

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2016-CP-40-03478
Appellate Case No.: 2017-000561

RECEIVED

APR 06 2018

SC Court of Appeals

Cricket Store 17 d/b/a Taboo,..... Appellant,

vs.

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

and

City of Columbia Zoning Administrator, ... Counterclaimant,

vs.

Cricket Store 17, L.L.C. d/b/a Taboo..... Counterdefendant.

RECORD ON APPEAL
VOLUME 1

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December 1, 2017

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Admitted *pro hac vice*, admission challenged on appeal

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Board of Zoning Appeals)
)
City of Columbia)

**ORDER
ON AN ADMINISTRATIVE APPEAL**

Date Heard: April 12, 2016
Case Number: 16-010-AA
Subject Property: 4716 Devine Street (TMS#13814-09-02).
Zoning District: C-3, -FP (General Commercial district within a Flood Protective Overlay)
Applicant: Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore)
Other Parties in Interest: None.

The City of Columbia Board of Zoning Appeals held a public hearing on April 12, 2016 to consider the appeal for administrative review of Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore), Applicant, pursuant to §17-111 and §17-112; and §17-371, §17-372, §17-373, and §17-374 of the City of Columbia Code of Ordinances. The applicant alleges that the Zoning Administrator did err by "arbitrarily requiring Taboo to comply strictly with ordinance regulations or face immediate penalties of fines and/or imprisonment rather than to allow Taboo continued operation as a nonconforming use. The City is electing to enforce a provision of its ordinance for "Sexually Oriented Businesses" despite Taboo's record of compliance and compatibility with the surrounding uses in the vicinity of its property."

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

Findings of Fact:

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

The subject property, 4716 Devine Street, TMS # 13814-09-02, is located in the City of Columbia, South Carolina, and is within the C-3 (General Commercial) zoning district.

On January 28, 2016 the Zoning Administrator delivered a written notice of violation letter to Taboo Adult Superstore located at 4716 Devine Street for operating a sexual device shop in violation of the Zoning Ordinance. The notice of violation letter was addressed to owner, Jeff White, and signed/accepted by employee Cheyenne Wiseman. A copy of the letter was presented to the Board. The applicant filed for appeal within 30 days of the January 28 letter.

The Zoning Administrator requested that the determination made in the letter of January 28, 2016 that Taboo Adult Superstore was operating as a sexual device shop, in violation of the Zoning Ordinance, be upheld.

Taboo is located at 4716 Devine Street and is within a C-3 (General Commercial) district. Per §17-374 (b) and (i) of the Zoning Ordinance, a sexually oriented business, including a

sexual device shop, cannot operate within the C-3 district:

(b) A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business outside of a designated M-1 or M-2 district. A sexually oriented business shall be located within an M-1 or M-2 district; however no sexually oriented business shall be permitted to operate within an M-1 or M-2 district appended with a -DD, -ID, -DP, -NC or -PD Overlay district.

(i) Any sexually oriented business lawfully operating as of the date of the ordinance from which this section is derived that is in violation of subsections (b), (c), (d), (e) or (f) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue until and through January 1, 2014, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

The following definitions are found within §17-372 of the Zoning Ordinance:

Sexual device means any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.

Sexually oriented business means an "adult arcade," an "adult bookstore or adult video store," an "adult cabaret," an "adult motel," an "adult motion picture theater," "escort agency," a "semi-nude model studio," or a "sexual device shop."

The Zoning Administrator stated that he "conducted a site visit at Taboo on January 28, 2016 and observed an open establishment that, based on the sexual device inventory displayed, met the definition of a sexually oriented business and a sexual device shop. Predominately displayed were various three dimensional objects designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for

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

16-010-AA

sadomasochistic use or abuse of oneself or others, and also included devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organ." Photographic evidence of the site visit, date stamped January 28, 2016, was provided to the Board and the applicant during the hearing and is included as part of the record as Exhibit B.

Conclusions of Law:

Pursuant to the power and duties of the Board of Zoning Appeals to review administrative decisions and determinations (§17-112), we have heard the testimony and reviewed the Applicant's request for administrative appeal, and find that adequate evidence has been presented that sexual devices have been predominately displayed per the definition for a sexually oriented business and a sexual device shop found in §17-372, the facts and the legal issues have been explored and that the decision that the Zoning Administrator made in his letter of January 28, 2016 was correct based on the facts.

Therefore, based on the foregoing, the Board of Zoning Appeals concludes that the decision of the Zoning Administrator as described above is hereby **AFFIRMED**.

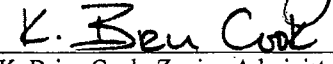
Upon a motion to deny the administrative appeal:

Voting Aye: Hubbard, McKnight, Salley, Young, McMeekin, and Williams.

Voting Nay: None.

Absent: Gregg.

AND IT IS SO ORDERED!

	<u>5/10/16</u>
Chuck Salley, Board Chairman	Date
	<u>5/3/16</u>
K. Brian Cook, Zoning Administrator	Date

Date Mailed to Applicant
and Other Parties of Interest:

5/11/16 ATL

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

16-010-AA

Board of Zoning Appeals)

City of Columbia)

ORDER

ON AN ADMINISTRATIVE APPEAL

Date Heard: April 12, 2016

Case Number: 16-011-AA

Subject Property: 4716 Devine Street (TMS#13814-09-02)

Zoning District: C-3, -FP (General Commercial district within a Flood Protective Overlay)

Applicant: Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore)

Other Parties in Interest: None.

The City of Columbia Board of Zoning Appeals held a public hearing on April 12, 2016 to consider the appeal for administrative review of Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore), Applicant, pursuant to §17-111 and §17-112; and §17-371, §17-372, §17-373, and §17-374 of the City of Columbia Code of Ordinances.

The applicant alleges that the Zoning Administrator did err by "refusing to accept Taboo's application for special exception, the granting of which the Board of Zoning Appeals is authorized under §6-29-800 (a)(3); and also by the Zoning Administrator's refusal to schedule a pre-hearing conference, which is prerequisite to such applications, per his letter dated February 26, 2016: 'Please be advised that neither a Variance nor a Special Exception is applicable in the case, and applications for same cannot be processed. City Code §17-374(a).' See also Zoning Administrator's email dated February 26, 2016: 'Your administrative appeal request before the Board of Zoning Appeals will be scheduled for April 12th 2016 at 10:00 at 1737 Main Street (Council Chambers). A pre-hearing conference is not required.'"

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

Findings of Fact:

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

The subject property, 4716 Devine Street, TMS # 13814-09-02, is located in the City of Columbia, South Carolina, and is within the C-3 (General Commercial) zoning district.

In a letter dated February 26, 2016, the Zoning Administrator returned fees and applications to the applicant. These applications and fees were for a variance request and special exception request for Taboo Adult Superstore, a sexual device shop and sexually oriented business. This letter stated that the application for special exception could not be processed. The applicant filed for appeal on March 1, 2016, within 30 days of the February 26 letter.

South Carolina Code §6-29-800(A)(3) states that the board of appeals has the power "to permit uses by special exception subject to the terms and conditions for the uses set for

such uses in the zoning ordinance". Amongst the location requirements for sexually oriented businesses contained within the Zoning Ordinance of the City of Columbia, §17-374(b) states that, "a person commits a misdemeanor if he operates or causes to be operated a sexually oriented businesses outside a designated M-1 or M-2 district..." The subject property is within the C-3 district, not within either the M-1 or M-2 district, and as such is not permissible at the location.

Further, §17-374(a) states that no variance or special exception regarding any of the location requirements for sexually oriented businesses may be granted by the board, and no other section of the Zoning Ordinance of the City of Columbia allows a sexually oriented business to be permitted by special exception.

The Zoning Administrator testified that the language regarding a pre-application conference was part of the special exception application, was optional, and not part of an application for administrative appeal. The application for special exception could not be accepted and the reasoning for that decision was provided to the applicant in writing. Letters and emails were exchanged between the Zoning Administrator and applicant regarding the applications for administrative appeal.

Conclusions of Law:

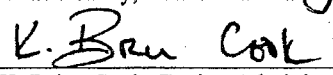
Pursuant to the power and duties of the Board of Zoning Appeals to review administrative decisions and determinations (§17-112), we have heard the testimony and reviewed the Applicant's request for administrative appeal, and find it clear that the Zoning Ordinance of the City of Columbia does not permit a special exception to be granted for a sexually oriented business. As the duties of the Board include hearing and deciding only the applications for special exception the Board of Zoning Appeals is specifically authorized to pass upon by terms of the Zoning Ordinance of the City of Columbia, the decision of the Zoning Administrator to not process a special exception application for a sexually oriented business is correct.

Therefore, based on the foregoing, the Board of Zoning Appeals concludes that the decision of the Zoning Administrator as described above is hereby **AFFIRMED**.

Upon a motion to deny the administrative appeal:

Voting Aye: Hubbard, Young, Salley, McKnight, McMeekin, and Williams.
Voting Nay: None.
Absent: Gregg.

AND IT IS SO ORDERED!

	5/10/16
Chuck Salley, Board Chairman	Date
	5/3/16
K. Brian Cook, Zoning Administrator	Date

Date Mailed to Applicant
and Other Parties of Interest:

5/11/16 ATL

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

16-011-AA

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2016CP4003478**

Cricket Store 17

City Of Columbia Board of Zoning Appeals

Taboo

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Scott Bergthold is admitted pro hac vice.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge Scott BergtholdJudge Code 2164Date Jan 26, 17

For Clerk of Court Office Use Only

This judgment was entered on the 1 day of Feb, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 2 day of Feb, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas R. Goldstein

Peter M Balthazor

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W McBride

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Cricket Store 17, L.L.C.,
d/b/a/ Taboo)

Plaintiff,)

vs.)

City of Columbia Board of Zoning Appeals)

Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 16-CP-40-3478

**ORDER GRANTING ATTORNEY
SCOTT D. BERGTHOLD
ADMISSION *PRO HAC VICE***

RICHLAND COUNTY
FILED
2017 FEB - 1 PM 12:46
J. ROBERT E. HOOD
CLERK OF COURT
S.C.

This matter is before the Court on Defendant's motion, pursuant to SC Rule 404, for the admission *pro hac vice* of attorney Scott Dean Bergthold. Having considered the motion, the Verified Application for Admission *Pro Hac Vice*, the arguments of counsel at the October 28, 2016 hearing, and related correspondence, the Court hereby **GRANTS** same.

Re Hood

Hon. Robert E. Hood
Richland County Court of Common Pleas

Jan 26, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2016CP4003478**

Cricket Store 17

City Of Columbia Board of Zoning Appeals

Taboo

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration awards; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 9 day of Sept, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas R. Goldstein

Peter M Balthazor

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Janette W. White

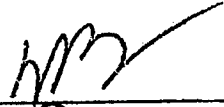
STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Cricket Store 17, L.L.C.,)
d/b/a/ Taboo)
)
Plaintiff,)
)
vs.)
)
City of Columbia Board of Zoning Appeals)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 16-CP-40-3478

ORDER GRANTING ATTORNEY
SCOTT D. BERGTHOLD
ADMISSION *PRO HAC VICE*

RICHLAND COUNTY
FILED
2016 SEP -1 PM 3:16
JEANETTE W. MCBRIDE
CLERK, S.C. JUD. S.

This matter is before the Court on Defendant's motion, pursuant to SC Rule 404, for the admission *pro hac vice* of attorney Scott Dean Bergthold. Having considered the motion and the attached Verified Application for Admission *Pro Hac Vice* in the State of South Carolina, the Court hereby GRANTS same.



Hon. DeAndrea Benjamin
Richland County Court of Common Pleas

LAW OFFICE OF SCOTT D. BERGTHOLD, PLLC
GENERAL ACCOUNT

2290 OGLETHREE AVE., SUITE 106
CHATTANOOGA, TN 37421
423-899-3025

FIRST CITIZENS BANK

6368

07-037/640

327
CHECK NUMBER

8/10/2016

PAY TO THE ORDER OF South Carolina Supreme Court

\$**250.00

Two Hundred Fifty and 00/100***** DOLLARS

South Carolina Supreme Court

MEMO

Pro Hac Vice Fee - Scott D. Bergthold

Laura G. Crow
AUTHORIZED SIGNATURE

⑈006368⑈ ⑆064008970⑆009020053274⑈

GENERAL ACCOUNT

6368

South Carolina Supreme Court

Pro Hac Vice Fee - Scott D. Bergthold

8/10/2016

250.00

PLLC General Account Pro Hac Vice Fee - Scott D. Bergthold

250.00

Applicant Name: *Pete M. Bokhazoe* OKAY FOR SIGNATURE ☒
Case Name: *Cricket Store 17 LLC vs. City of Columbia Board of Zoning Appeals*
Case No.: *2014 CP 40 03478*

PRO HAC VICE ADMISSIONS

See Rule 404, SCACR

- ☒ Motion made with \$25 filing fee
- ☒ Regular member of SC Bar associated with person—check on attorney search to make sure it is a person in good standing
- ☒ Proposed Order
- ☒ Application form attached. Should all be on form, but Rule requires it to contain
 - o (1) the applicant's residence and office addresses;
 - o (2) the state and federal courts to which the applicant has been admitted to practice and the dates of admission;
 - o (3) whether the applicant is a member in good standing in those courts, and a certificate of good standing of the Bar of the highest court of the state or the District of Columbia where the applicant regularly practices law;
 - o (4) whether the applicant is currently suspended or disbarred in any court, and if so, a description of the circumstances under which the suspension or disbarment occurred;
 - o (5) whether the applicant has been formally notified of any complaints pending before a disciplinary agency in any jurisdiction and, if so, provide a detailed description of the nature and status of any pending disciplinary complaints;
 - o (6) an identification of all law firms with which the applicant is associated and a description of all the applicant's pending pro hac vice appearances in South Carolina to include the name and address of the tribunal;
 - o (7) the names of each case or proceeding in South Carolina in which the applicant has filed an application to appear as counsel pro hac vice, the name and address of the tribunal, the date of each application, and whether it was granted; and
 - o (8) an affirmation that the applicant will comply with the applicable statutes, law and procedural rules of the State of South Carolina; be familiar with and comply with the South Carolina Rules of Professional Conduct; and submit to the jurisdiction of the South Carolina courts and the South Carolina disciplinary process.
- ☒ Must be certification by the Clerk of the Supreme Court that application was received by them. Supreme Court sends the certification to our clerk's office. Call the Supreme Court's Office of Bar Admissions at (803) 734-1080 and ask if they have seen and signed off on this person/case.

RILEY POPE & LANEY, LLC
ATTORNEYS AND COUNSELORS AT LAW

TELEPHONE
(803) 799-9993

2838 DEVINE STREET
POST OFFICE BOX 11412 (29211)
COLUMBIA, SOUTH CAROLINA 29205

FACSIMILE
(803) 239-1414

August 17, 2016

Richland County Clerk of Court
The Honorable Jeanette W. McBride
Post Office Box 2766
Columbia, South Carolina 29202-2766

Re: Cricket Store 17, L.L.C. vs. City of Columbia Board of Zoning Appeals
Calendar No.: 16-CP-40-03478
Our File No.: 5253.00114

Dear Ms. McBride:

Please find enclosed for filing, an original and one copy of a Motion for Admission *Pro Hac Vice* in the above-referenced matter. The motion is being submitted along with the original completed Verified Application for Admission *Pro Hac Vice* as required by Rule 404, SCACR. Under separate cover, we have already provided a copy of the Verified Application to the Supreme Court Office of Bar Admissions along with the admission fee of \$250.

Please file this motion, and return a file-stamped copy in the self-addressed stamped envelope.

Sincerely,


Peter M. Balthazor

PMB/krb
Enclosures

cc: Scott D. Bergthold, Esquire
Law Office of Scott D. Bergthold, PLLC
2290 Ogletree Avenue, Suite 106
Chattanooga, Tennessee 37421-8828

Thomas R. Goldstein, Esquire
Belk Cobb Infinger & Goldstein, PA
Post Office Box 71121
Charleston, South Carolina 29415-1121

STATE OF SOUTH CAROLINA
COUNTY OF Richland
Cricket Store 17, L.L.C. d/b/a Taboo

Plaintiff,

vs.

City of Columbia
Board of Zoning Appeals

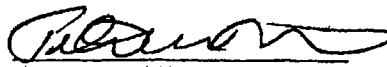
Defendant.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 26-CP-40-3478

MOTION IN SUPPORT OF
PRO HAC VICE APPLICATION

RICHLAND COUNTY
FILED
2006 SEP -1 PM 3:16
JEANETTE W. MCOWEN
CLERK, P. & S.

COMES NOW Defendants City of Columbia Board of Zoning Appeals, by its undersigned counsel and pursuant to SC Rule 404, and moves the Court for an order that Scott Dean Bergthold be admitted *pro hac vice* in the above-captioned case. Mr. Bergthold's Verified Petition for Admission *Pro Hac Vice* in the State of South Carolina is attached hereto and incorporated by reference.



