED AS TO FORM:


Kelly J. Golden, Staff Attorney

ATTEST:


Suzanne M. Rainey, Clerk to Council

First Reading: January 28, 2008

Second Reading: February 11, 2008

Public Hearing: February 25, 2008

Third and Final Reading: February 25, 2008
(Amending 99/12)

EXHIBIT I

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

- (2) *Minor subdivision exemption.* These subdivisions shall be exempt from certain review requirements that larger subdivisions must comply with. All other appropriate standards of this chapter shall be adhered to. The ZDA shall review and approve minor subdivisions complying with the specific requirements explained as follows:
- a. Minor subdivisions are exempt from DRT review and the site capacity analysis in article VII, except for the calculation of the base site area, provided the subject land has not been previously subdivided within five years.

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

Subdivision means:

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

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

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

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

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

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

Sec. 106-1526. Table explanation.

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

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

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

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

(a) Nonresidential uses and structures.

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

**COUNTY COUNCIL OF BEAUFORT COUNTY**

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

October 10, 2007

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

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

Dear Mr. Blankenship:

As stated in the Beaufort County Zoning & Development Standards Ordinance, Section 108-368 (b) (1) "Upon completion of all appropriate county reviews, the ZDA shall then file a staff report including all review recommendations no later than five working days prior to the scheduled DRT meeting". This letter will serve as the recommendations from each member of the DRT for conceptual review of the referenced project.

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

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

DRT recommends the project be disapproved.

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

Sincerely,

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

EXHIBIT K

"Professionally we serve; Personally we care!"

000050



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

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

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

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

November 6, 2007

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

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

Dear Members of the Planning Commission:

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

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

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

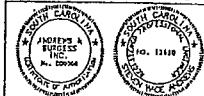
Aside from the procedural errors at the October 17 meeting, the DRT erred in disapproving the Church's application. The DRT stated its disapproval of the Church's application by letter dated October 18, 2007. The DRT's reason for disapproving the



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

40A Shanklin Road
Bramford, ST 29906
813.468.0369
Fax 813.466.9764

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PLAN REVISIONS			
NO.	DESCRIPTION	DATE	BY
1	CORRECT TO BAWA WATER	09/21/07	RL
2	-	-	-
3	-	-	-
4	-	-	-
5	-	-	-
6	-	-	-
7	-	-	-
8	-	-	-

JOB: 270026 of 1	SHEET #: 1	Date Drawing Last Revision Drawn By Engineer	02/10/07 K. Iyer L. Anderson	Overall Site Plan
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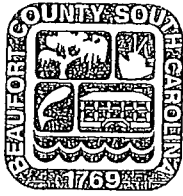
COUNTY OF BEAUFORT				
DEVELOPMENT REVIEW TEAM				
ACTION FORM				
Members Present - Hillary (FOR), Delores (FOR), Arthur (FOR), Robert (FOR)				
PROJECT NAME		PROJECT TYPE		
Gray's Hill Baptist Church Fellowship Hall		Institutional		
APPLICANT(DEVELOPER)NAME,ADDRESS,PHONE#				
Steve Blakenship, Gray's Hill Baptist Church				
PROJECT LOCATION	PIN	LAND AREA(ACRES)	LOTS/UNITS	BLDG AREA(SQFT)
Hwy 21	100-20-18C	9.35	N/A	10,000
DATE OF REVIEW	OVERLAY DISTRICT	FIRE DISTRICT	ZONING DISTRICT	
10/17/07	HCOD	Burton	CS	
TYPE OF DRT REVIEW (X) CONCEPTUAL () PRELIMINARY () FINAL				
APPROVED NO CONDITIONS				
DISAPPROVED ☒ REASONS: PROJECT DOES NOT MEET THE INTENT OF THE AIRPORT OVERLAY DISTRICT. ADDING A 10,000 SQUARE FOOT BUILDING TO THE EXISTING SITE WOULD DOUBLE THE OCCUPANCY LOAD. (APPENDIX A.1, SECTION (7)(6) OF THE BEAUFORT COUNTY ZONING & DEVELOPMENT STANDARDS ORDINANCE.				
* APPLICANT HAS THE OPTION TO APPEAL THE DRT'S DECISION				
APPROVED WITH CONDITIONS _____ CONDITIONS: TO THE PLANNING COMMISSION WITHIN 30 DAYS FROM THE DATE OF THIS MEETING.				
APPROVED SUBJECT TO _____ CONDITIONS: _____				
DEFERRED: (PLEASE SUBMIT THE FOLLOWING) _____				

Hillary A. Austin
ZONING & DEVELOPMENT ADMINISTRATOR

10-17-07
DATE

LETTER WILL BE MAILED WITHIN 48 HOURS FOLLOWING THE MEETING

000053



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

June 24, 2008

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

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

Dear Mr. Reeves,

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

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

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

Very Respectfully,

Jim Hicks
Beaufort County Planning Commission Chairman

EXHIBIT M

000054



COUNTY COUNCIL OF BEAUFORT COUNTY
BEAUFORT COUNTY PLANNING DEPARTMENT

Multi Government Center • 100 Ribaut Road, Room 260

Post Office Drawer 1228, Beaufort, SC 29901-1228

Phone: (843) 470-2724 • FAX: (843) 470-2731

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

Members Present:

Mr. Jim Hicks, Chair

Ms. Mary LeGree

Ms. Diane Chmelik

Mr. Frank Mullen

Mr. Brian Flewelling

Mr. Vernon Pottenger

Members Absent: Mr. Ronald Petit

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

Staff Present:

Mr. Anthony Criscitiello, Planning Director

Ms. Delores Frazier, Assistant Planning Director

Ms. Barbara Childs, Admin. Asst. to Planning Director

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

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

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

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

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

EXHIBIT N

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

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

Public Comments:

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

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

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

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

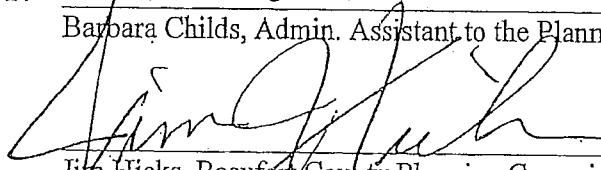
OTHER BUSINESS: Chairman Hicks noted that the next Commission meeting would be on Thursday, January 3, 2008. He also noted that elections for Commission chair and vice-chair would occur at that January 2008 meeting.

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

SUBMITTED BY:



Barbara Childs, Admin. Assistant to the Planning Director



Jim Hicks, Beaufort County Planning Commission Chairman

APPROVED:

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

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

IN RE: GRAYS HILL BAPTIST CHURCH

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

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

EXHIBIT O

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

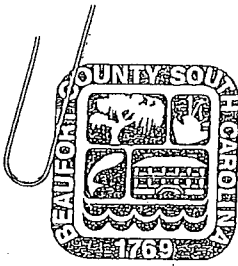
Despite the appropriateness of the Fellowship Hall use, the Development Review Team at its meeting held December 17, 2007, and the Beaufort County Planning Commission at its hearing held on December 3, 2007, denied the Church's application for the Fellowship Hall, concluding that while the expansion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

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

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

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

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



COUNTY COUNCIL OF BEAUFORT COUNTY

Beaufort County Zoning & Development

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

August 10, 2010

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

Grays Hill Baptist Church
2749 Trask Parkway
Beaufort, SC 29906

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

Dear Mr. Kuhn Jr.,

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

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

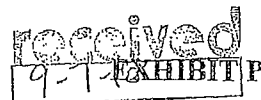
- a. There were no extraordinary and exceptional conditions pertaining to this particular piece of property.
- b. The authorization of the variance would adversely affect the adjacent properties or the public good. Also, the character of the district would be harmed by the granting of the variance.
-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

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

Sincerely,

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

This 31st Day of August, 2010



CERTIFICATE OF SERVICE

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

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

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

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	2012-CP-07-1394
	)	
GRAYS HILL BAPTIST CHURCH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER DENYING MOTION
	)	FOR RECONSIDERATION
	)	
BEAUFORT COUNTY,	)	
	)	
Defendant.	)	
	)	

2016 FEB 29 PM 3:02
 JERRI L. ROSENEAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

This matter comes before me pursuant to a Motion for Reconsideration filed by the Defendant Beaufort County, purportedly pursuant to Rules 52 and 59, SCRCP, requesting that I reconsider my Final Order of March 19, 2013. Shortly after the Defendant Beaufort County filed its Motion to Reconsider, the parties asked the Court to take the motion under advisement and to withhold a ruling, as the parties wished to continue negotiations in an effort to resolve this matter among themselves. The parties have now informed the Court that they have been unable to reach a settlement and Beaufort County's Motion for Reconsideration is now ripe for resolution.

After due consideration of the motion and arguments of counsel, I find and conclude that the motion should be denied.

In its motion, the Defendant Beaufort County enumerates six (6) alleged errors. Each of these alleged errors is set forth verbatim and discussed in turn herein below.

I.

The Circuit Court erred in making a determination that the property was grandfathered and thus did not have to apply for a new permit. This is a vested rights determination and is controlled by a separate statutory process. The Vested Rights Act is a set of statutory provisions under which a developer may seek to protect the right to

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undertake and complete the development of property. See S.C. Code Ann. §§ 6-29-1510 to 1560 (Supp. 2011). The Plaintiffs never asserted their rights under his process but rather availed themselves of the appeal of the denial of a new permit. The Court's finding that a new permit is not required is not appropriate in the context of this appeal.

Although this alleged specification of error is somewhat cryptic, the Defendant Beaufort County appears to be alleging that the Final Order somehow violates the Vested Rights Act, S.C. Code Ann. §§ 6-29-150, et seq. (2014).

Initially, I note that this is the first mention by the Defendant Beaufort County of the Vested Rights Act as it pertains to this case, and it seems untimely to be raising it for the first time after the case has been tried and a final order entered.

Even if the Vested Rights Act had been timely raised, however, it does not affect the decision in this case, for a couple of reasons.

First, the Vested Rights Act was passed by the General Assembly on July 22, 2004 and went into effect on July 5, 2005. This is well after the Defendant Beaufort County issued the Development Permit which is the subject of the Final Order to the Plaintiff Church on January 7, 1997. The Vested Rights Act does not purport to limit or revoke development permits which were already in effect. Indeed, the purpose of the Vested Rights Act is not to restrict or revoke development permits, but rather, the legislative findings underlying the Act expressly state that the Act's purpose is to protect, preserve and create vested rights in development permits. 2004 South Carolina Laws Act 287 (H.B. 3858), Legislative Findings, Section 1.

Second, the Vested Rights Act was enacted by the General Assembly in order to protect and preserve the development rights of landowners. The General Assembly recognized that it was desirable to establish vested rights in certain land developments in order to secure the

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reasonable expectations of landowners who make significant investments in site evaluation, planning, and development. *Id.* The Vested Rights Act accomplishes this purpose in a fairly straight forward fashion. It guarantees that a development permit for a "site specific development plan," which is the type of development at issue in this case (S.C. Code Ann. 6-29-1520(9) (2014)), must have an initial term of two (2) years, plus be guaranteed **at least** five (5) annual extensions. *Id.*, § 6-29-1530(A)(2). I emphasize the words "at least" in order to emphasize the fact that the Vested Rights Act is not intended to shorten the life of a development permit, but rather, is intended to guarantee at least a minimum life span to a development permit. In short, nothing in the Vested Rights Act prohibits or bars Beaufort County from honoring the development permit which it had already issued to the Plaintiff Church in this case. More to the point, the Vested Rights Act does not empower Beaufort County to rescind or revoke the development permit which it had already issued to the Plaintiff Church in this case.

Finally, this alleged specification of error overlooks the fact that the development permit issued by Beaufort County to the Plaintiff Church on January 7, 1997 expressly provides that it expires only if "substantial improvement" of the development has not occurred within two (2) years from the date of issuance. The evidence is uncontradicted that by December of 1997, well within this two (2) year time period, substantial improvement had occurred in that construction of all improvements shown on the development plat, except for the Fellowship Hall, had been completed. The Vested Rights Act does not "unvest" a right that had already vested at the time of the Act's passage.

II.

The court erred in finding that the Boards' determinations were arbitrary and capricious and not supported by the evidence in the Record. The Boards' respective

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determinations on both the Variance and on the Development Permit issue were supported by evidence in the record and the Circuit Court has erred in replacing its judgment for that of the Planning Commission and the Zoning Board of Appeals. The Court has further erred in applying law relative to the Ordinance allowing for expansion to a nonconforming place of worship as well as in applying the law relative to the issuance of a variance by the ZBOA.

This alleged specification of error is very broad and general. The Defendant Beaufort County does not identify what "law" was allegedly erroneously applied, nor what "determinations" were allegedly disregarded.

The Defendant Beaufort County correctly notes that it would be error for the Circuit Court to replace its judgment for that of the Planning Commission and the Zoning Board of Appeals. The Final Order expressly recognizes that the Circuit Court cannot reverse the decisions of these County Boards unless the Boards' findings of fact have no evidentiary support or the Boards committed an error of law. See Final Order of Judgment, pg. 5, citing *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 443 S.E.2d 401 (Ct.App.1994). See also Final Order of Judgment, pg. 19, Conclusion of Law number 2. Rather than re-recite every Finding of Fact and Conclusion of Law set forth in the Final Order of Judgment, reference is simply craved to the Findings of Fact and Conclusions of Law which are set forth in detail in the Final Order of Judgment.

III.

The Court erred in failing to note the intervention of the United States of America in this action.

On May 20, 2011 the United States of America filed a Motion to Intervene in Cases

2008-CP-07-1114 and 2010-CP-07-4844 and, with the consent of the parties, this motion was granted on June 30, 2011. The fact that the United States of America is an intervenor in this case, however, does not affect the merits of the case, nor does it alter any of the substantive findings or conclusions set forth in the Final Order of Judgment.

IV.

The Court erred as a matter of law in finding Development Permit No. 3057 applied to any new construction designated as Phase II of the original Development Plan.

This issue was discussed at length in the Final Order of Judgment. As Beaufort County correctly notes the Development Permit (Exhibit B to the Final Order of Judgment) permits development of the Church's property as shown on the original Development Plat (Exhibit A to the Final Order of Judgment). Contrary to what Beaufort County now asserts, this original Development Plat is not broken down into phases. The word "phase" much less the phrase "Phase II" appears nowhere on the Development Plat. The Development Plat is one, unified, project. The building which is the subject of this controversy, which the parties now refer to as the Fellowship Hall, is plainly and clearly shown on the original Development Plat, labeled "Proposed Sanctuary." Contrary to what this alleged specification of error states, there is no "new construction" in the sense that the Church is seeking to build anything that is not already plainly and clearly shown on the original Development Plan.

V.

The Court erred in its application of the Ordinance in that it is clear that the intent of the Ordinance was to allow up to a 15% increase to the building as opposed to a 15% increase of the disturbed area. Under the Plaintiff's definition the addition of a 10,000 square foot building on "disturbed area" would not technically increase any percentage of

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the “disturbed area.”

This alleged specification of error is discussed at length in the Final Order of Judgment. See Findings of Fact 17, 18, 19, 20, 31(b). In sum, when the Church’s application for a new Development Permit was heard by the County’s Development Review Team (DRT) on March 7, 2007, the County’s Ordinance allowed nonconforming places of assembly and worship to be expanded by up to 15% of the “disturbed area,” provided the expansion did not increase the occupant load of the building. Since the disturbed area of the Church’s development is 184,785 square feet, and the proposed Fellowship Hall is 10,000 square feet, the proposed expansion is only 5.45% of the disturbed area, well below the 15% threshold. The DRT, however, denied the application, ignoring the language of the existing Ordinance and instead relying upon the language of a proposed amendment to the Ordinance which was being considered at that time by Beaufort County Council. This proposed amendment changed the wording of the Ordinance from 5% of the “disturbed area” to 15% of the “existing floor area,” provided that the expansion does not increase the occupant load of the building. This proposed amendment was not enacted until the following year, on February 25, 2008. Clearly, the DRT erred in applying the language of a proposed amendment to the Ordinance, instead of applying the actual Ordinance which was in effect at the time of the application and hearing. I reject the argument that the Defendant Beaufort County now makes, that this change in wording was simply a clarification of the intent of the original Ordinance. Changing the criteria from all of the “disturbed area,” which would include for example a parking lot, to only “existing floor area,” is not simply a clarification of intent but a significant change in substance of the Ordinance.

Additionally, the foregoing decision by the DRT was a preliminary decision. When the DRT made its final decision, on October 10, 2007, it apparently recognized the fact that the

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Fellowship Hall would occupy substantially less than the 15% of the disturbed area, as the only reason relied upon by the DRT in disapproving the project was its conclusion that allowing the new building "could substantially increase the occupant load of the site." See Final Order of Judgment Exhibit K.

VI.

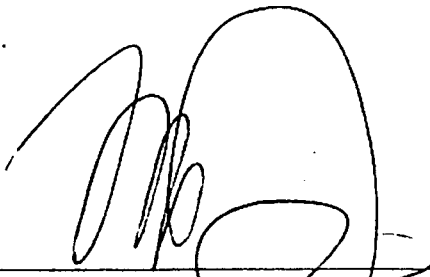
The Court erred in failing to find that the addition of 10,000 square feet of building to the property would not increase available occupant load of the building on the site given the testimony in the record.

This issue was discussed at length in the Final Order of Judgment in Findings of Fact 21, 28, 31(g), and 31(h), and reference is craved to these portions of the Final Order of Judgment. The evidence establishes that the Church and the Fellowship Hall would not be occupied at the same time.

CONCLUSION

For the reasons set forth herein the Defendant Beaufort County's Motion for Reconsideration shall be and is hereby denied.

AND IT IS SO ORDERED.



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

Beaufort, South Carolina

Date: 2/29/16

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

GRAYSHILL BAPTIST CHURCH

CIVIL ACTION COVERSHEET

Plaintiff(s)

08 - CP - 07 - 1114

vs.

BEAUFORT COUNTY

Defendant(s)

(Please Print)

Submitted By: H. Fred Kuhn, Jr., Esquire

Address: 1501 North Street/Post Office Drawer 507

Beaufort, South Carolina 29901

SC Bar #: 3576

Telephone #: 843-524-3373

Fax #: 843-524-1362

Other:

E-mail: fred@mossandkuhn.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| ☐ Contracts | ☐ Torts - Professional Malpractice | ☐ Torts - Personal Injury | ☐ Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Notice/ File Med Mal (230) | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | ☐ Other (299) | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | — | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Other (399) | ☐ Building Code Violation (460) |
| | | | ☒ Other (499) |
| | | | <u>Violation of Ordinance</u> |
| ☐ Inmate Petitions | ☐ Judgments/Settlements | ☐ Administrative Law/Relief | ☐ Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Sexual Predator (510) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Mandamus (520) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Habeas Corpus (530) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| ☐ Other (599) | ☐ Transcript Judgment (740) | ☐ Forfeiture (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Other (899) | ☐ SCDOT (950) |
| | ☐ Other (799) | | ☐ Worker's Comp (960) |
| | | | ☐ Zoning Board (970) |
| | | | ☐ Administrative Law Judge (980) |
| | | | ☐ Public Service Commission (990) |
| | | | ☐ Employment Security Comm (991) |
| | | | ☐ Other (999) |
| ☐ Special/Complex /Other | ☐ Pharmaceuticals (630) | | |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | | |
| ☐ Automobile Arb. (610) | ☐ Out-of State Depositions (650) | | |
| ☐ Medical (620) | | | |
| ☐ Other (699) | | | |

Submitting Party Signature: _____

Date: 04/03/08

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

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FOR MANDATED ADR COUNTIES ONLY**Florence, Horry, Lexington, Richland, Greenville**, and Anderson******** Contact Respective County Clerk of Court for modified ADR Program Rules**

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

08-CP-07- 1114

GRAYS HILL BAPTIST CHURCH,)
Plaintiff/Appellant,)
vs.)
BEAUFORT COUNTY,)
Defendant/Respondent.)

SUMMONS

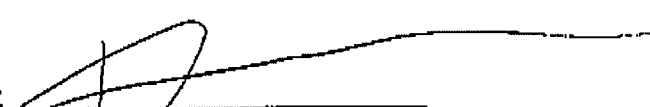
ELIZABETH M. SMITH
BEAUFORT COUNTY, S.C.
CLERK OF COURT

2008 APR -3 PM 4:11

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer upon the subscribed at his office, Post Office Drawer 507/1501 North Street, Beaufort, South Carolina 29901, within thirty (30) days from the service hereof, exclusive of the day of such service; and if you fail to Answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Plaintiff

Beaufort, South Carolina
April 3, 2008

000072

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

08-CP-07- 1114

GRAYS HILL BAPTIST CHURCH,)
)
 Plaintiff/Appellant,)
)
 vs.)
)
 BEAUFORT COUNTY,)
)
 Defendant/Respondent.)

COMPLAINT/APPEAL
 (NONJURY)

ELIZABETH C. FLEMING
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

2008 APR -3 PM 4:11

The Plaintiff, Grays Hill Baptist Church, complaining of the Defendant above-named, and appealing the Defendant's denial of a permit to the Plaintiff, would respectfully show unto this Honorable Court as follows:

1. The Plaintiff, Grays Hill Baptist Church, is a nonprofit religious corporation organized under and existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

2. The Defendant, Beaufort County, is a body politic and a subdivision of the State of South Carolina.

3. The Church is the owner of a parcel or real property located in Beaufort County, South Carolina, consisting of 9.35 acres, more or less, situated at the intersection of U.S. Highway 21 and South Carolina Highway 71 (Ann's Point Road) which is more particularly designated on the Beaufort County Tax Maps as R100 020 000 018C 0000.

4. In or around 1996 the Church applied to Beaufort County a permit to develop the aforesaid 9.35 acre parcel of real property.

5. On February 27, 1997 pursuant to Permit No. 970320 the Church received

permission from the County to develop and construct improvements upon the aforesaid parcel to property, said improvements including a 15,872 square foot Church building, roadways, parking, together with a separate building, rectangular in shape and measuring 75.0 feet on its eastern and western ends and 150 feet on its northern and southern ends, said building labeled on the aforesaid permit as a "Proposed Sanctuary."

6. The Church, pursuant to the aforesaid permit, thereafter constructed all the permitted improvements except for the building labeled "Proposed Sanctuary."

7. The County has now denied the Church permission to construct the previously permitted building labeled "Proposed Sanctuary" (hereinafter referred to as the "Fellowship Hall").

8. The subject building which the County has denied the Church permission to construct would consist of a large Fellowship Hall, bathrooms, a kitchen, and storage areas.

9. The County has erred and wrongfully denied the Church permission to construct its Fellowship Hall, on the following grounds:

a. The County failed to acknowledge and recognize that it has already granted to the Church permission to construct the Fellowship Hall when it approved the master plan for the subject real property and gave permission to construct the subject improvement in Permit No. 970320, issued by the County on February 27, 1997.

b. The County failed to recognize the grandfathered status of the subject property, the Fellowship Hall, in Permit No. 970320.

c. In denying permission to the Church to construct its Fellowship Hall, the County relied upon the fact that the project site is located within Accent Potential Zone 2

(APZ-2) and Noise Zone 3 of the Airport Overlay District. The County erred in failing to recognize that the Airport Overlay District was created after Permit No. 970320 was issued to the Church and the ordinances governing the Airport Overlay District, accordingly do not apply.

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

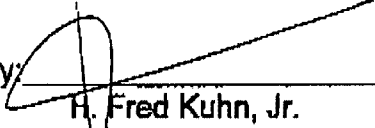
e. The County erroneously found that the construction of the Fellowship Hall would increase the occupant load of the building. The construction of a Fellowship Hall will not increase the occupant load. The occupant load of the property is governed by the available parking, which will not be increased. Additionally, the Church offered to amend its permit application so as to guarantee no increase in the occupant load.

f. In denying the Church's application, the County's Development Review Team, in violation of Section 106-404 of the Ordinance, failed to give the Church a full opportunity to be heard prior to voting to deny the Church's application at the October 17, 2007 hearing.

WHEREFORE, the Church prays that the Court inquire into the matters set forth herein, grant the Church's appeal, and either remand this matter back to the County for a full and fair hearing consistent with the due process requirements of the subject Ordinance, or alternatively, reverse the decision of the County and direct the County to issue to the Church a permit to construct the Fellowship Hall consistent with the approval previously

given pursuant to Permit No. 970320, together with such other and further relief as this Honorable Court may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Plaintiff

Beaufort, South Carolina
April 3, 2008

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
2010 OCT -4 PM 4:06
2010-CP-07-04844
JAMES W. ROSEMAN
BEAUFORT COUNTY, S.C.
CLERK OF COURT

GRAYS HILL BAPTIST CHURCH,

Appellant-Plaintiff,

vs.

BEAUFORT COUNTY and THE
BEAUFORT COUNTY ZONING
BOARD OF APPEALS,

Respondents-Defendants.

SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint-Petition in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer upon the subscribed at his office, Post Office Drawer 507/1501 North Street, Beaufort, South Carolina 29901, within thirty (30) days from the service hereof, exclusive of the day of such service; and if you fail to Answer the Complaint-Petition within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded.

MOSS, KUHN & FLEMING, P.A.

By:

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Beaufort, South Carolina
October 4, 2010

Attorney for the Plaintiff

000077

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

2010 OCT 14 PM 4:08
IN THE COURT OF COMMON PLEAS

FILED 2010-CP-07-104844
BEAUFORT COUNTY, S.C.
CLERK OF COURT

GRAYS HILL BAPTIST CHURCH,

Appellant-Plaintiff,

vs.

BEAUFORT COUNTY and THE
BEAUFORT COUNTY ZONING
BOARD OF APPEALS,

Respondents-Defendants.

COMPLAINT-PETITION
(APPEAL-NONJURY)

The Appellant, Grays Hill Baptist Church (hereinafter "Baptist Church"), hereby appeals from the final decision of Respondents, Beaufort County and the Beaufort County Zoning Board of Appeals (hereinafter "ZBOA"), denying the Baptist Church's request for a variance, alleging and stating as follows:

1. This is an appeal from the ZBOA's final decision under Section 106-522 of the County Zoning and Development Standards Ordinance (hereinafter "ZDSO") denying the Baptist Church's request for a variance allowing the construction of a Fellowship Hall on its property located at TMS #R100-020-000-018C-0000, a ten (10) acre parcel of land upon which the Baptist Church has been meeting since the Church was built in 1997, located in Beaufort County, South Carolina (hereinafter the "property").

2. A copy of the August 10, 2010 written decision of the ZBOA is attached hereto as Exhibit A.

3. The Appellant, the Baptist Church, hereby files this notice of appeal in accordance with S.C. Code Ann. §6-29-820(A) (2010).

4. The Beaufort County Court of Common Pleas has jurisdiction and venue over this matter pursuant to S.C. Code Ann. §6-29-820(A) (2010).

5. The Baptist Church owns the property in fee simple.

6. There is an existing Church building on the property, and the requested variance would simply allow the construction of an adjunct Fellowship Hall.

7. The requested Fellowship Hall was shown on the original master plan submitted by the Baptist Church to the Defendant Beaufort County in 1996.

8. The foregoing master plan was approved by the Defendant Beaufort County and the Baptist Church built its Sanctuary in 1997 as Phase I of the development, with the Fellowship Hall to follow as part of Phase II.

9. Subsequently, the Defendant Beaufort County created the Airport Overlay District, which came into being on or around December 11, 2006.

10. The Baptist Church submitted its application to the Defendants for conceptual review of the construction of the Fellowship Hall, submitting said plans to the Defendants' Planning Commission on September 25, 2007. At that time, the ZDSO allowed an expansion of "up to 15% in accordance with Table 106.9 provided that the expansion does not increase the occupant load of the building." Table 106.9 allowed a nonconforming use to be expanded up to 15% of the "disturbed area."

11. The disturbed area of the subject property is 184,785 square feet.

12. The proposed Fellowship Hall is 10,000 square feet, which is only 5.4% of the disturbed area, well below the 15% threshold.

13. The Defendants, acting through their Zoning and Development Administrator, in correspondence dated October 10, 2007 acknowledged that it "was the intent of this

section of the ordinance (the ZDSO) to allow small expansions to existing churches to accommodate restrooms, storage space, a kitchen, **and the like** The intent of Section 7(a)(6) nonconforming uses is to allow additions, i.e., parking spaces, restrooms, **storage and other auxiliary uses** where the seating capacity in the sanctuary and other places of assembly will not increase.” (Emphasis added).

14. The Fellowship Hall is an auxiliary use to the Sanctuary.

15. Despite the appropriateness of the Fellowship Hall use, the fact that the Fellowship Hall is an auxiliary use to the Sanctuary, the fact that the size of the Fellowship Hall is well below the 15% disturbed area threshold, and despite the fact that the Fellowship Hall had been approved on the original master plan, the Defendant Beaufort County, acting through its Development Review Team at its meeting held on December 17, 2007, and its Planning Commission at its hearing held on December 3, 2007, denied the Baptist Church’s application for the Fellowship Hall, erroneously concluding that while the expansion fell within the 15% allowance, that it would increase the occupant load.

16. The foregoing finding by the Defendants is erroneous, in that one of the unique conditions of this property is that this Sanctuary, and the proposed Fellowship Hall, is not located in a residential area or other area where people could walk to church and the occupancy load, accordingly, is defined by the allowable parking. In this case, the allowable parking has already been established. The construction of the Fellowship Hall will neither increase nor decrease the number of parking spaces permitted on this property. Since the occupancy load is already defined by the number of parking spaces, the construction of the Fellowship Hall necessarily will not increase the occupancy load. As acknowledged by the Defendants, acting through their Planning Director in his November

27, 2000 Memorandum, while the term "occupant load" is not specifically defined in the ZDSO, it is referred to in the International Building Code as the number of occupants for whom a space is "designed." Accordingly, the "occupant load" for this particular piece of property has already been "designed" and fixed by the number of allowable parking spaces.

17. Accordingly, the proposed Fellowship Hall was part of the original master plan submitted and approved in 1996.

18. Additionally, the proposed Fellowship Hall satisfied the requirements of the Airport Overlay District Ordinance at the time the Baptist Church was required to resubmit its application in 2007, and the application was denied based upon the erroneous assumption that the occupancy load would increase.

19. The ZBOA, at its hearing held on July 22, 2010, denied the Appellant's application for a variance on the ground that there were no extraordinary or exceptional conditions pertaining to this particular piece of property.

20. The foregoing conclusion by the ZBOA was erroneous, inasmuch as the circumstances set forth above are extraordinary and unusual, and are unique to this particular property and its circumstances.

21. Restricting the nearly ten (10) acre parcel of property which is the subject of this action to the construction of one (1) building constitutes an unreasonable restriction on the utilization of this parcel of property, particularly where one purpose of the ZBOA is to allow for "auxiliary" uses, and the Fellowship Hall is an auxiliary use to the Church Sanctuary.

22. The ZBOA erred in concluding that authorization of the variance would

adversely affect adjacent property or the public good. Granting the variance would allow the Church to more effectively carry on its mission, which by definition is to promote the public good. Any finding by the ZBOA that the construction of the Fellowship Hall would adversely affect adjacent property or the public good is pure speculation and conjecture, and not based upon fact.

23. The ZBOA, upon information and belief, denied the Appellant's application for a variance on the grounds that there are no extraordinary or exceptional conditions pertaining to this particular piece of property as required by Section 106-522(A), or in the alternative, would violate Section 106-522(c).

24. The written decision dated August 10, 2010 does not accurately reflect the decision made by the ZBOA insofar as said letter is inconsistent with the motion which was made and passed by the ZBOA, is void and of no effect.

25. The decision by the ZBOA is controlled by errors of law inasmuch as members of the ZBOA were motivated to vote against the requested variance upon the erroneous legal conclusions that:

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

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

Ordinance that rendered this property nonconforming;

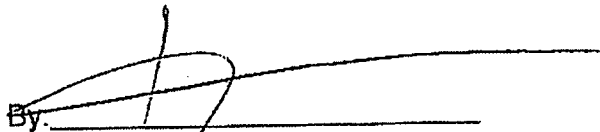
26. A true and accurate copy of the Appellant's Application for a Variance is attached hereto as Exhibit B.

27. For the foregoing reasons, the final decision of the ZBOA denying the Baptist Church's request for a variance is erroneous as a matter of law, should be reversed, and the variance request granted.

WHEREFORE, Appellant, the Baptist Church, asks this Court for the relief as follows:

- a. That the Court reverse the decision of the ZBOA and grant the variance request of the Appellant;
- b. That the Court award the Appellant its attorney's fees and costs; and
- c. For such other and further relief as this Honorable Court may deem to be just and proper.

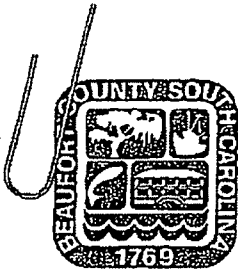
MOSS, KUHN & FLEMING, P.A.

By. 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Plaintiff-Appellant

Beaufort, South Carolina
October 4, 2010



COUNTY COUNCIL OF BEAUFORT COUNTY

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

August 10, 2010

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

Grays Hill Baptist Church
2749 Trask Parkway
Beaufort, SC 29906

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

Dear Mr. Kuhn Jr.,

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

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

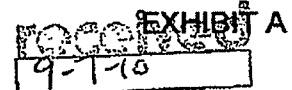
- a. There were no extraordinary and exceptional conditions pertaining to this particular piece of property.
- b. The authorization of the variance would adversely affect the adjacent properties or the public good. Also, the character of the district would be harmed by the granting of the variance.
-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

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

Sincerely,

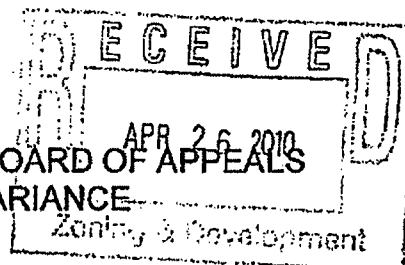
Thomas Gasparini
Chairman, Zoning Board of Appeals
Beaufort, South Carolina

This 31st Day of August, 2010





BEAUFORT COUNTY - ZONING BOARD OF APPEALS
APPLICATION FOR VARIANCE



INSTRUCTIONS:

Please fill out this application form completely. Attach any pertinent materials that may help the board members to better understand your request, i.e. photos, maps, drawings, etc. Failure to follow these instructions may result in rejection of your application.

1. Property Owner Name: Grays Hill Baptist Church
Address: 2749 Trask Parkway, Beaufort, SC 29906
Home Phone: 843-846-2797 Work Phone: 843-846-2797
2. Applicant Name (If different): H. Fred Kuhn, Jr. - Attorney for Grays Hill Baptist Church
Address: P.O. Drawer 507, Beaufort, SC 29901-0507
Home Phone: 843-986-3606 Work Phone: 843-524-3373
3. Property Location: Tax District # R100 Tax Map # 020 Tax Parcel # 018C Lot # 0000
Street Address: 2749 Trask Parkway, Beaufort, SC 29906
4. Ordinance Section from which variance is requested: APPENDIX A-1 - AIRPORT OVERLAY DISTRICT
Zoning & Development Standards Ordinance: Article _____ Section(s)/Tables(s) Sec. 7(a)(6), Table 106-9
5. Please describe each variance and how it differs from the requirements. (Attach additional sheets as needed):
The Church seeks the construction of a fellowship hall as originally permitted, which would be a larger than 15% expansion of the existing building size.
6. What extraordinary and exceptional conditions exist that would create an extreme hardship if this variance was not granted? (Attach additional sheets as needed):
See attached.
7. To avoid a variance condition, have you considered an alternate method of accomplishing what you desire that meets the intent of the ordinance? Yes (X) No () If yes, please explain: _____
8. How would the variance not cause substantial detriment to the adjacent property or the public good, and the character of the district? The fellowship hall will not substantially increase the occupant load of the site.
9. Length of time the property has been held/titled in applicant's name? Since May 15, 1995

NOTE: THE BOARD MAY POSTPONE OR PROCEED TO DISPOSE OF THE MATTER ON THE AGENDA IN THE ABSENCE OF THE APPLICANT.

I hereby agree to abide by all conditions imposed by the County of Beaufort in granting the/this variance. I understand that such conditions apply to the property and are a right or obligation transferable by sale.

I affirm that in all other respects this property will conform to all other codes and ordinances.

Signature of Applicant

H. FRED KUHN, JR., Esq.

Printed Name of Applicant
for
Grays Hill Baptist Church

April 26, 2010

Date

EXHIBIT B

000085

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

GRAYS HILL BAPTIST CHURCH

ATTACHMENT TO APPLICATION FOR VARIANCE

The Applicant, Grays Hill Baptist Church, respectfully submits that extraordinary and exceptional circumstances exist that would create an extreme hardship if this variance is not granted, based on the following facts:

I. GENERAL BACKGROUND

1. The Applicant, Grays Hill Baptist Church (the "Church"), is a nonprofit religious corporation organized under and existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

2. Beaufort County (the "County"), is a body politic and a subdivision of the State of South Carolina.

3. The Church is the owner of a parcel or real property located in Beaufort County, South Carolina, consisting of 9.35 acres, more or less, situated at the intersection of U.S. Highway 21 and South Carolina Highway 71 (Ann's Point Road) which is more particularly designated on the Beaufort County Tax Maps as R100 020 000 018C 0000.

4. In or around 1996 the Church applied to Beaufort County for a permit to develop the aforesaid 9.35 acre parcel of real property.

5. On February 27, 1997 pursuant to Permit No. 970320 the Church received permission from the County to develop and construct improvements upon the aforesaid parcel to property, said improvements including a 15,872 square foot Church building,

roadways, parking, together with a separate building, rectangular in shape and measuring 75.0 feet on its eastern and western ends and 150 feet on its northern and southern ends, said building labeled on the aforesaid permit as a "Proposed Sanctuary."

6. The Church, pursuant to the aforesaid permit, thereafter constructed all the permitted improvements except for the building labeled "Proposed Sanctuary."

7. The County has now denied the Church permission to construct the previously permitted building labeled "Proposed Sanctuary" (hereinafter referred to as the "Fellowship Hall").

8. The subject building which the County has denied the Church permission to construct would consist of a large Fellowship Hall, bathrooms, a kitchen, and storage areas.

II. GROUNDS FOR VARIANCE

9. The following exceptional and extraordinary circumstances exist which justify the granting of a variance:

a. The County failed to acknowledge and recognize that it has already granted to the Church permission to construct the Fellowship Hall when it approved the master plan for the subject real property and gave permission to construct the subject improvement in Permit No. 970320, issued by the County on February 27, 1997.

b. The County failed to recognize the grandfathered status of the subject property, the Fellowship Hall, in Permit No. 970320.

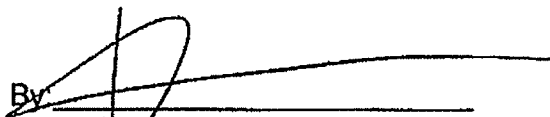
c. In denying permission to the Church to construct its Fellowship Hall, the County relied upon the fact that the project site is located within Accident Potential Zone 2 (APZ-2) and Noise Zone 3 of the Airport Overlay District. The County erred in failing to

recognize that the Airport Overlay District was created after Permit No. 970320 was issued to the Church and the ordinances governing the Airport Overlay District, accordingly do not apply.

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

e. The County erroneously found that the construction of the Fellowship Hall would increase the occupant load of the building. The construction of a Fellowship Hall will not increase the occupant load. The occupant load of the property is governed by the available parking, which will not be increased.

10. Attached are various documents in support of this variance request.
MOSS, KUHN & FLEMING, P.A.

By 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Plaintiff

Beaufort, South Carolina
April 26, 2010



APPLICATION FOR ADMINISTRATIVE APPEAL
OF DECISIONS BY THE
DEVELOPMENT REVIEW TEAM (DRT)

RECEIVED

NOV 08 2007

Appeal # MISC 2007-31

Date Rec'd: 11/8/07 By: CHG

Hearing Date: 12-3-07

PLANNING DEPARTMENT

Grays Hill Baptist Church 843-846-2797
Appellant's Name Phone

2749 Trask Parkway, Beaufort, SC 29906
Appellant's Mailing Address (City, State and Zip Code)

1. PROPERTY INFORMATION

A. Address of property affected by this Appeal:

2749 Trask Parkway, Beaufort, SC 29906

B. Property Identification Number (PIN): R100 020 000 018C 0000

2. REQUEST: Please attach a narrative describing in detail the reason for this appeal. Include any supportive information that substantiates your position. If the Appellant is not the owner of the affected property, include a notarized document signed by the property owner authorizing the appellant to represent the property owner in this appeal. Application submission must be received by the Beaufort County Planning office no later than three (3) weeks before a scheduled Planning Commission meeting (call the Beaufort County Planning office at 843-470-2724 for the scheduled meeting dates).
3. FEE: An application processing fee of \$75.00 must accompany this application. Make checks payable to Beaufort County.
4. NOTIFICATION: The Appellant must notify in writing the property owners within 500 feet of the affected property (see the attached sample letter) NO LATER THAN 15 days prior to the hearing. Prior to the hearing, the Appellant must also provide the Planning Department with proof of the mailing (including a copy of the letter sent to the property owners; and a list of the property owners notified, including their property identification numbers (PIN) and addresses).
5. HEARING TRANSCRIPTION: The Planning Commission provides summary, not verbatim, minutes. If the Appellant desires verbatim minutes, they must provide a court reporter for their Planning Commission hearing.

I, the undersigned appellant, hereby submit this application with the attached information. The information and documents provided are complete and accurate to the best of my knowledge.

Sham Reeves, for Grays Hill Baptist Church 11/6/07
Signature of Appellant Date

Sec. 106-521. - Scope of subdivision.

This subdivision establishes the procedures and conditions for a variance from this chapter's standards. This subdivision permits, under limited circumstances, a building or structure that does not comply with this chapter's standards when strict enforcement would represent a unique, undue, and unnecessary hardship.

(Ord. No. 99-12, § 1 (21.220), 4-26-1999)

Sec. 106-522. - Standards.

- (a) To approve a variance, the zoning board of appeals shall find all of the following standards are met based on the evidence presented by staff reports and testimony. The applicant shall be informed of the appropriate application to seek relief. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:
 - (1) There are extraordinary and exceptional conditions pertaining to the particular piece or property. Extraordinary conditions could exist due to topography, street widening, beachfront setback lines or other conditions which make it difficult or impossible to make reasonable use of the property.
 - (2) These conditions do not generally apply to other property in the vicinity.
 - (3) Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict utilization of the property.
 - (4) The authorization of a variance would not adversely affect adjacent property or the public good. Also, the character of the district would not be harmed by the granting of the variance.
 - (5) The hardship of which the applicant complains must:
 - a. Relate to the applicant's land, and not to the applicant's personal circumstances;
 - b. Be unique, or nearly so, and not one common to many surrounding properties;
 - c. Not be the result of the applicant's own actions; and
 - d. Be one suffered by the applicant and not the adjoining landowners or the general public.
- (b) The ZBOA shall also find that the granting of the variance:
 - (1) Is the minimum necessary to relieve the unnecessary hardship and permit a reasonable use of the land;
 - (2) Will not be injurious to the neighborhood surrounding the land where the variance is proposed and is otherwise not detrimental to the public welfare;
 - (3) Is in harmony with this chapter's purposes and intent; and
 - (4) Is consistent with the comprehensive plan.
- (c) The ZBOA may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to expand by more than 15 percent, 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 for grounds for a variance.
- (d) Variances to protect natural resources may be permitted; however, variances that would negatively impact natural resources shall not be permitted.

(Ord. No. 99-12, § 1 (21.221), 4-26-1999; Ord. No. 2004/40, 11-22-2004)

Sec. 106-523. - Conditions and restrictions.

In approving the application for any variance from this chapter, the ZBOA may impose additional restrictions and conditions on such approval. Restrictions and conditions may be limits on the use of the property; the standards

for locating the use; standards for mitigating the impact on adjoining property owners who would lose protection as a result of permitting the variance; or standards to protect the general health, safety, and welfare. All conditions imposed upon any variance shall be expressly set forth in writing with the granting of such variance.

(Ord. No. 99-12, § 1 (21.222), 4-26-1999)

Sec. 106-524. - Development approvals subsequent to grant.

Development approved by a variance shall not be carried out until the applicant has secured all other development approvals required by this chapter. Approval of a variance shall apply only to that section of this chapter for which it is approved and does not ensure the development shall receive subsequent approval unless the relevant and applicable portions of this chapter or other ordinances are met.

(Ord. No. 99-12, § 1 (21.223), 4-26-1999)

Sec. 106-525. - Amendment.

A variance from this chapter may be amended, extended, varied, or altered only pursuant to the standards and procedures for the original approval of a variance.

(Ord. No. 99-12, § 1 (21.224), 4-26-1999)

Secs. 106-526—106-550. - Reserved.

| Sec. 106-521. - Scope of subdivision.

This subdivision establishes the procedures and conditions for a variance from this chapter's standards. This subdivision permits, under limited circumstances, a building or structure that does not comply with this chapter's standards when strict enforcement would represent a unique, undue, and unnecessary hardship.

(Ord. No. 99-12, § 1 (21.220), 4-26-1999)

| Sec. 106-522. - Standards.

- (a) To approve a variance, the zoning board of appeals shall find all of the following standards are met based on the evidence presented by staff reports and testimony. The applicant shall be informed of the appropriate application to seek relief. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:
- (1) There are extraordinary and exceptional conditions pertaining to the particular piece or property. Extraordinary conditions could exist due to topography, street widening, beachfront setback lines or other conditions which make it difficult or impossible to make reasonable use of the property.
 - (2) These conditions do not generally apply to other property in the vicinity.
 - (3) Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict utilization of the property.
 - (4) The authorization of a variance would not adversely affect adjacent property or the public good. Also, the character of the district would not be harmed by the granting of the variance.
 - (5) The hardship of which the applicant complains must:
 - a. Relate to the applicant's land, and not to the applicant's personal circumstances;
 - b. Be unique, or nearly so, and not one common to many surrounding properties;
 - c. Not be the result of the applicant's own actions; and
 - d. Be one suffered by the applicant and not the adjoining landowners or the general public.
- (b) The ZBOA shall also find that the granting of the variance:
- (1) Is the minimum necessary to relieve the unnecessary hardship and permit a reasonable use of the land;
 - (2) Will not be injurious to the neighborhood surrounding the land where the variance is proposed and is otherwise not detrimental to the public welfare;
 - (3) Is in harmony with this chapter's purposes and intent; and
 - (4) Is consistent with the comprehensive plan.
- (c) The ZBOA may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to expand by more than 15 percent, 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 for grounds for a variance.
- (d) Variances to protect natural resources may be permitted; however, variances that would negatively impact natural resources shall not be permitted.

(Ord. No. 99-12, § 1 (21.221), 4-26-1999; Ord. No. 2004/40, 11-22-2004)

| Sec. 106-523. - Conditions and restrictions.

In approving the application for any variance from this chapter, the ZBOA may impose additional restrictions and conditions on such approval. Restrictions and conditions may be limits on the use of the property; the standards

for locating the use; standards for mitigating the impact on adjoining property owners who would lose protection as a result of permitting the variance; or standards to protect the general health, safety, and welfare. All conditions imposed upon any variance shall be expressly set forth in writing with the granting of such variance.

(Ord. No. 99-12, § 1 (21.222), 4-26-1999)

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(Ord. No. 99-12, § 1 (21.224), 4-26-1999)

Secs. 106-526—106-550. - Reserved.



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

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(843) 524-3109 • (843) 524-6973 FAX
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W. BRANTLEY HARVEY, SR.
(1893-1981)
W. BRANTLEY HARVEY, JR.
COLDEN R. BATTEY, JR.
WILLIAM B. HARVEY, III
(SC Circuit Court Mediator)
JOHN M. TATUM, III
THOMAS A. HOLLOWAY
(also admitted in PA and NJ)

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

November 6, 2007

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

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

Dear Members of the Planning Commission:

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

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

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

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



fellowship hall was that "[b]y adding a 10,000 square foot building to the existing site, the occupancy load would double." This reason for disapproval constitutes a misinterpretation of the applicable County ordinances. The DRT's reason for disapproval is also not supported by any facts presented to the DRT.

The DRT found that the occupant load would double, but that conclusion is without merit. The Church wishes to build a fellowship hall to serve as a gathering place for Church activities such as meetings and social functions. The Church also plans to use the building for storage. The Church does not intend the building to be used for any anticipated increase in membership. In fact, the Church has been functioning well below its current occupant capacity. While the Church's sanctuary currently has a seating capacity of 293, the Church averages 145 in attendance. In other words, the Church is not seeking to construct an additional building because it is "bursting at the seams." Instead, the Church simply wishes to construct the fellowship hall to serve its existing members.

Supporting the Church's argument regarding occupant load is Section 106-2892, Parking Spaces Required. The ordinance requires one parking space per three seats or per six feet of pews, whichever is greater. The Church's proposed expansion project would not increase the number of seats or pews. Therefore, the ordinance would not require an increase in the number of parking spaces upon the completion of the proposed fellowship hall. In other words, the occupancy load on which the number of parking spaces required is based remains the same even with the Church's proposed expansion project.

Although the DRT did not base its disapproval of the Church's proposed fellowship hall on table 106-9, the DRT did mention this issue at its meeting. Section 7(a)(6) and table 106-9 limit the expansion of non-conforming uses and structures. Under "Uses," the standard for expansion is "15 percent disturbed area expansion allowed...." Under "Buildings and structures," the standard for expansion is "[e]xpansions of up to 15 percent are allowed...." The table specifically states that the expansion allowed for uses is 15 percent of the disturbed area. While the expansion standard for buildings does not specifically say 15 percent of what, the specific language for expansion of uses indicates that the same standard applies to buildings — 15 percent of the disturbed area.

In this case, the total disturbed area is approximately 184,785 square feet. A 10,000 square foot fellowship hall would only be approximately 5.4% of the disturbed area. Therefore, such expansion would be allowed under table 106-9.

In addition to the Church's grounds for appeal based on the applicable County ordinances, the Church also asks the Planning Commission to consider the proposed expansion's potential benefit to the community. In years past, Grays Hill Baptist Church



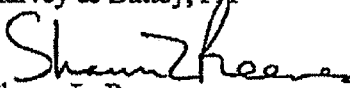
HARVEY & BATTEY, PA
— ATTORNEYS AT LAW —
SINCE 1922

November 6, 2007
Page 3 of 3

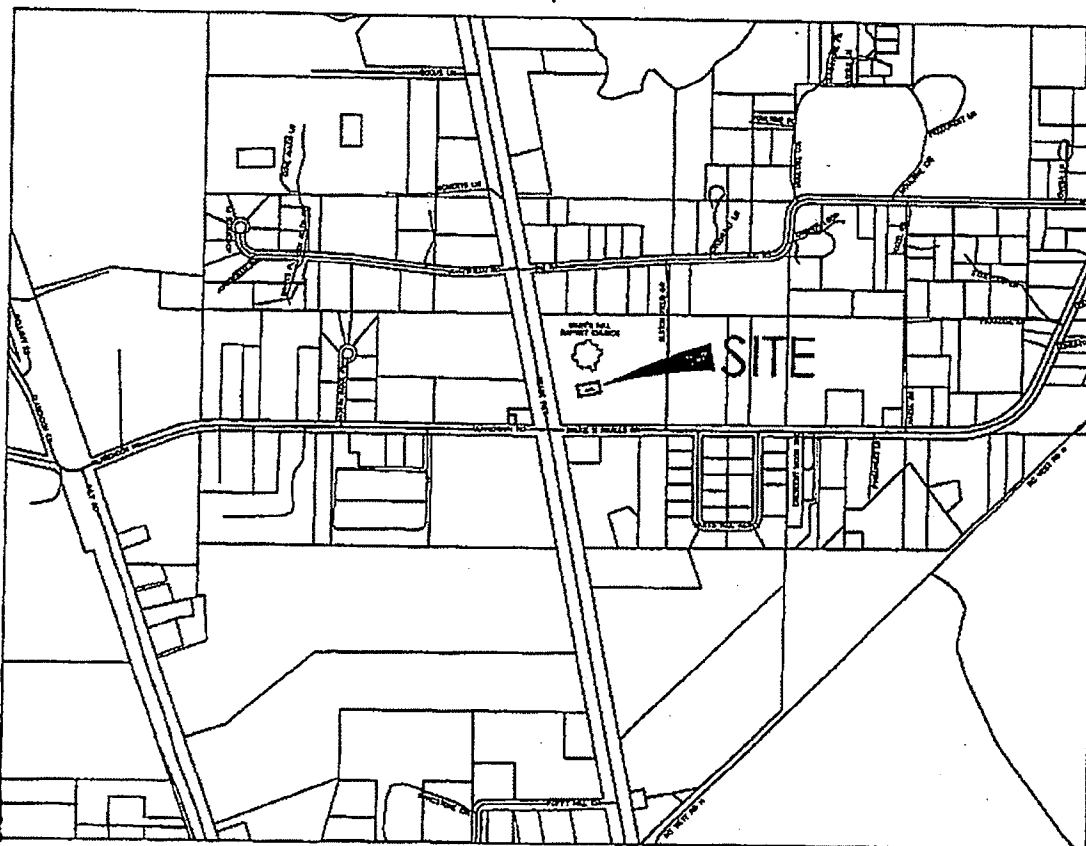
has generously agreed to allow Beaufort County to use its facility as an emergency distribution point after hurricanes or other natural disasters. The Church's construction of the proposed fellowship hall would greatly expand the Church's potential for use as a distribution point following a natural disaster.

In summary, the DRT erred in finding that the occupancy load would double with the Church's proposed fellowship hall expansion. The Church's expansion fits firmly within the Airport Overlay District ordinances regarding nonconforming uses and structures. Therefore, the DRT's disapproval of the Church's fellowship hall expansion project should be reversed.

Sincerely,
Harvey & Battey, PA


Shawn L. Reeves

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



VICINITY MAP
SCALE 1"=300'

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

3 DAYS BEFORE DECISION IN SOUTH CAROLINA
CALL 1-888-721-7077
PALESTINE UTILITY PROTECTION SERVICE

APPROXIMATE LOCATION OF SITE
LONGITUDE: 80°-46'-05"
LATITUDE: 33°-25'-37"

DEVELOPER NAME

STEVE BLANCHARD
GRAY'S HILL BAPTIST CHURCH
PO BOX 500
BURTON, SC 29540
PHONE: 8

PROJECT DATA INFORMATION

PROJECT: BLANCHARD'S HILL BAPTIST Church Fellowship Hall
DISTRICT # 100
PROJECT # 18-C
PROJECT ZONING: RPD-100/100-100
FORM: FLD-100 22-02, C

PHONE #:

BLANCHARD: 843.971.4220
BLANCHARD: 843.971.4220
BLANCHARD: 843.971.4220
BLANCHARD: 843.971.4220
BLANCHARD: 843.971.4220

PERMITS:

APPROVED FOR CONSTRUCTION

BY: _____ DATE: _____

Andrews & Burgess Inc.
Engineering & Surveying
101 Shreveport Road
Beaufort, SC 29906
Tel: 843-744-2222



THE DEEDS AND MAPS PROVIDED BY THIS
DRAWING ARE THE COPYRIGHTED PROPERTY OF ANDREWS
AND BURGESS, INC. THE USE OR REPRODUCTION
OF THESE PLANS OR ANY PART THEREOF IS STRICTLY
PROHIBITED WITHOUT WRITTEN PERMISSION.

INDEX OF DRAWINGS

DATE	DESCRIPTION
1	GENERAL SITE PLAN

DRAWING RELEASED FOR:

☐ PLAN REVIEW	DATE: 01/24/2007
☐ PERMIT DRAWINGS	DATE: 01/24/2007
☐ CONSTRUCTION PERMITS	DATE: 01/24/2007
☐ NO. SET	DATE: 01/24/2007
☐ RECORD DRAWINGS	DATE: 01/24/2007
☐ OTHER	DATE: 01/24/2007

PLAN REVISIONS

NO.	DESCRIPTION	DATE	BY
1	CONSTRUCTION SET SUBMITTAL	01/24/07	AB
2			
3			
4			
5			
6			
7			
8			
9			
10			



COUNTY COUNCIL OF BEAUFORT COUNTY

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

October 18, 2007

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

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

Dear Mr. Blankenship:

The Development Review Team (DRT) met on October 17, 2007 to render their decision on the subject projects. Listed below is the DRT's decision.

After a unanimous vote by the members present, DRT recommended that the project be disapproved due to the following:

Project does not meet the intent of the Airport Overlay District (MCAS). By adding a 10,000 square foot building to the existing site, the occupancy load would double. (Appendix A.1, Section (7) (6).

Representative from MCAS was in attendance at the meeting, and read the air station's position on the increase, and the safety hazard this increase would create.

The applicant was told to they have the option to appeal the DRT's decision to the Planning Commission within 30 days from the date of the DRT meeting. Applicant can receive all information pertaining to the appeal to the Planning Commission from the Planning Department. Contact Mrs. Childs at 843-470-2724.

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

Sincerely,

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

cc: DRT Members

COUNTY OF BEAUFORT DEVELOPMENT REVIEW TEAM ACTION FORM				
Members Present - Hillary (FOR), Delores (FOR), Arthur (FOR), Robert (FOR)				
PROJECT NAME		PROJECT TYPE		
Gray's Hill Baptist Church Fellowship Hall		Institutional		
APPLICANT(DEVELOPER)NAME, ADDRESS, PHONE#				
Steve Blakenship, Gray's Hill Baptist Church				
PROJECT LOCATION	PIN	LAND AREA(ACRES)	LOTS/UNITS	BLDG AREA(SQFT)
Hwy 21	100-20-18C	9.35	N/A	10,000
DATE OF REVIEW	OVERLAY DISTRICT	FIRE DISTRICT		ZONING DISTRICT
10/17/07	HCOD	Burton		CS
TYPE OF DRT REVIEW ☒ CONCEPTUAL () PRELIMINARY () FINAL				
APPROVED NO CONDITIONS _____				
DISAPPROVED ☒ REASONS: PROJECT DOES NOT MEET THE INTENT OF THE AIRPORT OVERLAY DISTRICT. ADDING A 10,000 SQUARE FOOT BUILDING TO THE EXISTING SITE WOULD DOUBLE THE OCCUPANCY LOAD. (APPENDIX A.1, SECTION (7)(6) OF THE BEAUFORT COUNTY ZONING & DEVELOPMENT STANDARDS ORDINANCE.				
* APPLICANT HAS THE OPTION TO APPEAL THE DRT'S DECISION				
APPROVED WITH CONDITIONS _____ CONDITIONS: TO THE PLANNING COMMISSION WITHIN 30 DAYS FROM THE DATE OF THIS MEETING.				
APPROVED SUBJECT TO _____ CONDITIONS: _____				
DEFERRED: (PLEASE SUBMIT THE FOLLOWING) _____				

Hillary A. Austin
ZONING & DEVELOPMENT ADMINISTRATOR

10-17-07
DATE

LETTER WILL BE MAILED WITHIN 48 HOURS FOLLOWING THE MEETING

000102

NARRATIVE

GRAYS HILL BAPTIST CHURCH FELLOWSHIP HALL ADDITION

BEAUFORT COUNTY

PROJECT NO. 270026

September 13, 2007

Revised: October 15, 2007

The Grays Hill Baptist Church is a 9.35-acre parcel located in the northeastern quadrant of the intersection of US Hwy 21 (Trask Parkway) and SC Highway 71 (Bruce K. Smalls Blvd) in Beaufort County, SC. The site is bordered by woodlands to the north, SC Highway 71 to the south, Alston Field Road to the east, and US Highway 21 to the west. This property is zoned Suburban Commercial and falls within the Accident Potential Zone 2 (APZ-2) of the Air Installation Compatible Use Zone (AICUZ). The Institutional Use of the church is a Limited Use within the Suburban Commercial District. Any alteration to the non-conforming use is limited to the 15% of the disturbed area of the site according to Table 106-9 of the Beaufort County ZDSO.

Phase I of the development consisted of a 15,872sf church sanctuary with 60,248sf of grass parking spaces and asphalt/concrete paving, with a total disturbed area of 184,785sf. The number of parking spaces required for the institutional use "church" is defined in *TABLE 106-2892(A). OFF-STREET PARKING REQUIREMENTS FOR SPECIFIC USES* of the Beaufort County ZDSO as being 1 parking space per 3 seats, regardless of building size. With the sanctuary seating capacity of 293, there were 98 required parking spaces. The church's congregation has maintained steady membership of approximately 145 for the past two years, meaning that it is operating at one half of its capacity, resulting in additional available parking spaces.

Phase II of the church development will consist of a 10,000sf fellowship hall shown on the enclosed plans as the proposed building located to the south of the existing church. This future building was illustrated on the DRT approved plans as an 11,250sf building. No objection was made at that time to the square footage nor building placement, or it would have to have been removed from the plans. The proposed fellowship hall will be constructed within existing setbacks and will not require any additional parking. This proposed fellowship hall will include restrooms, storage area, and the remainder will be used as gathering space with no partitions. The building will have an 8' covered porch along the north and eastern sides. A conceptual elevation rendering has been prepared.

This expansion is allowed because it will not increase the occupant load of the complex, which is prohibited in the APPENDIX A1. AIRPORT OVERLAY DISTRICT/MCAS—BEAUFORT, Section 7(a).6, but allows a 15% disturbed area increase. The members of the DRT heard this project as a "discussion only" item after the 09/19/07 meeting and conceded (Arthur Cummings, Building Codes Director and Deloris Frazier, Assistant Planning Director) that the building addition would not increase the occupant load of the church complex. The DRT suggested the applicant request an administrative interpretation of Table 106-9, which they believe *should have been* written to state the increase to a

nonconforming use is limited to 15% expansion of the existing building, opposed the current language allowing 15% expansion of the disturbed area. Because of the current language refers to the disturbed area, it is our position that the church is allowed to construct the fellowship hall because it is merely 5.4% of the disturbed area ($10,000\text{sf} / 184,785\text{sf} = 0.054 = 5.4\%$).

In addition, there have been onsite meetings and multiple phone discussions between the MCAS Air Station and the Church. MCAS will not issue any written recommendations or opinions to the church, only to Beaufort County.

The stormwater runoff is handled by two existing on-site stormwater detention ponds designed to accommodate the post development runoff from both the church and the fellowship hall. The existing access driveways and parking lot will serve the church and proposed fellowship hall.

Water service for the phase 2 fellowship hall will be furnished tapping into the existing waterline along Highway 21. An on-site septic tank and drain field will handle sanitary sewer service. Electrical and telephone lines will be installed underground. SCE&G and Embarq will provide electrical and telephone service, respectively. Waste Management will handle solid waste disposal/pick up, and fire protection as well as emergency medical services will be provided by the Burton Fire District.

SEE ATTACHED EXERPTS FROM:

1) Beaufort County ZDSO

- a. APPENDIX A1. AIRPORT OVERLAY DISTRICT/MCAS-BEAUFORT*
- b. APPENDIX B. CORRIDOR OVERLAY DISTRICT GUIDELINES
- c. Sec. 106-961. Commercial suburban (CS) district.
- d. Sec. 106-1054. Airport overlay (AO) district.
- e. Sec. 106-1098. Use table
- f. Sec. 106-1246. Assembly and worship, large.