Peter M. Balthazor
S.C. Bar #: 68244

Riley, Pope, and Laney LLC
2838 Devine St.
Columbia, South Carolina 29205

Attorney for the Defendants,
Columbia, South Carolina

pd
9-1-16
mm

**VERIFIED APPLICATION FOR ADMISSION *PRO HAC VICE*
IN THE STATE OF SOUTH CAROLINA**

Cricket Store 17, L.L.C. 16-CP-40-3478 Richland County Court of Common Pleas
Plaintiff Case No. Tribunal

vs.

Mailing Address of Tribunal: 1701 Main Street, Room 205
City of Columbia Board of Zoning Appeals P. O. Box 2766
Defendant Columbia, SC 29202

Comes now Scott D. Berothold, applicant herein, and respectfully represents the following:

1. Applicant resides at:
534 Turtle Crossing
Street Address
Ooltewah Hamilton Tennessee 37363
City County State Zip Code
Telephone

2. Applicant is an attorney and a member of the law firm of (or practices law under the name of)
Law Office of Scott D. Bergthold, PLLC, with offices at
2290 Ogletree Avenue, Suite 106
Street Address
Chattanooga Hamilton Tennessee 37421
City County State Zip Code
423-899-3025 423-802-9459 423-899-3029 sbergthold@sdblawfirm.com
Primary Telephone Cell Phone Fax Number Email Address

3. Applicant has been retained personally or as a member of the above-named law firm by
City of Columbia Board of Zoning Appeals to provide legal representation in connection with the above case now pending before the above-named tribunal of the State of South Carolina.

4. Since April of 2004, applicant has been, and presently is, a member in good standing of the bar of the highest court of the District of Columbia or the State of Tennessee where applicant regularly practices law. Attached is a certificate of good standing dated within the last 90 days from the bar of the highest court of the District of Columbia or the State where applicant regularly practices law.

5. Applicant has been admitted to practice before the following courts: (List all of the following courts applicant has been admitted to practice before: United States District Courts; United States Circuit Courts of Appeals; the Supreme Court of the United States; and courts of other states or the District of Columbia.)

Court:	Date Admitted:
See Attached	

Court:	Date Admitted:

Applicant is presently a member in good standing of the bars of those courts listed above, except as listed below: (List any court named in the preceding paragraph that applicant is no longer admitted to practice before.)

6. Applicant presently is not subject to any suspension or disbarment proceedings, and has not been formally notified of any complaints pending before a disciplinary agency, except as provided below (give particulars, e.g., jurisdiction, court date):

7. Applicant never has had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked, except as provided below (give particulars, e.g., date, court, docket number, judge, circumstances; attach a copy of any order of denial or revocation):

8. Applicant never has had any certificate or privilege to appear and practice before any court or administrative body suspended or revoked, except as provided below (give particulars, e.g., date, court, administrative body, date of suspension and reinstatement):

9. Local counsel of record associated with applicant in this case is Peter M. Balthazor
of the Riley, Pope, and Laney, LLC law firm, which has offices at:

2838 Devine Street
Street Address
Columbia Richland South Carolina 29205
City County State Zip Code
803-223-9791 803-467-9003 803-239-1414 peteb@rplfirm.com
Primary Telephone Cell Phone Fax Number Email Address
No. 68244
South Carolina Bar Number

10. Applicant has previously filed an application to appear *pro hac vice* in the following South Carolina cases (give case name and status of litigation, date of application, local counsel of record in each case, and state whether application is pending or was granted).

See Attached

11. Applicant agrees to comply with the applicable statutes, laws and rules of the State of South Carolina and will familiarize him/herself with and comply with the South Carolina Rules of Professional Conduct. Applicant consents to the jurisdiction of the South Carolina courts and Commission on Lawyer Conduct.

12. Applicant respectfully requests to be admitted to practice in the above-named tribunal for this case only.

DATED this 10th day of August, 20 16



APPLICANT

VERIFICATION

STATE OF Tennessee

COUNTY OF Hamilton

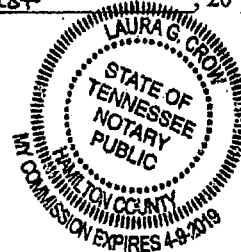
I, Scott D. Berghold, do hereby swear and affirm under penalty of perjury that I am the applicant in the above-styled matter; that I have read the foregoing application and know the contents thereof; and that the contents are true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe them to be true. I understand that I am under a continuing duty to promptly update the information provided in the application until the tribunal has ruled on the motion for admission pro hac vice. Further, if the motion is granted, I understand that I am under a continuing duty to promptly update the information provided in the application as long as I continue to appear pro hac vice in the action or proceeding. Any updated information shall be provided to both the tribunal that granted the motion and to the tribunal in which the action or proceeding may then be pending.

[Signature]
APPLICANT/AFFIANT

Subscribed and sworn to before me this 10th day of August, 20 16

Laura G. Crow
Notary Public for the State of Tennessee

My Commission Expires: 4-9-2019



LOCAL COUNSEL CONSENT

I hereby consent, as local counsel of record, to the association of applicant in this cause pursuant to Rules Governing Admission *Pro Hac Vice* to the South Carolina Bar.

DATED this 17 day of August, 20 16

[Signature] Peter M. Balthazor #68244
LOCAL COUNSEL OF RECORD

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this application upon the South Carolina Supreme Court by mail addressed to: South Carolina Supreme Court Office of Bar Admissions, PO Box 11330, Columbia, SC 29211, accompanied by payment of the \$250 filing fee payable to the South Carolina Supreme Court on this

17 day of August, 20 16

[Signature]
APPLICANT/AFFIANT

5. Scott D. Bergthold is a member in good standing in the following courts:

Court	Date Admitted
Supreme Court of Arizona	October 18, 1997
Supreme Court of Tennessee	April 22, 2004
Supreme Court of Georgia	January 21, 2014
Supreme Court of the United States	November 28, 2000
U. S. Court of Appeals – Second Circuit	June 4, 2014
U. S. Court of Appeals – Fourth Circuit	October 17, 2014
U. S. Court of Appeals – Fifth Circuit	August 28, 2002
U. S. Court of Appeals – Sixth Circuit	June 23, 2000
U. S. Court of Appeals – Seventh Circuit	January 27, 1999
U. S. Court of Appeals – Ninth Circuit	January 25, 2000
U. S. Court of Appeals – Tenth Circuit	September 3, 2002
U. S. Court of Appeals – Eleventh Circuit	April 25, 2005
U. S. District Court – District of Arizona	October 28, 2002
U.S. District Court – District of Nebraska	July 24, 2015
U. S. District Court – Western District of Michigan	April 24, 2002
U. S. District Court – Eastern District of Michigan	September 22, 2009
U. S. District Court – Northern District of Ohio	November 20, 2002
U. S. District Court – Northern District of Indiana	December 28, 2001
U. S. District Court – Southern District of Indiana	June 25, 2009
U. S. District Court – Eastern District of Tennessee	October 20, 2005
U. S. District Court – Northern District of Texas	May 2, 2008
U. S. District Court – Western District of Texas	June 16, 2008
U. S. District Court – Northern District of Florida	December 13, 2010
U. S. District Court – Southern District of Illinois	February 24, 2011
U. S. District Court – Northern District of Georgia	November 18, 2013
U.S. District Court – Eastern District of Wisconsin	November 3, 2015

10. Previous *pro hac vice* applications:

Horry County Court of Common Pleas	Date of Application	Local Counsel of Record	Application Pending/Granted
<i>Horry County, SC v. Inlet Gifts LLC</i>	1/28/16	Arrigo Carotti	Granted 4/25/16
<i>Kelvin Lewis, agent for K & T Holdings, LLC</i>	1/12/16	Wesley Covington	Granted 2/24/16

Municipal Hearing	Date of Application	Local Counsel of Record	Application Pending/Granted
<i>IN RE: Cricket Store 17, LLC dba Taboo, Application for Hardship Extension</i>	11/14/13	Peter M. Balthazor	Granted 11/21/13

U.S. District Court Cases	Date of Application	Local Counsel of Record	Application Pending/Granted
<i>Terrie Eddie Land v. The City of Sumter, et al.</i> Case No. 12-02845	1/21/13	Murrell Smith	Granted 1/22/13
<i>MJJG Restaurant, LLC et al. v. Horry County, SC</i> Case No. 13-00885	5/17/13	Michael Battle	Granted 5/23/13
<i>Cricket Store 17, LLC v. City of Columbia</i> Case No. 13-03557	12/27/13	Peter M. Balthazor	Granted 12/30/13
<i>Myrtle Beach Holdings, LLC v Horry County, SC</i> Case No. 14-01127	3/31/14	James R. Battle	Granted 4/1/14

CLERK OF THE SUPREME COURT

STATE OF TENNESSEE

RICHLAND COUNTY
FILED
2016 SEP - 1 PM 3:16
JEANNETTE W. MCARDOE
C.C.P. & G.S.

I, James M. Hivner, Clerk of the Supreme Court, do hereby certify that SCOTT DEAN BERGTHOLD is a licensed and practicing attorney of the Courts of this State, having taken the oath as prescribed by law, is enrolled as an attorney of this Court, and is in good standing. The Supreme Court is the Court of last resort in Tennessee.

Date of Enrollment: April 22, 2004

In testimony whereof, I have set my hand and affixed the seal of the Court on this the 15th day of July, 2016.

James M. Hivner, Clerk

MB Lindsey

By: MaryBeth Lindsey, D.C.

**CERTIFICATE OF THE CLERK OF THE SUPREME COURT
OF THE
STATE OF ARIZONA**

RICH AND COUNTY
FILED
2006 SEP -11 PM 3:55
JEANETTE W. MCCORMIE
Clerk of the Court

I, Janet Johnson, Clerk of the Supreme Court of the State of Arizona, hereby certify that, according to the records of my office and upon the recommendation of the Disciplinary Clerk of the Supreme Court of Arizona

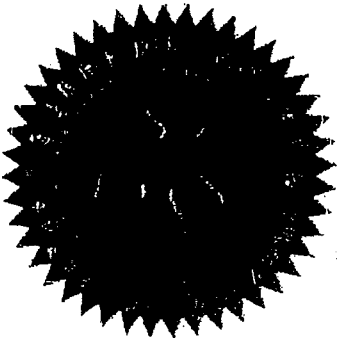
SCOTT DEAN BERGTHOLD

was on the 18th day of October, 1997, duly admitted to practice as an Attorney and Counselor at Law in all the courts of Arizona; that no disciplinary proceedings are pending against this attorney in the Arizona Supreme Court as of the date of this certificate; and that this name now appears on the Roll of Attorneys in this office as an active member of the Bar in good standing.

Given under my hand and the seal of said Court this 28th day of June, 2016.

JANET JOHNSON, Clerk

By Sara Jones
Sara Jones
Deputy Clerk Supervisor

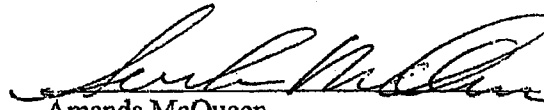


CERTIFICATE OF GOOD STANDING
ISSUED BY THE DISCIPLINARY CLERK
FOR AND ON BEHALF OF
THE SUPREME COURT OF ARIZONA

RICH AND COURT
FILED
2016 SEP -1 PM 3:15
JEANETTE W. MCQUEEN
C.C.P. & S.S.

The Disciplinary Clerk pursuant to Rule 74, Rules of the Supreme Court of Arizona, hereby certifies that according to the records of the State Bar, **SCOTT DEAN BERGTHOLD** duly admitted to practice as an attorney and counselor at law in all courts of Arizona by the Supreme Court of Arizona on October 18, 1997 and is now, as of the date of this Certificate, an active member of the State Bar of Arizona in good standing.

Given under the seal of the Disciplinary
Clerk of the Supreme Court of Arizona
this June 24, 2016.


Amanda McQueen
Disciplinary Clerk



State Bar of Georgia

Lawyers Serving the Public and the Justice System

Mr. Scott Dean Bergthold
Law Office of Scott D. Bergthold PLLC
2290 Ogletree Avenue, Suite 106
Chattanooga, TN 37421

CURRENT STATUS: Active Member-Good Standing
DATE OF ADMISSION: 09/24/2013
BAR NUMBER: 202030
TODAY'S DATE: 06/20/2016

Listed below are the public disciplinary actions, if any, which have been taken against this member:

State Disciplinary Board Docket #	Supreme Court Docket #	Disposition	Date
N/A	N/A	N/A	N/A

The prerequisites for practicing law in the State of Georgia are as follows:

- Certified by the Office of Bar Admissions, either by Exam, or on Motion (Reciprocity).
- Sworn in to the Superior Court in Georgia, highest court required to practice law in Georgia.
- Enrolled with the State Bar of Georgia, arm of the Supreme Court of Georgia.

Attorneys licensed in Georgia and whose current status is Active are eligible to practice law in Superior Court. Attorneys may, upon application, apply for admission to the Supreme, District and State Court of Appeals.

Under the privacy/confidentiality provision of the Bar Rule 4-221(d), any complaint against a member resolved prior to the filing and docketing of a disciplinary case in the Supreme Court is not a matter of public record, and may not be revealed without a waiver from the member. It is the policy of the State Bar of Georgia to answer any inquiry about a member by disclosing only those complaints that have been docketed in the Supreme Court. With respect to matters that are currently pending as active, undocketed cases, when an inquiry is received, the State Bar of Georgia shall not disclose the existence of those complaints. Such non-disclosure should not be construed to confirm the existence of confidential complaints since the vast majority of members in good standing are not the subjects of such confidential complaints.

This member is currently in "good standing" as termed and defined by State Bar Rule 1-204. The member is current in license fees and is not suspended or disbarred as of the date of this letter.



STATE BAR OF GEORGIA

Brinda Lovvorn

Official Representative of the State Bar of Georgia

HEADQUARTERS
104 Marietta St. NW, Suite 100
Atlanta, GA 30303-2743
404-527-8700 • 800-334-6865
Fax 404-527-8717
www.gabar.org

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Savannah, GA 31401-1225
912-239-9910 • 877-239-9910
Fax 912-239-9970

SOUTH GEORGIA OFFICE
244 E. 2nd St. (31794)
P.O. Box 1390
Tifton, GA 31795-1390
229-387-0446 • 800-330-0446
Fax 229-382-7435

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Cricket Store 17, L.L.C. d/b/a Taboo,

Plaintiff,

v.

City of Columbia Board of Zoning Appeals,

Defendant,

and

City of Columbia Zoning Administrator,

Counterclaimant,

v.

Cricket Store 17, L.L.C. d/b/a Taboo,

Counterdefendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-03478

RICHLAND COUNTY
FILED
2017 FEB -6 PM 4:47
JEANETTE L. GORDON
C.C.P. & G.S.

ORDER AFFIRMING ZONING BOARD DECISIONS

This case presents two appeals from decisions reached by Defendant City of Columbia Board of Zoning Appeals (the "Board" or "BOZA"). Plaintiff Cricket Store 17, L.L.C. d/b/a Taboo ("Taboo") appealed the decisions to this Court, and the BOZA provided the complete administrative record of the April 12, 2016 hearing before the Board.¹ In October 2016, the parties submitted briefs on the appeals, and the Court heard oral argument. In January 2017, a transcript of the April 12, 2016 BOZA hearing was provided to the Court. Based on the record, and for the following reasons, the Court affirms both of the decisions reached by the Board.

¹ The Board's July 2016 answer included a counterclaim by the City of Columbia Zoning Administrator seeking injunctive relief against Taboo, but that counterclaim is not the subject of this order.

I. Procedural Background

In late 2011, Taboo obtained a general business license and opened its “adult superstore” at 4716 Devine Street. On December 29, 2011, the City of Columbia adopted a sexually oriented business licensing ordinance with location restrictions, and on November 13, 2012, adopted updated sexually oriented business zoning regulations. *Cricket Store 17, L.L.C. v. City of Columbia*, 996 F. Supp. 2d 422, 424-426 (D.S.C. 2014). Taboo did not conform to the location regulations, but was allowed to amortize its investment and move to a conforming location by December 31, 2013. *Id.* at 426; *see also Bugsy’s, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 97 (2000) (upholding similar amortization period for nonconforming uses); *Centaur, Inc. v. Richland County*, 301 S.C. 374 (1990) (same). Taboo applied to extend the amortization period, but an independent hearing officer held that Taboo failed to show that it had not reasonably recouped its investment, and denied the application. *Cricket Store 17*, 996 F. Supp. 2d at 426.

Taboo sued in federal court. In detailed orders, the federal court upheld the City’s ordinances, ruling against Taboo at the preliminary injunction stage, *id.* at 438, at summary judgment, *Cricket Store 17, L.L.C. v. City of Columbia*, 97 F. Supp. 3d 737 (D.S.C. 2015), and on post-judgment motions. *Cricket Store 17, L.L.C. v. City of Columbia*, No. 3:13-3557, 2016 WL 81807 (D.S.C. Jan. 7, 2016). On January 25, 2017, the U.S. Court of Appeals for the Fourth Circuit affirmed summary judgment. *Cricket Store 17, L.L.C. v. City of Columbia*, No. 16-1065, Doc. 48 (4th Cir. Jan. 25, 2017).