2) AICUZ Plan 2004

- a. <http://www.lowcountryjhus.org/aicuz.html>

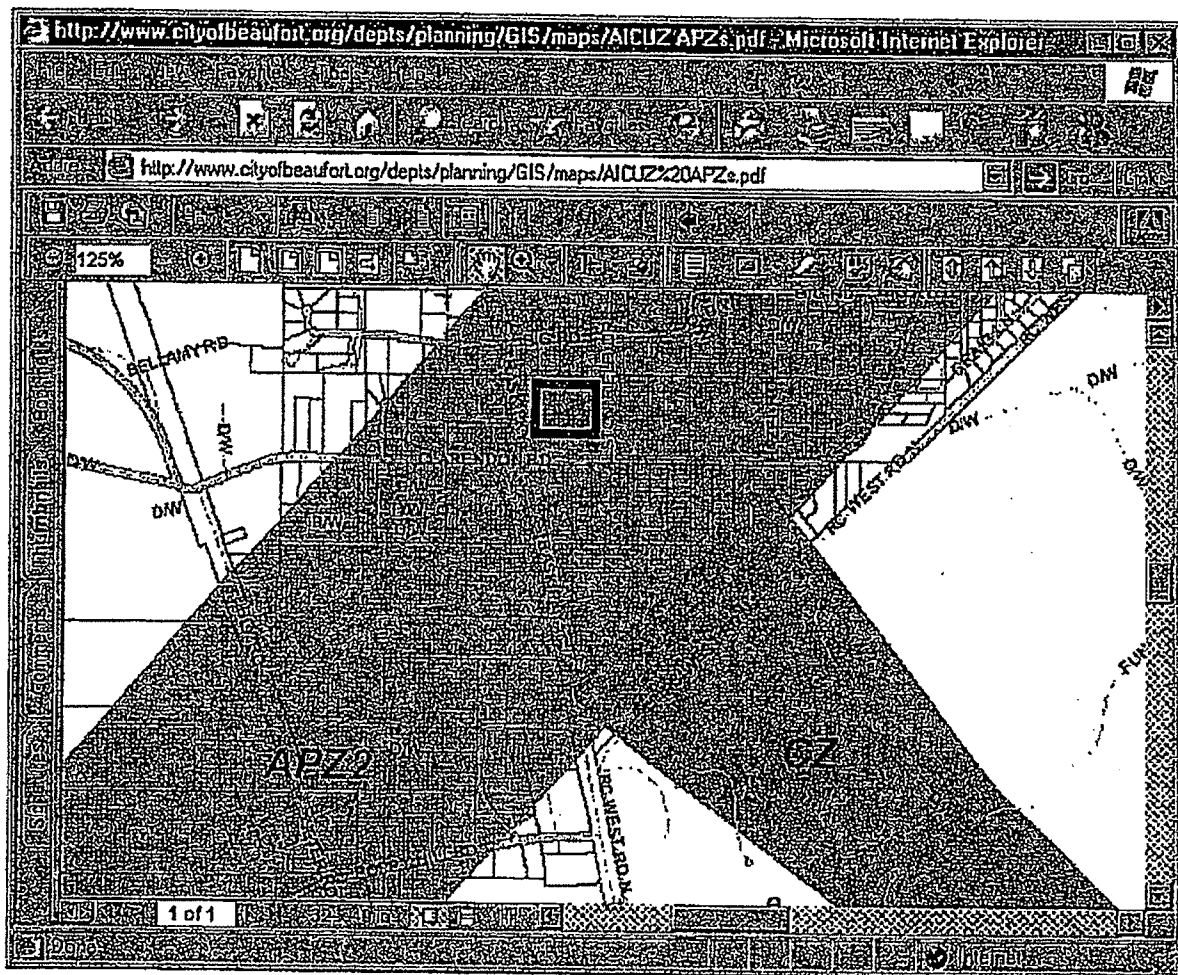
APPENDIX A1. AIRPORT OVERLAY DISTRICT/MCAS--BEAUFORT*

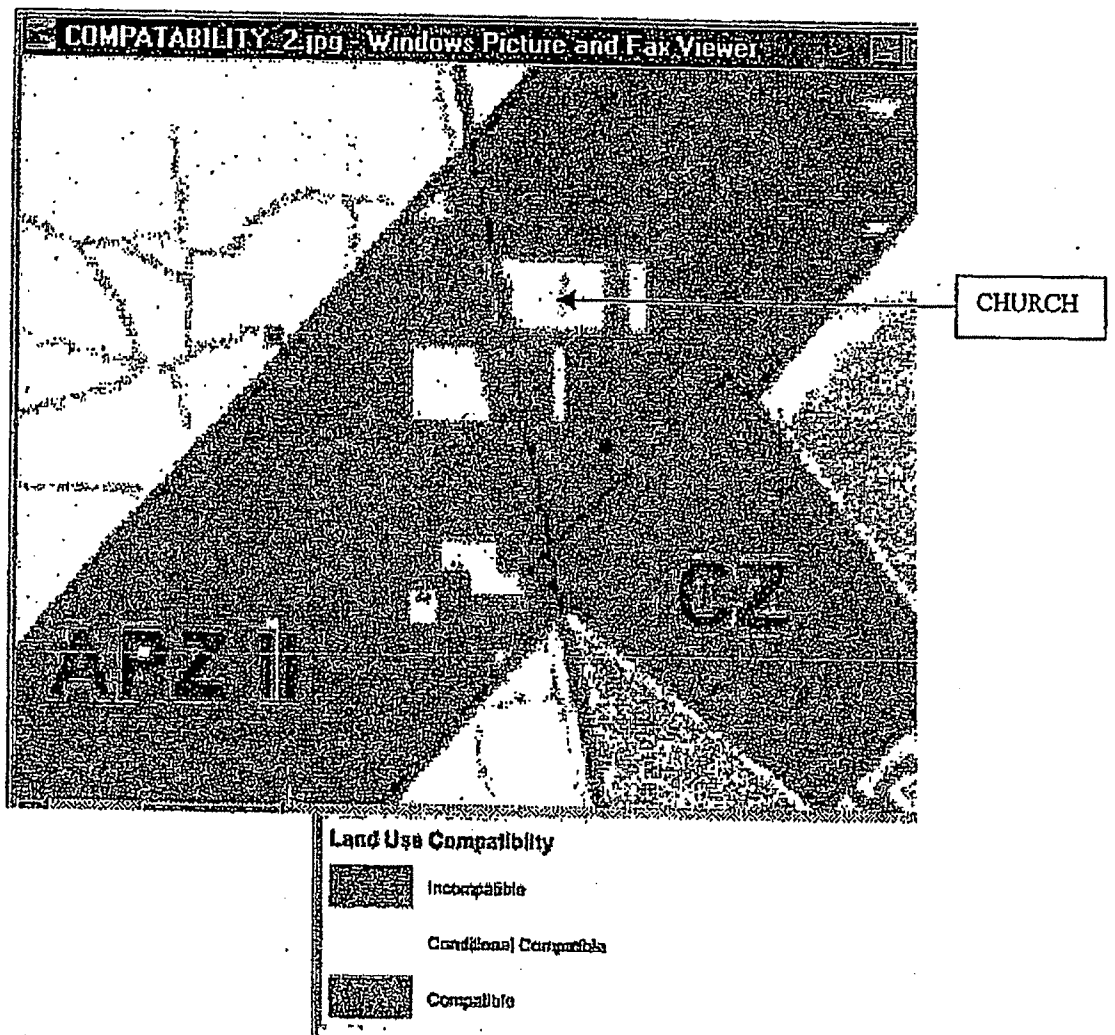
Sec. 7. Nonconforming uses and structures.

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

(a) *Nonresidential uses and structures.*

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





Sec. 106-9. Nonconformities.

(a) *Purpose.* This section regulates nonconforming uses, buildings and structures, lots, and signs. This chapter recognizes that nonconformities vary in the degree of conflict, annoyance, incompatibility, or hazard to the surrounding community. The purpose of regulating nonconformities is to gradually increase the degree of compatibility and functionality within zoning districts. All nonconforming uses, buildings and structures, lots and signs shall be encouraged to become conforming, while attempting to minimize disruption of surrounding, established, conforming situations. Over time, this chapter will lead to greater conformity and functionality within zoning districts as nonconformities are abandoned, damaged, or converted to conforming status. It is recognized that this is a slow and gradual process, and not one that is intended to be unduly disruptive to a property owner or a community. Rules and procedures are intended to balance the desire to eventually eliminate the nonconformity against the degree of the problem and the landowner's rights. Table 106-9 provides a detailed description of types of nonconforming situations, and limitations and standards for each.

TABLE 106-9. DESCRIPTION OF NONCONFORMING USES, STRUCTURES, LOTS & SIGNS
TABLE INSET:

Type	Definition	Standards for Use or Expansion	Conversion to Conforming Use
Uses	Any existing use not permitted in the general use table 106-1098 is a nonconforming use.	15 percent disturbed area expansion allowed within required setbacks and with maximum feasible buffers.	Nonconforming uses may become conforming by correcting the nonconformity or through approval of a special use permit. See subsection (b) of this section.
Buildings and structures	Buildings and structures are nonconforming if they exceed floor area, setback or density standards by 20 percent or have less than 75 percent of required open space or landscaped surface.	Expansions of up to 15 percent are allowed provided setbacks are not reduced and maximum feasible landscaping and buffers are used. A building's intrusion into setbacks shall not project further into the setback than at present. Nonconforming structures may expand only within the existing setback requirements.	Nonconforming buildings and structures may become conforming by correcting the nonconformity or through approval of a special use permit. See column at left and subsection (b) of this section.

Sec. 106-961. Commercial suburban (CS) district.

(a) The commercial suburban (CS) district provides for a limited number of retail, service, and office uses intended to serve the surrounding neighborhood. These are smaller uses and not highway service types of uses.

(b) The intensity standards are set to ensure that the uses have the same suburban character as the surrounding suburban residential areas. They are intended to blend with the surrounding areas, not threaten the character of the area.

(c) These districts shall not be strip developments, but neighborhood centers with a sense of place; they shall meet the following vocational requirements:

(1) Adjoin large suburban, residential areas.

(2) Be at intersections of arterial or collector roads where residential area traffic is high.

(3) Be no larger than 20 acres.

(4) Be at least one mile from other commercial districts.

Sec. 106-1054. Airport overlay (AO) district.

The airport overlay (AO) provides special controls for this district that are intended to prevent incompatible uses or other uses where there is a high likelihood of a concentration of people in the high risk areas associated with increased potential for aviation accidents. Additional regulations may require increased building standards where noise levels are highest. This is an overlay over the underlying zoning. Thus, for example, a rural area within the airport overlay would be designated on maps as R-A indicating the base zoning (rural), and the overlay (airport overlay).

Sec. 106-1246. Assembly and worship, large.

(a) *Size.* Large assembly and worship are 15,000 square feet or greater and/or with a school.

(b) *Reports/studies required.* All applications for this use shall include a traffic impact analysis.

(c) *Urban, suburban, commercial suburban districts.* In urban, suburban and commercial suburban districts, access shall be provided through frontage on an arterial or collector street, unless the DRT finds that access to an adjoining local street is safer, and provides improved design, benefiting the county. There shall be no minimum lot size for this use.

Sec. 106-1098. Use table.

TABLE 106-1098. GENERAL USE TABLE

INSTITUTIONAL USES													
Land Use	U	S	CR	CS	RD	LI	IP	R	RR	RB	RC	Additional Standards	Use Definition
Assembly and worship, large	L	L	Y	L	N	N	N	L	N	L	N	106-1246	Museums, libraries, aquariums, cultural or arts centers, historic sites and churches with or without schools (except Sunday schools occupying no more than 50 percent of the floor area) as part of the complex and having 15,000 or greater square feet of floor area. (NAICS 6111, 8131, 8134)
Use Permission													
Y = Permitted use													
L = Limited use													
S = Special use													
N = Prohibited use													
LC = Permitted use only in residential community use option													

APPENDIX B. CORRIDOR OVERLAY DISTRICT GUIDELINES

Sec. 3. Nonconforming situations.

A. Existing nonconforming uses within a CO district, on the effective date of the ordinance from which this chapter derives, may be brought into full or partial compliance through a streamlined staff review process. Such situations shall require approval of the development review manager, and be exempt from CRB review. This option shall be permitted only for those uses whose owners or operators would like to continue the existing use, with no change of ownership, and where no abandonment has occurred. Only improvements in landscaping and minor building improvements shall be exempt from CRB review. Any expansion or other change shall be guided under the applicable process as required by this chapter.

B. All other nonconforming situations shall be brought into compliance with standards contained within sections 106-1 through 106-12 of this chapter; articles V, VI and XIII of this chapter; and this appendix when the nonconforming situation proposes any change, alteration or expansion to any portion of a building, structure or use, and/or has been abandoned according to table 106-9.

October 15, 2007

Ms. Hillary Austin
Beaufort County Zoning & Development
P.O. Drawer 1228
Beaufort, SC 29901-1228

RE: PROJECT #270026 – GRAY'S HILL BAPTIST CHUCH EXPANSION

Dear Hillary

In reference to the abovementioned project, we offer this response to the DRT's recommendation for disapproval in your letter dated October 10th, 2007 to Mr. Steve Blankenship.

The letter states:

"It was the intent of this section of the ordinance to allow small expansions to the existing churches to accommodate restrooms, storage space, a kitchen, and the like. It was not the intent to permit an expansion that could allow more people to be in harms way, such as additional classroom space or expansions to the sanctuary". Also stated "...the intent...is to allow for additions, i.e. parking spaces, restrooms. Storage and other auxiliary uses where the seating capacity in the sanctuary and other places of assembly will not increase."

It is our position that this expansion *is* allowed because it *will not* increase the occupant load of the complex. The members of the DRT heard this project as a "discussion only" item after the 09/19/07 meeting and verbally conceded (Arthur Cummings, Building Codes Director and Deloris Frazier, Assistant Planning Director) that this building addition *would not* increase the occupant load of the church complex. The DRT's argument at that time was more directly related to the way the ordinance was written, and Mrs. Frasier suggested that I request an administrative interpretation to clarify the ordinance's intent (which seemed clear to me that this expansion is allowed by the current ZDSO). At that point, I requested the administrative interpretation in a letter to you on 09/25/07, and my response from you via phone conversation on 9/26/07 was that you felt that no interpretation was needed, because you believed the ordinance allows this expansion, just as it has allowed many other 15% expansions all over Beaufort County similar to this one. The fact that this project falls within the AICUZ zone is the only difference, but Appendix A of the ordinance refers back to Table 106-9, which allows this expansion.

The current language allows 15% expansion of the disturbed area. Since the current language refers to the disturbed area, it is our position that the church *should* be allowed to construct the proposed fellowship hall.

If, after review of this letter, the DRT maintains their position that this project does not meet the current language of the ordinance, then this letter shall also serve as a second formal request for an administrative interpretation of the applicable sections of the ordinance in which the DRT feels this project does not meet, including but not limited to the definition or interpretation of the "occupancy load" calculation, and the Table 106-9.

If you have any questions or need additional information, please contact our office at 466-0369.

Sincerely,

Ryan Lyle, EIT

Enclosures

CC: Steve Blankenship – Grays Hill Baptist Church
David Tedder- Tedder Law Firm

**COUNTY COUNCIL OF BEAUFORT COUNTY**

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

October 10, 2007

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

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

Dear Mr. Blankenship:

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

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

The proposed addition of the fellowship hall does not comply with the ordinance. Adding a 10,000 square foot building to the existing site would double the occupancy load. The intent of Section 7(a)(6) Nonconforming Uses is to allow for additions i.e. parking spaces, restrooms, storage and other auxiliary uses where the seating capacity in the sanctuary and other places of assembly will not increase.

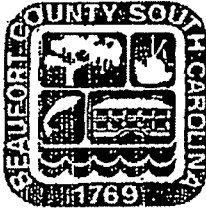
DRT recommends the project be disapproved.

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

Sincerely,

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

"Professionally we serve; Personally we care!"



COUNTY COUNCIL OF BEAUFORT COUNTY

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

June 29, 2007

Mr. Steve Blankenship
c/o Grays Hill Baptist Church
2749 Trask Parkway
Beaufort, SC 29906

Re: Staff Discussion -- ACUIZ, Expansion of Church

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

Concern 1. Applicant wants to build a 6,000 sq. ft. fellowship hall addition to the existing church. Building will have bathrooms, kitchen, classrooms and storage areas.

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

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

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

Sincerely,

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

Cc: DRT Members

GRAYS HILL BAPTIST CHURCH



2749 Trask Parkway
Beaufort, South Carolina 29906
Telephone (843) 846-2797
Fax (843) 846-4509

James E. Baker, Pastor
522-1521

John J. Cook, Assoc. Pastor/Youth
597-4906

June 20, 2007

Beaufort County Development Review Team

Attn: Hillary Austin

Grays Hill Baptist Church is requesting permission to build a 6,000 sq. ft. building on our current property at 2749 Trask Parkway. This building would not be occupied by more than our currently allowed occupancy rating. Our current square footage is 17,476. Our original master plan submitted in 1996 showed 2 additional buildings to be constructed.

We are trying to create a separate space in order to divide our large meetings into smaller spaces. It is a hardship to have several different groups meeting in one large room or building. A smaller separate building would allow us to spread out the number of people meeting in one place or building at one time.

The church building is only occupied for 3 to 4 hours on Sunday and Wednesday by the membership.

We have a contract with the Beaufort County Emergency Management Department to use a portion of our property as an emergency distribution point, after a hurricane or other natural disaster has struck our area.

At any given time we have a number of military families who are members and we have always supported our troops and bases here in Beaufort County.

Your favorable consideration of our request will be greatly appreciated.

Sincerely,

Steve Blankenship, Chairman
Building Committee

OCT-30-2007 03:18P FROM: GRAYS HILL BAPTIST C 18438-46-1509

P. 6.35

[illegible]

Office of the Clerk of Court

Beaufort County

Post Office Drawer 1128
Beaufort, South Carolina 29901-1128
(843)470-5218 Fax: (843)470-5248

Jerri Ann Roseneau
Clerk

Melissa Kilby
Judgments Administrator

DATE: April 10, 2012

TO: Beaufort County Planning Commission- Barbara Childs
100 Ribaut Rd, Room 115
Beaufort, SC 29902

FROM: Jerri Ann Roseneau

RE: Grays Hill Baptist Church v. Beaufort County and the Beaufort
County Planning Commission
Case No: 12-CP-07-1394

In accordance with Section 6-29-830 of the South Carolina Code of Laws
1976 as amended: Notice is given that a Notice of Appeal was filed
April 6, 2012.

CC: Beaufort County Planning Commission Secretary, Barbara Childs
Beaufort County Council, Sue Rainey
H. Fred Kuhn, Jr, Esq for Grays Hill Baptist Church
Joshua Gruber, Esq

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
2012-CP-07- 1394

2012 APR -6 AM 11:54
JERILAN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

GRAYS HILL BAPTIST CHURCH,)
Appellant-Plaintiff,)

vs.)

SUMMONS

BEAUFORT COUNTY and THE)
BEAUFORT COUNTY)
PLANNING COMMISSION,)
Respondents-Defendants.)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint-Petition in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer upon the subscribed at his office, Post Office Drawer 507/1501 North Street, Beaufort, South Carolina 29901, within thirty (30) days from the service hereof, exclusive of the day of such service; and if you fail to Answer the Complaint-Petition within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded.

MOSS, KUHNS & FLEMING, P.A.

By: _____

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)
Attorney for the Appellant-Plaintiff

Beaufort, South Carolina
April 6, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

2012-CP-07-

1394

2012 APR -6 AM 11:54
JENNIFER ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

GRAYS HILL BAPTIST CHURCH,)
Appellant-Plaintiff,)

vs.)

BEAUFORT COUNTY and THE)
BEAUFORT COUNTY)
PLANNING COMMISSION,)

Respondents-Defendants.)

COMPLAINT-PETITION
(APPEAL-NONJURY)

The Appellant, Grays Hill Baptist Church (hereinafter "Baptist Church"), hereby appeals from the final decision of Respondents, Beaufort County and the Beaufort County Planning Commission (hereinafter "Commission"), denying the Baptist Church's request for permission to build a fellowship hall and complete Phase II of its development, alleging and stating as follows:

1. This is an appeal from the Commission's final decision under denying the Baptist Church's request for a permit allowing the construction of a Fellowship Hall on its property located at TMS #R100-020-000-018C-0000, a ten (10) acre parcel of land upon which the Baptist Church has been meeting since the Church was built in 1997, located in Beaufort County, South Carolina (hereinafter the "property").

2. A copy of the decision of the Commission from which this appeal is taken, dated March 6, 2012 and received on March 12, 2012, is attached hereto as Exhibit A.

3. The Appellant, the Baptist Church, hereby files this notice of appeal in accordance with S.C. Code Ann. §6-29-1150 (2012).

4. The Beaufort County Court of Common Pleas has jurisdiction and venue over this matter pursuant to S.C. Code Ann. §6-29-1150 (2012).

5. The Baptist Church owns the property in fee simple.

6. There is an existing Church building on the property, and the requested variance would simply allow the construction of an adjunct Fellowship Hall.

7. The requested Fellowship Hall was shown on the original master plan submitted by the Baptist Church to the Defendant Beaufort County in 1996.

8. The foregoing master plan was approved by the Defendant Beaufort County and the Baptist Church built its Sanctuary in 1997 as Phase I of the development, with the Fellowship Hall to follow as part of Phase II.

9. Subsequently, the Defendant Beaufort County created the Airport Overlay District, which came into being on or around December 11, 2006.

10. The Baptist Church submitted its application to the Defendants for conceptual review of the construction of the Fellowship Hall, submitting said plans to the Defendants' Planning Commission on September 25, 2007. At that time, the ZDSO allowed an expansion of "up to 15% in accordance with Table 106.9 provided that the expansion does not increase the occupant load of the building." Table 106.9 allowed a nonconforming use to be expanded up to 15% of the "disturbed area."

11. The disturbed area of the subject property is 184,785 square feet.

12. The proposed Fellowship Hall is 10,000 square feet, which is only 5.4% of the disturbed area, well below the 15% threshold.

13. The Defendants, acting through their Zoning and Development Administrator, in correspondence dated October 10, 2007 acknowledged that it "was the

intent of this section of the ordinance (the ZDSO) to allow small expansions to existing churches to accommodate restrooms, storage space, a kitchen, **and the like** The intent of Section 7(a)(6) nonconforming uses is to allow additions, i.e., parking spaces, restrooms, storage **and other auxiliary uses** where the seating capacity in the sanctuary and other places of assembly will not increase." (Emphasis added).

14. The Fellowship Hall is an auxiliary use to the Sanctuary.

15. Despite the appropriateness of the Fellowship Hall use, the fact that the Fellowship Hall is an auxiliary use to the Sanctuary, the fact that the size of the Fellowship Hall is well below the 15% disturbed area threshold, and despite the fact that the Fellowship Hall had been approved on the original master plan, the Defendant Beaufort County, acting through its Development Review Team at its meeting held on December 17, 2007, and its Planning Commission at its hearing held on December 3, 2007, denied the Baptist Church's application for the Fellowship Hall, erroneously concluding that while the expansion fell within the 15% allowance, that it would increase the occupant load.

16. The proposed Fellowship Hall was part of the original master plan submitted and approved in 1996.

17. Additionally, the proposed Fellowship Hall satisfied the requirements of the Airport Overlay District Ordinance at the time the Baptist Church was required to resubmit its application in 2007, and the application was denied based upon the erroneous assumption that the occupancy load would increase.

18. Restricting the nearly ten (10) acre parcel of property which is the subject of this action to the construction of one (1) building constitutes an unreasonable

restriction on the utilization of this parcel of property, particularly where one purpose of the Ordinances is to allow for "auxiliary" uses, and the Fellowship Hall is an auxiliary use to the Church Sanctuary.

19. Additionally, the decision of the Commission dated March 6, 2012 is based upon numerous errors of law and erroneous factual findings, as follows, to-wit:

a) The Commission correctly found, that the Appellants began construction in 1997 on their Church and supporting infrastructure, that the original master plan had both a Church and a Fellowship Hall planned, and that the Appellant's initial building permit in 1997 was for only the Church and surrounding infrastructure. The Commission, however, erroneously confused the Development Permit, which encompassed both the Church as Phase I, and the Fellowship Hall as Phase II, was issued and approved, and therefore it was error to deny the Church's application for a construction permit when the Church was ready to proceed with the construction of the Fellowship Hall as Phase II of the previously approved development.

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

c) The Commission erred in failing to find that the Church's application for the construction of a Fellowship Hall was grandfathered by virtue of the application and development plan clearly showing the Fellowship Hall, which was submitted prior to the enactment of the Airport Overlay District.

d) The Commission erred in finding that there would be an increased occupancy load or an increased number of people meeting, or additional times that people would congregate at the subject location, where this factual finding is not only unsupported by the evidence, but is directly contrary to the evidence.

e) The Commission erred in adopting a definition for "occupancy load" which is not set forth in the Ordinance.

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

g) The Commission erred in finding that there is "no evidence" which would support the continued validity or vested right in the subject 1997 Development Permit as alleged by the Church, where this finding is contrary to the evidence. The development permit expressly provided that it would expire only if the Church did not commence development of the property. The Church did commence development of the property by proceeding with and completing Phase I of the development, thereby leaving the development permit open under its express terms for the construction and completion of the Phase II.

h) The Commission erred in finding that "all construction which was requested in the initial development permit was completed in 1997," where the initial application clearly showed the proposed Fellowship Hall.

i) The Commission erred in finding that no request or permit to build the Fellowship Hall was made prior to the permits requested in 2007. The Commission, again, confuses a development permit with a construction permit. The undisputed evidence is that the Church sought a development permit for the development of the entire project, both Phase I and Phase II, and once the Church applied for the construction permit to commence and complete Phase I, the development permit for Phase II remained open, thereby allowing the Church to complete construction of the Fellowship Hall as part of Phase II.

j) The Commission erred in relying upon the testimony of Tim Ogden, a fire code official, in creating a definition for "occupancy load," where Mr. Ogden expressly stated that he was giving no consideration to how many people will actually occupy the proposed building, inasmuch as a definition that totally ignores the use to which the building will be put defies logic, common sense, and is an abuse of discretion.

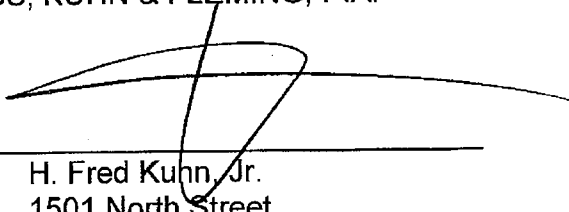
k) The Commission erred in finding that the construction of the Fellowship Hall on this property would increase the "occupancy load" where this finding is unsupported by, and contrary to, the evidence.

WHEREFORE, Appellant, the Baptist Church, asks this Court for the relief as follows:

a. That the Court reverse the decision of the Commission and grant the permit request of the Appellant, allowing the construction of the Fellowship Hall;

- b. That the Court award the Appellant its attorney's fees and costs; and
- c. For such other and further relief as this Honorable Court may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Plaintiff-Appellant

Beaufort, South Carolina
April 6, 2012

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

GRAYS HILL BAPTIST CHURCH

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012 APR - 6 AM 11: 54

2012-CP - 07- 1394

vs.

JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

BEAUFORT COUNTY AND BEAUFORT COUNTY
PLANNING COMMISSION

Defendant(s))

(Please Print)

Submitted By: H. FRED KUHN, JR.

Address: PO DRAWER 507

BEAUFORT, SC 29901

SC Bar #: 3576

Telephone #: 843-524-3373

Fax #: 843-524-1302

Other:

E-mail: fred@mossandkuhn.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 -CP- - | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| Special/Complex /Other | ☐ Pharmaceuticals (630) | | ☐ Public Service Commission (990) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | | ☐ Employment Security Comm (991) |
| ☐ Automobile Arb. (610) | ☐ Out-of State Depositions (650) | | ☒ Other (999) |
| ☐ Medical (620) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | Planning Commission |
| ☐ Other (699) | ☐ Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: 04/06/12

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT 2011 MAY 20) AM 10:09) FOURTEENTH JUDICIAL CIRCUIT
) Civil Case Numbers: 2008-CP-07-1114 and
GRAYS HILL BAPTIST CHURCH,) 2010-CP-07-04844
) S.C.
Appellant-Plaintiff,)
) vs.) NOTICE OF MOTION AND MOTION TO
) INTERVENE ON BEHALF OF THE
BEAUFORT COUNTY, and THE) UNITED STATES OF AMERICA
BEAUFORT COUNTY ZONING)
BOARD OF APPEALS,)
Defendants.)

PLEASE TAKE NOTICE that Intervenor, the United States of America, by and through its undersigned counsel, in accordance with Rules 19, 20, and 24(a) and (b) of the South Carolina Rules of Civil Procedure, will and hereby does move before the presiding judge of the Fourteenth Judicial Circuit, ten (10) days hence or as soon thereafter as may be heard, for an order permitting the United States of America to be joined and/or intervene in the above-captioned matters, to wit: 2008-CP-07-1114 and 2010-CP-07-04844, for the following reasons:

JURISDICTION AND VENUE

- 1) That the Intervenor, the United States of America, is now, and was at all times mentioned herein, a right and proper party to the subject actions.
- 2) Upon information and belief, Defendant Beaufort County, and Defendant Beaufort County Zoning Board of Appeals (hereinafter "Defendant Beaufort County" and "Defendant ZBOA") constitute a body politic and subdivision of the State of South Carolina.
- 3) Upon information and belief Plaintiff Grays Hill Baptist Church (hereinafter

"Plaintiff Church") is a nonprofit religious corporation organized under and existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

FACTUAL ALLEGATIONS

- 4) Intervenor is informed and believes that Plaintiff Church began construction in 1997 on their existing church and supporting infrastructure. Intervenor is informed and believes that the original master plan had both a church and sanctuary planned.
- 5) Furthermore, Intervenor is informed and believes that when Plaintiff Church applied for a building permit in 1997, it only applied for permission to construct the church and surrounding infrastructure. No request to build the sanctuary was made at that time.
- 6) Intervenor is informed and believes that all construction which was requested in the initial building permit was completed in 1997.
- 7) Intervenor is informed and believes that on or about December 11, 2006, Defendant Beaufort County adopted the Airport Overlay District.
- 8) Intervenor is informed and believes the Grays Hill Baptist Church became a "nonconforming place of assembly and worship" which limited expansion to fifteen (15%) percent.
- 9) Intervenor is informed and believes due to questions as to whether the expansion limitation was fifteen (15%) percent of the total disturbed area of the church complex, or fifteen (15%) percent of the current church building, Defendant Beaufort County amended its ordinance on February 25, 2008 to clarify that the

limitation was to a fifteen (15%) percent expansion of the building only.

- 10) Intervenor alleges the Plaintiff Church's property is located in the Accident Potential Zone-2 (APZ-2) within Defendant Beaufort County's Airport Overlay District which has a "measurable potential for an aircraft accident."
- 11) Intervenor alleges Accident Potential Zones (hereinafter "APZs") are based upon statistical analyses of past Department of Defense aircraft accidents. It is further alleged that APZs consist of a clear zone (hereinafter "CZ"), APZ-I, and APZ-II. The CZ, the area closest to the runway end, is the most potentially hazardous. APZ-I is an area beyond the CZ that possesses a significant potential for accidents. APZ-II is an area beyond APZ-I having a lower, but still significant, potential for accidents.
- 12) Intervenor is informed and believes that in 2007 Plaintiff Church submitted an application to build a new sanctuary/fellowship hall next to their church.
- 13) Intervenor is informed and believes that on or about October 17, 2007, the Defendant Beaufort County's Development Review Team denied the Plaintiffs request to construct the sanctuary/fellowship hall by unanimous vote, specifically noting the safety hazard of having increase numbers of people meeting and the additional times people would congregate at the location.
- 14) Intervenor is informed and believes that on or about November 6, 2007, Plaintiff Church appealed to the Defendant Beaufort County's Planning Commission and again was denied permission to construct the sanctuary/fellowship hall.
- 15) Intervenor is informed and believes that on or about April 26, 2010, Plaintiff Church applied for a variance and that the application was denied on July 22,

2010.

- 16) Intervenor is informed and believes that Plaintiff Church's application contains factual errors and fails to meet or address the requirements of Section 106-522 of the Beaufort County ordinances establishing the procedures and conditions for a variance to be approved.
- 17) Intervenor is informed and believes that it should be authorized to intervene and be heard in the subject matters in order to protect the interests of the Intervenor.

INTERVENOR'S INTERESTS

- 18) Pursuant to Rule 19 of the South Carolina Rules of Civil Procedure, for reason's set forth herein, Intervenor claims in its absence complete relief cannot be accorded among those already parties and further claims an interest relating to the subject of the action and is so situated that the disposition of the action in its absence may (i) as a practical matter impair or impede its ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. The United States of America is subject to service of process and its joinder as a Defendant will not deprive the court of jurisdiction over the subject matter of the action. The United States of America should therefore be named a Defendant in the subject actions.
- 19) Additionally, pursuant to Rule 20 of the South Carolina Rules of Civil Procedure, for reason's set forth herein, Intervenor claims that it may join in the above actions as a Defendant as a question of law or fact common to all these persons will arise in these actions. Pursuant to the same Rule, a plaintiff or defendant

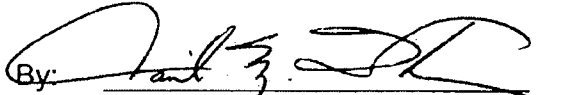
need not be interested in obtaining or defending against all the relief demanded.

- 20) Pursuant to Rule 24(a) and (b) of the South Carolina Rules of Civil Procedure, for reason's set forth herein, Intervenor claims an interest in the subject matters, and the Intervenor believes that the disposition of these or related actions without the Intervenor being heard may, as a practical matter, impair or impede its ability to protect its interests in the subject matters and its property.
- 21) Intervenor alleges that the Government owns certain property, from which it maintains and operates a military installation, to wit: Marine Corps Air Station, Beaufort, South Carolina, within the same Airport Overlay District. Said installation facilitates and supports the essential training of military pilots and the operation of its aircraft.
- 22) Furthermore, Intervenor alleges that the Grays Hill Baptist Church lays directly in the immediate landing pattern of military aircraft operating from the Marine Corps Air Station.
- 23) Intervenor is informed and believes that the Court should permit it to join and/or intervene in this action in order to protect the interests of the Intervenor and of Defendant Beaufort County and Defendant ZBOA.
- 24) Furthermore, Intervenor is informed and believes that the Court should permit it to intervene in this action in order to assert a defense(s), to answer, move, plead, or, otherwise respond to the Complaint.

25) Counsel for the Intervenor did contact opposing counsel prior to filing the motion.

Submitted, this the 20th day of May, 2011.

Respectfully submitted,

By: 

David M. Wunder, Esquire
67 Virginia Dare Drive
Suite 206
Camp Lejeune, North Carolina 28547
(910) 451-5577
(910) 451-5045 (fax)
ATTORNEY FOR THE UNITED
STATES OF AMERICA
S.C. Bar No.: 11230

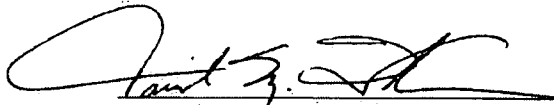
Beaufort, South Carolina
May 20th, 2011

CERTIFICATE OF SERVICE

I, David M. Wunder, Esquire, attorney for the Intervenor in the above entitled action, do hereby certify that on this date I caused the NOTICE OF MOTION AND MOTION TO INTERVENE ON BEHALF OF UNITED STATES OF AMERICA to be served upon the parties indicated by causing a true and correct copy thereof to be deposited via hand delivery to the counsel of record indicated below:

H. Fred Kuhn, Jr., Esquire
Post Office Drawer 507
Beaufort, South Carolina 29901
843-524-3373
843-524-1302 fax
Counsel for the Plaintiff

Mary Lohr, Esquire
Post Office Box 40
Beaufort, South Carolina 29901
843-522-2400
843-522-2429 fax
Counsel for Defendant Beaufort County and
Defendant ZBOA.


David M. Wunder, Esquire

May 20th, 2011
Beaufort, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

GRAYS HILL BAPTIST CHURCH

☐ Plaintiff / Appellant

Beaufort County and the Beaufort County
Zoning Board of Appeals

☐ Defendant and
The United States of America

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NOS

2008-CP-07-1114 and

2010-CP-07-04844

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: H. FRED KUHN Bar No. Address: phone: fax: e-mail: other:	Defendant's Attorney: David M. WUNDER Bar No. 11230 Address: 67 VIRGINIA DARE, DR. SUITE 206 (910) CAMP LEJEUNE, NC 28540 phone: 451-5977 fax: (910) 451-5045 e-mail: david.wunder@usmc.mil other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: NOTICE OF MOTION AND MOTION TO INTERVIEW Estimated Time Needed: 30 min Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted	
SECTION III: Motion Fee ☐ PAID - AMOUNT: ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION Collected by: Date Filed: ☐ MOTION FEE COLLECTED: ☐ CONTESTED - AMOUNT DUE:	

1 STATE OF SOUTH CAROLINA

PLANNING COMMISSION

2 BEAUFORT COUNTY

Case No. 2012-CP-07-1394

4 IN RE:

6 GRAY'S HILL BAPTIST CHURCH'S

7 APPEAL

2012 OCT 11 PM 2:40
JENNIFER ROSENBLAT
BEAUFORT COUNTY, S.C.
CLERK OF COURT

10
11 Hearing regarding the application for an administrative appeal of the denial by the
12 Development Review Team (hereafter "DRT") of a conceptual approval of a 10,000-
13 square foot fellowship hall by Gray's Hill Baptist Church, R100 020 000 018C 0000 at the
14 corner of Highway 21/Trask Parkway and Bruce K. Smalls Drive, Burton, South
15 Carolina, before the Beaufort County Planning Commission on the 5th day of December
16 2011, at the Beaufort Industrial Park, Beaufort County Building 2 Conference Room, 102
17 Industrial Village Road, Beaufort, South Carolina, commencing at approximately 6:30
18 p.m.

1 APPEARANCES

2 Members of the Beaufort County Planning Commission (Present):

3 Mr. Jim Hicks, Chairman
4 Mr. Robert Semmler, Vice Chairman
5 Ms. Diane Chmelik, Member
6 Ms. Mary R. LeGree, Member
7 Mr. Ronald Petit, Member
8 Mr. W. Edward Riley, Member
9 Mr. E. Parker Sutler, Member
10 Mr. John Thomas, Member

11 Members of the Beaufort County Planning Commission (Absent):

12 None (Vacancy for Northern Beaufort County representative)

13 Beaufort County Staff Present:

14 Ms. Delores Frazier, Beaufort County Assistant Planning Director
15 Ms. Barbara Childs, Beaufort County Administrative Assistant to the Planning
16 Director

17 Also Present:

18 Ms. Gail Westerfield, court reporter for Beaufort County
19 Mr. Lee Berlinsky, United States Attorney's office
20 Ms. Charline Duncan, Gray's Hill Baptist Church member
21 Ms. Ethylean Fisk, Gray's Hill Baptist Church member
22 Mr. Kyle Peterson, Island Packet/ Beaufort Gazette report
23 Mr. David Wunder, Eastern Area Counsel Office
24 Mr. Russell Byrd, U.S. Marine Corps Air Station planner
25 Major Jeff Stephens, USMCR, U.S. Marine Corps Air Station
Pastor James Baker, Gray's Hill Baptist Church pastor, Appellant
Mr. Steve Blankenship, Gray's Hill Baptist Church Chairman of the Trustees,
Appellant
Mr. Fred Kuhn, of Moss, Kuhn, Fleming, attorney for Gray's Hill Baptist Church
Mr. Gerald Swank, Gray's Hill Baptist Church member
Mr. Kenneth B. Peeples, Gray's Hill Baptist Church member
Ms. Marilyn E. Turnham, Gray's Hill Baptist Church member
Ms. Betty Sanders, Gray's Hill Baptist Church member
Ms. Sara Shearouse, Gray's Hill Baptist Church member
Ms. Vera Ellis, Gray's Hill Baptist Church member
Ms. Mary Lohr, of Howell Gibson & Hughes, attorney for Beaufort County
Mr. Tim Ogden, Beaufort County Building Codes

2 **BEAUFORT COUNTY PLANNING COMMISSION**

100 RIBAUT ROAD
BEAUFORT, SOUTH CAROLINA 29902
(843) 255-2140

000135

1 Mr. Walter Clarke, III, Gray's Hill Baptist Church member
2 Several other Gray's Hill Baptist Church members (about 10-15)

3 Given before Barbara Childs, Administrative Assistant, at the Beaufort Industrial Park,
4 Beaufort County Building 2 Conference Room, 102 Industrial Village Road, Beaufort,
5 South Carolina, on Monday, December 5, 2011.
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1 **Chairman Hicks:** The next item on the agenda is an administrative appeal of the
2 decision of the Development Review Team (DRT) on denying approval of a request for
3 a 1,000 square foot fellowship hall addition. The -

4 **Unknown voice from back of the room** (believe it to be Steve Blankenship):
5 10,000.
6

7 **Chairman Hicks:** 10,000. You have to watch me there. I can misread that very
8 quickly. 10,000. The appellant is the Gray's Hill Baptist Church, and I would like to say
9 for the record: This is before the Planning Commission, and it should be noted that in
10 2007 it had come before the Planning Commission. It was the decision of the Planning
11 Commission (that) was appealed; it went to Circuit Court. The Circuit Court judge who
12 recently reviewed it questioned that this Planning Commission - uh, if you played golf,
13 it would be like a mulligan - I'm sure there's a legal word for it - but it means "do it all
14 over again" and - and disregard any actions that were taken in the original case. And
15 the reason for this is because it was requested; he hoped that there could be more of a
16 legal basis for which he can make the ruling. It's not any more complicated than that.
17 Considering - and let it be known for the record, that if I'm not mistaken, with the
18 possible exception of Miss Chmelik who doesn't remember, there is no member of the
19 commission who sat on the original one - I just had to say that, Diane (Chmelik) - but
20 there's no member of the commission who sat on the original viewing of this.
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1 Ms. LeGree: This was in 2007?

2 Chairman Hicks: 2007 is when it came through.

3 Ms. Chmelik: I vaguely remember.

4 Ms. LeGree: I vaguely remember this.

5
6 Chairman Hicks: I've got two "vaguelys." The point is, there is not some
7 preconceived notion by this commission as to what is a just and correct ruling on this.

8 Ms. LeGree: OK.

9 *(Indistinct)*

10 Ms. Chmelik: I remember *(Inaudible)*.

11
12 Chairman Hicks: OK. Now, I'm going to read just a little bit folks, just because it
13 is required. "There is no legal question that by existing county ordinance, the DRT - our
14 Development Review Team - is authorized to make decisions regarding the projects
15 which are brought before it. There may arise questions that the decisions made by the
16 Development Review Team are based on a correct interpretation of existing ordinances
17 or law. In that case, the individual or organization requesting approval of the project by
18 the DRT may appeal to the County Planning Commission to review and make a
19 decision, not necessarily a decision on the legal - not on the decision itself, but on the
20 basis of which the decision was made.
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1 "The rulings allowed by this commission on such appeals are: the DRT did or
2 did not make an error in reviewing whether a standard was met. In determining cases
3 of conflicting evidence, what evidence or testimony bears the greatest credibility in
4 terms of documentation and qualification for those making the determination. The DRT
5 made the decision on standards not contained within the ZDSO or other county
6 ordinances, regulations, or state law; or standards more strict or broad were applied
7 than was contained within the ordinance which they were using as a guide.
8
9 Administrative decision-makers are not authorized to consider or create standards not
10 officially adopted. The DRT did or did not" - and this is the last possible - "The DRT
11 did or did not make an error in applying a standard or measuring a standard. If it is
12 determined that the DRT did make an error, the case under consideration will be
13 returned to the DRT for review and decision in light of the ruling, or you may make a
14 corrective action on it." In other words, if you bring out during this something that the
15 DRT perhaps didn't have, it is a courtesy to allow it to go back in to be re-done. On the
16 other hand, if it is - the ruling by this group is that they did make an error, and it is the
17 desire of this body to approve the appeal, you may do that.
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20 Accordingly, from here on, the format for this hearing - oh, and one other thing,
21 they're - we have legal representation from the person or party that's appealing; we
22 have legal representation from the county. Accordingly, there will be no public
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1 comment - like we just had public comment - there will be no public comment on this
2 subject. Only presentations by the government and the appellant will be allowed.

3 The format for this hearing will be as this: a statement of the matter to be heard -
4 and I just made it - which was, Gray's Hill did in fact apply for a 10,000 square foot
5 building and was turned down in '77
6

7 **Mr. Semmler:** 2007.

8 **Chairman Hicks:** 2007 by the, uh, DRT, and it is now before us as a matter of
9 appeal. I would like for the lawyers to present their cases - or their argument as follows:
10 for Mr. Kuhn, I'd like for you to go first. Ms. Lohr, representing the county, I'd like for
11 you to go second. Although not required, if a representative - the minister or whoever
12 from the church, as the property owner - representing the property owner, we'll
13 certainly take a presentation. I'm - I'm - if you so desire. It's not mandatory. It's just a
14 courtesy if you'd care to make a statement.
15

16 Following that, Mr. Kuhn, you can give a rebuttal, because you will have heard -
17 give your side, her side, the property owner, and you can give a rebuttal. And at that
18 point, present any extenuating or mitigating circumstances which this commission
19 needs to take into account as it goes. We'll then bring it back to us; we will discuss it.
20 Both lawyers will have heard what the discussion is, and we'll allow final argument at
21 that time. I know that's one more time (than) you may have been thinking about, but I
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1 often hear where the lawyer said, "If I knew that you were going to say this, I could've
2 explained it much better," so I just, I'm giving you a chance to explain it much better to
3 us at the end. We will - and the order of that will be the appellant followed by the
4 government because we used the reverse order before that. Any questions? I'm looking
5 at the lawyers. Are you comfortable with that route, Mr. Kuhn?
6

7 **Mr. Kuhn:** Yes, sir.

8 **Chairman Hicks:** Are you comfortable, Ms. Lohr?

9 **Ms. Lohr:** Mr. Chairman, my only concern is because of the unusual nature of the
10 process that we have been under, and the Marine Corps Air Station intervened in this
11 matter and were recognized as a party by the Circuit Court and I'm not really sure that
12 these rules - the rules for procedure address what happens. We actually have a third
13 party involved because we had them involved previously. So I don't know how you
14 want to handle - um, hearing from the Marine Corps.
15

16 **Chairman Hicks:** It appears - we have in our package a letter from the
17 Commanding Officer of the base that states the Marine Corps's position on this matter.
18 More than that, if this commission needs that, there is a lawyer from the Air Station
19 here to present their case. But until such time as there is an obvious need for it, it is my
20 intention to decline to - let's say invite - the Air Station to participate unless there's - it's
21 a pretty clear thing.
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1 **Ms. Lohr:** Yes, sir.

2 **Chairman Hicks:** Gray's Hill asked, County said "No," Air Station gave an
3 opinion as to what they think it should be. More than that at this point - if it reaches a
4 point that we need a legal status as to the Air Station, I'll be glad to ask the lawyer, but
5 otherwise, no.
6

7 **Ms. Lohr:** I think that's fine. I just wanted to make sure we were clear so we
8 weren't - so that there's no confusion.

9 **Chairman Hicks:** You comfortable with that, Mr. Kuhn?

10 **Mr. Kuhn:** Yes, sir. I am. Thank you.

11 **Chairman Hicks:** Very good. Floor's all yours, sir.

12
13 **Mr. Kuhn:** Mr. Chairman, commissioners, I'm Fred Kuhn. I'm here on behalf of
14 Gray's Hill Baptist Church. We are requesting that the commission approve the
15 construction of a fellowship hall to go with the already existing church building. Y'all
16 from this side of the river, I'm pretty sure y'all know where Gray's Hill Baptist Church
17 is, but it's right on Highway 21 in Gray's Hill. The church is the owner of a 9.35 acre
18 parcel, and the only thing on that parcel now is the church. We are asking that this body
19 approve the construction of a fellowship hall for two independent but interrelated
20 reasons. Number one, the fellowship hall has been part of this development from Day
21 One and has already been approved, and number two, even it hadn't already been
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1 approved - grandfathered, so to speak - even if it hadn't already been approved, it
2 qualifies for a development permit, the key issue being, does - on this latter ground -
3 does the construction of the fellowship hall increase the "occupant load" of the
4 property?
5

6 We are here before you, as the chairman has noted, pursuant to an order from
7 the Beaufort County Circuit Court, and I have copies of - I don't know if y'all have seen
8 the order, but the - the last paragraph of the order is, sets forth the reason we're here.
9 Says: "This case is remanded to the Beaufort County Planning Commission to hear and
10 consider evidence as to whether the permitting and construction of the subject facility
11 will increase the "occupant load" as that phrase is used in Appendix A.1., Section 7.(a)6.
12 of the Beaufort County Airport Overlay ordinance as it existed at the time in question.
13 The order has a lot of history of the case; I think it's helpful for you to consider. I have
14 copies. I'm not sure of the procedure. If I put it into evidence or I just hand it to you.
15
16 This is Judge - Judge --

17
18 **Ms. Lohr:** I'd like to object for the record to that going in. That's just an objection
19 for the record. I don't believe it's appropriate, um --

20 **Chairman Hicks:** So be it.

21 **Mr. Kuhn:** It's just the reason we're here - I think to understand why we're here
22 - in a regular review from the DRT, as the chairman has pointed out, that decision four
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1 years ago, just about, so a lot has happened. The issue before here, as defined by the
2 judge is, Should we be allowed to construct this fellowship hall? What I would like to
3 do is make a presentation – an overview – of why I believe the permit should be
4 granted, the development permit should be granted, and then I'd like to call Steve
5 Andrews who's an engineer who's been involved in the project since Day One to
6 explain to you what it is we're trying to build; Pastor Baker who can explain the use to
7 which the property is being put, and Steve Blankenship, who's the chairman of the
8 board of deacons, who's also been involved with this since Day One to explain some of
9 the history and the use to which this will be put. It's our position that in order to
10 determine whether or not this building will increase the occupant load, you have to
11 consider the use to which this building will be put.
12

14 In 1996, the church applied to Beaufort County to develop this property, and at
15 that time, there was nothing on it. If I can – in conjunction with their application for the
16 development permit the church prepared a plat showing the proposed development.
17 The primary features of the development are two buildings: the church building, which
18 is there now, and this fellowship hall. What might be easier – each of the documents I'm
19 going to be referring to, I've had copies made. Maybe I could just pass those around.
20 The first one is so small that --
21

22 **Chairman Hicks:** Ms. Lohr, here's a copy for you.
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1 **Ms. Lohr:** Thank you.

2 **Mr. Kuhn:** The first one is a copy of this document. I don't know if y'all can see
3 this - you can pass this around also. You can see that the church building is shown here.
4 The church building is shown here. This is the side road; Highway 21 is right here.
5 Excuse me: here. Excuse me: right here - trying to get oriented. Here's Highway 21,
6 here's the side road; the fire department is over here now. Here's the church building.
7 This is the 9.35 acres, and this is the fellowship hall we are seeking permission for now,
8 which is clearly shown on here as "proposed sanctuary." In conjunction with this plat
9 that was submitted back in 1997, you'll see there's parking, sewer, drainage, tree
10 removal, the driveways, the flow and everything goes around these two buildings. This
11 is actually the original: it is stamped by the county. It references the development
12 permit number and so forth. So this is the one from back then. This is one of the
13 originals. This was - this was what was kept on the site as the project was going on.
14 Maybe pass that around. It's a lot easier - This is a copy of it, but it's just so small that
15 it's just difficult to see.
16

17 In - on January 7, 1997, the church received a development permit from Beaufort
18 County. That is the second document in your package. It's Development Permit 3057;
19 it's Exhibit B. And if you look on the development permit, this is for the project that's
20 shown on that plat, it says on the very - on number 1, about halfway down, it says "All
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1 permits expire two years from the date of approval unless substantial improvement has
2 occurred or final subdivision plat has been recorded." This was issued January 7, 1997.
3 This isn't a subdivision so that second exception doesn't apply. Substantial
4 improvement began, so this permit did not expire.
5

6 We built the church, paved the roads, put in the parking, put in the drainage, the
7 sewer, the plumbing, the electricity - put in everything *except* the church did not go
8 forward with building the fellowship hall. On February 26, 1997, the church was issued
9 a construction permit to go ahead with construction, which they did, and around
10 December of 1997, they completed construction of everything shown on this plat except
11 for the fellowship hall building itself, the only reason being is this is not a rich church,
12 and they were being financially prudent, and they just wanted to build up some money.
13 They just didn't have the funds to do everything all at once - a very, very common
14 thing. They just built the church, put in everything - and you can see by looking at this,
15 and I'll have Mr. Andrews show this to you later on - he has a color copy, makes it a lot
16 easier to see - all the parking was put in place around the pad where the fellowship hall
17 was going to be built. Everything was put in place. They just did not build the building.
18
19

20 In December 11, 2006, Beaufort County adopted an ordinance creating the
21 Airport Overlay District, and that's actually why we are here now. This ordinance
22 created these Accident Potential Zones (APZs). This is near the Air Station. Because this
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1 church was located – was put in an APZ. At that point in time, the pastor of the church,
2 Pastor Hires, went to Beaufort County and said, “We have this fellowship hall we have
3 yet to build. Is this going to impact us?” And was told – and Steve Blankenship, who’s
4 here, also went to the county, and asked, “Is this going to impact us?” and was told,
5 “No it’s not. You’ve already been approved. You’ve started your project. We’ve got
6 your plans. You’re fine.”

8 In early 2007, they are ready to start building on the fellowship hall and were
9 told they had to get a building permit and were then told, “You need to reapply for
10 your development permit,” which they did. And at that time was when we ran into the
11 trouble. Said, “Well, this airport ordinance – airport overlay ordinance went into effect –
12 tongue-twister – and now you are a non-conforming use. The ordinance prohibits
13 places of worship in this area.” So the church became a non-conforming use when the
14 ordinance was passed on December 11, 2006. The church was not real concerned about
15 that because they felt, “We’ve already been approved. You have our plans. We started
16 construction. Our development permit has not expired because we started substantial
17 completion of the project before then.” And we also went and met with Charles Gatch
18 and Arthur Cummings were the two individuals that Pastor Hires and Steve
19 Blankenship spoke with to talk about while this ordinance was going through to see,
20 “Do we need to show up and object to it or are we going to have a problem if this gets
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1 passed?" And were reassured that it was not going to be a problem.

2 As the county requested, they submitted a new plat, nearly identical to the
3 existing plat, which is Exhibit G in the package, and unfortunately the DRT noted that,
4 as this was now a non-conforming use, made a preliminary decision not to issue a
5 development permit to the church. And that preliminary decision is Exhibit H. You'll
6 see this is where they talk about, it's an expansion of more than 15% of the disturbed
7 area and it will increase the occupancy load. In making that preliminary decision, they
8 were looking at the section - this is Section 7.(a)6. of the Airport Overlay Ordinance. We
9 went back and forth on this 15% requirement and finally we reached - we agreed - that
10 the 15% requirement was not an issue. The issue was, is it going to increase the
11 occupancy load? The DRT felt it would increase the occupancy load. We then appealed
12 to this body back in December 3, 2007, which again led to the appeal to Judge Dukes,
13 which has now been remanded back to y'all to reconsider.
14

15 What I would like to do is turn the floor over to Steve Andrews To show you just
16 exactly what is there just to show you just exactly what is there now and what it is we
17 are trying to accomplish. And then Steve Blankenship, the chair of the board of deacons,
18 and Pastor Baker to explain why it is - what this fellowship hall is. I think you need to
19 see the use it's going to be put to to see that it's not going to increase the occupancy
20 load.
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1 Very briefly, though, so what you hear will make sense, the church is a Baptist
2 church. When it holds a service, a church service, it's in the sanctuary, and they have
3 chairs in the sanctuary, and these are like pews, everybody listens to the pastor, just like
4 you would imagine. The church also holds fellowship functions, like Wednesday night
5 dinner, for example. When they do that, they have to take down all these chairs, put up
6 tables, put up chairs around the tables, and then hold their function in the church
7 sanctuary space. The purpose of the fellowship hall is so they can leave the chairs in
8 church, and everybody just goes over to the fellowship hall, and the fellowship hall is
9 set up to hold these dinners, or fellowship functions. It's a matter of convenience, but
10 it's really a major inconvenience. There's not going to be any more people on the
11 property at one time. The function that would normally be taking place in the church
12 will now just take place in the fellowship hall. When the fellowship hall is being used,
13 the church is going to be empty. When the church is being used, the fellowship hall is
14 going to be empty. Additionally, the parking - you'll see on the plat Mr. Andrews will
15 show you in a minute - the parking's already set in place. And this church - it's not in a
16 neighborhood, it's not a walking church. You have to drive to get there. So the parking
17 limits the number of people we can have there anyway, as a practical matter. But if I can
18 turn the floor over to Mr. Andrews for a minute to have him show you where the
19 fellowship hall is, what's in place now, and the physical layout of the property, I think
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1 that will be helpful in making your determination.

2 **Steve Andrews:** Good evening. My name's Steve Andrews with Andrews and
3 Burgess. And we've been the surveyors and civil engineers since the beginning, in 1996,
4 when it was first permitted. And if I may spread this color drawing out in front of y'all,
5 it will make it a little bit easier to see. And this is the same thing that Mr. Kuhn first
6 unrolled - and it's the document that was originally permitted and had the
7 development permit. And the only thing we've done is added some color to it.
8

9 **Chairman Hicks:** We'll be your easel.

10 **Mr. Andrews:** The green represents the 9.35 acre site - the pale green. The gold -
11 the paler of the two golds - thank you for pointing - that represents the sanctuary, the
12 structure that is currently built. The rectangular building represents the fellowship hall
13 that we're here to talk about. The grey linear represents the existing asphalt driveways.
14 The darker green represents the areas in the grass that are designated for parking. In
15 1996-97, all of that was permitted. In addition, you can see the blue in the top right, and
16 the blue in the lower left. Those were the stormwater management areas, and those
17 were permitted in 1997. And then - this location, this location, and this location are the
18 septic tanks and drain fields for which DHEC (S.C. Department of Health and
19 Environmental Controls) permits were issued in the 1996-1997 period.
20

21 So the total site was submitted, was approved by the state regulatory agencies
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1 and the Beaufort County regulatory agencies. And it was identified as Phase One and
2 Phase Two, with Phase One being the existing building and Phase Two being the
3 fellowship hall that we're here talking about tonight. So what has been built on that
4 drawing is everything *but* the fellowship hall. And the parking was developed based on
5 the sanctuary and the capacity of the church - based on the number of pews that it has.
6 And that is what has been done to date. And if there's questions as to the drawing, I can
7 answer those, if y'all have any.

8
9 **Mr. Kuhn:** Very good. Thanks, Steve. If I could have - Steve Blankenship - he's
10 the chairman of the board of deacons - if I could have him explain to you some of the
11 history and the use to which this fellowship hall will be put.

12
13 **Chairman Hicks:** If I could, Mr. Kuhn -

14 **Mr. Kuhn:** Yes.

15 **Chairman Hicks:** I'd love to stick it right now with stick with the legal side of it
16 and then as to what the future uses would be when we get to where the property owner
17 in which in this case, he's most welcome to say anything he so desires at that time.

18 **Mr. Kuhn:** OK. He and Pastor Baker both have a little bit different perspective.
19 Will they both be allowed to speak?

20
21 **Chairman Hicks:** Certainly. You mean two ministers can't agree? (*Laughter*) Ms.
22 Lohr? For Beaufort County.

1 (*Overlapping dialogue*)

2 **Ms. Lohr:** Thank you, Mr. Chairman. Ladies and gentlemen, I'll - the way I'd
3 like to handle this is I'd like to address Mr. Kuhn's argument, the way he laid them out
4 to you. First, with regard to his argument that the fellowship hall was a part of the
5 original development as permitted. While it was - a diagram was provided that showed
6 the master plan, the documents - the permitting documents specifically show you -
7 we're talking about Permit 3057; that was the development permit number. I have here
8 the original application document or one of the original application documents, and on
9 here - and I'm going to submit this as evidence - on here you see the building area
10 square footage - 15,872 square feet. That means that the larger building - the 15,000
11 square foot sanctuary, which was built, was the only building that was permitted on
12 this development permit.
13

14 Additionally, and by way of explanation, in the narrative, dated December 4,
15 1996, the applicant had submitted: "Phase One of the development will consist of 15,872
16 square feet church - foot church - with 25,150 square foot of asphalt and concrete
17 paving. Phase Two will consist of 11,250 square foot building, shown on the enclosed
18 plans as a building to the south of the church." That is absolutely designating it as
19 Phase Two. So by applying for a building of 15,872 square feet on the actual permit,
20 they were only asking for what was designated on the map as Phase One. That is all
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1 that they were permitted.

2 Furthermore, what Mr. Kuhn was arguing to you is basically a grandfathering or
3 a vested rights issue. It's a completely different path that you take - not going to the
4 Planning Commission - but it's called a vested rights determination. And that would
5 have been the appropriate course to make that argument had the church chosen that
6 path. However, what we actually had was an appeal to the Planning Commission
7 because that issue wasn't really argued back in 2007 until Mr. Kuhn became involved.
8

9 The permit itself that we were talking about that Mr. Kuhn says, you know, as
10 long as you start building on it, or you start construction - it's a two-year permit until
11 you start construction - and then you can keep getting extensions. I don't know if y'all
12 know how that works practically, but that's how it goes. You can keep getting
13 extensions as long as you have started doing some building. However, this permit -
14 3057 - was closed out with final inspection, back in December 17, 1997. It's signed off to
15 Charles Gatch from Bob Klink. It's a certificate of compliance - final inspection, and
16 references Permit 3057. So that permit is done as far as the county is concerned. That's
17 why the church came back - they didn't attempt to build under the 3057 permit - that's
18 why they came back and asked for a new permit. So I'm going to hand these documents
19 to you. Fred, I have a packet for you over there. I can get to you if you need them.
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22 **Chairman Hicks:** With your permission, any of the paper that's being handed up
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1 here, if you so desire, I'll be glad to share it as we go into discussion, but otherwise we'd
2 be doing a great deal of reading while we should be listening. That's not to keep you
3 from reading --

4 **Ms. Lohr:** Um, therefore it's the county's position that the permit 3057 did not
5 actually include the fellowship hall. And that permit closed out when the final
6 inspection was requested and the certificate of compliance was authorized. As to the
7 issue of does it qualify for a new, a new, um, permit under the non-conforming use
8 portion of the statute. I think we all agree it is in the AICUZ (Air Installation
9 Compatibility Use Zone), it's in the Airport Overlay District, it's not a use that would be
10 allowable under the new ordinance. Therefore it would have to come under a non-
11 conforming use.
12

13 There was specifically - and- and for the record - I didn't want to interrupt Mr.
14 Kuhn while he was making his legal argument - um, and this is a different - this is a
15 different kind of appeal hearing because you're allowed to introduce evidence, and I'm
16 supposed to object to it when you introduce it. But I couldn't - I didn't want to
17 interrupt him when he did it. And he technically was making legal arguments. But to
18 the extent that any hearsay evidence comes in, I'm objecting to that.
19
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21 Judge Dukes, when he originally heard this, was concerned with the issue of
22 occupant load, and was enough information given to the Planning Commission to
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1 determine what the occupant load of this building is. That's the key in determining this
2 appeal, because, you're allowed - if you're a non-conforming use under the ordinance -
3 you're allowed - you're allowed to increase the size of your building by 15% or your
4 site, depending on which one you're looking at, so long as it doesn't increase the
5 occupant load of the area: the building, the site, whatever. So the key in determining all
6 this is: What does occupant load mean, and would this increase the occupant load of the
7 building? I understand Mr. Kuhn and his clients have taken the position that practically
8 speaking, that would not - it wouldn't increase the occupant load of the building.
9
10 However, what the county is tasked with isn't what the practical application is going to
11 be; it's what the *potential* is for increasing. They have to look at not what representations
12 are made because this building, you have to remember, may not always belong to the
13 church. They could sell it to another church who has a completely different intent in
14 mind. And there's no way you could police the use of the church in terms of "Well, we
15 promise not to use this while this is in use." You never know what's going to happen.
16

17 So the county, when they look at it, and I've brought Mr. Tim Ogden, who's the
18 county fire marshal, to explain in his line of work what occupant load means, because
19 the only place we have a definition for it is in the building - is in the fire codes. How he
20 calculates occupant load, what the potential occupant load of this building would be on
21 the high and low end, and so the question for you is, if the occupant load is increased,
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1 does – if the occupant load is increased, can you give this permit to Gray’s Hill Baptist
2 Church? So, I don’t know how you want to handle –

3 **Chairman Hicks:** If there’s a matter of question, you’ve made him as a resource
4 available for the question and answer period. And if you have questions on what the
5 fire marshal says is “occupant load,” he’s present and we’ll ask him during the
6 discussion period when I get to it.