Meanwhile, on January 28, 2016, the Zoning Administrator provided a letter to Taboo stating that Taboo would be required to comply with the City’s sexually oriented business

regulations. (No. 16-010-AA_0030). The letter indicated that Taboo would be cited for ordinance violations if it did not comply with the regulations. (*Id.*)

II. Factual Background and BOZA Cases

~~This action concerns two separate cases heard by BOZA on April 12, 2016.~~

The first case (No. 16-010-AA) alleges that by issuing the January 28, 2016 letter, “the Zoning Administrator did err by ‘arbitrarily requiring Taboo to comply strictly with ordinance regulations . . . rather than to allow Taboo continued operation as a nonconforming use.’” Order on an Administrative Appeal, No. 16-010-AA_007 (*see* 16-010-AA_0023). Plaintiff’s sexually-oriented business is located within a C-3 (General Commercial) district. (16-010-AA_0019 and 0020). Sexually-oriented businesses are not permitted in a C-3 zoning district. *Id.* City Code § 17-374(b). The Zoning Administrator conducted a site visit on January 28, 2016, took pictures inside the establishment, and concluded that Taboo met the definition of a sexual device shop. (16-010-AA_0012 – 0019). After hearing the evidence, the Board concluded that “the decision of the Zoning Administrator made in his letter of January 28, 2016 was correct based on the facts.” (16-010-AA_0009).

The second case (No. 16-011-AA) alleges “that the Zoning Administrator did err by: ‘refusing to accept Taboo’s application for special exception’” on the grounds that Columbia City Code § 17-374(a) prohibits the granting of a variance or special exception to a sexually oriented business. (16-011-AA_0007, _0009, _0013-0015). South Carolina Code § 6-29-800(A)(3) states that the Board has the power “to permit uses by special exception *subject to the terms and conditions for the uses set for such uses in the zoning ordinance.*” S.C. Code Ann. § 6-29-800 (Supp. 2015) (emphasis added). Section 17-374(a) of the Columbia zoning ordinance states that no variance or special exception shall be granted for a sexually oriented business. (16-

011-AA_0030). Thus, the Board concluded that “the decision of the Zoning Administrator to not process a special exception application for a sexually oriented business is correct.” (16-011-AA_0007 – 0008)

III. Standard of Review

South Carolina Code § 6-29-840(A) specifies that “[t]he findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. . . . In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law.”

Section 6-29-840 is very deferential to a zoning board’s findings of fact as it equates them to a jury’s findings. *Williams v. Lexington County Bd. of Zoning Appeals*, 413 S.C. 647, 652 (Ct. App. 2015). In other words, the court must not disturb the board’s findings of fact unless there is no evidence reasonably supporting the board’s decision. *See Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 479-480 (2005) (“[A] factual finding of the jury will not be disturbed unless a review of the record discloses there is no evidence which reasonably supports the jury’s findings.”). “Courts are bound to afford substantial deference to the decisions of those charged with interpreting and applying local zoning ordinances.” *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 465 (Ct. App. 2004), *aff’d*, 372 S.C. 230 (S.C. 2007). A court will not substitute its judgment for that of the reviewing body, even if it disagrees with the decision. *Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 216 (1999).

IV. Law and Analysis

Taboo sued the City in federal court at the end of the amortization period set forth in the City’s zoning ordinance. After the federal district court ruled against all of Taboo’s claims against the ordinance, the Zoning Administrator personally visited the site, took pictures of a

multitude of sexual devices, and issued a letter on January 28, 2016, notifying Taboo that it would need to come into compliance with the zoning ordinance. Taboo appealed to the Board, but failed to provide evidence that the Zoning Administrator's January 28, 2016 letter was erroneous or arbitrary based on the facts.

Indeed, Taboo's entire argument was that it was being required to *comply* with the sexually oriented business zoning regulations, rather than continuing to operate in violation as a nonconforming use. (16-010-AA_0030). But the federal court rejected Taboo's challenges to the City's application of its ordinances to Taboo, and the Fourth Circuit has recently affirmed that ruling. That final judgment in federal court is res judicata to Taboo's claims against the City's enforcement of the ordinance against its sexual device shop.

"[R]es judicata[, which] is more commonly referred to simply as claim preclusion . . . bars plaintiffs from pursuing a later suit where the claim (1) was litigated or (2) could have been litigated." *Catawba Indian Nation v. State*, 407 S.C. 526, 537 (2014) (citations omitted). Taboo was not entitled to continue operating a nonconforming sexually oriented business in violation of the zoning ordinance, and it was not entitled to a special exception from the zoning ordinance's requirements. Those claims have already been litigated, or could have been litigated, in the prior federal action that resulted in a final judgment adverse to Taboo.

In the first appeal, 16-010-AA, the Zoning Administrator presented evidence that Taboo was not in compliance with the City's regulations. The Zoning Administrator informed the Board that he delivered a letter to Taboo on January 28, 2016. (See DVD of Board hearing starting at time marker 42:50; 16-010-AA_0030). The Zoning Administrator presented facts, which were considered and accepted by the Board, showing that Taboo was operating as a sexual device shop on January 28, 2016. The Zoning Administrator described the inventory displayed in

Taboo during his site visit of January 28, 2016, and he presented to the Board photographs showing that inventory as it was displayed in Taboo on January 28, 2016. (16-010-AA_0012 – 0017; Apr. 12, 2016 Hrg. Tr. 29:10-23; 30:11-31:11.)

Because evidence in the record supports the Board's decision—which is entitled to substantial deference—and because Taboo has shown no error of law, the Court affirms the Board's decision upholding the Zoning Administrator's determination.

At the Board hearing, Taboo sought to invoke a section of the City's sexually oriented business *licensing* ordinance that provides for a provisional license, (Apr. 12, 2016 Hrg. Tr. 4:11-5:5), but that section of the City Code has no relevance here. First, the licensing ordinance is not within the jurisdiction of either the Zoning Administrator or the Board of Zoning Appeals. Second, that section applies only to a business that is lawfully operating as a sexually oriented business on the date that it files an application for a sexually oriented business license. But Taboo was not lawfully operating a sexually oriented business on January 28, 2016 (more than two years after its amortization period expired), nor did Taboo apply for, or suffer the denial of, a sexually oriented business license. Thus, the Board correctly refused to entertain an issue that was (1) outside of the zoning ordinance and the Board's jurisdiction, and (2) unsupported by any record evidence.

In the second appeal, 16-011-AA, Taboo attempted to apply for a special exception to operate a sexually oriented business. The application was returned to Taboo as unprocessed by the Zoning Administrator because the City's zoning ordinances do not allow a special exception to be granted regarding any of the requirements of the sexually oriented business regulations. (16-011-AA_0021; 16-011-AA_0030). Taboo asserted that the Zoning Administrator erred by refusing to accept the application for special exception.

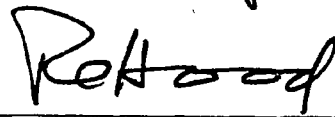
The Board denied Taboo's appeal and correctly found that the Board was not permitted to grant special exceptions for sexually oriented businesses. The Board's determination was correct because the zoning ordinance authorizes the Board to hear only the applications for special exceptions that the Board is specifically authorized to pass upon by the terms of the zoning ordinance. (City Code § 17-112; 16-011-AA_0032) The Board's enabling statute provides that a board of zoning appeals has the authority only to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance. S.C. Code Ann. § 6-29-800(A)(3) (Supp. 2015). The City, through its zoning ordinances, has decided not to give the Board the authority to permit special exceptions for sexually oriented businesses.

Therefore, the Board correctly applied the City's zoning ordinances to uphold the Zoning Administrator's decision to return the special exception application as unprocessed.

V. Conclusion

For the reasons stated in the Board's written orders, and for those stated herein, the Court affirms the orders below.

SO ORDERED, THIS 1 DAY OF February, 2017.



Judge Robert E. Hood

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Cricket Store 17, L.L.C. d/b/a Taboo,

Plaintiff,

v.

City of Columbia Board of Zoning Appeals,

Defendant,

and

City of Columbia Zoning Administrator,

Counterclaimant,

v.

Cricket Store 17, L.L.C. d/b/a Taboo,

Counterdefendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-03478

RICHLAND COUNTY
FILED
2017 MAR -2 PM 12:01
JEANETTE A. BARNES
C.C.J. & CLERK

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

This matter comes before the Court by way of Plaintiff's Motion for Reconsideration filed February 15, 2017. Specifically, Plaintiff asks this Court to reconsider its February 1, 2017 Order Affirming Zoning Board Decisions and its January 26, 2017 Order Granting Attorney Scott D. Bergthold Admission *Pro Hac Vice*.

After careful consideration of the record and the submissions of the parties, the Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact. Accordingly, the Court hereby **DENIES**

Plaintiff's Motion for Reconsideration. Furthermore, pursuant to Rule 59(f), SCRCP, the Court concludes that oral argument is not necessary.

SO ORDERED, THIS 22 DAY OF February, 2017.

ReHood

Judge Robert E. Hood





We Are Columbia

Planning and Development Services • Zoning Division

1136 Washington Street, Columbia, SC 29201 • Phone: 803-545-3333 • Fax: 803-733-8699

VIA HAND DELIVERY

January 28, 2016

Jeff White
Taboo Adult Superstore
4716 Devine St.
Columbia, SC 29209

RE: Required Compliance with Zoning Ordinance

Mr. White,

On January 7, 2016, the U.S. District Court rejected Taboo's remaining claims against the City of Columbia's sexually oriented business regulations. Thus, Taboo is required to comply with these regulations, which it has unsuccessfully challenged since 2013, by February 5, 2016.

If Taboo fails to comply by that date, it will be cited for operating a sexual device shop in violation of the Zoning Ordinance. Taboo may also be cited for any other violations of the City Code occurring on the premises. Please note that violations of the Zoning Ordinance are punishable by a fine of up to \$500.00 or by imprisonment of up to 30 days, or both. Columbia City Code § 1-5(a). Additionally, each day of violation is a separate offense. Columbia City Code § 1-5(b).

Thank you for your attention to this matter.

Sincerely,

K. Brian Cook
Zoning Administrator



We Are Columbia

Planning and Development Services • Zoning Division

1136 Washington Street, Columbia, SC 29201 • Phone: 803-545-3333 • Fax: 803-733-8699

VIA EMAIL

jeffreyfromco@msn.com

February 1, 2016

Jeff White
Taboo Adult Superstore
4716 Devine St.
Columbia, SC 29209

RE: Required Compliance with Zoning Ordinance

Mr. White,

Thank you for your email on 1/28/16 (attached). The judicial process resulted in a federal court judgment upholding the City's ordinances. Taboo's filing of an appeal of that judgment does not excuse ongoing violations of the City's ordinances. Per my prior correspondence (attached), the City intends to enforce its ordinances beginning February 5, 2016, and asks that you comply by that date.

Sincerely,

K. Brian Cook

K. Brian Cook
Zoning Administrator



SPECIAL EXCEPTION APPLICATION

CITY OF COLUMBIA BOARD OF ZONING APPEALS

Applications for Special Exception are due on or before 4:00pm on the due date (see attached calendar). Please review the following checklist to ensure that your application is complete. You should schedule a pre-application conference with staff (803-545-3333) prior to the application deadline to discuss your specific case and its requirements. **Failure to submit a complete application or to provide requested documentation may result in your application being returned or your case scheduled for a later date.**

- ☐ Completed and Signed Application
- ☐ Letter of Agency (*if applicant is not the property owner*)
- ☐ Calendar (*included in this packet for your information*)
- ☐ Application Fee
 - o \$50 for residential applications
 - o \$75 for commercial applications (projects valued under \$50,000)
 - o \$125 for commercial applications (projects valued \$50,000 or more)
- ☐ Supporting Materials, i.e.:
 - o Site Plan
 - o Plat of property
 - o Photographs

Staff Contact:
Andrew Livengood
Deputy Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, SC 29201

803-545-3333
www.columbiaplanning.net
atlivengood@columbiasc.net

OFFICE USE ONLY:

Date Received _____
Staff _____
Fee Paid _____

Case Number _____ - _____ -SE
Zoning Dist. _____
Overlay _____

Revised October 2013

Property and Applicant Information:Address of Subject Property: 4716 Devine StreetTax Map Number (Example: 12345-67-8910) R13814-09Zoning District: C-3Describe your proposal in detail: See attachedList pertinent section(s) of City of Columbia Zoning Ordinance: See attachedWhat is the current use of the property?: RetailApplicant Name (Please Print): Cricket Store 17 L.L.C. d/b/a TabooName of Company (If applicable): Cricket Store 17 L.L.C. d/b/a TabooAddress: 4716 Devine StreetCity, State, ZIP: Columbia, S.C. 29209Email Address: cricketstore17llc@yahoo.com or tgoldstein@cobblaw.netPhone Number(s) 843 554-4291Are you the property owner? Please circle **Yes** or **No**.
If No, please complete and submit a Letter of Agency.

6. The proposed special exception is consistent with the character and intent of the underlying district as indicated in the zoning district description, with any applicable zoning overlay district goals and requirements.

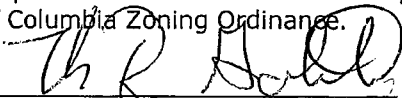
7. The proposed special exception is appropriate for its location and compatible with the permitted uses adjacent to and in the vicinity of the property.

8. The proposed special exception will not adversely affect the public interest.

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

1. I have completely read this application and understand all that it includes.
2. While the members of the Board of Zoning Appeals will carefully review and consider this application, the burden of proving conformance with the criteria for grant of special exception rests with me.
3. The Board of Zoning Appeals conducts public hearings on the second Tuesday of each month in City Council Chambers, 3rd floor of City Hall, 1737 Main Street, Columbia, South Carolina, 29201.
4. The Board of Zoning Appeals will render a written order regarding my application as soon as possible following the public hearing.
5. Any time frames related to an appeal of a decision of the Board of Zoning Appeals shall start from the date that the written and signed Order of the Board is mailed to the applicant.
6. The Board may prescribe appropriate conditions and safeguards in conformity with Ch. 17, including, but not limited to items like the following: (1) hours of operation; (2) landscaping; and (3) screening of activities or structures.
7. Violation of the conditions and safeguards prescribed in conformity with Ch. 17, when made a part of the terms under which a special exception is granted, shall be deemed a violation, punishable under the penalties established therein.
8. Failure to begin or complete an action for which a special exception is required, within the time limit specified, when such time limit is made a part of the terms under which the special exception is granted, shall void the special exception.
9. The proposed use and construction complies or will comply with all other requirements of the City of Columbia Zoning Ordinance.

Signature



Date

February 15, 2016

Print Name

Thomas R. Goltsen

4716 Devine Street, Columbia, SC 29209

Criteria for approval of special exception applications:

1. The proposed special exception will not have a substantial adverse impact on vehicular traffic or vehicular and pedestrian safety and adequate provisions are made in the proposed exception for parking and for loading and unloading.

The continued operation of the business at 4716 Devine Street will not have any adverse impact on traffic and pedestrian safety. Ingress and egress for vehicular traffic has proved more than sufficient since 2011. The business provides more than three times the required parking and includes handicap spaces. Parking is available in front, back, and alongside the building. No incidents have been reported involving vehicles or pedestrians on the property during the years Taboo, the business, has operated.

2. The proposed special exception will not have a substantial adverse impact on adjoining properties in terms of environmental factors such as noise, lights, glare, vibration, fumes, odors, obstruction of air or light, and litter.

Taboo is located on property that borders the banks of Gills Creek. Taboo's business is a particularly well-suited use for this environmentally sensitive property. Its operation produces nothing toxic or potentially toxic to the surrounding area, generates no noise, does not obstruct air or light, and produces zero vibration, fumes, or odors. Taboo's property is well lighted for safety, but not intrusively so. The exterior of the building and parking lot are under constant video surveillance by both on-site and off-site management. If littering, loitering, or any suspicious activity occurs, the operators react to keep the exterior premises safe and clean. Taboo is suited for its use and location for several reasons -- not the least of which is its negligible impact on the Gill Creek area. Taboo's operation produces minimal waste or pollution and requires nothing hazardous be stored on the premises.

3. The proposed special exception will not have a substantial adverse impact on the aesthetic character of the area, to include a review of the orientation and spacing of buildings.

The building is sited on the property's highest point, farthest from the potential (and in 2015, actual) hazard from Gills Creek flooding. Nevertheless, the flood waters from Gills Creek reached Taboo during last

year's floods when waters rose to approximately two feet inside the building, and the creek bank and parking lot were left almost unrecognizable from debris washed from upstream. Despite this hardship, Taboo's owner promptly cleaned the building—and surrounding property—and assisted adjacent property owners with their own clean up. The business was one of the first in the Gills Creek area to reopen, thus avoiding the danger and blight of an unoccupied, boarded up disaster site.

Taboo's building does not cause an adverse impact on the spacing of buildings or the aesthetic character of the area – nor does its use, as indicated by the economic development occurring around it. In fact, the Columbia Board of Zoning Appeals recently granted a special exception to the property immediately adjacent to Taboo (4720 Devine Street) in January 2016 to allow development of a new automotive service business. (See Case No. 15-083-SE, January 12, 2016: "Automotive services, except repair and car washes (SIC 7459) are allowed in the C-3 district by special exception.)