7
8 **Ms. Lohr:** So, basically, that’s our position. It’s not that we don’t believe the
9 people who go to Gray’s Hill Baptist Church, they’re nice people, I’m sure. It’s just that
10 we have to look at what the potential for the building is, not what the representations of
11 use will be. An occupant load is a certain number, and if it’s increased, then we can’t
12 give a permit under this ordinance. And the intent of the ordinance is, clearly, to keep
13 from an increasing number of people on this site because you’re in a crash zone
14 potentially – you have a crash zone potential and a noise zone potential. Thank you.

15
16 **Chairman Hicks:** Thank you, Ms. Lohr. Either minister. I don’t know if you
17 prefer alphabetical or seniority or –

18
19 **Pastor Baker:** I’m Pastor Baker from the Gray’s Hill Baptist Church, and I
20 appreciate your time tonight. And I come to speak to the purpose and use of the
21 building. We’ve fought many battles on this front, back and forth, concerning this
22 fellowship hall and the purpose of it. We’ve talked about occupant load and we’ve
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1 talked about the crash potential. We've talked about all of these things. What I'm here
2 to discuss with you tonight is to give a pastor's perspective of why we need this
3 building and why we're asking for this building and the permitting process through
4 you.
5

6 The building, as we've already been told, is Phase Two of a two-phase process.
7 And as we, as we come tonight as a church body, we are trying to minister to the
8 community around Gray's Hill, and we make no bones about that. That's why we're
9 here. We are a church trying to do the Lord's work, and as we do that, the church has
10 many functions and many needs. As we reach the community in which we live, Baptist
11 people historically have been those that love to "meet and eat." And you can tell that
12 we're not missing any meals. The struggle has been, for our church, since the inception
13 was that the second portion of this - the second phase would be built to take care of the
14 fellowship functions that the existing church has. We have - I know the - the - we've
15 heard the arguments about the potential and all that. I understand all that. But the same
16 people that are going to the Gray's Hill Baptist Church now are the same - for the most
17 part - the same people - excluding the military and those that have passed on - are the
18 same people that were there when the first building was built.
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21 We're not trying to deceive the county, we're not trying to deceive this
22 commission right now. We simply have brought the attendance records from the past to
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1 show that we're not trying to deceive anyone or we're not trying to hide anything. This
2 building is going to be foundational for the welfare and the well-being of the church
3 and the community around. And that's what we are trying to do. We are simply trying
4 to put together the fellowship hall so that those functions can be taken out of the
5 sanctuary - the holy place where we worship. At this point and at this time, what we do
6 is we have to break down all the chairs; we have to take the pulpit, the lectern, and all
7 the choir seats and all that - to push those things out to put up tables to have any kind
8 of function, whether it be a meal for a bereaved family that's lost a loved one, whether it
9 be for a homecoming, whether it be for whatever purpose it is. We have the same
10 amount of people, for the most part, week in and week out. And so this second phase is
11 actually a necessity in church life. And I'm asking you to consider that. It's simply
12 stated as a fellowship hall, nothing more, nothing less, and nothing else. And I
13 appreciate your time.

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16 **Chairman Hicks:** Thank you very much. Did the other gentleman desire to
17 speak?

18
19 **Steve Blankenship:** My name is Steve Blankenship. I'm chairman of the trustees
20 of Gray's Hill Baptist Church. And I've been a member there since about 1993. When
21 we were originally across the road and purchased that property and moved over across
22 the street to build a new building. Just a couple of points I wanted to try to make in
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1 reference to the things that was never mentioned.

2
3 We had a letter from Ms. Hillary Austin dated June 29th of 2007 that states the DRT's
4 comment, and if you look at it, it said that the - second sentence says that "the intent of
5 the ordinance was to allow, as a part of any expansion, to consist of bathrooms, kitchen,
6 storage. These uses would not increase the occupant load." And a fellowship hall was
7 what we are trying to do, which is exactly what this is. It would have bathrooms,
8 kitchen, and storage space. We're not asking for any additional classrooms; that was the
9 only thing.
10

11
12 The other letter I have was a copy of fire marshal's inspection when he did it and
13 dated December 8, 1997. He was stating that our building has a 320 capacity load. And
14 we had submitted earlier copies of our records that we take every Sunday. We take an
15 actual head count, including children and everything and had submitted all of that.
16 And as you can see, our average is running about 150 - 180 on a - We have extra on,
17 like, Easter Sunday or Christmas, so we are running less than half of our actual
18 occupant approved load.
19

20 We are in the AICUZ Zone 2, which this is a pamphlet furnished by the Air
21 Station. Y'all have seen all of those. And the only thing, couple of things I want to point
22 out there was that we are in actually the same AICUZ-2 as part of the Industrial Park,
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1 which they're trying to get businesses in, and so if they did that, they would have a
2 congregation of people in these businesses that would be there - a lot of them - 24
3 hours a day. Our church is only operated about 8 or 9 hours a week. We're not open,
4 you know, all the time. And part of the statement on here says, "An APZ 2," which is
5 what we are, "an accident is more likely to occur in an APZ 1 than in APZ 2, and more
6 likely to occur in a clear zone that either APZ 1 or 2." So by the Air Station zone
7 pamphlet that they produced, we're in one of the safest zones. When the Blue Angels
8 crashed, it crashed in the clear zone, it was over in Pine - Pine Grove, which is actually
9 pretty close to Burton Wells Complex, which Beaufort County just had the Dixie Youth
10 Baseball series there, with a lot of youth and other attendees. So there's big
11 congregations of people all over. You know, anybody that lives in the county knows
12 that the jets fly everywhere. We are aware of that. We're not trying to hide anything.
13 What we're trying to do is ask for a fellowship hall.

14
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16 **Chairman Hicks:** Mr. Kuhn, would you care to have another bite at the apple
17 before we pull it back up here as a rebuttal? (*Overlapping dialogue*) If you speak back
18 there, no one will hear you.

19
20 **Mr. Kuhn:** I would like a final bite at the apple, Mr. Chairman, but I don't need
21 two more final bites at the apple.

22 **Chairman Hicks:** OK.
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1 **Mr. Kuhn:** If that's what you're offering.

2 **Chairman Hicks:** You're satisfied now? Yeah, you'll get another one. You'll get
3 closing argument.

4 **Mr. Kuhn:** Yes, I'm satisfied now, thank you.

5 **Chairman Hicks:** At this time, we're going to pull it back up to us. As a matter of
6 discussion, I'd like to have the prerogative as chairman, I'm showing my age. I was on
7 the board when this ordinance was written. And it was written because there was a
8 small church in the AICUZ which wanted to build a kitchen. And they came before us
9 for that - a kitchen and some small thing. And at that time, all churches within the
10 AICUZ were non-conforming. But the request seemed so fair and reasonable, and all
11 they wanted was a kitchen, so that, in fact, they could have functions within the church.
12 And they came and they requested it, and the Planning Department got together, and
13 they wrote the ordinance which tonight we should look very carefully at. And the 15% -
14 15% was 15% of the existing building. And if you look at it, and read it, non-conforming
15 places of assembly - that's *existing* places of assembly is what it was. And so the
16 purpose of the ordinance, back when this commission passed it, worked on it, tried to
17 respond to a small church's reasonable desire for operating under a non-conforming
18 was this right here. So that is the background that's in there. Secondly, Mr. Kuhn
19 provided a copy of the judge's appellate order. It is rather long, but I would like to
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1 share with you, so that you can understand - without getting into a lot of "Herebys"
2 and this, the judge said there is no record of the hearing held. Now don't ask me where
3 it went; I don't know.

4 **Mr. Thomas:** May I ask, for the record, which hearing?

5 **Chairman Hicks:** The Planning Commission. "There is no record of the hearing
6 held before the Planning Commission. A key factual and legal issue is the finding from
7 the Planning Commission is whether the proposed action will increase the occupant
8 load. Without a record, it's impossible to determine if the commission's finding is
9 adequately supported or properly determined. I accordingly find this matter should be
10 remanded to the Planning Commission for a new hearing. I note that one of the
11 appellate issues issued by the church is that it was not allowed to fully participate at the
12 last hearing, and this remand also involves that issue."

13 Since the main issues include denial of the variance request, which is another
14 thing, and going through this - if in fact, you - when this first came up or anyone who
15 comes up, you advise them if it's the first time, that they have a right to go before the
16 ZBOA, and if they can prove that it's a hardship, then in fact, they can be granted a
17 variance. Now we're familiar with that, just as the ways of doing business. Not getting
18 into that, just simply making a statement that that could be done. Could have been
19 done.
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1 Now that you've allowed your old chairman to ramble on about the history of
2 how the ZBOA was written and - and - I am open for discussion, but I would like to
3 keep it - this is an application. The county did in fact authorize churches to be
4 expanded. So we are the non-conforming within the AICUZ, we are talking about
5 churches; there's not another subject that's on this table. If you would be kind enough to
6 go to your package here and pull the - I don't know what the page - it's the one that's
7 got the actual ordinance that we are discussing, where it says non-residential uses and
8 structures.
9

10 **Ms. LeGree:** Non-residential? Or non-conforming?
11

12 *(Overlapping conversation)*
13

14 **Chairman Hicks:** Where you see Section 7 Non-conforming Uses (*indistinct*) up
15 at the top. This is the key to what we have before us tonight. Would a reasonable person
16 - and there's many other factors - but we said, would a reasonable person read this and
17 allow a 10,000 square foot additional building to be built? The DRT declined to approve
18 that, based upon this. So please take a few MINUTES and read it, since we can get off
19 on many, many things in this one. We can get off on "Is the AICUZ dangerous?" We
20 can get off on the probability of planes falling. We can get off, but, and I would certainly
21 offer and I'd like to hear a discussion from you of - I offer to you, approval of a 10,000
22 square foot building is no different than when we approve a building in any other
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1 place, and it may be used at the discretion of the applicant unless such use is prohibited.
2 So, to – and it's not that I would– and I know I am treading in dangerous water when I
3 – but it is not that I believe that the ministers are providing falsehoods in their
4 intentions of use. But as members of this commission, you have to assume that once you
5 allow a 10,000 foot building to be built, it can be occupied by whoever owns that
6 property in the future.
7

8 **Mr. Thomas:** Isn't our primary goal as a Planning Commission to determine
9 whether the plans meet the ordinance or not? We really just actually need to see, does it
10 meet the requirements of the ordinance or not? We don't make interpretations beyond
11 that.
12

13 **Chairman Hicks:** We can go way afield, but, but the – such – the 15% increase is
14 in fact limited to churches, and that's fact.

15 **Mr. Petit:** Repeat that, please.

16 **Chairman Hicks:** The 15% increase that you're reading here is limited to
17 churches. It's not, uh – "non-conforming places of assembly or worship may be
18 expanded up to 15%." And it was attempted – you could say a bingo parlor is a place of
19 assembly, but the intention was churches. Yes, sir.
20

21 **Mr. Sutler:** I read it as saying "disturbed area." Could you define "disturbed
22 area"?
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1 **Chairman Hicks:** Where? Where, which? Give me the ... your --

2 **Mr. Sutler:** the next page -

3 **Chairman Hicks:** Next page over, the "disturbed area"?

4 **Mr. Thomas:** It's in the table, which I was going to comment on the table. The
5 comment: The table is broken down into two distinct categories: one is use, which deals
6 with land; second is buildings and structures, which deals exclusively with buildings
7 and structures. So on your site, you can expand your site area by adding parking or
8 whatever up to 15% of the disturbed area of the site, but the building is very clearly
9 defined as 15% of the gross square footage of the building. So I think that's the way that
10 is intended to be interpreted.
11

12 **Mr. Sutler:** Mr. Chairman, I'm not the smartest one at this table, I'm sure. And I
13 know there are laws, and there are laws of common sense. And I'm probably going to
14 base some of what I say on my own unfortunate experience going through what they're
15 going through. But this is a church, and they're right about that number. I know, I know
16 what the number of a Southern Baptist church is, on the association and the national
17 convention level, and those numbers are as predictable as anything. It's about 50% at
18 any given time of membership, and you're talking about, it may not always belong to
19 the church. And heaven forbid, that's possible. But is there not a way that the fire
20 marshal - you know, there's an occupancy cap that could be had, based on - the county
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1 has ordinances on how many parking spaces are allowed or required for a given
2 number of people. To allow the church to have this social hall, is there not another route
3 to go to maybe put a cap on total occupancy? And I realize that you say there's no way
4 to police it. The fire department, they don't police every building that they put a cap
5 on, unless somebody complains. And if somebody complains, they'll go check it out.
6

7 But - to I just feel like there's got to be a way, if we go back to where this thing
8 started, to provide them the simple thing that they're asking for: it's a place to get out of
9 the sanctuary with the food and get it into another building where they can sit around
10 and fellowship, which is what Baptists do best. They meet and they eat; he's exactly
11 right.
12

13 **Mr. Thomas:** (*Indistinct*) -- a Baptist. (*Laughter*)

14 **Mr. Sutler:** He's right. I can vouch for that. But, having been through this briar
15 patch a little bit myself - you're familiar with what I'm talking about - I - I can see
16 where they were talking about "implied consent," having been told one thing one time
17 and the other one the next. If someone - when they had applied for that first permit -
18 how much sense - if I were doing it, I'd have said, "I'm gonna get a permit for this one,
19 and then we'll build the next one, you know, when we get the money." That's the way
20 we work. But I'd be willing to bet everything I got in my pocket, and anything I got in
21 my bank account, probably, that nobody in the county looked at that and said, "Now
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1 you're Phase One and Phase Two. Are you gonna build the other one or not build the
2 other one?" Did somebody say, "How can I help you?" You do not hear that phrase in
3 Beaufort County. "How may I help you?" It just doesn't happen. It didn't happen to me
4 when I got - had to made to spend \$500 that I didn't need (to) because one person told
5 me one thing and I went back in with what I had to spend the \$500 (on), and they said,
6 "You don't need that."
7

8 **Chairman Hicks:** Could I offer that, as a friend, you're leaning toward being
9 prejudiced on matters other than that just before us right now.
10

11 **Mr. Sutler:** Well, I'll get back on the track. But I can understand where they're
12 coming from. In that several instances looks to me like they were given a - I just call it -
13 maybe not a legal term, but an implied consent.

14 **Ms. Chmelik:** I agree with you there. I know that our attorney - or the county's
15 attorney said it's hearsay. But if, in fact, they were told that it wouldn't make any
16 difference -- I have a real problem with fairness. Now maybe that's - I'm bringing this
17 up and I shouldn't - I know what you're - I know what you're saying, and I have a
18 problem if they were told that, "Oh, it won't affect you," and it does. I'm - I'm usually
19 pretty legalistic, but I have a real problem as far as, as far as when people are misled
20 and they lose in the process.
21

22 **Mr. Sutler:** As far as - and I don't mean to interrupt you -
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1 **Ms. Chmelik:** Go ahead.

2 **Mr. Sutler:** As far as the Marine Corps is concerned, I know I – and I guarantee,
3 if you told everybody in this room from the church, and go to the church and poll them,
4 to the person, they would say, "Listen, we love the Marine Corps. We wouldn't want to
5 do anything to harm the base or the Marine Corps or harm any military person here or
6 anywhere else. But this is a different situation. I've been here – well, since 1970, when I
7 moved back home. I can remember two crashes, other than the ones happened in the
8 ocean. Several of them happened in the ocean. One was a Harrier that went down in the
9 Beaufort River, by the bridge. Just on the other side of the bridge. This was in '70 – the
10 first half of the 70s. The other one was the Air Show. And I know we're not supposed to
11 get into odds of whether or not a plane would crash, and I'm gonna acknowledge that
12 this one is right under the glide path. This church is right under the glide path.
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15 **Chairman Hicks:** That's correct.

16 **Mr. Sutler:** But, the odds – if - I tried to sit down and figure it. What are the
17 odds? And it's infinitesimal, if it's sitting anywhere in that area. With it sitting – it's
18 probably one in a gazillion. When it's sitting right under the glide path, it brings it
19 down to one in a bazillion. Because the church is not open 7 days a week, 24 hours a
20 day. It has three periods that it's being used. It doesn't have a day care like a lot of
21 churches do. So if you multiply that back down to just the hours – I know the Lord that
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1 we serve doesn't deal in odds and percentages and bets and all that. But from a human
2 standpoint, the odds are infinitesimal that it would happen. I think that the AICUZ is
3 about accidents - air operation accidents. But it was primarily about noise. It was --

4
5 **Chairman Hicks:** I would urge you not to take on the role of Headquarters
6 Marine Corps establishment -

7 **Mr. Sutler:** Well, as I say, it's just my - the way I - my opinion. I will - but they
8 would acknowledge the noise and I think accept the noise. I do because I live on - if
9 there's a northeast wind to come over my house with everything to hang out, growling
10 and groaning, but I love it. But, and I think they acknowledge that where they are, the
11 odds, again, that the wind will be in the right direction. And I'll get off my horse, but I
12 just think there was at no point where somebody in the county said, "This is - There's
13 an ordinance that we got to deal with, but is there some way we might work around - "
14 or when they applied for the first permit, to say is, "Is this - Are you going to go ahead
15 and do all of it now? Or why are you doing just one?"

16
17 **Mr. Semmler:** Parker, I'm not convinced that that wasn't said.

18
19 **Chairman Hicks:** Let's go in the order - I know what you're going to say, but
20 Mr. Petit, you had raised your hand, wanting to be next -

21 **Mr. Petit:** Thank you, Mr. Chairman. I have two -

22 **Mr. Sutler:** Can I go ahead and move it to the -- Go right ahead, I just - I just - I
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1 just – Well, OK, go ahead.

2 **Mr. Petit:** I have two requests that I'd like to make and a couple points. But
3 before I do that I'd like to hear the definition of "occupancy load" from the fire
4 department.
5

6 **Chairman Hicks:** Certainly. He came loaded, and ready for this question.

7 **Tim Ogden:** Yes, sir. I'm Tim Ogden, Beaufort County's fire code official. And
8 the occupant load is defined in the fire code as the maximum number of people allowed
9 in a building. So, therefore, if we have a 10,000 square foot building, based on its use
10 and square footage, it can carry an occupant load of anywhere from 1600 to 533. That's
11 just rough numbers based on the number of exits that this building would have. What
12 we would do, we would post the maximum occupant load in that building once it's
13 complete. The existing church has its occupant load posted, as it does, so the code
14 actually sees it as two separate buildings with different occupant loads.
15

16 **Mr. Petit:** Mr. Chairman, the next question I have – and thank you –

17 **Chairman Hicks:** Can you give me the max load on that building again?
18

19 **Mr. Ogden:** Rough numbers were anywhere from 1600 to 533, and again, that
20 depends on the use of it

21 **Mr. Thomas:** The other building: what's the max load on that?

22 **Mr. Ogden:** I think its existing load was mentioned as 329 or –
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1 *(Overlapping dialogue)*

2 **Mr. Ogden:** Again, it depends on the use. It depends on the restrooms, the
3 number of other spaces in the building. If this was a 10,000 square foot assembly hall,
4 that's the numbers I was giving you, because that's really all the information I have is a
5 10,000 square foot building. But if it had 5000 square foot of restrooms, it may be a
6 different number. But from what we have to go on right now, that's the potential.
7

8 **Chairman Hicks:** You're giving us the outside number.

9 **Mr. Ogden:** Yes, sir.

10 **Chairman Hicks:** I accept that. Thank you.

11 **Mr. Petit:** Mr. Chairman, technical question I'd like to ask you and the rest of the
12 committee to take a look at this document here. This is the -- from the DRT.
13

14 **Ms. LeGree:** What page?

15 **Mr. Petit:** Doesn't have a page on it. It's about mid-way through. But this is --

16 **Chairman Hicks:** OK, I got it.

17 **Mr. Petit:** This is the county development DRT action form. I want to draw your
18 attention to that and also to the table we were just looking at. I have a question --
19 perhaps clarify for me. This is from the DRT. "The project does not meet the intent of
20 the Airport Overlay District." That's clear. "Adding a 10,000 square foot building to the
21 existing site would double the occupancy load." I'm a little confused about the word "to
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1 the existing site," as opposed to when you go over to the table, they talk in terms of
2 "disturbed area." So are we to assume that the site was the disturbed area, or was the
3 site they're referring to here, um - I'd just like some - to hear some discussion about
4 that.

5
6 *(Overlapping dialogue)*

7 **Chairman Hicks:** Ms. Frazier, are you comfortable with providing a definition of
8 disturbed area?

9 **Deloris Frazier:** We would look at the -

10 **Chairman Hicks:** You did not expect to be called.

11
12 **Ms. Frazier:** No, I did not. We would calculate disturbed area based on the
13 portion of the site that's being used for parking, used for stormwater management. In
14 this case, there are on-site septic systems that would be included in the disturbed area,
15 as well as the building footprint.

16 **Mr. Petit:** How would you interpret the comment by DRT - and I'm just asking a
17 question - instead of saying "the existing disturbed *area*" --

18
19 **Ms. Frazier:** Mm-hmm.

20 **Mr. Petit:** -- they are saying the existing disturbed *site*. Is that --

21 **Ms. Frazier:** I think it's essentially the same thing. It means the same thing.

22 **Mr. Petit:** So site and disturbed area in your interpretation is that - it's one and
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1 the same thing?

2 **Ms. Frazier:** In the context of that action point, I would say it would be the same.

3 **Mr. Petit:** Thank you.

4 **Chairman Hicks:** For the record, that's Ms. Deloris Frazier, Deputy Director of
5 Planning for Beaufort County. OK, Mr. Thomas.

6 **Mr. Thomas:** I think, the way that's worded, I think I would agree you. The
7 ordinance very clearly states that any use that will increase the occupancy load will not
8 be allowed. You're allowed a 15% increase in the building, so long as it does not
9 increase the occupancy load.
10

11 **Chairman Hicks:** No, there's not a person in here, and probably some people in
12 the Planning Department, that don't believe that this could be and have been written
13 clearer, but what we are dealing with is the ordinance as it is written on a legal basis.

14 **Mr. Thomas:** And I'm not - (*inaudible*) -- our church has been through that as
15 well. We tear down the sanctuary and set up every time we do a meal, things like that,
16 and it is a pain to have to do that every time. But the question I would ask is this: was
17 the fellowship hall as a proposed structure addressed in the AICUZ review? Seems to
18 me in that review, you look at every piece of land: What's on it? What's proposed on it?
19 To determine what you're gonna do with it. The first question I would ask: Did the
20 AICUZ look at that as a building that was going to be built, or as the site without that
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1 building that would never be there? And I think that's an important distinction. When
2 the AICUZ was set up, and they evaluated each of these parcels of property, did they
3 evaluate that parcel in its existing condition or on that site plan that shows the addition
4 of the assembly hall?
5

6 **Chairman Hicks:** When you say - Parker, go ahead. You're dying to say
7 something.

8 **Mr. Sutler:** When - I forget who it was who spoke - said that they - when the
9 AICUZ came up, they came to the county and asked - or I may be wrong, but - let me
10 clarify it. I understand that they came to the county and asked or came to somebody in
11 the county and asked, "Will this impact us?" And they were told not. Did I hear that
12 correct? They were told that it would not impact them.
13

14 **Chairman Hicks:** I have to say, Ms. Lohr loves this word: "hearsay." It's not that
15 I don't believe the people; I think they're honest as can be, but when this commission
16 sits here and gets into "he said / she said," we're off-base. We have an ordinance. I'm
17 not trying to correct wrongs of what was told or who. I have before this commission a
18 very clear question: When the DRT read this, and they have a church which wants a
19 10,000 - don't confuse this thing now - a 10,000 square foot building, that is in addition
20 to the building which is in existence, and is in the AICUZ, which has a danger. Let us
21 not try and get into Headquarters Marine Corps defining probability of aircraft falling
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1 from skies. That's not what we're here for. Just accept that the county council would not
2 have established the AICUZ if planes did not fall out - I'm not being facetious. I *am*
3 being facetious, but it's - did not fall of the sky. They do, and it's not for this
4 commission to get into the probability of it. It is simply that they do fall out, and the US
5 government is attempting the best possible to prevent, and I say this word with great -
6 catastrophic accidents. So - yes, sir.

8 **Mr. Thomas:** The last thing I want to say is, typically, when we get a site plan
9 approved like this at the county, you grandfather; the use of it is guaranteed 'cause your
10 site plan has been approved based on its uses. So, you know, it seems to me the avenue
11 is to go back and seek a grandfather on this site, based on the building -
12

13 **Chairman Hicks:** Would you say the grandfather is by use? And how would you
14 go back to get a grandfather? They have been - well, before the ZBOA, so that's -

15 **Mr. Thomas:** They already have been?

16 **Chairman Hicks:** Yes. (*Overlapping dialogue*) Isn't that correct, Mr. Webb?

17 **Mr. Thomas:** The caveat would be health, safety, and welfare of the general
18 public.
19

20 **Chairman Hicks:** Yeah, they have gone - they have gone after the last time so
21 this has been seen and heard, but -

22 **Mr. Thomas:** They've already -
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1 **Chairman Hicks:** - have been heard by the ZBOA. It's a fair question. The only
2 reason I would give into it is because it is part of the referral -

3 **Mr. Thomas:** The caveat is the health, safety, and welfare of the general public.
4 That does allow those kinds of things to be withdrawn. Because new conditions have
5 arisen that have changed the conditions from when the site plan was first approved.
6

7 **Mr. Petit:** Well, are you asking basically, when the AICUZ was approved to start
8 with, (if) that included this site? Is that what you're asking?

9 **Mr. Thomas:** The AICUZ would have reviewed all these properties -

10 **Mr. Petit:** OK, and what was the date on that?

11 **Unknown voice:** 2006.
12

13 **Mr. Petit:** That's what I was thinking.

14 **Chairman Hicks:** Can I say this? And I know we're - The AICUZ was
15 established based on the probability of aircraft falling, not on what is under it. It doesn't
16 go, "I don't like this guy, so -" It is: plane flies this way, the probability of noise - and
17 y'all are welcome to jump if I misstate this too terribly, but, uh, the AICUZ is
18 established for the safety of the population. It takes into account the probability of that
19 plane coming out of the air. And they draw lines based on how intense the noise is and
20 what the probability of that aircraft. They'll be the first to tell you that when the F-35B
21 comes, there'll be a different AICUZ - either bigger, smaller, or whatever. But it
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1 changes. And they will not go out and say, "There's a church here or a restaurant here."
2 There conceivably could be non-conforming uses. This is no different, ladies and
3 gentlemen, than when we passed the comprehensive plan. We made businesses non-
4 conforming by passing in the comprehensive plan. We had businesses that, the minute
5 that council raised their hand, those businesses were non-conforming. That's no
6 different than when they passed the other. So there's not a "Let's look at it."

8 It is - it is the - the USMC came before county council, through the Planning
9 Department, and said, "As a matter of safety for the population of Beaufort County
10 around the Air Station, these regulations should be imposed," and they were. In doing
11 so, there were things - places of assembly became non-conforming. Let me give you an
12 example: I doubt the drive-in movie theater could probably be re-built. I'm guessing
13 now. So, places of assembly and so on. What we are talking about here is -
14 understanding everything that you've said - moral, the desire to be good, the desire to
15 do what is right. But if, in fact, it is your desire to approve another 10,000 foot building,
16 then also say the same for *all* churches. Don't let this thing leave - make ruling A and
17 then make recommendation B, so that all churches may build additional buildings.
18 Period. Don't get into occupancy because - there's not a person here - (*addressing a*
19 *member of the commission*) I know you want - just give me a second - There's not a
20 person here that doesn't know that you are increasing the risk, allowing a 10,000 foot
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1 building to be built in a place that has been defined as being a danger. Now therein lies
2 the obligation – I’m not lecturing you. I’m just making a statement. Yes, ma’am?

3 **Ms. Chmelik:** I have a question of Ms. Frazier: When a site plan is approved, is
4 there a time limit on how long they’re good, or is it gone forever?
5

6 **Ms. Frazier:** In the 1999 ordinance, we set up a vesting provision for – if a
7 property owner had a development permit, that development permit would be good for
8 two years, with an additional five one-year extensions. We did not establish a vesting
9 procedure for master plans or site plans or anything like that.
10

11 **Chairman Hicks:** Good question.

12 **Mr. Thomas:** Do we know – was the property already zoned, Deloris, when they
13 proposed the church?

14 **Ms. Frazier:** Yes.

15 **Ms. LeGree:** Mr. Chairman, I would like anyone to enlighten me on this. I am
16 looking at a letter dated June 29, 2007 to Steve Blankenship, signed by Hillary Austin.
17 There are no page numbers or exhibit letters.
18

19 **Chairman Hicks:** And your question is –

20 **Ms. LeGree:** But the question is – what’s included in this letter is that the
21 applicant originally only wanted – wanted only a 6000 square foot building – fellowship
22 hall in addition to the existing church. And it says that if you exceeded – if you wanted
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1 to exceed more than 15% of the building, you can request a variance from the ZBOA?

2 Could you enlighten me on that? Under this scenario, can they go and request a
3 variance for 6000? In my mind, 10,000 seems to be like an - actually too much space, if it
4 accommodates up to 1500 people.
5

6 **Chairman Hicks:** The key word in ZBOA is "hardship." If in fact you have a
7 church, and you feel you need a hall of "X" number of feet, and you go before the
8 ZBOA and you say, "If we're not allowed to build this, this is a hardship." And if the
9 ZBOA says, "Yes, we concur with you, it is a hardship," then, in fact, they may grant
10 the variance. This has been done. They have gone before the ZBOA. I'm not even
11 attempting to tell you I know the "what" or the "whys" of the ZBOA. But they have - it
12 wasn't granted, and we are back to the Planning Commission.
13

14 **Ms. LeGree:** Oh, is that - Mr. Blankenship, you have -

15 **Mr. Thomas:** One other point I'd like to make, too, is the way the ordinance is
16 written, it's a 15% addition to an existing building, not a new building.
17

18 **Chairman Hicks:** That's correct.

19 **Mr. Thomas:** It words that very carefully.

20 **Chairman Hicks:** Yes, and that was the intent. I can tell you that, as we stumbled
21 through, when we wrote that thing. This is one of those cases, I have to say, well
22 intentions sometimes come back and bite you. Because the purpose of this document
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1 was to allow a church to have – reasonably small distinctions here.

2 **Mr. Thomas:** I think we can see the human side of this, but the point is there's an
3 ordinance that's in place. Our job is to determine the plans –

4 **Chairman Hicks:** But to interpret it not only now, but interpret it for the future.
5 If you're going to kiss it – if you're going to kiss the frog, in fact, don't expect it to turn
6 into ---

7
8 **Mr. Thomas:** Well, you set the precedent.

9 **Mr. Petit:** Mr. Chairman, I'd like to draw everybody's attention to this letter. This
10 is dated October 10, 2007. In the middle of the page, um, if you'll bear with me, it says,
11 "Gray's Hill Baptist Church is non-conforming to the Airport Overlay District because it
12 would not be allowed today to be built in the current location. During the development
13 in the overlay district, a compromise was reached between the county, MCAS Beaufort,
14 and representatives in the Gray's Hill area to allow existing churches within these zones
15 to be rebuilt if damaged greater than 50%."