4. The proposed special exception will not have a substantial adverse impact on public safety or create nuisance conditions detrimental to the public interest or conditions likely to result in increased law enforcement response.

From the first day it opened in 2011, Taboo's operators realized they must ensure their customers' and the public's safety and go the extra mile to be a "good neighbor." The owner's best interest is that adjacent businesses and nearby residential neighborhoods are not impacted (negatively) by Taboo's operation. Since 2011, there have been no crimes reported on the subject property. (See City of Columbia's Police Department website screenshots showing no crime reported at Taboo's address during the past year.) The City's fears of any "negative secondary effects" from Taboo are unfounded in fact, and its operation allows for the quiet enjoyment of nearby commercial and residential property owners, as well as the general public. Taboo has proved to be a responsible addition to the area and will continue to monitor and maintain its property to insure its future continued success.

5. The establishment of the proposed special exception does not create a concentration or proliferation of the same or similar types of special exception use, which concentration may be detrimental to the development or redevelopment of the area in which the special exception use is proposed to be developed.

Taboo is the only business of its type in the entire City of Columbia. The granting of a special exception for Taboo's continued use will not create a "proliferation" or "concentration" of similar types. Taboo presents an inarguable record of success operating at 4716 Devine Street—not just commercial success, but as an appropriate addition to the Devine Street area

revitalization. Even the City of Columbia promotes on its website the diverse commercial businesses of Devine Street:

"Devine Street offers a variety of upscale specialty shopping, dining, entertainment, service, and commercial businesses in a neighborhood environment. It's hard to know where to start on this street. Are you looking for art, furniture, backpacking and camping supplies, audio electronics, bicycles or clothing? How about something to eat – fish taco, gyro, braised quail, pizza – maybe sushi? – Come and enjoy a day or night-on-the-town . . . Devine Street."

Taboo is a positive addition to the vibrant Devine Street scene and has been in no way "detrimental to development or redevelopment in the area" since it opened in 2011. Statistically, property in proximity to Taboo's operation has appreciated in value. The City's report, "Devine Street -- Snapshot of the Area" lists the neighborhoods near the intersection of Fort Jackson Boulevard, Devine Street, and Cross Hill Road and includes Shandon, Sherwood Forest, and Hampton Hills, among others. The real estate website Zillow predicts homes in the Sherwood Forest zip code, as an example, will rise 4.4% next year, compared to a 3.8% increase for Columbia as a whole. Likewise, homes in Shandon are predicted to rise 5.8% next year. In Hampton Hills' zip code, home values are predicted to increase 3.9% next year. Neighborhoods near Taboo enjoy higher than average home values.

New economic development is remarkable near Taboo's property since it opened in 2011. Rosewood Crossing opened in August 2015 and is "part of the retail makeover (in) the area east of downtown Columbia starting with the Whole Foods-anchored Cross Hill Market." (The State, December 14, 2015) Whole Foods purchased property near Taboo and opened its first store in the City of Columbia in late 2012. The redevelopment of this area continues at a rapid pace, and the City cannot show any negative effect on this redevelopment by Taboo's existence, considering most of the investment has occurred since Taboo opened in 2011.

Taboo's successful operation over the past four years lends both stability and diversity to the ongoing Devine Street regeneration. Granting Taboo a special exception to continue its current operation meets the City's goal of "retaining existing downtown businesses" and avoids the blight of a vacant storefront -- one of the negative secondary effects the City claims wishing to avoid as it seeks "to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects . . . urban blight . . ." (City of Columbia zoning code, Division 11, Section 17-371)

Hon. Mayor Steve Benjamin serves on the "City Center Partnership" Board of Directors, which states the Board's purpose, to "oversee the organization's

mission – to focus on filling vacancies in commercial properties, retaining existing downtown businesses and recruiting new ones.” (City Center Partnership website) Granting a special exception for Taboo’s continued operation avoids creating a commercial storefront vacancy and retains a stable, existing downtown business.

6. The proposed special exception is consistent with the character and intent of the underlying district as indicated in the zoning district description, with any applicable zoning overlay district goals and requirements.

The C-3 district is intended to allow a variety of general commercial and nonresidential uses characterized primarily by retail, office, and service establishments oriented primarily to major traffic arteries or extensive areas of predominantly commercial usage and characteristics. Importantly, “certain . . . uses are . . . permissible as special exceptions subject to restrictions and requirements intended to best fulfill the intent of this article.” (City of Columbia, SC zoning code, Section 17-240, C-3 General Commercial District) “Long, narrow strips of commercial development fronting on major arteries” are discouraged. Taboo’s property includes a relatively small, stand-alone building that fits perfectly with the intended purpose of the C-3 district.

7. The proposed special exception is appropriate for its location and compatible with the permitted uses adjacent to and in the vicinity of the property.

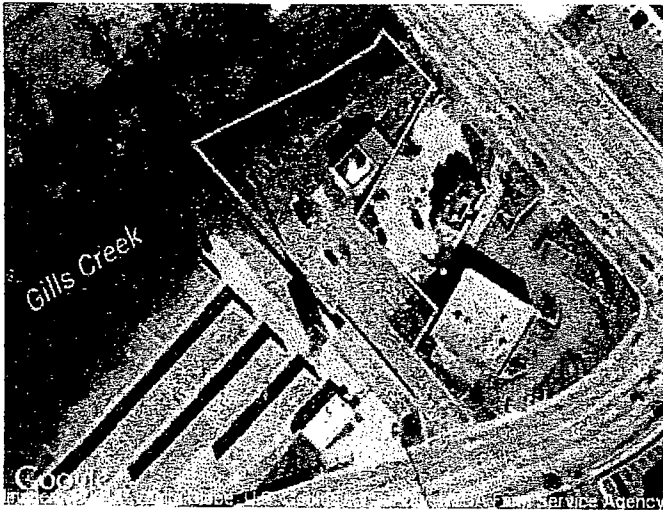
The requested exception is appropriate for its location and is compatible with permitted uses in the area for the reasons already stated in this application. Taboo has operated for over four years in its current location as a nonconforming use. The “Sexually Oriented Business” ordinance allows Taboo’s nonconforming use to “continue until and through January 1, 2014” unless terminated sooner or voluntarily. (City of Columbia SC zoning code, Division 11 – “Sexually Oriented Businesses” Section 17-374 (i)) Taboo’s request for special exception is essentially a request that the period for nonconforming use be maintained as the status quo for Taboo, due to its proven record for producing zero negative secondary effects from its years-long successful operation. Terminating a nonconforming use is not mandatory on the City, evidenced by the fact that the City has voluntarily allowed Taboo’s operation, until February 2016. Taboo hereby requests that the City maintain the status quo and continue to permit its operation and maintain its nonconforming use, as Taboo has presented abundant evidence of its compatibility with adjacent uses in the vicinity of its property and has caused no rationale for the City to terminate its nonconforming use.

8. The proposed special exception will not adversely affect the public interest.

Taboo's continued operation will not adversely affect the public interest, for reasons stated above - its continued use is environmentally harmonious with the Gills Creek area; its property is under security surveillance to ensure safety and to prevent loitering and littering; it offers abundant parking and efficient traffic flow; the City can document zero negative secondary effects resulting from Taboo's operation; and its continued operation will support the economic development of the Devine Street area, which has only prospered since Taboo opened its doors in 2011.

Sorry, we have no imagery here.

Google



Parcel Number:R13814-09-02Situs
Address:4716 DEVINE STPrimary
Zoning:C-3Secondary Zoning:Tax
District:1CCAssessed
Value:415,200Building Value:62,700Land
Value:352,500Acreage:0.900Owner
Name:RESTAURANT INCOME
PROPERTIESOwner Address:%
FREDERICK L KOTOSKEOwner
Address:P O BOX 24709Owner
City:COLUMBIAOwner State:SCOwner
ZIP:29224Bedrooms:0Bathrooms:2Year
Built:1980Heated Sq Feet:1,620 ft²Last Sale
Date:November 19, 1993Last Sale
Price:\$5Legal Description:Legal
Description:Legal Description:#SULegal
Description:#PR Y-7881 52-2970/2971

Google Maps 4716 Devine St



Imagery ©2016 Google, Map data ©2016 Google 50 ft

4716 Devine St
Columbia, SC 29209

At this location

Taboo Adult Superstore
4.8 (7)
Adult Entertainment Store · Devine St
Open until 12:00 AM

<https://www.google.com/maps/place/4716+Devine+St,+Columbia,+SC+29209/@33.9889...> 2/11/2016

Devine Street/Fort Jackson Boulevard Commercial Node Plan

Snapshot of the Study Area

Technical Memorandum

City of Columbia
9/24/2013

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Introduction

The commercial area at the intersection of Devine Street, Fort Jackson Boulevard and Cross Hill Road is changing. Presently, the area consists primarily of strip shopping centers with national and local retailers and fast-food restaurants. This area will most likely continue to contain a mix of commercial uses that meet the needs of the area residents, students, employees, visitors, and military personnel. However, there is potential for a more diverse mix of uses and improvements in the quality of the development with reinvestment in the area. Some reinvestment, including the development of the Cross Hill Market shopping center which includes a Whole Foods grocery store, has already occurred. A key element that will likely redefine this area is the revitalization that is anticipated along the banks of Gills Creek as a result of implementing the Gills Creek Middle Watershed Plan. The potential environmental, economic and recreational opportunities of Gills Creek could make it a critical centerpiece of this redevelopment area.

To maintain the momentum, a concerted effort to position such areas as competitive business locations is sometimes needed to increase the appeal and attract businesses and other uses that, combined, strengthen the economic diversity and vibrancy of the area. Therefore, the City has initiated a planning process to study the node and prepare a master plan and supporting implementation strategies. By defining a direction forward with the participation of the community members and other stakeholders, public investment decisions can be better informed and result in catalyst projects that will improve the area's vibrancy, walkability and aesthetics and will potentially stimulate subsequent private investment. This will strengthen the opportunity for this commercial node to act as a welcoming gateway into the City, a destination in the City, a neighborhood center, and a place that people and businesses want to be.

The resulting plan will create a clear vision for the future of the node; address development design, transportation, and other issues; establish standards for future development to ensure cohesiveness; and outline strategies so the public and private sectors can jointly implement the plan.

Context

The Devine Street/Fort Jackson Boulevard commercial node is a key location for commercial development in the city. Businesses benefit from traffic generated by four main institutional neighbors: Fort Jackson, Midlands Technical College, the University of South Carolina Medical School and the Dorn VA Medical Center. In addition, the node is surrounded by several Columbia neighborhoods. The node also serves as a gateway into Columbia. Garners Ferry Road which changes names to Devine Street at the study area's eastern edge is one of the main east/west connections for those traveling from Sumter, Shaw Air Force Base and points east to downtown Columbia.

Study Area

The heart of the study area is the intersection of Devine Street, Fort Jackson Boulevard, and Cross Hill Road. The study area extends east along Fort Jackson Boulevard to the gate at Fort Jackson. The properties adjacent to Beltline Boulevard form the western border of the area. The southern edge includes Midlands Technical College and the properties adjacent to Rosewood Drive. Map 1 illustrates the study area extent.

Planning Process

The process to develop the plan is divided into five phases. Phase One includes project initiation tasks such as data collection and initial meetings with City staff. An assessment of existing conditions occurs in Phase Two and includes a review of data, regulations, plans and studies and initial mapping. Development concepts and supporting imagery are developed in Phase Three. During Phase Four the project team will work with City staff to develop a set of recommendation and implementation strategies that support the plan and provide a framework of real, creative economic development, land use, urban design and transportation solutions. Based on the results of the two previous phases the Devine Street/Fort Jackson Boulevard Commercial Node Plan will be finalized in Phase Five.

Advisory Committee

The development of the Devine Street/Fort Jackson Boulevard Commercial Node Plan is informed by an Advisory Committee made up of a diversity of stakeholders including local developers, neighborhood advocates, Gills Creek Watershed representatives and Richland County staff. This group meets regularly through the process to provide feedback and advise the project team on plan concepts and recommendations.

Public Involvement

Community participation and input helps shape the Devine Street/Fort Jackson Boulevard Commercial Node Plan. Understanding community values today ensures that this plan can support recommendations to maintain those priorities in the future. The process includes two community meetings held at critical points during the process.

Stakeholder Interviews

Stakeholder interviews were conducted to verify and supplement the data gathered and mapped, to explain the conditions observed and to further understand the issues and opportunities that affect the study area and the plan. Their input supplements the input received directly from citizens and property owners participating in the process. The stakeholders include key personnel from City departments as well as representatives of interest groups who can address questions about the following topics: real estate development, neighborhoods, and Gills Creek.

Data Collection and Research

The plan is informed by existing plans, reports, policies and regulations. In addition, the project team analyzed data and created maps to further examine the study area's existing condition. The following topics are included in the analysis: market conditions, land use, urban design, transportation infrastructure, water and waste water infrastructure and natural resources and open space.

In addition to data collected for mapping purposes, data were also collected to gain a better understanding of the conditions reflected on maps. Many of these additional data were gathered through a review of relevant documents, interviews of key stakeholders, a study area tour, and conversations with City staff.

Study Area Tour

The project team participated in a study area tour with City staff, elected officials and Advisory Committee members. The purpose was to make observations and gather photos throughout the study area. Also, data gathered and information shown on preliminary mapping were verified. Observations made were intended to understand the study area context and document the established character of the built environment, including the development pattern.

About this Memo

The primary purpose of this memo is to provide a snapshot of the existing conditions of the node to gain an understanding of the potential impacts of various factors on the future growth and development of the area. By documenting the existing conditions in this memo, those involved in the process can identify the potential issues and opportunities, which will be the basis for Devine Street/Fort Jackson Commercial Node Plan.

Market Conditions

Current Market Conditions

For the purpose of this analysis a trade area was defined for the Devine Street/Fort Jackson Boulevard Commercial Node. The trade area is defined by a five-minute drive time from the intersection of Devine Street, Fort Jackson Boulevard and Cross Hill Road. Map 2 illustrates the trade area boundary.

Population

The trade area contains an estimated 28,961 residents, or 3.7% of the six-county Columbia Metropolitan Statistical Area (MSA). The 1,374 new residents in the trade area added between 2000 and 2012 equated to a growth rate of 5.0%. Richland County increased 23.3% to 395,322 residents during this same time period. The trade area contains established in-town neighborhoods close to downtown, the University of South Carolina (USC), and Fort Jackson; resulting in a lower Compound Annual Growth Rate (CAGR) of 0.4% compared to 1.8% for Richland County and 1.7% for the Columbia MSA.

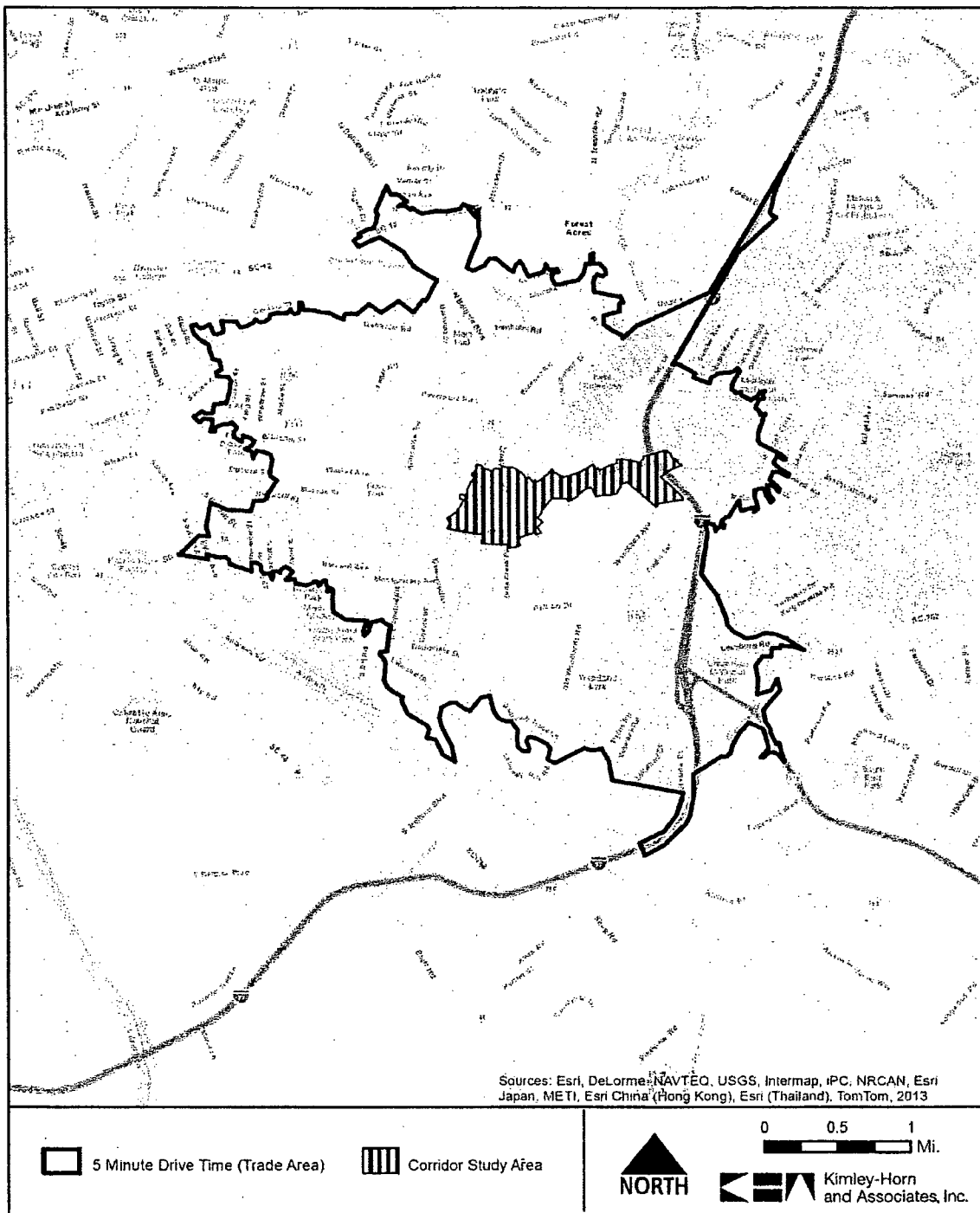
Table 1: Comparison of Population Trends, 2000-2012

Area	2000	2012	2000-2012 Δ		
			#	%	CAGR
Trade Area	27,587	28,961	1,374	5.0%	0.4%
Richland County	320,677	395,322	74,645	23.3%	1.8%
Columbia MSA	647,158	788,418	141,260	21.8%	1.7%
Trade Area % of MSA	4.3%	3.7%	1.0%		

Note: The Trade Area is defined as a five minute drive from the intersection of Devine Street and Fort Jackson Boulevard.

Source: ESRI; Kimley-Horn and Associates

Map 2: Trade Area



*Drive times were produced by ESRI's Business Analyst Online program using posted speed limits for local roads.

Snapshot of the Study Area

Reflective of national trends, Generation Y (included in 15-34 age cohorts) and Baby Boomers (included in 45-64 age cohorts) make up the majority of the trade area. The 15-24 age group comprises almost 20% of the trade area, reflecting presence of USC and other colleges. This age group also grew 20% over the 12-year period, adding almost 1,000 residents. Residents age 55-64 experienced the largest absolute and percent increases between 2000 and 2012 suggesting that Baby Boomers are aging in place. In addition, a decline in children between ages 5 and 14, as well as Generation X between ages 35 and 44 indicates loss of families with children. Table 2 provides these details.

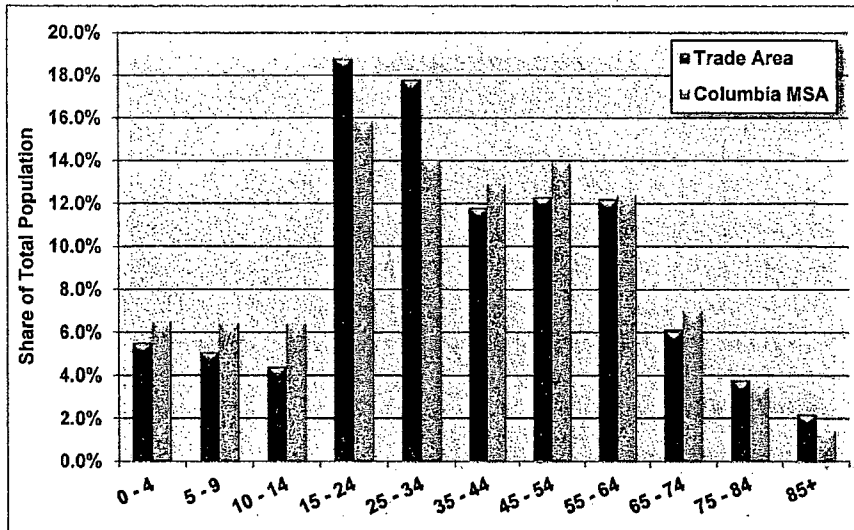
Table 2: Population by Age Cohort Trade Area, 2000-2012

Cohort	2000	2012	2000-2012 Δ		
			#	%	
0 - 4	1,545	1,593	48	3.1%	Generation Y
5 - 9	1,462	1,477	15	1.0%	
10 - 14	1,517	1,274	-243	-16.0%	
15 - 24	4,552	5,445	893	19.6%	Generation X
25 - 34	5,048	5,155	107	2.1%	
35 - 44	4,221	3,417	-803	-19.0%	
45 - 54	3,779	3,562	-217	-5.7%	Baby Boomers
55 - 64	2,041	3,533	1,492	73.1%	
65 - 74	1,572	1,767	194	12.3%	Greatest (Silent) Generation
75 - 84	1,462	1,101	-362	-24.7%	
85+	386	637	251	65.0%	
Total	27,587	28,961	1,374	5.0%	

Source: ESRI; Kimley-Horn and Associates

In comparison to the larger Columbia MSA, the trade area has notably higher shares of residents aged 15-34 (students and young professionals). This young cohort could drive demand for a variety of housing, retail goods and services, and entertainment in pedestrian friendly environments. Alternatively, the MSA has higher shares of school-aged children, Generation X (aged 35-44), and younger Baby Boomers.

Chart 1: Comparison of Shares of Population by Age Cohort, 2012



The area remains mostly white, but is becoming more ethnically diverse. Approximately 94% of residents in the trade area classify themselves as White or Black, similar to the larger MSA. Residents classifying themselves as having Hispanic origin (categorized separately) in the area doubled from 772 people in 2000 to 1,535 in 2012, but still only 5% of total population.

Table 3: Change in Shares of Population by Race, Trade Area, 2000-2012

Race/Ethnicity	2000	2012	'00-'12 Change
White Alone	78.8%	76.1%	-2.7%
Black Alone	16.8%	17.9%	1.1%
American Indian Alone	0.3%	0.3%	0.0%
Asian/Pacific Islander Alone	1.4%	1.9%	0.5%
Other Race Alone	1.4%	2.2%	0.8%
Two or More Races Alone	1.3%	1.7%	0.4%
Total	100.0%	100.1%	

Source: ESRI; Kimley-Horn and Associates

Table 4: Population by Race, Trade Area, 2000-2012

Race/Ethnicity	2000	2012	2000-2012 Δ	
			#	%
White Alone	21,739	22,039	301	1.4%
Black Alone	4,635	5,184	549	11.9%
American Indian Alone	83	87	4	5.0%
Asian/Pacific Islander Alone	386	550	164	42.5%
Other Race Alone	386	637	251	65.0%
Two or More Races Alone	359	492	134	37.3%
Total	27,587	28,961	1,374	5.0%
Hispanic Origin (Any Race)	772	1,535	762	98.7%

Source: ESRI; Kimley-Horn and Associates

Households

There were an estimated 13,098 households in the trade area in 2012; an increase of 2.3% since 2000. Richland County experienced a faster 24.6% growth rate, similar to the Columbia MSA's 23.5%. With its older established neighborhoods near downtown and USC, the trade area captured only 0.5% of the total household growth in the larger Columbia MSA between 2000 and 2012.

Table 5: Comparison of Household Trends, 2000-2012

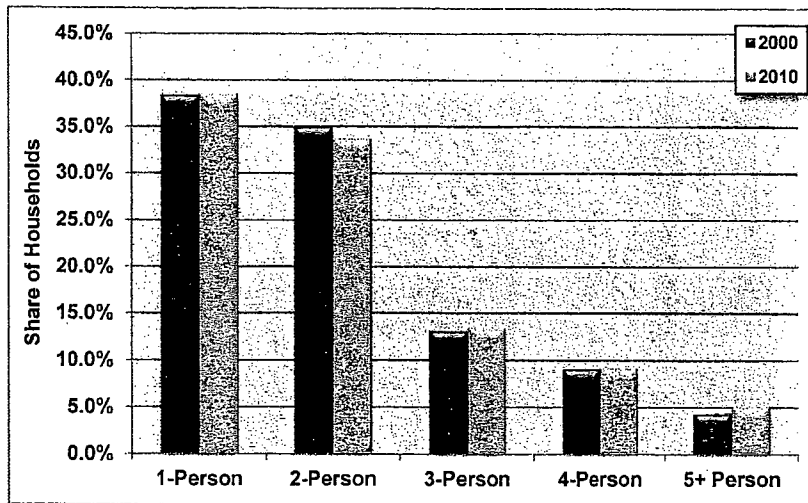
Area	2000	2012	2000-2012 Δ		
			#	%	CAGR
Trade Area	12,801	13,098	297	2.3%	0.2%
Richland County	120,101	149,679	29,578	24.6%	1.9%
Columbia MSA	245,347	303,015	57,668	23.5%	1.8%
Planning Area % of MSA	5.2%	4.3%	0.5%		

Note: The Trade Area is defined as a five minute drive from the intersection of Devine Street and Fort Jackson Boulevard.

Source: ESRI; Kimley-Horn and Associates

Nationally, average household size slightly declined from 2.59 to 2.58 people from 2000 to 2010. Growing Baby Boomer and Generation Y age cohorts typically have smaller household sizes than Generation X. The current average household size in the trade area of 2.06 is much lower than the U.S., due to higher shares of one- and two-person households that are typical of established urban and inner suburban areas.

Chart 2: Share of Households by Size, Trade Area, 2000-2010



Households earning \$50,000 to \$74,999 represent the largest cohort in the trade area, at 17.4% of the total. There is currently no dominant income cohort, indicating a diversity of housing demand and spending potential. However, the area is becoming more affluent; households earning \$100,000 to \$149,999 generated the predominant share of growth between 2000 and 2012. Continuation of 2000-2012 trends would result in the \$100,000-\$149,999 cohort being the largest in the trade area by 2017.

Table 6: Households by Income Cohort, Trade Area 2000-2012

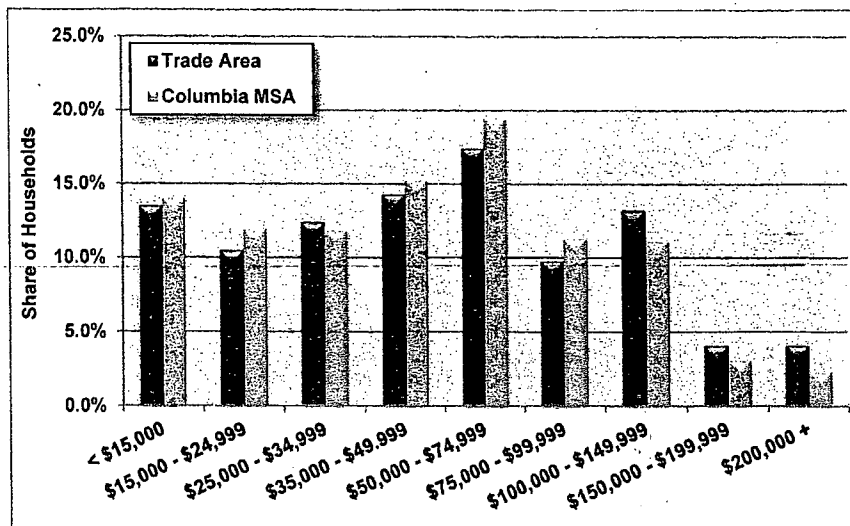
Cohort	2000	2012	2000-2012 Δ	
			#	%
< \$15,000	1,869	1,768	-101	-5.4%
\$15,000 - \$24,999	1,613	1,375	-238	-14.7%
\$25,000 - \$34,999	1,792	1,624	-168	-9.4%
\$35,000 - \$49,999	2,087	1,873	-214	-10.2%
\$50,000 - \$74,999	2,291	2,279	-12	-0.5%
\$75,000 - \$99,999	1,178	1,284	106	9.0%
\$100,000 - \$149,999	1,114	1,729	615	55.2%
\$150,000 - \$199,999	320	537	217	67.8%
\$200,000 +	550	537	-13	-2.4%
Total	12,801	13,098	193	1.5%

Source: ESRI; Kimley-Horn and Associates

The trade area has a higher share of households earning \$100,000+ than the Columbia MSA; the gap between shares over \$100,000 will escalate as the trade area becomes more affluent. With the exception of the \$25,000-\$34,999 cohort, the trade area has lower shares of households earning less than \$99,999 annually than the MSA.

Chart 3: Comparison of Households by Income Cohort, 2012

Snapshot of the Study Area



The trade area median household income of \$49,002 in 2012 was 2.4% higher than \$47,835 for Richland County and 5.7% higher than \$46,346 for the Columbia MSA. All three areas exceeded the \$44,578 median income reported for the State of South Carolina in 2012. The trade area's 14.8% increase in median income from 2000 to 2012 was lower than 19.7% for Richland County, but slightly higher than 13.8% for the MSA.

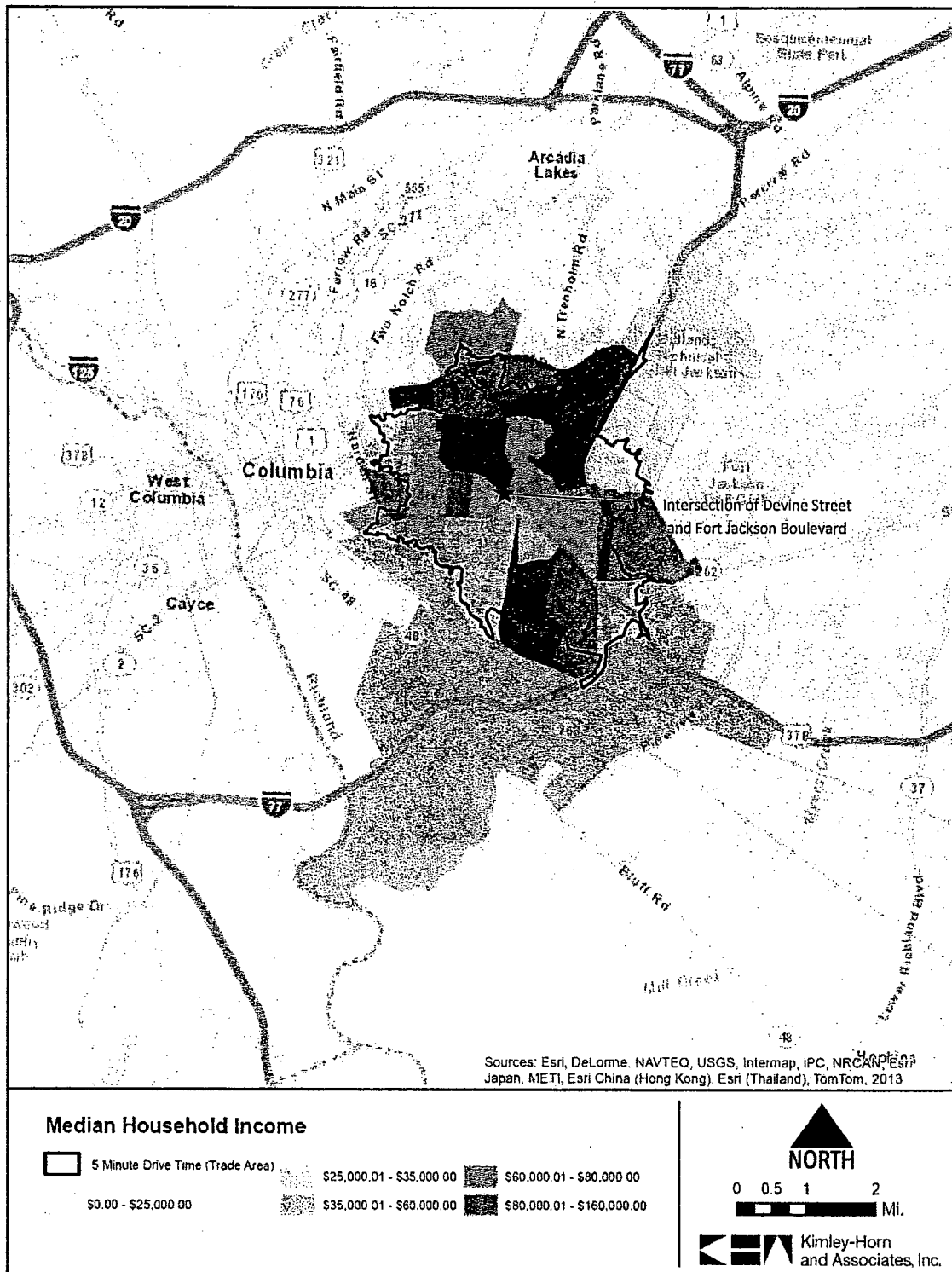
Table 7: Comparison of Median Household Incomes, 2000-2012

Geography	2000	2012	2000-2012 Δ	
			#	%
Trade Area	\$42,679	\$49,002	\$6,323	14.8%
Richland County	\$39,962	\$47,835	\$7,873	19.7%
Columbia MSA	\$40,740	\$46,346	\$5,606	13.8%

Source: ESRI; Kimley-Horn and Associates

Map 3: Median Household Income demonstrates median household incomes in the trade area by Census Block Group. Higher income households generally concentrated north of US-378 (Devine Street/Garners Ferry Road). Moderate- to lower-income households concentrated to the south and west.