16
17 **Chairman Hicks:** 50%, yes, that's right

18
19 **Mr. Petit:** "And to permit 15% expansion – "

20 **Chairman Hicks:** That's correct.

21 **Mr. Petit:** "As long as the expansion did not increase the occupant load, and it's
22 been clearly made very clear that the new building *would* increase the occupancy load
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1 for the existing definition as given to us here this evening. So, this letter here clearly
2 says there was a compromise and discussion about this back in 2007.

3 **Chairman Hicks:** I have no doubt of that.

4 **Mr. Petit:** Thank you, Mr. Chairman.

5
6 **Chairman Hicks:** OK, we are going to end back up with a request for a 10,000
7 foot building, but may end up back - and I'm not pushing you into this - but looking at
8 the request, it's for a 10,000 square foot building in addition to, in addition to the
9 existing building. And the question is, if you allow - don't anybody thrown anything at
10 me now - if you allow another 10,000 square foot building, does or does not that
11 increase the potential - I can't say whose going to come or not come - does or does not it
12 increase the potential occupancy load?
13

14 Now, with that, and I promise we will come back, but what I'd like to do is hear
15 closing arguments of the two lawyers, then open it up to you for a vote. And we can
16 have discussion if you want, but the point is, I think we've just about hit all the points,
17 the relevant points that (are) before the commission tonight. And it's not an easy thing
18 to do, but please do not think you're ruling on this single piece. If you want churches to
19 have 10,000 square foot extra buildings because they have the property, that's the site,
20 then that's what you're doing, regardless of the potential danger you could be placing
21 within an area that has been established as dangerous.
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1 **Mr. Semmler:** Can I say something before you start that?

2 **Chairman Hicks:** Please.

3 **Mr. Semmler:** I can feel you. The church I go to, same thing. We tore down and
4 built up until we built another one. I went out to Gray's Hill this afternoon, and I
5 walked through the sanctuary, and I walked outside. I tried to picture exactly how they
6 wanted it. And I could see it. And I can feel for it. And I know exactly what they're
7 trying to do. But the point is just what Jim's talking about. And I'll go back to the key
8 that the DRT was making their decision on: It goes back to that occupancy rate.

9 **Chairman Hicks:** True.

10 **Mr. Semmler:** And they have to go to that. And when I was working on the
11 BRAC, we went around and talked to everybody. And we worked on the Joint Land
12 Use Study, and we worked on the AICUZ studies. And we went out to Gray's Hill to
13 the community center, which is right next door almost - almost - to the church, and we
14 talked to the community. So, notification, talking, communication, working with
15 everybody, that was ongoing. The - I also agree with what John was saying, that there
16 seems to be some confusion, and in a perfect world - okay? - somebody in the county
17 has a little tickler file that says "This person's permit is about to expire. Call them." But
18 that doesn't work. That's why they have lawyers, bless their hearts. And they're
19 supposed to let you know those things are happening. And unfortunately that doesn't
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1 always happen. That AICUZ is not just in the Gray's Hill area. It is all over. And there's
2 a lot of churches. And there's a lot of other facilities that would like to expand. And we
3 need to go by what the DRT was looking at, because that's why the judge threw it back
4 to us. That doesn't mean they can't appeal it one more time.
5

6 **Mr. Petit:** I'd like to make one more comment. The new fighter that's coming into
7 Beaufort -

8 **Chairman Hicks:** F35B

9 **Mr. Petit:** F35B is going to going to establish this facility as a training installation.
10 The odds of accidents increase with trainer aircraft and trainer pilots who are just
11 learning to fly the aircraft. The only thing I'm saying is that the whole idea of protecting
12 what's in the zone makes a lot of sense, even more so now with the F35 than it did with
13 the old aircraft.
14

15 **Chairman Hicks:** Excuse me - you have been so quiet down there. Before I go to
16 the lawyers, would you like to say anything?
17

18 **Mr. Riley:** It has just been an exciting commentary. But, yeah, I do. To me, it boils
19 down to one fact: either you enforce the ordinance, or you don't enforce the ordinance. I
20 do have a question. You made the comment that the county said the plan was OK. And
21 I understand hearsay. Is there anywhere in any type of document --?

22 **Chairman Hicks:** You're asking Mr. Kuhn? He can address that when he gets up
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1 here.

2 **Mr. Riley:** That's the question I have: if there's anything that it was approved.
3 Everything I've seen, in the submission to me, is, unfortunately, the church was told it
4 was not an acceptable project in the area it was in. With that said, I've got to agree with
5 the chairman: if we approve this, and we get one tomorrow, we've got to approve
6 another one. Do I think - and hopefully, dear God, no aircraft ever comes down again
7 in Beaufort - is it a possibility, sure it is - but that's safety and you can't legislate safety
8 other than to look at it and try to do the best you can. But I think our sole purpose is to
9 look at it and decide if the ordinance was properly applied. And that's what I think we
10 have to do. And sometimes we have to do something we don't like doing, but it's what
11 the ordinance says. Well, with that said, I'm, I listened, and I think all the points are
12 well-made.
13

14 **Chairman Hicks:** Very good. Mr. Kuhn, you've been most patient, and the floor
15 is yours to provide closing argument.
16

17 **Mr. Kuhn:** Thank you, Mr. Chairman. The only documentation I have regarding
18 that is, there's a memo that Pastor Hires wrote to the trustees after a visit with Tom
19 Wilson and Larry Frey in which he confirms what I stated, that they told him, and I can
20 read it: "Mr. Frey retrieved from the office of Mr. Gatch the Gray's Hill Baptist Church
21 development plan, since that development plan was approved. And we had done all
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1 that is required for the development of the entire area. Our proposed sanctuary should
2 be grandfathered. No changes in the overlay (AICUZ) will restrict the development as
3 we planned."

4 **Ms. Lohr:** I want to renew my objection on that.

5 **Mr. Kuhn:** That's a memo Pastor Hires wrote to the trustees.

6 **Mr. Riley:** But he did say "sanctuary," or did I mishear something?

7 **Mr. Kuhn:** That's true. But if you see on the plan, that's what they called it:
8 "proposed sanctuary." What we're calling the fellowship hall now, back then was called
9 a proposed sanctuary.
10

11 **Chairman Hicks:** Thank you, sir.

12 **Mr. Kuhn:** And there's a narrative that someone with the church wrote where
13 they're at a meeting with Arthur Cummings - and this is somewhat later on in the
14 process, and this is, "Arthur Cummings said that the building addition would not
15 increase the occupant load of the church, and therefore there'd be no problem." But,
16 again, these are --
17

18 *(Inaudible)*
19

20 **Chairman Hicks:** But again, sir, to you and to Mr. Kuhn --

21 **Mr. Kuhn:** That's the only documents I have. *(Overlapping dialogue)* But I think
22 the statement from the county would be an exception to the hearsay rule, but I don't
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1 have the - Mr. Cummings, or ____

2 **Chairman Hicks:** Mr. Kuhn, we are talking commonsense instead of hearsay
3 rules, and I think you were asking for a document that is an official document
4

5 **Mr. Riley:** Something in hard copy.

6 **Mr. Kuhn:** These are the only documents I have. They're not official county
7 records. But - common sense, if something if - tells you you don't want to do it, that it's
8 going against your good judgment, then you probably shouldn't do it. We want the law
9 applied. The county has done a good job of calling in a fire marshal to give a definition
10 of a term used in the fire code. We're not talking about the fire code. We're talking
11 about this particular ordinance, which just says if the occupant load is increased, it
12 should not be approved. And I respectfully submit that you need to just use common
13 sense, and apply the English language to this whole project.
14

15 Number one, I think there's no doubt that when this project started many years
16 ago, this building was part of the project. The excerpt that Ms. Lohr read to you from
17 the narrative that accompanied the development permit when it was applied for and
18 granted expressly talks about it. It talks about it in phases, but it talks about it. And we
19 did everything to get this built. If you go out there now, you will see that the drive, and
20 the roads, the drainage, the trees cut down - everything is there. So I don't believe
21 there's any doubt - could be any doubt in anybody's mind that this fellowship hall has
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1 been part of this project from the day the church spent the first nickel and have poured
2 their hearts and souls and hard-earned money in tithes and contributions into this
3 project.

4 And then the law changed while they're in the middle of it. And now, by using a
5 twisted definition of "occupant load," they want to say, "Yes, we know this is what you
6 intended from Day One, and we let you go forward with this, and we have changed the
7 rules on you in the middle of the game, but we want to use this twisted definition of
8 occupancy load that talks about a fire code." But as the fire code enforcement officer
9 said, "In order to come up with the occupant load, I have to look at the use." That only
10 makes sense. If we were building a football stadium, the occupant load would be one
11 thing. If we were building a cemetery, the occupant load would be one thing. If we were
12 building a gas station, the occupant load would be one thing. We are building a
13 fellowship hall. You've got to look at the use. And in this case, the occupant load is not
14 going to increase (by) one person.

15 These are honest - as honest and trustworthy clients as I have ever represented
16 in my life - and I have practiced 31 years. They are telling you - and I have no doubt -
17 the truth: that they are not going to have people in this building when a church service
18 is going on. And they are not going to have a church service going on - when a church
19 service is going on, there's not going to be anyone in this building. You've got to look at
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1 the use. The occupancy load is not going up one soul. The parking is not being
2 increased. The drainage is not being increased. Nothing is being increased.

3 We are building a building, yes, but you've got to look at the use. What are we
4 going to use this building for? We are using this building as a substitute meeting
5 location. We are going to meet in the church and do our stuff in the church building
6 with 100 people or 150 people, or we're going to do it in the sanctuary - the, the
7 fellowship hall, with those same people, but we're not going to be in both places at
8 once. Now, I've heard the arguments about, "Well, how are you gonna enforce that?"
9 Well, easily: the same way you enforce every zoning regulation. If I come to you and
10 say, "I want to build a structure that's zoned for single family residences," and you
11 approve it, and I build a structure, it had better be a single family residence. If I build a
12 commercial building in that spot instead, or if I build my single family residence, and
13 someone later buys it and converts it to a commercial structure, I have violated the
14 zoning. That's easy to enforce. So if this building starts to be used for any use other than
15 as an alternative meeting location, you will have 100, 150, 180 witnesses to that fact
16 every time that happens. That will be the easiest thing to enforce.
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20 The use is critical in this case. You cannot interpret these words in a vacuum.
21 You've got to look at what we want to build and what we are going to use it for. The
22 occupancy load of - look at the reasoning of the statute that has been alluded to: this is
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1 in an AICUZ zone. AICUZ – even though it’s the least dangerous AICUZ zone in
2 existence – is an area where a plane might crash. If you turn this down, and a plane
3 crashes into the church building, all those people will probably perish. If you allow us
4 to build the sanctuary – the fellowship hall, and a plane crashes into the church
5 building when they’re all in the fellowship hall, you have saved their lives. This is not
6 going to increase – seriously, this is not going to increase the risk of a plane crash, nor is
7 this going to increase the risk of harm to anybody. Those 180, 150 people are going to be
8 on that property Sunday morning, Wednesday night, Sunday afternoon, whether you
9 allow them to build this building or not. They’re just going to be “here” (*indicating on*
10 *drawing*) instead of “here.” That’s the only difference that allowing them to build this
11 building will – because there’s no increase of risk of harm to a single soul. If there was,
12 these people would be the first to say, “We don’t want to do it,” ‘cause it’s their lives,
13 their loved ones, their families that they’d be putting at risk. That’s absurd to think that
14 there’s going to be increase in risk and that they would be asking for that.

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16
17 The statute was passed, I respectfully submit, so that if someone wants to build a
18 structure, and that structure’s not going to result in any more people being on that
19 property, then it should be allowed, and that’s *exactly* the situation we have here.
20 There’s no problem with precedent here. The key distinguishing fact here, which I think
21 gives us – should give you – to bend over backwards to interpret this in our favor, is
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1 that this is obviously something that these people have been praying and working for,
2 for almost a decade. This has been part of the plan from Day One. This is not something
3 they thought of last year or two years ago or five years ago. This has been part of the
4 plan from Day One. They have wanted this fellowship hall, and it's very simple. You
5 have expressed how much trouble it is to take stuff down and then put it back; that is a
6 pain. They would like to be able to have their fellowship in their fellowship hall so that
7 they don't have to hold functions that are really not appropriate for the sanctity of the
8 church building and have a fellowship hall. That is church, not a fellowship hall; it just
9 isn't right. It's been part of their plan. It's not going to increase the occupancy load of
10 this property one whit, because they're either going to be in one place or another place.
11 And if they violate that, there will be plenty of witnesses to step forward to verify it.
12 And they'd get sanctioned, just as if I wanted to turn my single-family residence into a
13 restaurant and I'm not zoned for that. It's easily enforceable; you're not setting bad
14 precedent. It's the right thing to do, and I request that you allow them to build their
15 fellowship hall as they had planned from Day One. Thank you very much.

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19 **Chairman Hicks:** Thank you very much, Mr. Kuhn. Ms. Lohr? You've been very
20 patient. I know you just wanted to object and - *(laughter)*

21 **Ms. Lohr:** Ladies and gentlemen, Mr. Kuhn made a very impassioned plea to
22 you, and I'm not unmoved by it. The moment this thing came across my desk, I felt bad
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1 for these folks, because I'd like to see them have their fellowship hall, too. The only way
2 the county can allow that - and that you can allow that - is if you nullify the ordinance;
3 it's as simple as that. You have to - in order to allow them to have this - you have to
4 ignore what the ordinance says, and what the intent of the ordinance is. And it's as
5 simple as that.
6

7 Irregardless of what the - I intentionally didn't address the 15% disturbed area
8 versus the 15% build area, because it's confusing. But regardless of whether it's an
9 expansion of 15% or not, we all have to understand and agree that it increases the
10 occupant load. There will be more people on the site. I mean, it's really just as easy as
11 that. I brought you the fire marshal to tell you that. I think you all know that. I mean, if
12 you have a bigger building, there's potential - and I understand what Mr. Kuhn's
13 position is. He says that it isn't - that it isn't going to increase. I - I - I guarantee you
14 that these honest folks in here agree with him, and they honestly believe that. But it's
15 like spending money, y'all: If you have a bigger paycheck, you're gonna spend more
16 money. So, you have more room, you're gonna have bigger things. The potential is
17 there; that's what the county has to look at. We don't look at - well, maybe these folks -
18 I don't know - we can allow a - a five-story building. We can't allow a five-story
19 building, but these folks say they're just gonna live on two stories. So - they swear
20 they're only gonna do that. What do we do if they break the rule? Do we tear the
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1 building down? We can't do that! They can sell this building, once it's built, and the
2 county has no recourse as to keep - you can get 1000 people on that site, potentially.

3 And when the - the fire marshal - I have a copy of the um, the building code
4 ordinance - I mean the fire ordinance - the fire code for y'all, if you'd like to see it. It
5 actually is part - and by the way, it isn't some random set of rules that I found and
6 brought in. It's part of our code of ordinance. It's adopted by reference. So it's part of
7 the Beaufort County zoning, um, it's part of the Beaufort County Building Codes
8 Ordinance. It's not defined in the zoning ordinances.

9
10 I think the clear intent - it's obvious - "We aren't gonna have more people there
11 despite the use - we're gonna" - If you put another building there, of course it's gonna
12 increase the occupant load. I mean - it's the potential. The building - the, the fire
13 marshal doesn't look at this and say, "You know, only one or two people are ever gonna
14 be in this building, so I'm just - I'm not gonna look at what the formula tells me I have
15 to look at. I'm just gonna say - we'll allow it because only one or two people are gonna
16 be in the building." His job is to look at the potential. He's got rules to follow. It's set
17 out in black and white. And you have rules at this table to follow. They're set out in
18 black and white, and they're the rules passed by county council. And as much as I
19 would like to see these folks get what they've been planning on for years - I know some
20 of you at this table would like to see that, too - we just can't do it. It's just not allowed in
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1 the ordinance.

2 Um, the plan was specific. The permit – the development permit was specific. It
3 did not have the 10,000 square foot building on it; it had a 15,000 square foot building
4 on it. That's what they had a vested right – or would have had in 1999 a vested right to
5 build – had they not built it yet. And that got closed out in, actually, I think it was 1997
6 was the date I told y'all. They built it, they got it up, that permit closed out. There's no
7 right under that permit to add the extra building. And it's as simple as that. And if there
8 was a right, it wouldn't be through this process. It would be through the vested rights
9 determination process.
10

11 I think that's all I have. I appreciate your patience with us tonight. And this is
12 something a little out of the ordinary, I think, for y'all, so anyway, I – I appreciate – this
13 is a different room, too. I know y'all are usually allowed a lot more space. I know these
14 folks here have been cramped up – y'all have been standing for a long time, so I'll sit
15 down.
16

17 **Chairman Hicks:** Back to us, folks. I need a motion. And the motion should be –
18 you have had a template but I need a motion. And then we should also then, secondly,
19 since the judge asked for it, I think we should make a – there's two things I would like
20 for you to consider. One is a motion, and the request is that it be granted – that this be
21 granted. So therefore – You have a question?
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1 **Mr. Semmler:** Yes, sir. The way I've read this thing is the DRT -- we have to make
2 a decision that the DRT made a mistake.

3 **Chairman Hicks:** First.

4 **Mr. Semmler:** And that -- and if they did make a mistake, it was based on them
5 using the occupancy rate --
6

7 **Chairman Hicks:** Erroneously.

8 **Mr. Semmler:** They used it erroneously. They used that as the basis for their
9 decision --
10

11 **Chairman Hicks:** True.

12 **Mr. Semmler:** And to deny the permit --

13 **Chairman Hicks:** That's correct.

14 **Mr. Semmler:** That's the first decision we have to make.

15 **Chairman Hicks:** That's correct.

16 **Mr. Semmler:** If we determine that they were in error in using the occupancy
17 rate, then we have to go through the process of --
18

19 **Chairman Hicks:** Defining how --

20 **Mr. Semmler:** How it was wrong and how we can recommend they fix that.

21 **Chairman Hicks:** That's correct.

22 **Mr. Semmler:** OK. If we determine that the DRT was correct in how they viewed
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1 the occupancy rate, using that as the basis for denying the permit, OK, then all we have
2 to do is say, "DRT was correct in using - in their use of the occupancy rate - in denying
3 the permit.

4 **Chairman Hicks:** Correct. I think that the one thing we owe - uh, the judge on
5 this one, is a clear second statement, that it is the opinion of this commission that - I'm
6 saying - I'm not saying which way to go - but it is the opinion of this commission that
7 the addition of 10,000 square foot building would, in fact, significantly increase the
8 potential occupancy rate - "potential" being the key word in that.

9
10 **Mr. Thomas:** One other point I'd make, too, that goes back to the ordinance - it's
11 pretty clear in the ordinance that it's intended to allow expansion of 15% of the *existing*
12 building. Not the building of a new building.

13
14 **Chairman Hicks:** Correct.

15 **Mr. Thomas:** And that's why I have a hang up, because it's pretty clear that it's
16 the expansion of an existing church, not a new building.

17 **Chairman Hicks:** Would you like to give a shot at it?

18
19 **Mr. Semmler:** Let me give a shot at it. We may have to walk through this once or
20 twice to get the wording.

21 **Chairman Hicks:** OK.

22 **Mr. Semmler:** The - Mr. Chairman, first I think that the commission needs to
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1 vote if we feel the DRT made a mistake.

2 **Chairman Hicks:** If you can give me a motion that the position of the
3 commission on this matter should be one of these: The DRT did or did not make a
4 mistake, we can work it from there.

5
6 **Mr. Semmler:** OK. I make a motion – this is for the Planning Commission to
7 forward to the council – I make a motion, uh, that the DRT utilized the occupancy basis
8 for denying the permit appropriately. And – should we expand on that or just – ?

9 **Chairman Hicks:** Yes, right here: "And did not make an error."

10 **Mr. Semmler:** That works. And the DRT did not make an error in reviewing
11 whether a standard was met.

12
13 **Chairman Hicks:** Right. That's all. You don't use any more because that's a
14 pretty simple one. You have cleared the occupancy rate, and you have cleared the thing.
15 Do I have a second to that?

16 **Mr. Thomas:** Second.

17 **Chairman Hicks:** I have a motion, and I have a second. Further discussion? I'm
18 certainly open to it. Hearing none, all in favor of the motion? Let the record show: 1-2-3-
19 4-5-6-7. Opposed? Two. Motion passes. Now, if I could have Mr. Semmler or someone –
20 a very clear motion, that it's the opinion of this commission that the addition of a 10,000
21 square foot building would, in fact, increase a potential occupancy. I know that's
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1 redundant, but the judge had asked for it, so I think we should include it.

2 **Mr. Semmler:** Mr. Chairman, I think we should have, uh, an additional comment
3 added to this motion.

4 **Chairman Hicks:** OK.

5 **Mr. Semmler:** That it is the opinion of this commission that erection of a 10,000
6 square foot building would – it would allow the increase of the occupancy load –
7

8 **Chairman Hicks:** Very good.

9 **Mr. Semmler:** Significantly.

10 **Chairman Hicks:** In this case.

11 **Mr. Semmler:** In this case. Did that make sense, Barb?

12 **Chairman Hicks:** *(laughter)* Barbara said she cannot help you. She'd like to, but
13 she can't.
14

15 **Mr. Semmler:** I want to add the word "potential."

16 **Ms. Childs:** Potential?

17 **Chairman Hicks:** Potential is the key word in that. You want to read it one more
18 time, then I'll ask for the vote.
19

20 **Mr. Semmler:** For the motion or the last sentence?

21 **Chairman Hicks:** For the motion. I mean, yeah, the one you just got through
22 with.
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1 **Mr. Semmler:** It is the opinion of this commission -

2 **Chairman Hicks:** Correct.

3 **Mr. Semmler:** The potential for increased occupancy will significantly increase
4 with the construction of a 10,000 square foot building.

5 **Chairman Hicks:** That's good enough.

6 **Mr. Thomas:** Second.

7 **Chairman Hicks:** The motion's been made and seconded. Discussion? All in
8 favor please raise your hand. Opposed? One opposed: Mr. Sutler. On the appeal of the
9 Gray's Hill Baptist Church, this commission finds that it has previously been passed by
10 motion, and directs that Beaufort County provide the order that results from this, which
11 is what you said and it's quite correct, that the order which results from this to the party
12 requesting this. Also, that they provide the appropriate documentation in the event that
13 it is appealed. To the appellant, I would offer, you have 30 days from this date, if I'm
14 not mistaken, to appeal this to Circuit Court, if that is your desire. We thank you very
15 much. We wish we could have given you a more favorable ruling than we did.

16 **(WHEREUPON, this hearing was concluded at approximately 9:19 p.m.)**
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1 STATE OF SOUTH CAROLINA

2 COUNTY OF BEAUFORT

3
4 We, Barbara Childs, Administrative Assistant to the Planning Director for
5 Beaufort County Planning, and Gail Westerfield, independent court reporter, do hereby
6 certify that the foregoing sixty-five (65) pages of typewritten testimony were taken
7 down by us, and then transcribed by us; that the same is a true, correct and complete
8 transcript of the proceedings as stated in the caption.
9

10 IN WITNESS WHEREOF, we have hereunto set our hand this 27th day of
11 December, 2011.
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PM17A PERMIT FOR CONSTRUCTION IN BEAUFORT COUNTY, SOUTH CAROLINA

Department of Inspections

PERMIT FEE: \$1,910.00

PERMIT NUMBER: 0000970320 - 00

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

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

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

COST DATA

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

TYPE IMPROVEMENT	BUILDING PERMIT	OWNERSHIP	PRIVATE
PROPOSED USE	ASSEMBLY	NUMBER UNITS	1
PRINC. TYPE FRAME	TYPE VI UNPROTECTED	TYPE OF HEATING	ELECTRIC
TYPE SEWAGE	SEPTIC TANK	SEPTIC TANK NO.	1996-120002
NUMBER-BEDROOMS	0	NUMBER-BATHROOMS	6
NUMBER-STORIES	1	TOTAL FLOOR SQ. FT	15,200
CENTRAL A/C	Y	ELEVATOR	N
INTERIOR WALLS	DRYWALL	TYPE FLOORING	CARPET VINYL

INSPECTIONS REQUIRED

TS ☐ FT ☐ RP ☐ FL ☐ SL ☐ FR ☐ PL ☐
 BL ☐ BV ☐ IN ☐ PS ☐ OTHER ☐ CO. ☐

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

EXHIBIT C

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

APPENDIX A1.

AIRPORT OVERLAY DISTRICT/MCAS--BEAUFORT*

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

Sec. 1. Purpose.

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

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

(Ord. No. 2006/27, § 1, 12-11-2006)

Sec. 2. Accident potential zones (APZ).

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

(Ord. No. 2006/27, § 2, 12-11-2006)

Sec. 3. Noise zones.

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

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

EXHIBIT D

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

(Ord. No. 2006/27, § 3, 12-11-2006)

Sec. 4. Notification.

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

Airport Overlay Disclosure Form

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

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

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

CERTIFICATION

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

Dated this _____ day of _____, _____.

Witness _____ Owner _____

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

Dated this _____ day of _____, _____.

Witness _____ Purchaser _____

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

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

Airport Overlay Disclosure Statement

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

Accident Potential Zone: _____

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

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

Sec. 5. Use limitations.

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

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

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

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

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

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

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

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

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

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

Sec. 6. Noise attenuation.

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

Additional Construction Standards

DNL 65--70: 25 dB reduction required.

DNL 70--75: 30 dB reduction required.

DNL 75 and above: 35 dB reduction required.

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

Airport Noise Zone Disclosure Statement

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

Dated this _____ day of _____, _____.

Witness _____ Owner _____

(Ord. No. 2006/27, § 6, 12-11-2006)

Sec. 7. Nonconforming uses and structures.

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

(a) *Nonresidential uses and structures.*

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

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

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

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

Sec. 8. Variances.

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

(Ord. No. 2006/27, § 8, 12-11-2006)

Sec. 9. Official map.

GRAPHIC UNAVAILABLE: MCAS--Beaufort Noise Contours and APZs

(Ord. No. 2006/27, § 9, 12-11-2006)

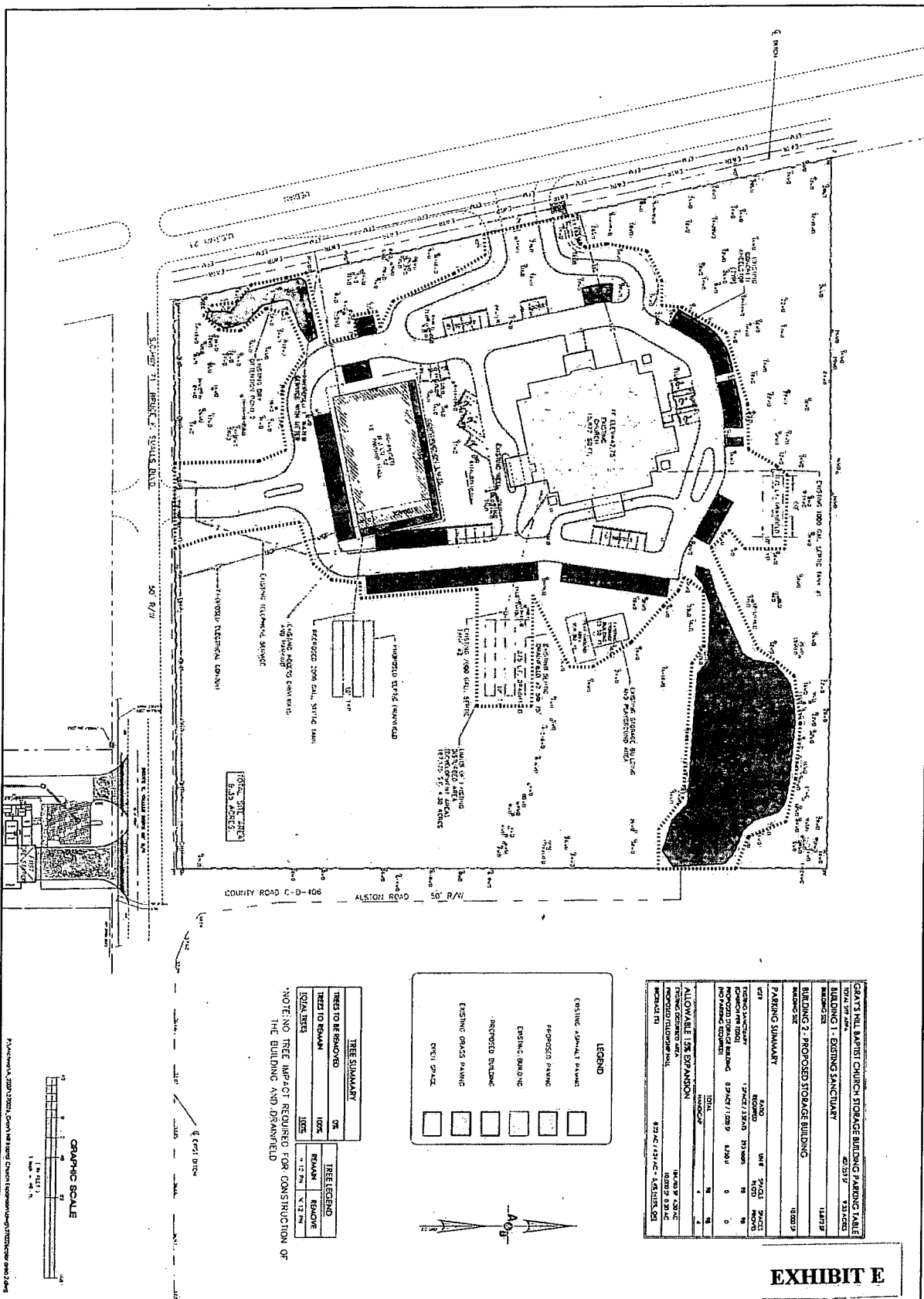


EXHIBIT E

[illegible]

TREE SUMMARY	
TREES TO BE REMOVED	0%
TREES TO REMAIN	100%
TOTAL TREES	100%

TREE LEGEND	
REMAIN	REMOVE
* 12 PM	X 12 PM

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

P. McHenry, 2020-2022, Green Hill Baptist Church (expansion) 7707 Lakeside Blvd

GRAPHIC SCALE

(IN FEET)

1 inch = 40 ft.

A horizontal graphic scale bar. The top edge is marked with numbers 0, 20, 40, 60, 80, 100, 120, 140. The bar is divided into segments by vertical lines. The first segment (0-20) is further divided into four smaller segments by tick marks. The bar is labeled 'GRAPHIC SCALE' and '(IN FEET)' above it, and '1 inch = 40 ft.' below it.