Map 3: Median Household Income



Housing Units

Housing inventory in the trade area increased by approximately 816 units, or 5.9%, between 2000 and 2012. Richland County grew at a faster 28.1% rate, and housing units in the larger MSA increased by 26.3% during the same time period. The area accounted for 1.2% of new housing unit growth in the MSA which indicates residential development focused in suburban areas of Richland County versus infill locations like the trade area's established neighborhoods.

Table 8: Comparison of Housing Unit Trends, 2000-2012

Area	2000	2012	2000-2012 Δ		
			#	%	CAGR
Planning Area	13,818	14,634	816	5.9%	0.5%
Richland County	129,793	166,230	36,437	28.1%	2.1%
Columbia MSA	269,244	339,948	70,704	26.3%	2.0%
Planning Area % of CSA	5.1%	4.3%	1.2%		

Source: ESRI; Kimley-Horn and Associates

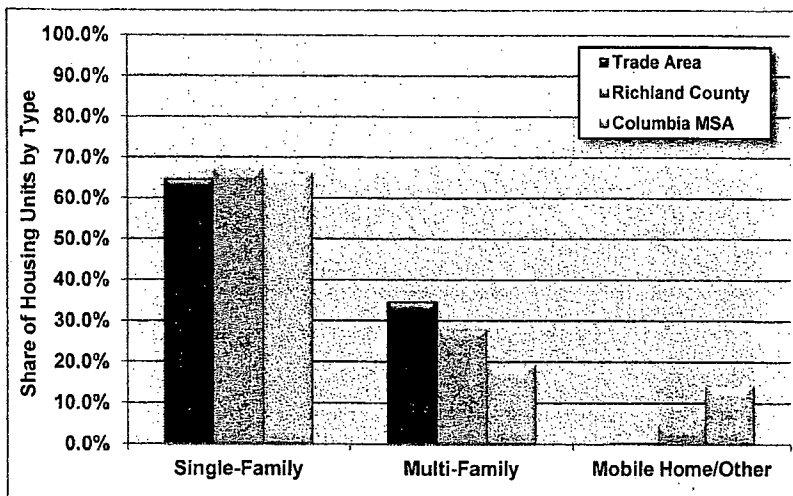
The majority of housing units in the trade area are single-family detached, making up 62.3% of the inventory. The area includes several established single-family neighborhoods such as Shandon and Sherwood Forest. Multi-family units in the trade area declined over the last 12 years as older product was demolished. The area has a relatively comparable share of single-family detached units to Richland County and the Columbia MSA and a higher share of multi-family units than Richland County or MSA.

Table 9: Housing Unit Trends, Trade Area, 2000-2012

Type	2000	2012	2000-2012 Δ	
			#	%
Single-Family, Detached	7,558	9,117	1,559	20.6%
Single-Family, Attached	359	351	-8	-2.2%
Multi-Family	5,886	5,093	-794	-13.5%
Mobile Home/Other	14	73	59	429.5%
Total	13,818	14,634	816	5.9%

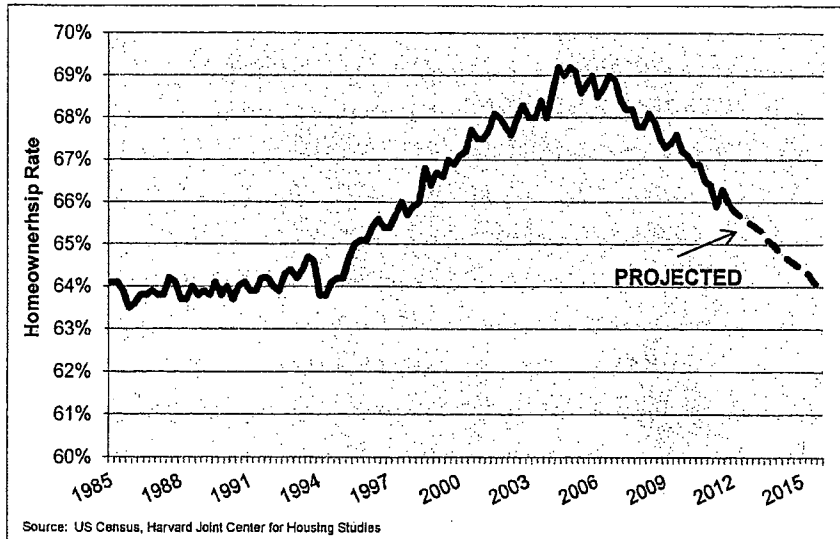
Source: ESRI; Kimley-Horn and Associates

Chart 4: Comparison of Housing Unit Trends, 2012



Since the 2007-2009 Recession and housing crisis, the national homeownership rate has declined sharply from a peak of approximately 69% in the mid-2000s. Decline was due to loss of jobs, foreclosures, severe drops in values, difficulties qualifying for a mortgage, and the Generation Y cohort showing a preference for apartments that offer urban lifestyles and greater mobility. The homeownership rate is expected to continue to decline over the next two to three years, reaching the long-term average of approximately 64%.

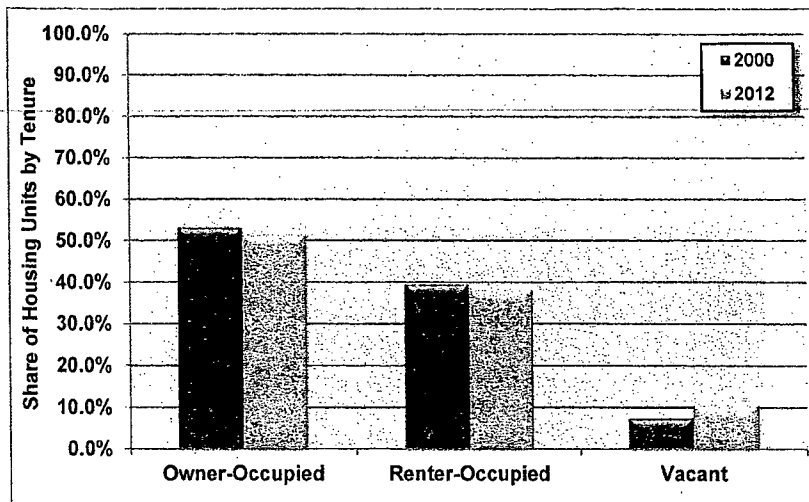
Chart 5: Homeownership Rate, United States, 1985-2015 (Projected)



Similar to national trends, the share of owner-occupied housing units in the trade area decreased between 2000 and 2012. During the same time period, the renter-occupied share also declined,

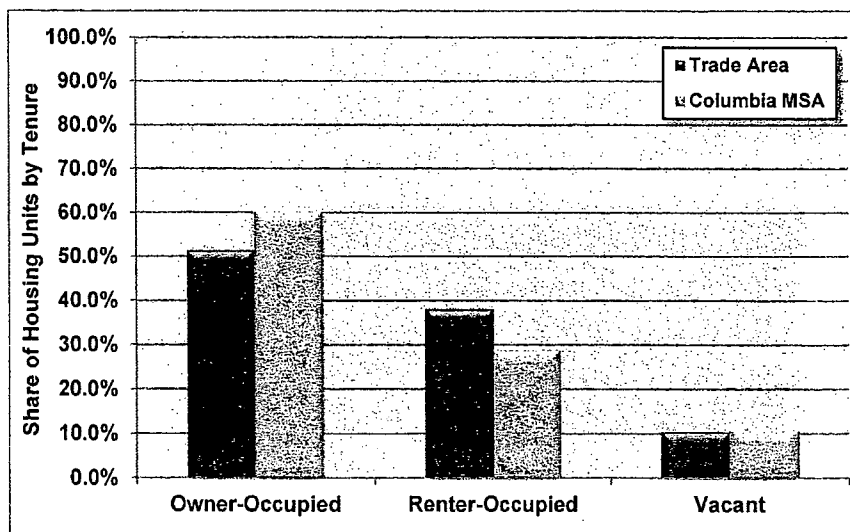
partially due to the demolition of older multi-family product. Vacant units made up approximately 10% of the area in 2012, increasing from 7.5% in 2000.

Chart 6: Housing Unit Tenure, Trade Area, 2000-2012



Owner-occupied units accounted for approximately 50% of all units in the trade area in 2012, lower than 60% for the Columbia MSA. As a result, the area's renter-occupied share is higher than the MSA. As the trade area and MSA have similar shares of single-family detached units, it is likely that many of the single-family units in the area are investor-owned rental units.

Chart 7: Housing Unit Tenure Comparison, 2012



Employment

Excluding the military, the largest employers in Richland County are the State of South Carolina, Palmetto Health, Blue Cross Blue Shield, and the University of South Carolina. Significant employment sectors include Government, Education, Healthcare, and Insurance; these industries did not experience the extreme losses exhibited by Manufacturing, Construction, and Wholesale Trade/Warehousing during the 2007-2009 Recession.

Table 10: Major Employers, Richland County, 2012

Employer	Industry	Estimated Employment
State of South Carolina	Government	24,791
Palmetto Health	Healthcare	9,000
Blue Cross Blue Shield of SC	Insurance	6,459
University of South Carolina	Education	5,997
S.C. Department of Transportation	Government	4,418
Richland County School District 1	Education	4,036
S.C. Department of Mental Health	Healthcare	3,798
Richland County School District 2	Education	3,300
S.C. Department of Health and Environmental Control	Government	3,096
AT&T	Call Centers/Customer Service	2,400
City of Columbia	Government	2,150
Humana/TriCare	Insurance	2,100
Providence Hospitals	Healthcare	2,075
Palmetto GBA	Insurance	1,900
Richland County	Government	1,708
Midlands Technical College	Education	1,600
Wells Fargo	Financial Services	1,549
Verizon Communications	Call Centers/Customer Service	1,500

Source: Central SC

The military is one of the area's largest employers. Fort Jackson is home to the US Army's largest Initial Entry Training Center. The installation trains over 36,000 basic and 8,000 advanced soldiers annually including 50% of Army's basic combat units and 60% of women entering the Army. More than 3,500 active duty soldiers are assigned to Fort Jackson, but deployment affects the total on-base population at any given time. In addition the base supports a total of 16,460 jobs, earning approximately \$856 million in compensation. The Fort hosts numerous graduations each year and attracts over 120,000 out-of-state visitors annually.

Richland County had a total of 203,844 annualized full-time jobs at place of employment in 2012, a decrease of 5.8% since 2007. Healthcare and Social Assistance made up the largest share of Richland County employment in 2012 at nearly 15%. Educational Services, related to both K-12 facilities and colleges/universities, experienced the largest absolute growth over the last five years. The largest declines were noted in Construction; Retail Trade; and Transportation, Warehousing, and Utilities.

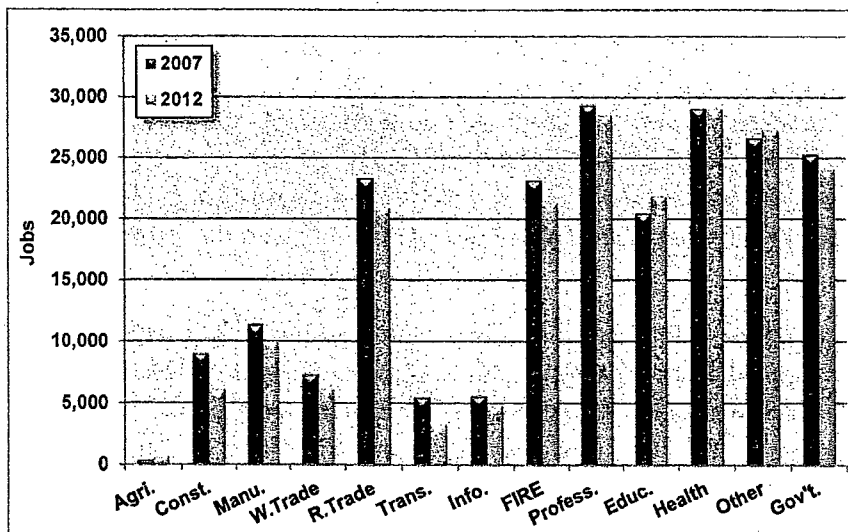
Table 11: At-Place Employment by Industry, Richland County, 2007-2012

Industry	2007	2012	2007-2012 Δ	
			#	%
Agriculture and Mining	385	675	290	75.3%
Construction	9,031	6,129	-2,902	-32.1%
Manufacturing	11,366	9,976	-1,390	-12.2%
Wholesale Trade	7,322	6,171	-1,151	-15.7%
Retail Trade	23,307	20,916	-2,391	-10.3%
Transportation, Warehousing & Utilities	5,499	3,323	-2,176	-39.6%
Information	5,590	4,778	-812	-14.5%
F.I.R.E.	23,142	21,288	-1,854	-8.0%
Professional Services	29,344	28,479	-865	-2.9%
Educational Services	20,444	21,844	1,400	6.8%
Healthcare and Social Assistance	29,057	28,983	-74	-0.3%
Other Services	26,581	27,281	700	2.6%
Public Administration	25,276	24,001	-1,275	-5.0%
Total	216,344	203,844	-12,500	-5.8%

Source: SC Employment Securities Commission; Kimley-Horn and Associates

Education and Other Services experienced increases between 2007 and 2012. Because of the Recession, most employment sectors noted declines over the last five years, with the largest losses in Construction, Retail Trade, and Transportation, Warehousing, and Utilities. A review of more recent quarterly trends demonstrates a stabilization of jobs in Richland County (between 4Q2011 and 4Q2012 Richland County added over 2,000 jobs.)

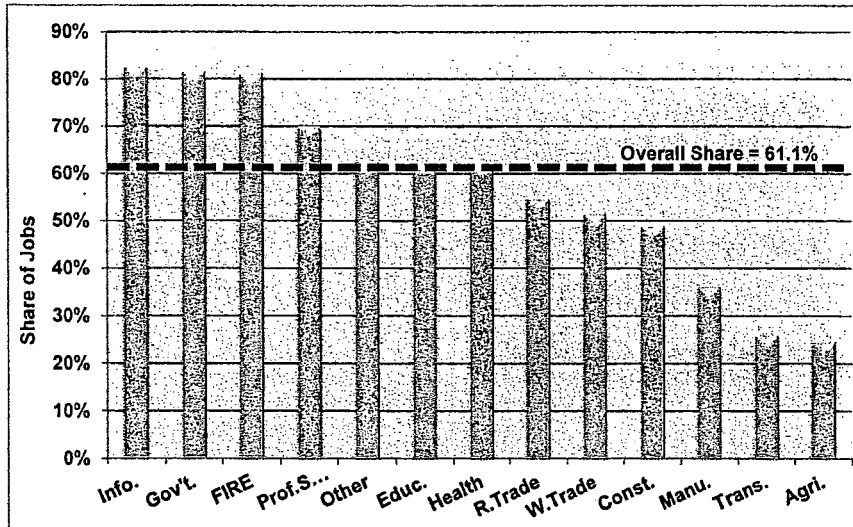
Chart 8: At-Place Employment by Industry, Richland County, 2007-2012



Jobs located in Richland County make up approximately 61.1% of the total in the six-county Columbia MSA. Industries in Richland County exceeding the overall 61.1% share of MSA jobs include Information;

Government; Finance, Insurance and Real Estate (FIRE); and Professional Services. The County's 61.1% share of MSA jobs was higher than its 50.1% share of population in 2012, reflecting the concentration of jobs in Columbia.

Chart 9: Richland County Shares of Columbia MSA Employment, 2012



In 2012, the trade area had an estimated 11,461 jobs, comprising 5.6% of the Richland County total. The trade area had a 7.3% share of the County's population in 2012, showing a higher concentration of people than jobs. Other Services, which includes Accommodation and Food Services, made up 18.2% of the total jobs in the trade area, followed by Public Administration (15.1%), Retail Trade (14.6%), and Professional Services (14.4%). A majority of trade area jobs are in service-related industries.

Table 12: Annual Employment by Industry, Trade Area, 2012

Industry	Jobs	% of Total
Agriculture and Mining	20	0.2%
Construction	391	3.4%
Manufacturing	137	1.2%
Wholesale Trade	302	2.6%
Retail Trade	1,678	14.6%
Transportation, Warehousing & Utilities	142	1.2%
Information	274	2.4%
F.I.R.E.	889	7.8%
Professional Services	1,647	14.4%
Educational Services	1,389	12.1%
Healthcare and Social Assistance	772	6.7%
Other Services	2,086	18.2%
Public Administration	1,734	15.1%
Total	11,461	100.0%

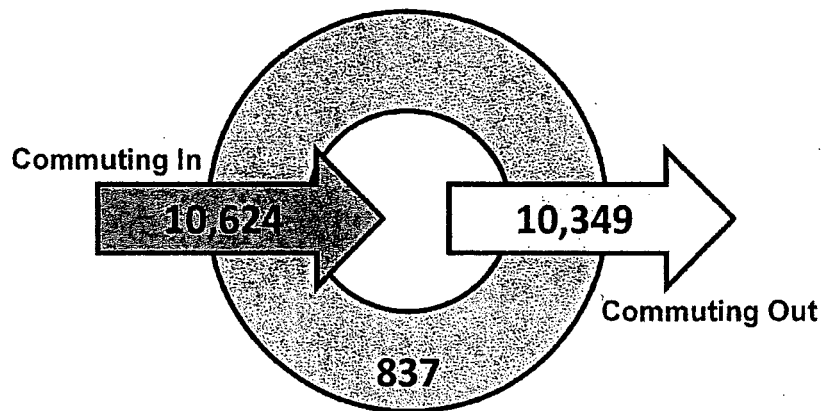
Source: ESRI; Kimley-Horn and Associates

There are an estimated 11,461 jobs at place of employment in the trade area, with 10,624 positions filled by in-commuters (93%) and 837 jobs held by residents (7%). Of the 11,186 employed residents of the trade area, an estimated 10,349 people, or 93%, commute elsewhere. The combination of 10,624 in-commuters and 10,349 out-commuters results in a net inflow of 275 workers to the area.