JOB: 270026

1

Overall Site Plan	Date Drawn: 8/25/07 Last Revised: 3/11/10 Drawn By: R. Cressy Engineer: J. Andrews
-------------------------	---

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

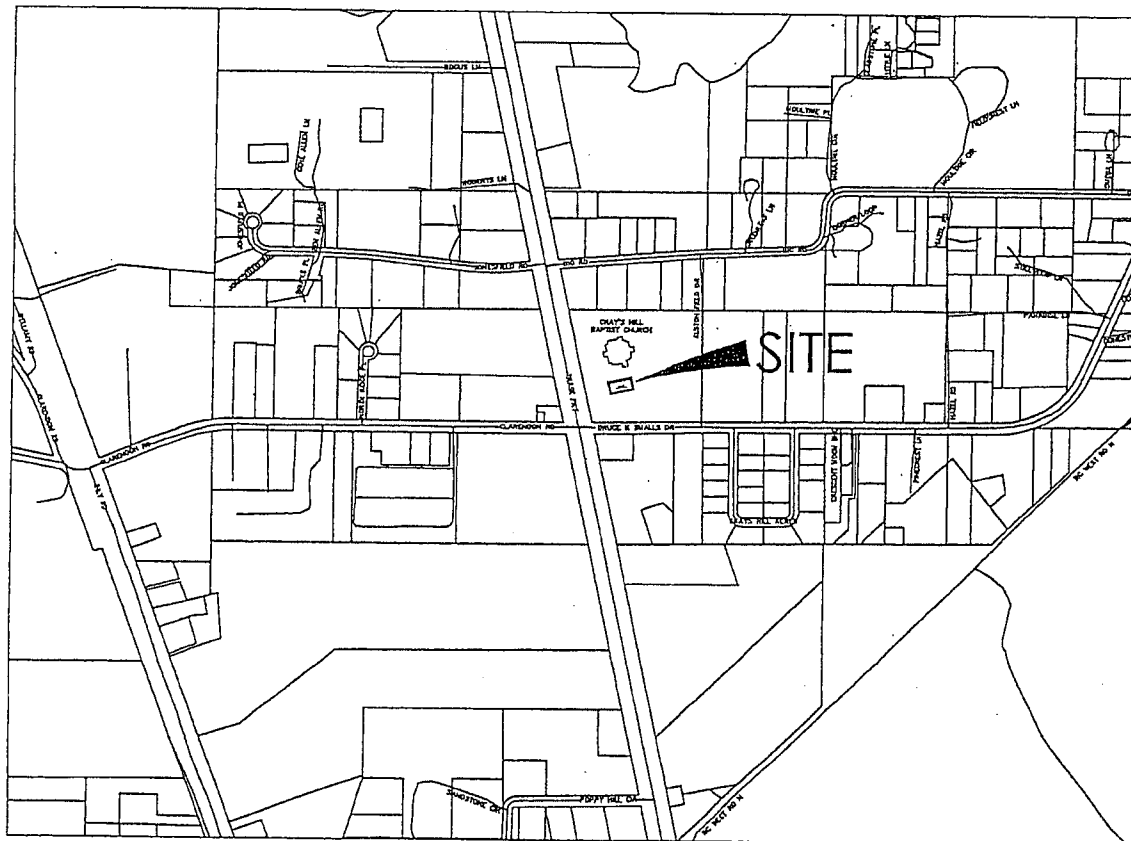
**Andrews
& Burgess Inc.**
40A Sheridon Road
Burlington, SC 29308
843.466.0169
Fax 843.466.0369
Engineering & Surveying

THE DESIGNS AND IDEAS PRESENTED IN THESE
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W. BURGESS, INC. THE USE OR REPRODUCTION
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PLAN REVISIONS			
NO.	DESCRIPTION	DATE	BY
1	-	-	-
2	-	-	-
3	-	-	-
4	-	-	-
5	-	-	-
6	-	-	-
7	-	-	-

000209

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



VICINITY MAP
SCALE: 1"=300'

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

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

APPROXIMATE LOCATION OF SITE:

LONGITUDE: 80°-44'-35"
LATITUDE: 33°-25'-37"

DEVELOPER NAME:

STEVE BLANCHARD
GRAY'S HILL BAPTIST CHURCH
PO BOX 335
SEABROOK, SC 29940
PHONE #

PROJECT DATA INFORMATION:

PROJECT NAME: Gray's Hill Baptist Church Fellowship Hall
DISTRICT # 100
MAP # 20
PARCEL # 18-C
PROJECT ZONING: AIRPORT OVERLAY DISTRICT
ZONING BOUNDARIES: -
FEMA FLOOD ZONING: C

PHONE #:

S.W.S.A. 843.987.9250
S.W.E.C. 843.553.3345
O.C.B.M. 843.744.3958
S.C.D.B.T. 843.514.7255
S.C.E.A.G. 843.553.7712
P.A. ELEC. 843.308.5512

PERMIT#:

APPROVED FOR CONSTRUCTION

BY: _____ DATE: ____/____/____

Andrews & Burgess Inc.
Engineering & Surveying
40A Shanklin Road
Beaufort, SC 29904
843-444-3359
Fax 843-464-3369



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EXHIBIT F

000210

INDEX OF DRAWINGS

SHEET #	DESCRIPTION
1	FILE OVERALL SITE PLAN

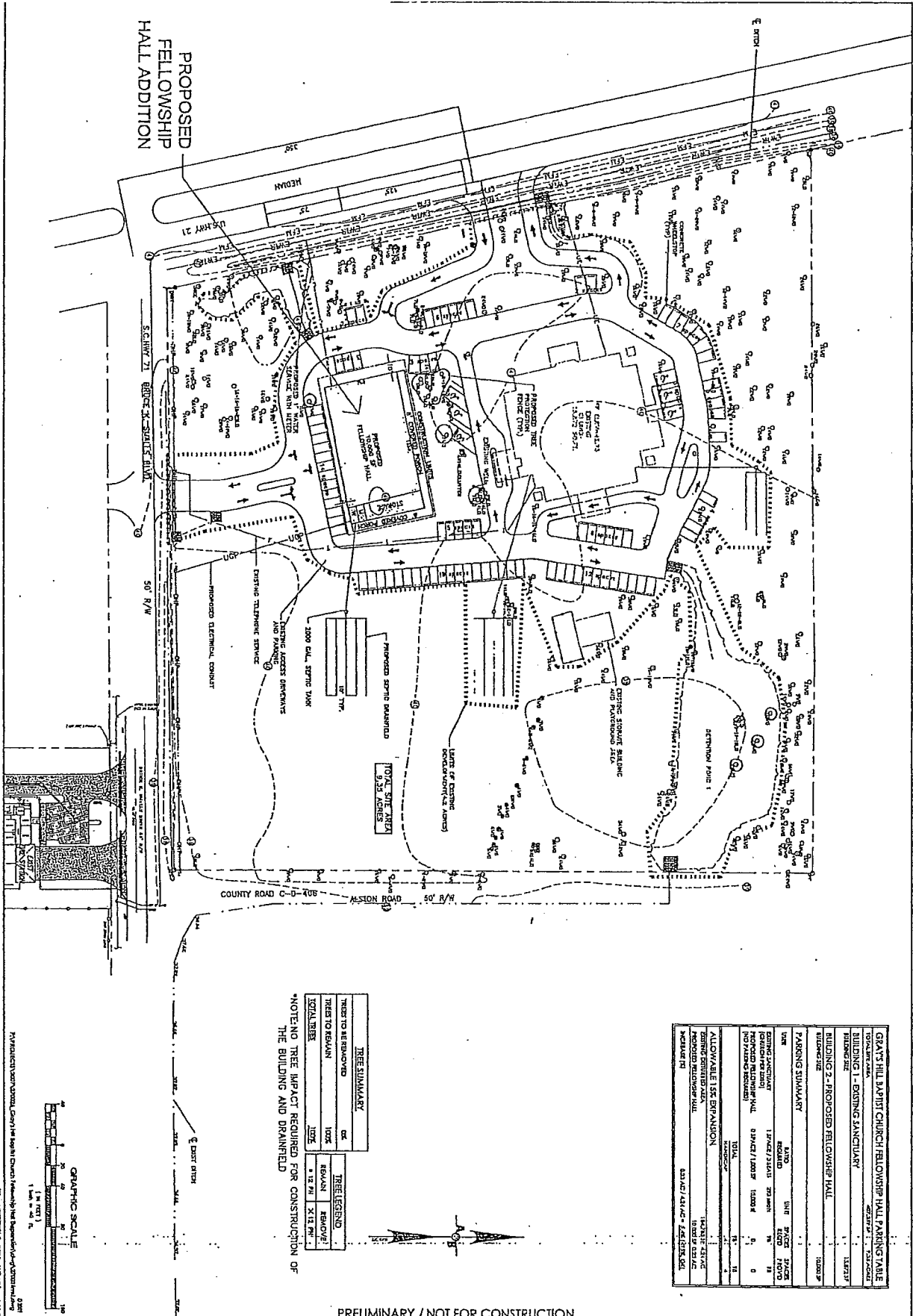
DRAWING RELEASED FOR:

☐ PLAN REVIEW	08/14/2007
☐ PERMIT DRAWINGS	08/15/2007
☐ CONSTRUCTION DRAWINGS	____/____/____
☐ BID SET	____/____/____
☐ RECORD DRAWINGS	____/____/____
☐ OTHER:	____/____/____

PLAN REVISIONS

NO.	DESCRIPTION	DATE	BY
1	CONCEPTUAL DRY SUBMITTAL	08/25/07	RL
2			
3			
4			
5			
6			
7			
8			

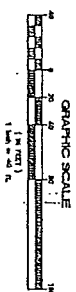
PROPOSED FELLOWSHIP HALL ADDITION



GRAYS HILL BAPTIST CHURCH FELLOWSHIP HALL PARKING TABLE			
ITEM	QUANTITY	UNIT PRICE	TOTAL
BUILDING 1 - EXISTING SANCTUARY	1	13,872.00	13,872.00
BUILDING 2 - PROPOSED FELLOWSHIP HALL	1	10,000.00	10,000.00
PARKING SUMMARY			
TOTAL	2		23,872.00
EXISTING SANCTUARY	1	13,872.00	13,872.00
PROPOSED FELLOWSHIP HALL	1	10,000.00	10,000.00
TOTAL	2		23,872.00
ALLOWABLE 15% EXPANSION			
PROPOSED BUILDING AREA	63,142 / 43,142	448,000.00	448,000.00
PROPOSED BUILDING AREA	63,142 / 43,142	448,000.00	448,000.00

TREE SUMMARY			
TREES TO BE REMOVED	QUANTITY	TREE LEGEND	REMARKS
TREES TO REMAIN	100%	REMAIN	REMOVED
TOTAL TREES	100%	REMAIN	REMOVED

*NOTE: TREE IMPACT REQUIRED FOR CONSTRUCTION OF THE BUILDING AND DRAINFIELD

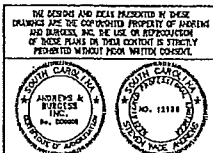


PRELIMINARY / NOT FOR CONSTRUCTION

EXHIBIT G

NO.	DESCRIPTION	DATE	BY
1	CORRECT TO BWSA WATER	09/11/07	RL
2			
3			
4			
5			
6			
7			
8			

Andrews & Burgess Inc.
Engineering & Surveying
404A Shackleford Road
P.O. Box 200
Burlington, NC 27215
813-446-2315
Fax 813-446-3744



Fellowship Hall Expansion
Gray's Hill Baptist Church
Burlington, North Carolina

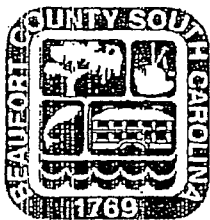
Overall Site Plan

Date: 09/11/07
Drawn by: RL
Checked by: RL
Project No.: 13000

SHEET #:
1
of 1

JOB: 270026

000211



COUNTY COUNCIL OF BEAUFORT COUNTY

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

June 29, 2007

Mr. Steve Blankenship
c/o Grays Hill Baptist Church
2749 Trask Parkway
Beaufort, SC 29906

Re: Staff Discussion -- ACUIZ, Expansion of Church

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

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

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

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

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

Sincerely,

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

Cc: DRT Members

EXHIBIT H

000212

2008/8

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

- ARTICLE I. IN GENERAL; SEC. 106-8. EXEMPTION FROM SUBDIVISION REVIEW: TO REQUIRE BASE SITE AREA CALCULATION FOR MINOR SUBDIVISIONS

- ARTICLE I. IN GENERAL; SEC. 106-18. DEFINITIONS: AMEND THE DEFINITION OF "SUBDIVISION" TO CORRESPOND WITH STATE STATUTES

- ARTICLE IV. ZONING DISTRICTS; SEC. 106-926. DEVELOPMENTS IN MORE THAN ONE ZONING DISTRICT: TO PROHIBIT USES IN THE "LOWER-INTENSITY" DISTRICT THAT ARE NOT OTHERWISE ALLOWED IN THAT DISTRICT

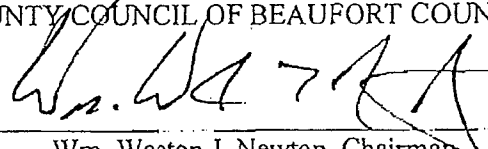
- ARTICLE VI. OPEN SPACE AND DENSITY, LOT AND BUILDING INTENSITY, BUFFERYARDS AND LANDSCAPING, EXTERIOR STORAGE AND ILLUMINATION; SEC. 106-1526. TABLE EXPLANATION: TO CLARIFY EXPLANATION OF TERMS

- APPENDIX A.I. AIRPORT OVERLAY DISTRICT / MCAS-BEAUFORT; SEC. 7. NONCONFORMING USES AND STRUCTURES: TO CLARIFY ALLOWED EXPANSIONS TO NONCONFORMING PLACES OF ASSEMBLY AND WORSHIP

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

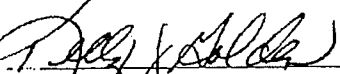
Adopted this 25th day of February, 2008.

COUNTY COUNCIL OF BEAUFORT COUNTY

BY: 

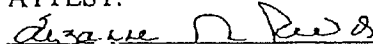
Wm. Weston J. Newton, Chairman

APPROVED AS TO FORM:



Kelly J. Golden, Staff Attorney

ATTEST:



Suzanne M. Rainey, Clerk to Council

First Reading: January 28, 2008

Second Reading: February 11, 2008

Public Hearing: February 25, 2008

Third and Final Reading: February 25, 2008

(Amending 99/12)

EXHIBIT I

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

- (2) *Minor subdivision exemption.* These subdivisions shall be exempt from certain review requirements that larger subdivisions must comply with. All other appropriate standards of this chapter shall be adhered to. The ZDA shall review and approve minor subdivisions complying with the specific requirements explained as follows:
 - a. Minor subdivisions are exempt from DRT review and the site capacity analysis in article VII, except for the calculation of the base site area, provided the subject land has not been previously subdivided within five years.

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

Subdivision means:

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

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

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

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

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

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

Sec. 106-1526. Table explanation.

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

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

Max. Gross Overall density for ~~an entire~~ a base site which includes lots, open space and roads.

Max. Net The resulting density of a portion of a site including roads and lots, but not open space or landscaped surface.

Floor Area Ration (FAR) A nonresidential measure of intensity comparing floor area to lot area.

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

(a) Nonresidential uses and structures.

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

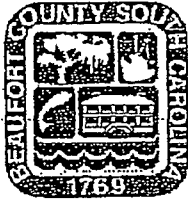
Sec. 106-9. Nonconformities.

(a) *Purpose.* This section regulates nonconforming uses, buildings and structures, lots, and signs. This chapter recognizes that nonconformities vary in the degree of conflict, annoyance, incompatibility, or hazard to the surrounding community. The purpose of regulating nonconformities is to gradually increase the degree of compatibility and functionality within zoning districts. All nonconforming uses, buildings and structures, lots and signs shall be encouraged to become conforming, while attempting to minimize disruption of surrounding, established, conforming situations. Over time, this chapter will lead to greater conformity and functionality within zoning districts as nonconformities are abandoned, damaged, or converted to conforming status. It is recognized that this is a slow and gradual process, and not one that is intended to be unduly disruptive to a property owner or a community. Rules and procedures are intended to balance the desire to eventually eliminate the nonconformity against the degree of the problem and the landowner's rights. Table 106-9 provides a detailed description of types of nonconforming situations, and limitations and standards for each.

TABLE 106-9. DESCRIPTION OF NONCONFORMING USES, STRUCTURES, LOTS & SIGNS
TABLE INSET:

Type	Definition	Standards for Use or Expansion	Conversion to Conforming Use
Uses	Any existing use not permitted in the general use table 106-1098 is a nonconforming use.	15 percent disturbed area expansion allowed within required setbacks and with maximum feasible buffers.	Nonconforming uses may become conforming by correcting the nonconformity or through approval of a special use permit. See subsection (b) of this section.
Buildings and structures	Buildings and structures are nonconforming if they exceed floor area, setback or density standards by 20 percent or have less than 75 percent of required open space or landscaped surface.	Expansions of up to 15 percent are allowed provided setbacks are not reduced and maximum feasible landscaping and buffers are used. A building's intrusion into setbacks shall not project further into the setback than at present. Nonconforming structures may expand only within the existing setback requirements.	Nonconforming buildings and structures may become conforming by correcting the nonconformity or through approval of a special use permit. See column at left and subsection (b) of this section.

EXHIBIT J

**COUNTY COUNCIL OF BEAUFORT COUNTY**

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

October 10, 2007

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

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

Dear Mr. Blankenship:

As stated in the Beaufort County Zoning & Development Standards Ordinance, Section 105-368 (b) (1) "Upon completion of all appropriate county reviews, the ZDA shall then file a staff report including all review recommendations no later than five working days prior to the scheduled DRT meeting". This letter will serve as the recommendations from each member of the DRT for conceptual review of the referenced project.

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

The proposed addition of the fellowship hall does not comply with the ordinance. Adding a 10,000 square foot building to the existing site would double the occupancy load. The intent of Section 7(a)(6) Nonconforming Uses is to allow for additions i.e. parking spaces, restrooms, storage and other auxiliary uses where the seating capacity in the sanctuary and other places of assembly will not increase.

DRT recommends the project be disapproved.

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

Sincerely,

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

EXHIBIT K

"Professionally we serve; Personally we care!"

000218



APPLICATION FOR ADMINISTRATIVE APPEAL
OF DECISIONS BY THE
DEVELOPMENT REVIEW TEAM (DRT)

RECEIVED

NOV 08 2007

Appeal # MISC 2007-31
Hearing Date: 12-3-07

Date Rec'd: 11/8/07 By: CHG

PLANNING DEPARTMENT

Grays Hill Baptist Church 843-846-2797
Appellant's Name Phone

2749 Trask Parkway, Beaufort, SC 29906
Appellant's Mailing Address (City, State and Zip Code)

1. PROPERTY INFORMATION

A. Address of property affected by this Appeal:

2749 Trask Parkway, Beaufort, SC 29906

B. Property Identification Number (PIN): R100 020 000 018C 0000

2. REQUEST: Please attach a narrative describing in detail the reason for this appeal. Include any supportive information that substantiates your position. If the Appellant is not the owner of the affected property, include a notarized document signed by the property owner authorizing the appellant to represent the property owner in this appeal. Application submission must be received by the Beaufort County Planning office no later than three (3) weeks before a scheduled Planning Commission meeting (call the Beaufort County Planning office at 843-470-2724 for the scheduled meeting dates).
3. FEE: An application processing fee of \$75.00 must accompany this application. Make checks payable to Beaufort County.
4. NOTIFICATION: The Appellant must notify in writing the property owners within 500 feet of the affected property (see the attached sample letter) NO LATER THAN 15 days prior to the hearing. Prior to the hearing, the Appellant must also provide the Planning Department with proof of the mailing (including a copy of the letter sent to the property owners; and a list of the property owners notified, including their property identification numbers (PIN) and addresses).
5. HEARING TRANSCRIPTION: The Planning Commission provides summary, not verbatim, minutes. If the Appellant desires verbatim minutes, they must provide a court reporter for their Planning Commission hearing.

I, the undersigned appellant, hereby submit this application with the attached information. The information and documents provided are complete and accurate to the best of my knowledge.

Sham Reeves, for Grays Hill Baptist Church EXHIBIT L 11/6/07
Signature of Appellant Date



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

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

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

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

THOMAS C. DAVIS
(Of Counsel)

November 6, 2007

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

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

Dear Members of the Planning Commission:

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

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

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

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



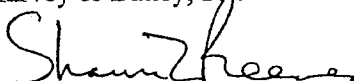
HARVEY & BATTEY, PA
— ATTORNEYS AT LAW —
SINCE 1922

November 6, 2007
Page 3 of 3

has generously agreed to allow Beaufort County to use its facility as an emergency distribution point after hurricanes or other natural disasters. The Church's construction of the proposed fellowship hall would greatly expand the Church's potential for use as a distribution point following a natural disaster.

In summary, the DRT erred in finding that the occupancy load would double with the Church's proposed fellowship hall expansion. The Church's expansion fits firmly within the Airport Overlay District ordinances regarding nonconforming uses and structures. Therefore, the DRT's disapproval of the Church's fellowship hall expansion project should be reversed.

Sincerely,
Harvey & Battey, PA


Shawn L. Reeves

COUNTY OF BEAUFORT DEVELOPMENT REVIEW TEAM ACTION FORM				
Members Present - Hillary (FOR), Delores (FOR), Arthur (FOR), Robert (FOR)				
PROJECT NAME		PROJECT TYPE		
Gray's Hill Baptist Church Fellowship Hall		Institutional		
APPLICANT(DEVELOPER)NAME,ADDRESS,PHONE#				
Steve Blakenship, Gray's Hill Baptist Church				
PROJECT LOCATION	PIN	LAND AREA(ACRES)	LOTS/UNITS	BLDG AREA(SQFT)
Hwy 21	100-20-18C	9.35	N/A	10,000
DATE OF REVIEW	OVERLAY DISTRICT	FIRE DISTRICT		ZONING DISTRICT
10/17/07	HCOD	Burton		CS
TYPE OF DRT REVIEW (X) CONCEPTUAL () PRELIMINARY () FINAL				
APPROVED NO CONDITIONS _____				
DISAPPROVED ☒ REASONS: PROJECT DOES NOT MEET THE INTENT OF THE AIRPORT OVERLAY DISTRICT. ADDING A 10,000 SQUARE FOOT BUILDING TO THE EXISTING SITE WOULD DOUBLE THE OCCUPANCY LOAD. (APPENDIX A.1, SECTION (7)(6) OF THE BEAUFORT COUNTY ZONING & DEVELOPMENT STANDARDS ORDINANCE.				
* APPLICANT HAS THE OPTION TO APPEAL THE DRT'S DECISION				
APPROVED WITH CONDITIONS _____ CONDITIONS: TO THE PLANNING COMMISSION WITHIN 30 DAYS FROM THE DATE OF THIS MEETING.				
APPROVED SUBJECT TO _____ CONDITIONS: _____				
DEFERRED: (PLEASE SUBMIT THE FOLLOWING) _____				

Hillary A. Austin
ZONING & DEVELOPMENT ADMINISTRATOR

10-17-07
DATE

LETTER WILL BE MAILED WITHIN 48 HOURS FOLLOWING THE MEETING

000223



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

June 24, 2008

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

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

Dear Mr. Reeves,

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

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

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

Very Respectfully,

Jim Hicks
Beaufort County Planning Commission Chairman

EXHIBIT M

000224



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

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

Members Present:

Mr. Jim Hicks, Chair
Ms. Mary LeGree

Ms. Diane Chmelik
Mr. Frank Mullen

Mr. Brian Flewelling
Mr. Vernon Pottenger

Members Absent: Mr. Ronald Petit

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

Staff Present:

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

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

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

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

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

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

EXHIBIT N

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

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

Public Comments:

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

reiteration of rezoning allowing property owners to build whatever is allowed by the approved zoning; a clarification of the parking text amendment request to conform to current non-CP parking standards; a clarification on the staff recommended special use of grocery stores in the Public Market District; a clarification of the fifth paragraph on page 6 of the staff report on design to avoid suburban shopping center concept; an explanation of the various County processes—Development Review Team/DRT, Corridor Review Board/CRB and Zoning Board of Appeals/ZBOA; a clarification on possible Commission motions; opposition to split zoned parcels; a clarification of the special use requirement for community impact statement; a clarification on applying conditions to rezoning requests; the Lady's Island/St. Helena Island Subcommittee rationale for recommending approval of the Applicants' request to move the large building away from Highway 21; and the juxtaposition of owners' rights versus existing development standards.

Motion: Ms. LeGree made a motion, and Mr. Flewelling seconded, to forward to County Council a recommendation of approval of the St. Helena Island Map Amendment/Rezoning Request for R300-16-50A and 51A (7.2 and 3.2 acres, respectively; at the corner of Highway 21 and Polowana Road); from Corners Area Community Preservation District (CCPD) and Corners Area Public Market District (PMD) to PMD, as requested by the Applicants. The motion was carried unanimously (FOR: Chmelik, Flewelling, Hicks, LeGree, Mullen, and Pottenger)

Note: Chairman Hicks recessed the meeting at 7:53 p.m. and reconvened the meeting at 8:01 p.m.

TEXT AMENDMENTS TO THE BEAUFORT COUNTY ZONING AND DEVELOPMENT STANDARDS/ZDSO, APPENDIX K-CORNERS AREA COMMUNITY PRESERVATION DISTRICT (CPD) AND PUBLIC MARKET DISTRICT (PMD), SECTION 12(H)(6). PARKING (DESIGN STANDARDS), TO AMEND PARKING REQUIREMENTS OF THE PMD; APPLICANTS: KUZZEN, INC. (50A); AND JOHN TRASK JR., WILLIAM C. ANDERSON, AND MATTHEW S. MCALHANEY (51A); AGENT: DAVID TEDDER

Motion: Mr. Flewelling made a motion, and Ms. Chmelik seconded, to forward to County Council a recommendation of approval of the Applicants' request for Text Amendments to the Beaufort County Zoning and Development Standards/ZDSO, Appendix K-Corners Area Community Preservation District (CPD) and Public Market District (PMD), Section 12(H)(6)-Parking (Design Standards), to amend parking requirements of the PMD for grocery and hardware stores. Discussion included a clarification of the request that narrowed the parking standards to particular uses, a clarification on parking standards for other uses in the Public Market District, and limitations on sideyard setbacks. The motion was carried unanimously (FOR: Chmelik, Flewelling, Hicks, LeGree, Mullen, and Pottenger)

ADMINISTRATIVE APPEAL OF DECISION BY THE DEVELOPMENT REVIEW TEAM (DRT) ON DENYING APPROVAL OF A REQUEST FOR A 10,000 SQUARE

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

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

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

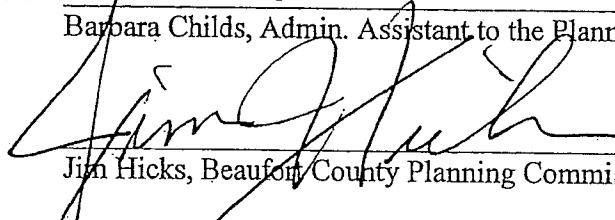
OTHER BUSINESS: Chairman Hicks noted that the next Commission meeting would be on Thursday, January 3, 2008. He also noted that elections for Commission chair and vice-chair would occur at that January 2008 meeting.

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

SUBMITTED BY:



Barbara Childs, Admin. Assistant to the Planning Director



Jim Hicks, Beaufort County Planning Commission Chairman

APPROVED:

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

IN THE STATE OF SOUTH CAROLINA ZONING BOARD OF APPEALS

COUNTY OF BEAUFORT

IN RE: GRAYS HILL BAPTIST CHURCH

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

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

EXHIBIT O

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

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

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

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

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

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

the safest accident potential zone, i.e., APZ-2. Finally, allowing the construction of the Fellowship Hall will actually decrease the amount of time the congregation spends on the property, as Fellowship Hall activities are now conducted within the Sanctuary building and it takes approximately six (6) hours to convert the Sanctuary building from Church service use to Fellowship use (approximately three (3) hours to take down the chairs and set up the tables and the same amount of time to reverse the process).

The last criteria under Section 106-522 has four (4) sub-parts, as follows.

The hardship must relate to the applicant's land, and not to the applicant's personal circumstances. This is true in this case. This is not a situation where the applicant is trying to, for example, save money by building a cheaper building or avoiding a setback requirement.

Secondly the hardship must be unique, or nearly so, and not one common to the many surrounding properties. In this case, there is no other surrounding property in this situation.

Third, the hardship must not be the result of the applicant's own actions. In this case, the applicant has done everything asked and reasonably expected of it.

Lastly, the hardship must be one suffered by the applicant and not the adjoining landowners or the general public. In this case, this hardship is clearly unique to the applicant.

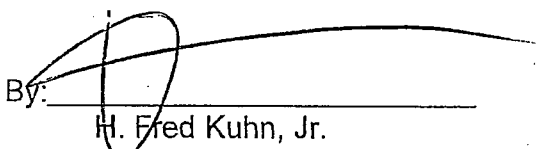
In summary, if the variance is granted there will be only two (2) buildings on a nearly 10 acre parcel, in the safest accident potential zone that exists, the requested Fellowship Hall was part of the original master plan, the Fellowship Hall should have been approved by the Planning Commission under the then existing Ordinance, and due to the location

of the Church and the fact that the number of allowable parking spaces has already been fixed, the occupancy load will not increase, but rather, has already effectively been set in stone.

It is accordingly respectfully requested that the Variance be granted and the Grays Hill Baptist Church be allowed to build its Fellowship Hall, which has clearly been part of its original plans since 1996, which will only improve and enhance the character of this neighborhood.

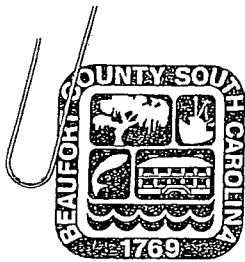
Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Beaufort, South Carolina
July 22, 2010



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

August 10, 2010

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

Grays Hill Baptist Church
2749 Trask Parkway
Beaufort, SC 29906

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

Dear Mr. Kuhn Jr.,

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

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

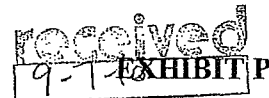
- a. There were no extraordinary and exceptional conditions pertaining to this particular piece of property.
- b. The authorization of the variance would adversely affect the adjacent properties or the public good. Also, the character of the district would be harmed by the granting of the variance.
-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

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

Sincerely,

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

This 31st Day of August, 2010



**COUNTY COUNCIL OF BEAUFORT COUNTY**

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

October 10, 2007

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

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

Dear Mr. Blankenship:

As stated in the Beaufort County Zoning & Development Standards Ordinance, Section 105-368 (b) (1) "Upon completion of all appropriate county reviews, the ZDA shall then file a staff report including all review recommendations no later than five working days prior to the scheduled DRT meeting". This letter will serve as the recommendations from each member of the DRT for conceptual review of the referenced project.

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

The proposed addition of the fellowship hall does not comply with the ordinance. Adding a 10,000 square foot building to the existing site would double the occupancy load. The intent of Section 7(a)(6) Nonconforming Uses is to allow for additions i.e. parking spaces, restrooms, storage and other auxiliary uses where the seating capacity in the sanctuary and other places of assembly will not increase.

DRT recommends the project be disapproved.

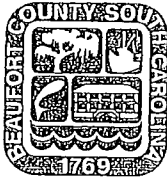
NOTE: THE DRT RESERVES THE RIGHT TO CONSIDER ADDITIONAL INFORMATION RELATED TO THE PROJECT LISTED ABOVE PRIOR TO THE DATE OF THE DRT MEETING. THEREFORE, THE DRT'S DECISIONS MAY CHANGE ACCORDING TO NEW FACTS OR THE CONSIDERATION OF ADDITIONAL FACTS UNKNOWN AS OF THE DATE OF THIS REPORT.

Sincerely,

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

EXHIBIT K*"Professionally we serve; Personally we care!"*

000235



COUNTY COUNCIL OF BEAUFORT COUNTY
BEAUFORT COUNTY PLANNING DEPARTMENT

Multi Government Center • 100 Ribaut Road, Room 115

Post Office Drawer 1228, Beaufort, SC 29901-1228

Phone: (843) 470-2724 • FAX: (843) 470-2731

June 24, 2008

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

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

Dear Mr. Reeves,

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

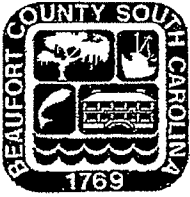
Mr. Tony Criscitiello, representing the County, stated that the DRT voted to deny the application because they determined that the expansion would increase the occupancy load of the site in violation of the County's Zoning and Development Standards Ordinance (ZDSO), Appendix A-1, Section 7(A)(6). As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

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

Very Respectfully,

Jim Hicks
Beaufort County Planning Commission Chairman

EXHIBIT M



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

 **COPY**

August 10, 2010

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

Grays Hill Baptist Church
2749 Trask Parkway
Beaufort, SC 29906

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

Dear Mr. Kuhn Jr.,

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

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

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

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

Sincerely,



Thomas Gasparini
Chairman, Zoning Board of Appeals

Beaufort, South Carolina

This 31st Day of August, 2010

"Professionally we serve; Personally we care!"