Table 12: Employment Inflow/Outflow, Trade Area, 2012

Trade Area Jobs Filled by In Commuters	10,624
Trade Area Jobs Filled by Residents	837
Total Trade Area Jobs	11,461
Trade Area Employed Residents	11,186
Net Inflow/Outflow	275

Source: ESRI; U.S. Census; Kimley-Horn and Associates



The Devine Street Trade Area has a 0.78 jobs/housing unit ratio. Fewer jobs than housing units is indicative of a predominantly residential development pattern and a comparatively high commuter share. Commuting distances and times have not been analyzed for the area, but the jobs/housing disconnect strains transportation infrastructure during peak hours. As the primary employment center in the MSA, Richland County has a 1.23 jobs/housing unit ratio. The Columbia MSA reports a comparatively balanced 0.98 jobs/unit.

Table 13: Jobs/Housing Unit Ratio Comparison, 2012

Geography	At-Place Jobs	Housing Units	Jobs/ Unit
Trade Area	11,461	14,634	0.78
Richland County	203,844	166,230	1.23
Columbia MSA	333,754	339,948	0.98

Source: US Census; NCESC; Kimley-Horn and Associates

Future Market Conditions

Residential

Two residential growth scenarios were evaluated to forecast population, households, and housing units for the trade area through 2032:

- Scenario 1 (Baseline): Uses a 0.7% CAGR as a basis for increasing population; this measure is slightly higher than 0.4% annually demonstrated between 2000 and 2012
- Scenario 2 (Accelerated Growth): Scenario 2 forecast accelerated post-2015 to indicate improvements to the economy following the recession and continued attraction by the Gen Y to live in urban areas providing multiple transportation options

This analysis utilized a straight average of the two scenarios as the basis for the residential demand forecast. Housing unit forecasts are based on average household sizes and a 9% vacancy rate, reported by ESRI. Population in the trade area could increase by 2,800 people, equating to an annual growth rate of 0.9%. Population growth will likely be limited by land availability. Preferences of Gen Y will positively impact areas the study area, due to proximity to the urban core, pedestrian access to retail, and access to available transportation options.

Table 14: Average Residential Forecast, Trade Area, 2012-2032

Scenario	2012	2022	2032	2012-2032 Δ		
				#	%	CAGR
Scenario 1	14,630	15,980	17,220	2,590	17.7%	0.8%
Scenario 2	14,630	16,060	17,650	3,020	20.6%	0.9%
Average	14,630	16,020	17,430	2,800	19.1%	0.9%

Source: ESRI, Kimley-Horn & Associates

Snapshot of the Study Area

The study area could capture 10%-15% of the population growth in the trade area, equating to approximately 280 to 420 new residential units between 2012 and 2032. Housing demand is likely to break out as follows:

- **Single-Family Detached** construction will primarily be comprised of infill opportunities, based on existing land use this could be 10-20 units over the next 20 years
- **Townhouse**, or attached, units could provide an alternative to single-family detached units in established neighborhoods; approximately 50 to 75 attached units could be supported in the Study Area
- **Apartments/Multi-Family** are expected to comprise the majority of new residential development in the Study Area; approximately 220 to 325 units could be supported in smaller infill communities

Table 15: Housing Demand Forecast, Study Area, 2012-2032

Unit Type	Projected Unit Growth (2012-2032)	
	Low	High
Single-Family Detached	10	20
Townhouse	50	75
Multi-Family	220	325
Total	280	420

Source: Kimley-Horn & Associates

The 2012-2032 land demand for new residential units is based on assumed ranges for units per acre by type. Density assumption for single-family detached in the study area is approximately eight units per acre, equating to demand of one to three acres. Townhouses are assumed to have a density of 15 units per acre, with total land demand of three to five acres. Assuming a density of 25 units per acre, multi-family would have land demand of nine to 13 acres, comprising the largest share of demand of all residential types. In total, the 2012-2032 residential land demand range from 13 to 21 acres. The majority of residential demand will be accommodated in infill or redevelopment opportunities, within walking distance of retail and restaurants.

Table 16: Residential Land Demand, Study Area, 2012-2032

Type	Land Demand	
	Low	High
Single-Family¹	1	3
Townhouse²	3	5
Multi-Family³	9	13
Total	13	21

¹ Assumes eight units per acre.

² Assumes 15 units per acre.

³ Assumes 25 units per acre.

Source: Kimley-Horn and Associates

Retail

As of second-quarter 2013, Columbia has an inventory over 12.5 million square feet of multi-tenant retail space. Retail occupancy has remained constant in the Columbia Market, reporting 8.36% in second-quarter 2013, a slight reduction from 9.45% two years earlier. Colliers International defines a smaller Southeast Submarket, which incorporates the intersection of Devine Street and Fort Jackson Boulevard. Within this Submarket there is over 1.0 million square feet of multi-tenant retail inventory. The current overall retail vacancy rate is estimated at less than 5%; there is extremely limited vacancy in anchor and junior anchor space in the Submarket. Average small-shop rents generally range from \$10-\$12/square foot.

Table 17: Retail Trends, Columbia Market, 2011-2013

Reporting Period	Inventory	Vacancy Rate	Columbia Market		
			Quoted Rent/Sq.Ft.		
			Anchor	Jr. Anchor	Sm. Shop
Q2 2011	11,978,792	9.45%	\$14.45	\$9.39	\$13.08
Q2 2012	12,373,368	8.34%	\$7.63	\$13.09	\$14.13
Q2 2013	12,505,119	8.36%	\$7.28	\$6.47	\$13.06

Note: * indicates that there is no space available in order to obtain a quoted rent

Source: Colliers International

Edens provided detail on three competitive retail developments in the vicinity of the trade area:

- **Trenholm Plaza**
 - 4840 Forest Drive
 - 99% occupancy; anchored by Publix
 - Quoted rent/sq.ft. from \$32 to \$38
- **Cross Hill Market**
 - Devine Street/Cross Hill Road
 - 100% occupancy; anchored by Whole Foods
 - Two outparcels available
 - Quoted rent/sq.ft. from \$28-\$35
- **Shoppes at Woodhill**
 - 6090 Garners Ferry Road
 - 97% occupancy; anchored by Target
 - Quoted rent/sq.ft. from \$24 to \$28

Competitive retail demonstrates high-performing centers that are likely to attract additional opportunities nearby.

The 2012-2032 retail demand for the Trade area was forecasted using the following method:

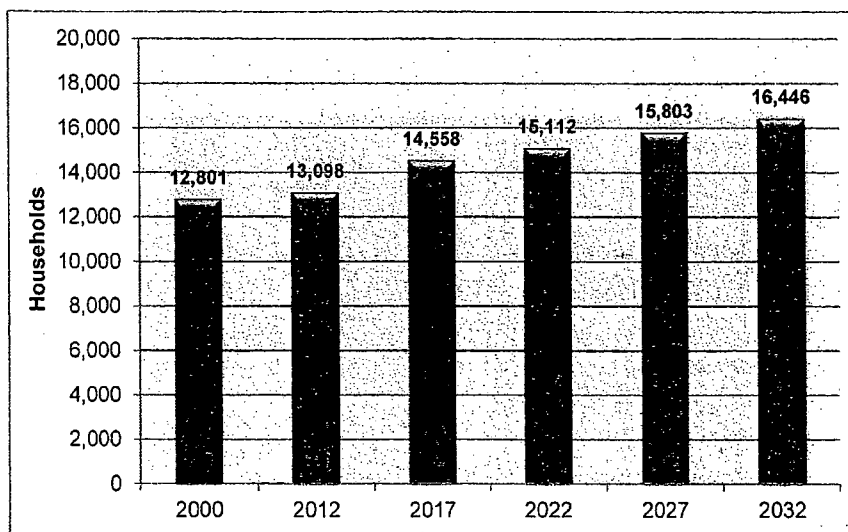
- Calculating the trade area's total household income in 2012 and 2032 by applying the forecasted households to average income projections derived from ESRI trends and proprietary population forecasts

Snapshot of the Study Area

- Estimating Richland County's expenditure potential based on data from the South Carolina Department of Revenue that indicates the percentage of income spent on various goods and services
- Determining the trade area sales capture in five-year increments through 2032, taking into account leakage resulting from resident commuting patterns
- Estimating sales inflow from non-trade area residents, including those who work there and commuters
- Converting retail sales to square feet based on sales per square feet data by type of retail

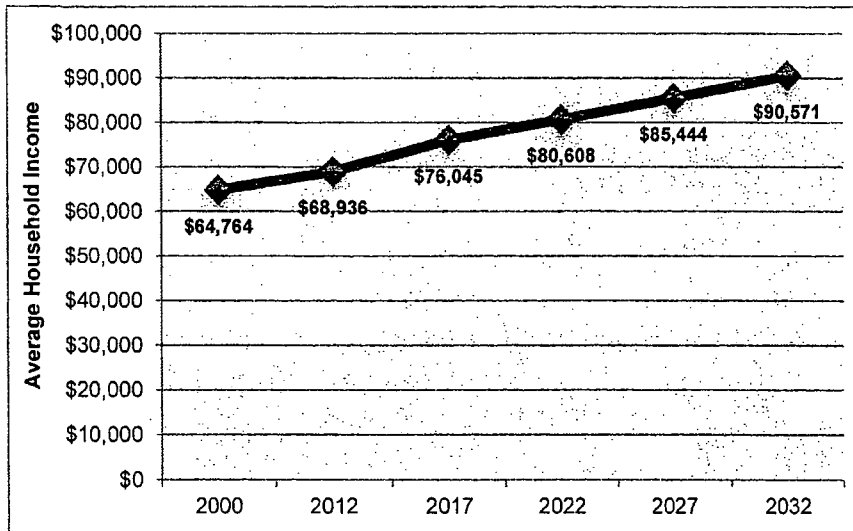
Based on the population forecast presented in the residential demand forecast, the trade area is expected to add 3,645 new households through 2032, a 25.6% increase over 20 years. In 2032, a total of 16,446 households could be located in the trade area. Although, the increase of new households will likely be limited by land availability.

Chart 10: Household Forecast, Trade Area, 2012-2032



Retail demand forecasts generally rely on average household income, which is typically higher than the median income statistics. According to ESRI, the trade area had an average income of \$68,936 in 2012, a 6.4% increase from \$64,764 in 2000. Based on income projections derived from ESRI trends, the average household income in the trade area could increase to \$90,571 by 2032.

Chart 11: Average Household Income Forecast, Trade Area, 2012-2032



The Trade Area has a forecasted demand of approximately 224,000 square feet of new retail space between 2012 and 2032. Demand for net new retail space is expected to hold constant throughout the forecast period; however, as available land for retail development declines new construction could also slow. Supermarkets, Building Materials, and Restaurants make up the largest growth categories for net new demand. The trade area is likely to accommodate one small grocery store through 2032.

Table 18: Net New Retail Demand, Trade Area, 2012-2032

Retail Category	Retail Demand (Sq.Ft.)				2012-2032 Change	% of Total
	2012-2017	2017-2022	2022-2027	2027-2032		
Supermarkets & Other Groceries	7,954	8,377	8,443	8,075	32,849	14.7%
Building Material & Supply Dealers	7,683	8,092	8,156	7,801	31,732	14.2%
Food Services - Restaurants	7,116	7,495	7,554	7,225	29,392	13.1%
Other General Merchandise Stores	5,297	5,579	5,623	5,378	21,876	9.8%
Pharmacies & Drug Stores	4,352	4,583	4,619	4,418	17,972	8.0%
Clothing Stores	3,670	3,865	3,896	3,726	15,157	6.8%
Discount Department Stores	2,880	3,033	3,057	2,924	11,895	5.3%
Department Stores	1,930	2,032	2,048	1,959	7,969	3.6%
Furniture Stores	1,734	1,826	1,841	1,761	7,162	3.2%
Electronics & Appliances	1,673	1,762	1,776	1,698	6,909	3.1%
All Other	9,951	10,481	10,564	10,104	41,101	18.3%
Total	54,239	57,127	57,577	55,069	224,012	100.0%

Source: Kimley-Horn and Associates

Similar to the residential forecast, two capture rate scenarios were prepared to demonstrate a range of demand for the Devine Street/Fort Jackson Boulevard Commercial Node Study Area. The more conservative scenario, defined as 'low', has capture rates ranging from 20% to 25% for the study area. Capture rates for the 'high' scenario ranges from 30% to 35%. Capture rates are based on the geographic size of the study area, the transportation network, and estimated share of current inventory.

Snapshot of the Study Area

Capture rates are expected to decline towards the end of the analysis period due to land availability in the study area. These rates equate to a net retail demand of 50,500 to 72,900 square feet between 2012 and 2032.

Table 19: Retail Capture Rates, Study Area, 2012-2032

Scenario	Time Period			
	2012-2017	2017-2022	2022-2027	2027-2032
Low	20%	25%	25%	20%
High	30%	35%	35%	30%

Source: Kimley-Horn and Associates

Retail land demand is based on floor area ratios (FAR) of 0.25, a typical industry standard for retail development. Applying the assumed FAR to the forecasted 2012-2032 net square footage for the study area equates to a land demand of approximately five to seven acres through 2032. New retail will likely be attracted to sites with superior visibility and access from Devine Street or Fort Jackson Boulevard. This acreage could also be accommodated in mixed-use developments.

Table 20: Retail Land Demand, Study Area, 2012-2032

Density Assumption	2012-2032	
	Forecast (Sq.Ft.)	Land (Acres)
Low	50,500	5
High	72,900	7

Source: Kimley-Horn and Associates

New retail tenants will likely be attracted to the momentum in the study area started by Whole Foods, and other high-end restaurants. Potential tenants might include:

- **Jr. Anchors:** Similar to Kohl's, TJ Maxx, Marshalls
- **Pharmacy:** Potential for another store, in addition to existing Walgreens
- **Restaurants:** Independent and chain; stores could locate as free-standing outparcels or in-line spaces
- **Small Shops/Specialty:** Independent clothing, home accessory, and gift stores

Given the presence of Whole Foods and Bi-Lo, it is unlikely that the study area would attract a third grocery store, although forecasted demand supports one in the larger trade area.

Office

The Columbia market reported a second-quarter 2012 inventory of over 9.4 million square feet of multi-tenant office. Nearly 50% of the inventory is located in the Central Business District (CBD). Although improvement has been noted between 2011 and 2013, vacancy rates remain elevated at 19.71%. Over the last three years annual (12-month) absorption has averaged approximately 115,000 square feet per year. Class A rents have remained steady at approximately \$18.50 per square foot. Inventory in the

"East Columbia" Submarket, as defined by Colliers, includes only 84,183 square feet of multi-tenant Class C space, with a vacancy rate of over 35%.

Table 21: Multi-Tenant Office Trends, Columbia Market, 2011-2013

Reporting Period	Columbia Market					
	6-Month		Vacancy Rate	Quoted Rent/Sq.Ft.		
	Inventory	Absorption		ClassA	ClassB	ClassC
Q2 2011	9,828,371	20,223	20.40%	\$18.59	\$15.21	\$14.44
Q2 2012	9,975,599	94,306	23.31%	\$18.48	\$15.45	\$13.92
Q2 2013	9,425,679	59,533	19.71%	\$18.64	\$15.40	\$12.90

Source: Colliers International

Office demand for the trade area is based on office-occupying employment growth as reported for Richland County by Woods & Poole. Richland County is expected to add over 50,000 jobs over the next 20 years, a 24.6% increase. This equates to approximately 2,500 new jobs on an annual basis. The strongest growth is expected in Health Care, Professional and Business Services, and Education.