000237

Notice of Decision Gray's Hill Baptist Church Z809

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ 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.		A. Signature X <i>C. H. Smith</i> ☐ Agent ☐ Addressee	
1. Article Addressed to: H. Fred Kuhn Jr. Esq. Post Office Drawer 507 Beaufort, SC 29901-0507		B. Received by (Printed Name) <i>C. H. Smith</i> C. Date of Delivery <i>12/17/09</i>	
2. Article Number (Transfer from service label) 7009 0820 0002 3449 3049		D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.		4. Restricted Delivery? (Extra Fee) ☐ Yes	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540			

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

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

OFFICIAL USE

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

Sent To: *Fred Kuhn Jr.*
Street, Apt. No., or PO Box No. *Post Office Drawer 507*
City, State, ZIP+4 *Beaufort SC 29901-0507*

PS Form 3800, August 2006 See reverse for instructions

2009 notice of decision duly entered mailed 11/11/09



2011-15

FILE COPY

COUNTY COUNCIL OF BEAUFORT COUNTY
BEAUFORT COUNTY PLANNING DIVISION
Multi-Government Center • 100 Ribaut Road, Room 115
Post Office Drawer 1228, Beaufort SC, 29901-1228
Phone: (843) 255-2140 • FAX: (843) 255-9432

March 6, 2012

Mr. H. Fred Kuhn, Jr., Esquire
Moss Kuhn & Fleming PA
1501 North Street
Beaufort, SC 29902

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

Dear Mr. Kuhn:

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

The Petitioners began construction in 1997 on their church and supporting infrastructure. The original master plan had both a church and fellowship hall planned. However, when the petitioners applied for a building permit in 1997, they applied for permission to construct only the church and surrounding infrastructure. The master plan approved by the county further indicates that the fellowship hall is designated as "Phase II" of the Plan. On December 11, 2006, Beaufort County adopted the Airport Overlay District. Grays Hill Baptist Church became a "nonconforming place of assembly and worship," which limited expansion to 15%. Due to questions as to whether the expansion limitation was 15% of the total disturbed area of the church complex, or 15% of the current church building, Beaufort County amended its ordinance on February 25, 2008, to clarify that the limitation was to a 15% expansion of the building only.

The property is located in the Accident Potential Zone-2 (APZ-2) of the Airport Overlay District, which has a "measurable potential for an aircraft accident." Accident Potential Zones are based upon statistical analyses of past Department of Defense (DOD) aircraft accidents. APZs consist of a clear zone (CZ), APZ I, and APZ II. The CZ, the area closest to the runway end, is the most potentially hazardous. APZ I is an area beyond the CZ that possesses a significant potential for accidents. APZ II is an area beyond APZ I having a lower, but still significant, potential for accidents.

In 2007, the Petitioners submitted an application to build a new fellowship hall next to their Church, which is the subject of this appeal. On October 17, 2007, Beaufort County's Development Review Team denied the Petitioners' request to construct the fellowship hall by unanimous vote, specifically noting the safety hazard of having increased numbers of people meeting (occupancy load) and the additional times people would congregate at the subject location.

On November 6, 2007, the Petitioners appealed to the Planning Commission and again were denied permission to construct the fellowship hall. The Petitioners then appealed the Planning Commission's denial to the Circuit Court. After an initial hearing on the matter, the Court agreed to stay the case while the Petitioners requested a variance from Beaufort County to build the fellowship hall. On April 26, 2010, the Petitioners applied for a variance and the application for variance was denied on July 22, 2010, by the Beaufort County Zoning Board of Appeals. The Petitioners appealed the denial of the variance also to the Circuit Court.

This matter went before the Circuit Court pursuant to two appeals, which were consolidated by consent of the parties. In a hearing on both appeals held on July 25, 2011, the circuit court ordered that the DRT's decision to deny the permit request be remanded back to the Planning Commission with instructions to rehear the appeal *de novo* as the current record was insufficient for him to rule upon. The court left open the question of the propriety of the variance for a later determination if necessary.

The parties agree that given the adoption and application of the Airport Overlay District to the area in 2006, the Church became a nonconforming use and structure in the area. Appendix A1, Section 7(a)(6) of the Zoning and Development Standards Ordinance (ZDSO) as it existed at the time of the petition provided that

...."nonconforming places of assembly and worship shall be permitted to be rebuilt if damaged greater than 50 percent of their market value provided that the noise attenuation requirements of section 6 are met. Nonconforming places of assembly and worship may be expanded up to 15 percent in accordance with table 106-9 provided the expansion does not increase the occupant load of the building."

Table 106-9 provides for Expansion with regard to "Uses" that "15 percent disturbed area expansion allowed within required setbacks and with maximum feasible buffers." Likewise Table 106-9 provides for "Buildings and structures" expansion that "Expansions of up to 15 percent are allowed provided setbacks are not reduced and maximum feasible landscaping and buffers are used."

In the first instance, the Petitioners argue that it should never have been required to seek a new development permit as a prerequisite to the construction permit for the fellowship hall as the fellowship hall is plainly and clearly shown on the development plan and the original development permit, under its own terms, and because the permit

had not expired since substantial improvement to the development had occurred within two years from the issuance of the permit

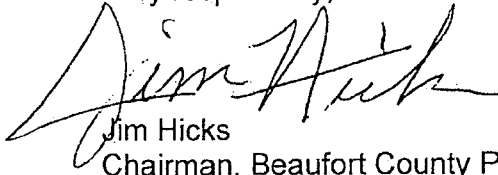
Based on the clear terms of the Church's development permit application, the Church only sought a permit to construct a 15,872-square foot building. No request or permit to build the fellowship hall was made prior to the permits requested in 2007 and at issue in this matter. Clearly, all construction which was requested in the initial development permit was completed in 1997. The Narrative, which was the descriptive basis of the Church's 1997 Development Permit Application, clearly divides the project into phases. Phase I being a 15,872-square foot church with 25,150 square feet of asphalt and concrete paving. Phase II of the development will consist of an 11,250-square foot building shown on the enclosed plans as the building south of the church. The application for the permit itself only requests to construct the "Phase I" building. Moreover, the County issued a final inspection certificate of compliance which effectively closed out this development permit in December of 1997. There is no evidence which would support the continued validity or vested right in the subject 1997 development permit as alleged by the Church.

Next, the Church asserts that the DRT erred in denying the new Development Permit in that it abused its discretion by concluding that the expansion would increase the occupant load of the building if the permit was approved.

The Church maintains that the fellowship hall will have no impact on occupancy in practice. The County, conversely, argues that there is no question but that the additional 10,000 square feet would increase the occupiable space on the site. While it is admitted by the County that occupant load is not defined anywhere in the ordinance, the County references the International Fire Code, which is adopted by reference and is part of the Beaufort County Code of Ordinances. The Fire Code defines Occupant Load as the number of persons for which the means of egress of a building or portion thereof is designed. The Code further goes on to set forth the means of calculation of the Occupant Load of a Building. The County provided the testimony of Tim Ogden, Beaufort County Fire Code official, with regard to the application of the calculation to the site. Mr. Ogden testified that the site's current occupant load for the Church sanctuary is 293. He further testified that the structure applied for in the permit would have a minimum occupant load of 533, thereby more than doubling the occupant load for the site. He additionally testified that when calculating occupant load, the potential for how many people can occupy the space is considered as opposed to representations as to how many people will actually occupy the building. In summary, it is a mathematical calculation based on the square footage of the building.

Because the calculation of the occupant load of the structure as requested in the permit would more than double what the current load is, the site expansion requested in the permit does not meet the minimum requirements as set forth in Appendix A1, Section 7(a)(6) of the ZDSO. Based on the foregoing, the permit for the Fellowship Hall expansion to the Grays Hill Baptist Church is **DENIED**.

Very respectfully,

A handwritten signature in cursive script, appearing to read "Jim Hicks".

Jim Hicks
Chairman, Beaufort County Planning Commission

00001

Beaufort County, South Carolina
DEVELOPMENT PERMIT
Zoning and Development Administration

Permit Number: 3257 Zone: GCD Date Issued: 1/7/97
Development Name: GRAY'S HILL BAPTIST CHURCH
Development Address: HWY 21, BEAUFORT
District/Map/Parcel Number: 100 20 18C Acreage: 9.35
Type of Development: INSTITUTIONAL

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

By: [Signature]

Zoning and Development Standards Administrator

Conditions of Permit Approval:
TREE PROTECTION BARRIER MUST BE ERECTED PRIOR TO COMMENCING CONSTRUCTION

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

White Copy Developer Yellow Copy Office Pink Copy Bldg. Codes

Paul

000244

00021

NARRATIVE

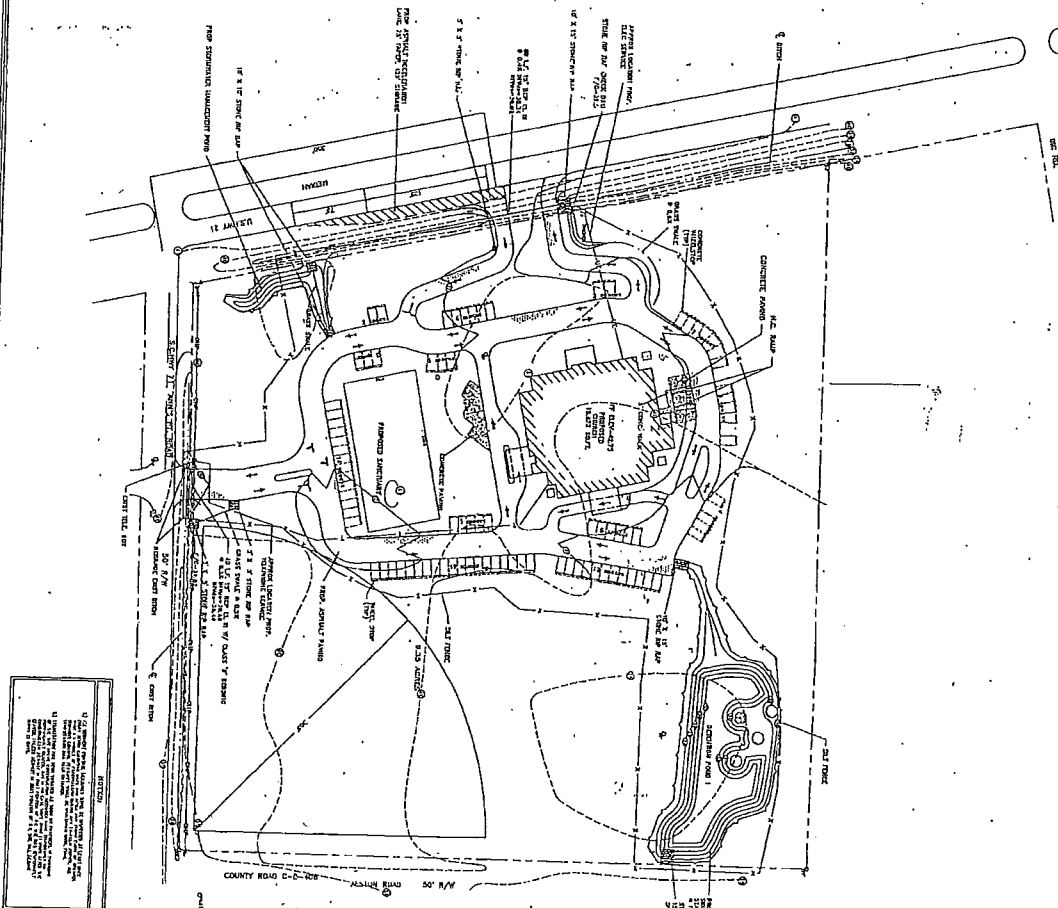
**GRAYS HILL BAPTIST CHURCH
BEAUFORT COUNTY
PROJECT NO. 96169
DECEMBER 4, 1996**

The Grays Hill Baptist Church is a 9.35 acre parcel located in the northeastern quadrant of the intersection of US Hwy 21 (Trask Parkway) and SC Hwy. 71 (Ann's Point Road) in Beaufort County, SC. The site is bordered by woodlands to the north, SC Hwy. 71 to the south, Alston Field Road to the east, and US Hwy. 21 to the west.

Phase I of the development will consist of a 15,872.31 church with 25,150 ft² of asphalt and concrete paving. Phase II of the development will consist of a 11,250 ft² building shown on the enclosed plans as the building to the south of the church.

The stormwater runoff will be handled by two on-site stormwater detention ponds, designed to accommodate the post development runoff from both phases. Traffic will be routed through the site on the proposed asphalt drives. The parking areas will be grassed, located around the existing trees to remain.

Water service for consumption will be furnished by an on-site well. Sanitary sewer service will be handled by two on-site septic tanks and drainfields. Electrical and telephone lines will be installed underground. SECAQ and Sprint will provide electrical and telephone service, respectively. Solid waste disposal/pick up will be handled by Waste Management. Fire protection and emergency medical services will be provided by the Burton Fire District.

[illegible]

Bids Copy

[illegible]

1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393
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PROPOSED SPILLWAY
#112

[illegible]

EXHIBIT A

GRAYS HILL BAPTIST CHURCH
U.S. HIGHWAY 21
U.S. HWY 21 & S.C. HWY 71
BEAUFORT, SOUTH CAROLINA

SEDIMENT CONTROL PLAN

DESIGNER:	D.M.K.
CAD TECH:	J.A.G.
CHECK:	A.R.T.
APPROVED:	S.W.A.
DATE:	10/10/98
SCALE:	1" = 50'

DRAWING RELEASED FOR:

☐ PLAN REVIEW / /

☐ PERMIT DRAWINGS / /

☐ CONSTRUCTION PLANS / /

☐ AS-BUILT DRAWINGS / /

☐ OTHER: / /



**Andrews
Engineering Co., Inc.**



COUNTY COUNCIL OF BEAUFORT COUNTY # 00003
Beaufort County Development Division
Muhl Community Center • 100 Ribault Road
Post Office Drawer 1228, Beaufort, SC 29901-1228
FAX: (803) 525-7113

Robert L. Goss, Jr.
County Engineer
Pc: 315-7113

John L. Cummings, C.E.D.
Building Code Director
Pc: 315-7110

Don Morgan
C.E.D. Coordinator
Pc: 315-7111

Lymerie J. Harford
Director of Planning
Pc: 315-7112

Charles Cash
Zoning & Development Manager
Pc: 315-7115/17

FINAL INSPECTION

CERTIFICATE OF COMPLIANCE

To: Charles Gatch
From: Bob Klink
Date: December 17, 1997
Project: Grays Hill Baptist Church
Development Permit Number 3057

**FINAL INSPECTION FOR COMPLIANCE WITH THE BEAUFORT COUNTY
DEVELOPMENT REVIEW COMMITTEE ZONING AND DEVELOPMENT STANDARDS.
THIS CERTIFICATE DOES NOT GRANT RELEASE OF RESPONSIBILITY FOR FULL
COMPLIANCE WITH ALL PROVISIONS OF THE BEAUFORT COUNTY ZONING AND
DEVELOPMENT STANDARDS ORDINANCE**

1. Site Work, Paving: All site work and paving is complete as per approved plans.
2. Parking: All parking is complete as per approved plans.
3. Drainage: All drainage facilities constructed as per approved plans.
4. Erosion/Sedimentation Control: Erosion control structures exist as per approved plans.
5. Landscaping: All landscaping is installed as per approved plans.
6. Handicap Barrier-Free Construction: Handicap facilities are complete as per approved plans.

Comments:

Bond Required:
Inspection Fee: None

REK/LIT/C/mjh

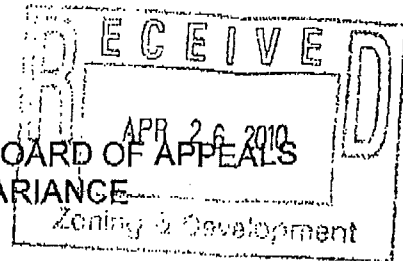
cc. Building Inspections Department
Local Fire District

(A:\ee\luc\3057.wpd)

"Professionally we serve; Personally we care!"



BEAUFORT COUNTY - ZONING BOARD OF APPEALS
APPLICATION FOR VARIANCE



INSTRUCTIONS:

Please fill out this application form completely. Attach any pertinent materials that may help the board members to better understand your request, i.e. photos, maps, drawings, etc. Failure to follow these instructions may result in rejection of your application.

1. Property Owner Name: Grays Hill Baptist Church
Address: 2749 Trask Parkway, Beaufort, SC 29906
Home Phone: 843-846-2797 Work Phone: 843-846-2797
2. Applicant Name (if different): H. Fred Kuhn, Jr. - Attorney for Grays Hill Baptist Church
Address: P.O. Drawer 507, Beaufort, SC 29901-0507
Home Phone: 843-986-3606 Work Phone: 843-524-3373
3. Property Location: Tax District # R100 Tax Map # 020 Tax Parcel # 018C Lot # 0000
Street Address: 2749 Trask Parkway, Beaufort, SC 29906
4. Ordinance Section from which variance is requested: APPENDIX A-1 - AIRPORT OVERLAY DISTRICT
Zoning & Development Standards Ordinance: Article _____ Section(s)/Tables(s) Sec. 7(a)(6), Table 106-9
5. Please describe each variance and how it differs from the requirements. (Attach additional sheets as needed):
The Church seeks the construction of a fellowship hall as originally permitted, which would be a larger than 15% expansion of the existing building size.
6. What extraordinary and exceptional conditions exist that would create an extreme hardship if this variance was not granted? (Attach additional sheets as needed):
See attached.
7. To avoid a variance condition, have you considered an alternate method of accomplishing what you desire that meets the intent of the ordinance? Yes (X) No () If yes, please explain: _____
8. How would the variance not cause substantial detriment to the adjacent property or the public good, and the character of the district? The fellowship hall will not substantially increase the occupant load of the site.
9. Length of time the property has been held/titled in applicant's name? Since May 15, 1995

NOTE: THE BOARD MAY POSTPONE OR PROCEED TO DISPOSE OF THE MATTER ON THE AGENDA IN THE ABSENCE OF THE APPLICANT.

I hereby agree to abide by all conditions imposed by the County of Beaufort in granting the/this variance. I understand that such conditions apply to the property and are a right or obligation transferable by sale.

I affirm that in all other respects this property will conform to all other codes and ordinances.

[Signature]
Signature of Applicant

H. Fred Kuhn Jr, Esq.
Printed Name of Applicant
for
Grays Hill Baptist Church

April 26, 2010
Date



APPLICATION FOR ADMINISTRATIVE APPEAL
OF DECISIONS BY THE
DEVELOPMENT REVIEW TEAM (DRT)

RECEIVED

NOV 08 2007

PLANNING DEPARTMENT

Appeal # MISC 2007-31

Date Rec'd: 11/8/07 By: CHB

Hearing Date: 12-3-07

Grays Hill Baptist Church 843-846-2797
Appellant's Name Phone

2749 Trask Parkway, Beaufort, SC 29906
Appellant's Mailing Address (City, State and Zip Code)

1. PROPERTY INFORMATION

A. Address of property affected by this Appeal:

2749 Trask Parkway, Beaufort, SC 29906

B. Property Identification Number (PIN): R100 020 000 018C 0000

2. REQUEST: Please attach a narrative describing in detail the reason for this appeal. Include any supportive information that substantiates your position. If the Appellant is not the owner of the affected property, include a notarized document signed by the property owner authorizing the appellant to represent the property owner in this appeal. Application submission must be received by the Beaufort County Planning office no later than three (3) weeks before a scheduled Planning Commission meeting (call the Beaufort County Planning office at 843-470-2724 for the scheduled meeting dates).
3. FEE: An application processing fee of \$75.00 must accompany this application. Make checks payable to Beaufort County.
4. NOTIFICATION: The Appellant must notify in writing the property owners within 500 feet of the affected property (see the attached sample letter) NO LATER THAN 15 days prior to the hearing. Prior to the hearing, the Appellant must also provide the Planning Department with proof of the mailing (including a copy of the letter sent to the property owners; and a list of the property owners notified, including their property identification numbers (PIN) and addresses).
5. HEARING TRANSCRIPTION: The Planning Commission provides summary, not verbatim, minutes. If the Appellant desires verbatim minutes, they must provide a court reporter for their Planning Commission hearing.

I, the undersigned appellant, hereby submit this application with the attached information. The information and documents provided are complete and accurate to the best of my knowledge.

Sham2Reever, for Grays Hill Baptist Church, 11/6/07
Signature of Appellant Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

GRAYS HILL BAPTIST CHURCH

ATTACHMENT TO APPLICATION FOR VARIANCE

The Applicant, Grays Hill Baptist Church, respectfully submits that extraordinary and exceptional circumstances exist that would create an extreme hardship if this variance is not granted, based on the following facts:

I. GENERAL BACKGROUND

1. The Applicant, Grays Hill Baptist Church (the "Church"), is a nonprofit religious corporation organized under and existing by virtue of the laws of the State of South Carolina with its primary place of business in Beaufort County, South Carolina.

2. Beaufort County (the "County"), is a body politic and a subdivision of the State of South Carolina.

3. The Church is the owner of a parcel or real property located in Beaufort County, South Carolina, consisting of 9.35 acres, more or less, situated at the intersection of U.S. Highway 21 and South Carolina Highway 71 (Ann's Point Road) which is more particularly designated on the Beaufort County Tax Maps as R100 020 000 018C 0000.

4. In or around 1996 the Church applied to Beaufort County for a permit to develop the aforesaid 9.35 acre parcel of real property.

5. On February 27, 1997 pursuant to Permit No. 970320 the Church received permission from the County to develop and construct improvements upon the aforesaid parcel to property, said improvements including a 15,872 square foot Church building,

roadways, parking, together with a separate building, rectangular in shape and measuring 75.0 feet on its eastern and western ends and 150 feet on its northern and southern ends, said building labeled on the aforesaid permit as a "Proposed Sanctuary."

6. The Church, pursuant to the aforesaid permit, thereafter constructed all the permitted improvements except for the building labeled "Proposed Sanctuary."

7. The County has now denied the Church permission to construct the previously permitted building labeled "Proposed Sanctuary" (hereinafter referred to as the "Fellowship Hall").

8. The subject building which the County has denied the Church permission to construct would consist of a large Fellowship Hall, bathrooms, a kitchen, and storage areas.

II. GROUNDS FOR VARIANCE

9. The following exceptional and extraordinary circumstances exist which justify the granting of a variance:

a. The County failed to acknowledge and recognize that it has already granted to the Church permission to construct the Fellowship Hall when it approved the master plan for the subject real property and gave permission to construct the subject improvement in Permit No. 970320, issued by the County on February 27, 1997.

b. The County failed to recognize the grandfathered status of the subject property, the Fellowship Hall, in Permit No. 970320.

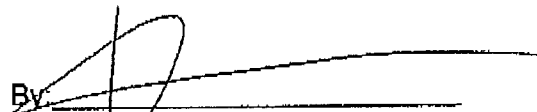
c. In denying permission to the Church to construct its Fellowship Hall, the County relied upon the fact that the project site is located within Accident Potential Zone 2 (APZ-2) and Noise Zone 3 of the Airport Overlay District. The County erred in failing to

recognize that the Airport Overlay District was created after Permit No. 970320 was issued to the Church and the ordinances governing the Airport Overlay District, accordingly do not apply.

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

e. The County erroneously found that the construction of the Fellowship Hall would increase the occupant load of the building. The construction of a Fellowship Hall will not increase the occupant load. The occupant load of the property is governed by the available parking, which will not be increased.

10. Attached are various documents in support of this variance request.
MOSS, KUHN & FLEMING, P.A.

By 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 (FX)

Attorney for the Plaintiff

Beaufort, South Carolina
April 26, 2010

APPENDIX A1. AIRPORT OVERLAY DISTRICT / MCAS - Beaufort

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

Section 1. Purpose.

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

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

Section 2. Accident Potential Zones (APZ).

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

Section 3. Noise Zones.

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

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

Noise Zones are shown on the map in Section 9. Noise Zone 1 covers that portion of the County that lies outside of the Airport Overlay District. Properties within Noise Zone 1 are exempt from the requirements of this Appendix.

65 to 70

Section 4. Notification.

- A. At all real estate closings involving a property in an Accident Potential Zone or Noise Zone, the buyer, seller and witnesses shall sign the following form, which shall be filed with the deed and/or plat at the Beaufort County Register of Deeds Office (RMC Office).

Airport Overlay Disclosure Form

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

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

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

CERTIFICATION

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

Dated this _____ day of _____, _____.

Witness _____ Owner _____

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

Dated this _____ day of _____, _____.

Witness _____ Purchaser _____

- B. All prospective renters signing a commercial or residential lease shall be notified by the property owner through a written provision contained in the lease agreement if the leased property is located within the AO District.
- C. All subdivision plats, planned unit development plats, townhouse plats and /or condominium documents shall contain the following disclosure statement:

Airport Overlay Disclosure Statement

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

Accident Potential Zone: _____

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

- D. In the case of new construction, a signed Airport Overlay Disclosure Statement shall accompany the building permit application.

Section 5. Use Limitations.

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

- A. The following uses are not permitted within a Clear Zone, any Accident Potential Zone and/or within Noise Zone 3 (DNL 75 and above), regardless of size:
1. Hospitals and Health Clinics
 2. Assembly and Worship
 3. Schools
 4. Commercial Daycare Centers
 5. Commercial Lodging
 6. Restaurants
 7. Multi-family housing (including duplexes)
 8. Indoor Recreation

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

- B. Single-family residential development within any Accident Potential Zone and/or within Noise Zone 3 (DNL 75 and above) shall not be permitted at a gross density that exceeds one (1) dwelling unit per three (3) acres. Gross density means the total number of dwelling units on a site divided by the entire site area. No residential development is permitted within a Clear Zone.
- C. Residential development within Noise Zone 2b (DNL 70 to 75) shall not be permitted at a gross density that exceeds one (1) dwelling unit per acre. If the maximum density requirement of the base zoning district is less than one dwelling unit per acre, the more stringent standard shall apply.
- D. Residential development within Noise Zone 2a (DNL 65 to 70) shall not be permitted at a gross density that exceeds two (2) dwelling units per acre. If the maximum density requirement of the base zoning district is less than two dwelling units per acre, the more stringent standard shall apply.
- E. Residential units may be required by the DRT to be clustered outside of the APZ's and/or Noise Zones if possible. In those instances, the number of allowable units on the remainder of the property shall be determined by the gross density permitted in the base zoning district calculated for the entire site. The DRT may modulate the minimum lot size requirement to achieve this result.
- F. Family compounds that meet the requirements of Sec. 106-2105 are exempt from this section.

Section 6. Noise Attenuation.

- A. The following noise level reduction standards shall be required for all new buildings within an Airport Noise Zone.

Additional Construction Standards

DNL 65 – 70: 25 dB reduction required.

DNL 70 – 75: 30 dB reduction required.

DNL 75 and above: 35 dB reduction required.

- B. Because manufactured homes are constructed to federal standards that may not meet the standards listed above for noise attenuation, all permit applications for the placement of manufactured homes within a Noise Zone shall be accompanied by the following disclosure statement:

Airport Noise Zone Disclosure Statement

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

Dated this _____ day of _____, _____.

Witness _____ Owner _____

Section 7. Nonconforming Uses and Structures.

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

- A. Nonresidential uses and structures.
1. Nonconforming structures with damage greater than 50% of their market value shall be replaced by conforming structures.
 2. Nonconforming uses and structures shall not be expanded.
 3. Nonconforming uses and structures shall not become conforming through the Special Use Permit process.
 4. Improvements to a structure that exceed 50% of market value shall be required to meet the noise attenuation requirements in Section 6. Permits for improvements shall be cumulative for a period of 5 years.

5. Any nonconforming use or structure shall be considered abandoned if vacant or unused for 90 days, and shall only be replaced with conforming uses and structures.

6. Notwithstanding the above, nonconforming places of assembly and worship shall be permitted to be rebuilt if damaged greater than 50% of their market value provided that the noise attenuation requirements of Section 6 are met. Nonconforming places of assembly and worship may be expanded by up to 15% in accordance with Table 106-9 provided that the expansion does not increase the occupant load of the building.

B. Residential Structures. Improvements to a residential structure that exceed 50% of market value shall be required to meet the noise attenuation requirements in Section 6. Permits for improvements shall be cumulative for a period of 5 years.

Section 8. Variances.

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

Section 9. Official Map.

Sec. 106-9. Nonconformities.

(a) **Purpose.** This section regulates nonconforming uses, buildings and structures, lots, and signs. This chapter recognizes that nonconformities vary in the degree of conflict, annoyance, incompatibility, or hazard to the surrounding community. The purpose of regulating nonconformities is to gradually increase the degree of compatibility and functionality within zoning districts. All nonconforming uses, buildings and structures, lots and signs shall be encouraged to become conforming, while attempting to minimize disruption of surrounding, established, conforming situations. Over time, this chapter will lead to greater conformity and functionality within zoning districts as nonconformities are abandoned, damaged, or converted to conforming status. It is recognized that this is a slow and gradual process, and not one that is intended to be unduly disruptive to a property owner or a community. Rules and procedures are intended to balance the desire to eventually eliminate the nonconformity against the degree of the problem and the landowner's rights. Table 106-9 provides a detailed description of types of nonconforming situations, and limitations and standards for each.

TABLE 106-9. DESCRIPTION OF NONCONFORMING USES, STRUCTURES, LOTS & SIGNS
TABLE INSET:

Type	Definition	Standards for Use or Expansion	Conversion to Conforming Use
Uses	Any existing use not permitted in the general use table 106-1098 is a nonconforming use.	15 percent disturbed area expansion allowed within required setbacks and with maximum feasible buffers.	Nonconforming uses may become conforming by correcting the nonconformity or through approval of a special use permit. See subsection (b) of this section.
Buildings and structures	Buildings and structures are nonconforming if they exceed floor area, setback or density standards by 20 percent or have less than 75 percent of required open space or landscaped surface.	Expansions of up to 15 percent are allowed provided setbacks are not reduced and maximum feasible landscaping and buffers are used. A building's intrusion into setbacks shall not project further into the setback than at present. Nonconforming structures may expand only within the existing setback requirements.	Nonconforming buildings and structures may become conforming by correcting the nonconformity or through approval of a special use permit. See column at left and subsection (b) of this section.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III

Civil Action No.: 2012-CP-07-01394
Appellate Case No.: 2016-000687

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OCT 25 2016

SC Court of Appeals

GRAYS HILL BAPTIST CHURCH.....Respondent

-VS-

BEAUFORT COUNTY, AND THE BEAUFORT COUNTY ZONING BOARD OF
APPEALS, DEFENDANTS

AND

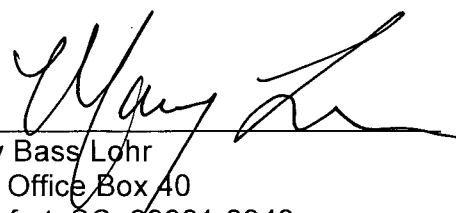
THE UNITED STATES OF AMERICA, DEFENDANT – INTERVENOR

OF WHICH BEAUFORT COUNTY AND THE UNITED STATES OF AMERICA
ARE THE.....Appellants

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material
proposed to be included of any of the parties, and no other material.

HOWELL, GIBSON & HUGHES, P.A.

By: 

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Beaufort, South Carolina

October 24, 2016

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ARE THE.....Appellants

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Record on Appeal has been reviewed
and redacted (where necessary) and complies with the Supreme Court's Order of
August 13, 2007.

SIGNATURE PAGE FOLLOWS

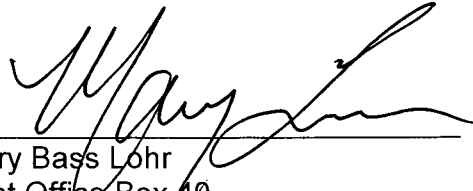
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CLERK OF COURT

OFFICE OF THE

CLERK OF COURT

HOWELL, GIBSON & HUGHES, P.A.

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