Table 22: Employment Forecast, Richland County, 2012-2032

Industry	2012	2017	2022	2027	2032	2012-2032 Δ	
						#	%
Agriculture Forestry Fishing & Hunting	590	596	602	614	626	36	6.1%
Mining	85	85	86	86	86	1	0.8%
Transportation, Warehousing, and Utilities	3,323	3,388	3,437	3,467	3,481	158	4.8%
Construction	6,129	6,270	6,420	6,575	6,732	603	9.8%
Manufacturing	9,976	9,977	9,952	9,932	9,912	-64	-0.6%
Wholesale Trade	6,171	6,280	6,379	6,465	6,539	368	6.0%
Retail Trade	20,916	21,262	21,548	21,772	21,933	1,017	4.9%
Information	4,778	4,864	4,940	5,004	5,057	279	5.8%
Finance and Insurance	18,178	18,214	18,269	18,324	18,379	201	1.1%
Real Estate and Rental and Leasing	3,110	3,249	3,384	3,514	3,639	529	17.0%
Professional and Business Services	28,479	31,327	35,086	40,349	46,401	17,922	62.9%
Educational Services	21,844	23,089	24,359	25,650	26,933	5,089	23.3%
Health Care and Social Assistance	28,983	31,881	35,707	41,063	47,633	18,650	64.3%
Arts Entertainment and Recreation	3,004	3,160	3,318	3,484	3,651	647	21.6%
Accommodation and Food Services	18,374	19,278	20,151	20,984	21,770	3,396	18.5%
Other Services	5,903	6,181	6,450	6,707	6,951	1,048	17.8%
Public Administration/Government	24,001	24,073	24,145	24,194	24,242	241	1.0%
Total	203,844	213,176	224,234	238,183	253,966	50,122	24.6%

Sources: SCESC; Woods & Poole; Kimley-Horn and Associates

To determine the forecasted increase in office-occupying employment, office shares were applied to each industry projection. Finance and Insurance and Professional and Business Services have the highest shares of office-occupying employment at 95%. Richland County is expected to have an increase of 26,964 office-occupying employees, or 30%, between 2012 and 2032.

Table 23: Office-Occupying Employment Forecast, Richland County, 2012-2032

Industry	Office Share						'12-'32 Change	
		2012	2017	2022	2027	2032	#	%
Agriculture Forestry Fishing & Hunting	5.0%	30	30	30	31	31	2	0.0%
Mining	5.0%	4	4	4	4	4	0	0.0%
Transportation, Warehousing, and Utilities	25.0%	831	847	859	867	870	40	4.8%
Construction	10.0%	613	627	642	657	673	60	9.8%
Manufacturing	5.0%	499	499	498	497	496	-3	-0.6%
Wholesale Trade	25.0%	1,543	1,570	1,595	1,616	1,635	92	6.0%
Retail Trade	10.0%	2,092	2,126	2,155	2,177	2,193	102	4.9%
Information	30.0%	1,433	1,459	1,482	1,501	1,517	84	5.8%
Finance and Insurance	95.0%	17,269	17,304	17,356	17,408	17,460	191	1.1%
Real Estate and Rental and Leasing	85.0%	2,644	2,762	2,877	2,987	3,093	450	17.0%
Professional and Business Services	95.0%	27,055	29,761	33,332	38,332	44,081	17,026	62.9%
Educational Services	30.0%	6,553	6,927	7,308	7,695	8,080	1,527	23.3%
Health Care and Social Assistance	35.0%	10,144	11,158	12,497	14,372	16,672	6,528	64.3%
Arts Entertainment and Recreation	15.0%	451	474	498	523	548	97	21.6%
Accommodation and Food Services	10.0%	1,837	1,928	2,015	2,098	2,177	340	18.5%
Other Services	25.0%	1,476	1,545	1,612	1,677	1,738	262	17.8%
Public Administration/Government	70.0%	16,801	16,851	16,902	16,935	16,969	169	1.0%
Total		91,273	95,872	101,661	109,377	118,237	26,964	29.5%

Sources: SCESC; Woods & Poole; Kimley-Horn and Associates

Forecasted office-occupying jobs have been used to estimate square footage demand. National trends indicate declining space per employee; estimates for office demand are based on square feet per employee averages, as follows:

- 2012-2017: 220 square feet/employee
- 2017-2022: 215 square feet/employee
- 2022-2027: 210 square feet/employee
- 2027-2032: 205 square feet/employee

Office demand in Richland County is expected to increase by 5.7 million square feet.

Table 24: Net New Office Demand, Richland County, 2012-2032

	Net Office Demand (Sq.Ft.)				2012-2032
	2012-2017	2017-2022	2022-2027	2027-2032	Total
Jobs	4,598	5,789	7,716	8,860	26,964
Square Feet	1,011,664	1,244,680	1,620,396	1,816,342	5,693,082

* Assumes declining square foot need per employee for each five-year period.

Source: Kimley-Horn and Associates; Woods & Poole

The trade area capture of Richland County demand is based on recent trends as presented by Colliers for the 'East Columbia' and 'Forest Acres' submarkets. This analysis assumes capture rates ranging from 2%-3% of the County total; capture rates are expected to decline as the trade area continues to build-out. Demand generators in the trade area will likely be existing office and retail in the Forest Acres neighborhood, competitive retail developments (Cross Hill, Trenholm, and Woodhill), and Five

Points/USC. In total, the trade area is expected to have a demand for approximately 136,000 square feet of office space through 2032.

Table 25: Net New Office Demand, Trade Area, 2012-2032

	Net Office Demand (Sq.Ft.)				2012-2032
	2012-2017	2017-2022	2022-2027	2027-2032	Total
Jobs	138	174	154	177	643
Square Feet	30,350	37,340	32,408	36,327	136,425

* Assumes increasing capture for each five-year period.

Source: Kimley-Horn and Associates; Woods & Poole

Two scenarios were prepared for office demand: a more conservative (low) and an aggressive (high). The study area's potential capture of office demand is expected to decline due to land availability. Capture rates are based on the geographic size of the study area, surrounding employment generators, and the transportation network. Capture rates are expected to range from:

- 15%-30% for the low scenario
- 30%-45% for the high scenario

Based on the assumed capture rates the Devine Street/Fort Jackson Boulevard Commercial Node study area could support approximately 30,300 to 50,800 square feet of net new office space between 2012 and 2032. The lack of Class A or B office space in the Study Area would likely result in new construction.

Table 26: Office Capture Rates, Study Area, 2012-2032

Scenario	Time Period			
	2012-2017	2017-2022	2022-2027	2027-2032
Low	30%	25%	20%	15%
High	45%	40%	35%	30%

Source: Kimley-Horn and Associates

Similar to retail, land demand for office is based on industry-standard floor area ratio (FAR) of approximately 0.30. Applying the assumed FARs to the forecasted 2012-2032 spare footage equates to office land demand of approximately two to four acres through 2032 in the study area. New office developments will likely be attracted to pedestrian access to retail services and restaurants. This acreage could also be accommodated in mixed-use developments.

Table 27: Office Land Demand, Study Area, 2012-2032

Density Assumption	2012-2032	
	Forecast (Sq.Ft.)	Land (Acres)
Low	30,300	2
High	50,800	4

Source: Kimley-Horn and Associates

Snapshot of the Study Area

Demand of approximately 30,000 to 50,000 square feet of office space in the study area would be attractive to smaller professional tenants including:

- Real estate brokers
- Mortgage firms
- Financial advisors
- Insurance agents
- Architects/design firms
- Marketing/PR consultants
- Non-profit agencies

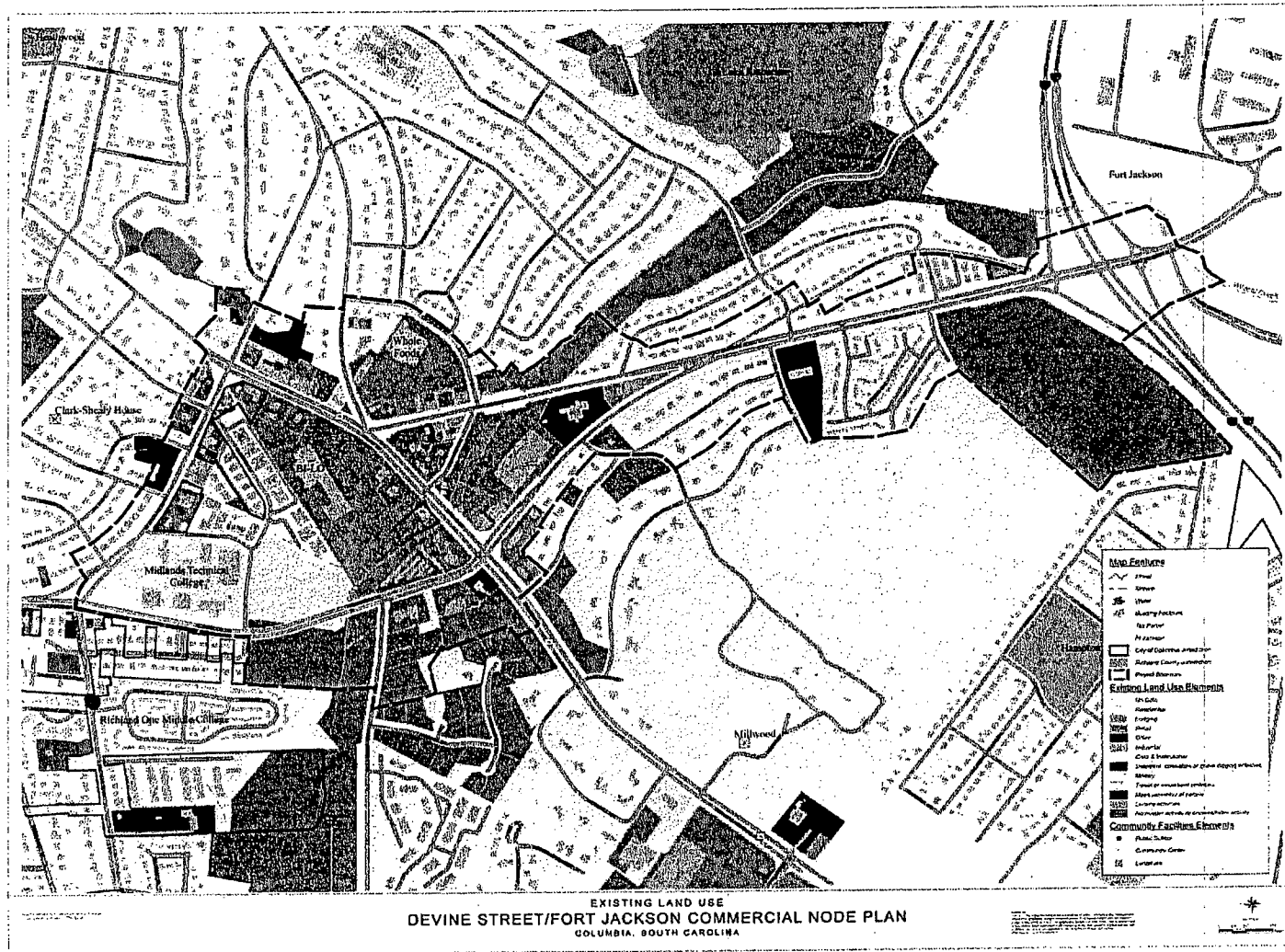
Pedestrian access to Whole Foods, and other neighborhood restaurants, would be an attractive amenity to employees of these tenants.

Land Use & Development Characteristics

The Devine Street/ Fort Jackson Boulevard Commercial Node is an eclectic mix of new and old, of traditional strip retail centers and village-scale commercial, of apartments, condominiums and single-family residences. Over the past fifty years the area has developed as a regional commercial destination and a neighborhood-serving center. Land uses in the study area include a mixture of primarily retail and residential developments.

Map 4 shows the land uses of the study area at the parcel level. The following describes the variation in development within each land use type and the characteristics of development, providing details about the scale and quality of the architecture and site features.

Map 4: Existing Land Use

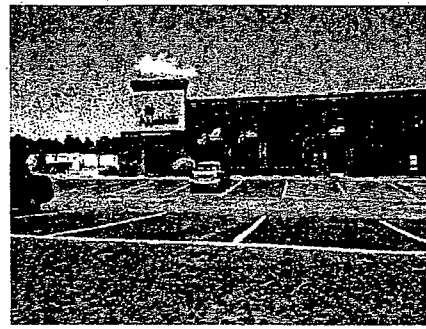


Commercial (Retail and Office)

Commercial uses are centered on the main intersection of Devine Street, Fort Jackson Boulevard and Cross Hill Road. The character of development surrounding this commercial heart of the node is traditional large footprint retailers center surrounded by out parcels and mainly quick-service restaurants, the type of auto-centric development that can be described as "Anywhere USA." However, the Cross Hill Market redevelopment defines a new character for the area. While the development pattern is the same (large footprint anchor, surrounded by retail outparcels) the attention to detail creates a new sense of place for this corner of the study area. Regionally inspired landscaping materials such as Palmetto trees and native grasses cultivate a unique retail experience. The development balances private businesses with public gathering spaces to encourage community interaction. Sidewalk connections to the surrounding neighborhood allow a pedestrian-friendly route that can be used as a precedent for new redevelopment. Ceiling fans, light paint colors, shaded seating and landscaped green spaces provide a place to escape from Columbia's summer heat.

The character of the retail development changes as you move west out of the main intersection. An eclectic mix of smaller footprint retail flank Devine Street west of the intersection. Local retailers line narrow sidewalks. Diagonal parking separates the pedestrian from vehicular movements. Many of the storefronts along this section of Devine Street are blighted or vacant. There is no streetscape and the sidewalks are in various states of disrepair. Turning the corner on Beltline, the retail again changes character. Larger footprint stores are surrounded by parking lots. Sidewalks are directly adjacent to the roadway making the pedestrian feel exposed and potentially unsafe. Much of the development in the area was constructed in the 1970s and is wearing the face of time.

East of the main intersection of Devine Street and Fort Jackson Boulevard is the Crowson Road commercial wedge. The area that fronts Devine has been redeveloped into a few national eateries. The development along Fort Jackson Boulevard and Crowson Road is smaller scale. Buildings of various sizes and shapes are surrounded by parking lots. Crowson Road lacks a definitive edge as pavement bleeds out on both sides, giving way to parking areas and sidewalks that are not delineated.



Many of the outparcels along Devine Street have recently redeveloped.



Whole Foods anchors the recently redeveloped Cross Hill Market shopping center.



A number of small, local businesses are located along Devine Street near the intersection at Beltline Boulevard.

Residential

From the main intersection at Fort Jackson Boulevard, Devine Street and Cross Hill Road, the character of the study area quickly transitions from commercial to residential. There are a number of neighborhoods in close proximity to the study area including Shandon, Sherwood Forest, Cross Hill, Hampton Hills, Heyward Park and Heathwood. These neighborhoods are primarily single-family and owner-occupied. The neighborhoods range from modest one-story homes to large single-family residences. Some of the most expensive residential product in the Columbia market is located in adjacent neighborhoods.

In addition, there are a few condominium and apartment complexes located within the study area. Near the intersection of I-77 and Fort Jackson Boulevard, there are two complexes. Nestled behind the commercial areas along Devine Street and Beltline Boulevard are a set of two-story apartment complexes. The apartments appear to be occupied but are in various states of disrepair.

Civic/Institutional

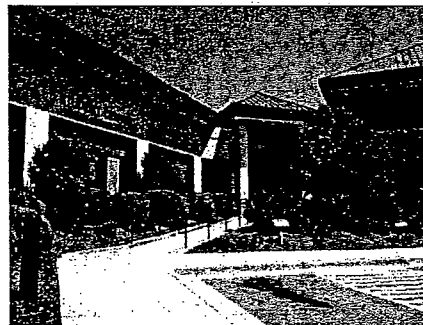
Midlands Technical College anchors the southern portion of the study area. The campus offers a variety of degree and certificate programs and serves as a feeder school to the University of South Carolina.



Historic Heathwood is just one of the many neighborhoods adjacent to the study area.



The multi-family product in the study area was built in the 1970s and is in need of renovation.



Midlands Technical College anchors the southern portion of the study area.

Transportation Infrastructure

Existing Roadway Conditions

This section of the report examines the roadway conditions and characteristics in the study area. Major intersections and travel behavior were evaluated based on field review and local expertise from the Advisory Committee.

Roadway Classification

The identification of roadway classification is a necessary step in assessing and evaluating the effectiveness of the roadway network. Federal Functional Classification System is used by SCDOT to classify roads in the study area by categorizing a road section on attributes common to its role and function within the roadway network.

- **Interstates** – Defined as significant highways featuring limited access and continuous, high-speed movements for a wide variety of traffic types. Interstates account for 1.0 miles as I-77 travels through the northeast part of the study area. The Annual Average Daily Traffic (AADT) on this roadway segment north of the I-77/Fort Jackson Boulevard Interchange is 24,388 vehicles per day (VPD), while south of the I-77/Fort Jackson Boulevard Interchange is 24,348 VPD.
- **Arterials** – Classified as major or minor arterials, these roads connect activity centers and carry large volumes of traffic at moderate speeds. The arterial system in the study area totals approximately 4.2 miles. Devine Street had highest traffic counts for arterials in the study area with an AADT of 46,585 southeast of the Devine Street and Wildcat intersection. Fort Jackson Boulevard has an AADT of 20,010 east of the intersection with Kilbourne and an AADT of 5,655 near the intersection with Devine Street.
- **Collectors** – Collectors typically allow access to activity centers from residential areas. Collectors can also be categorized as major and minor. Their purpose is to collect traffic from streets in residential and commercial areas and distribute it to the arterial system. The collector system in the study area consists of 0.1 total miles.

Roadway Statistics

Roadway statistics evaluated in this study include year 2005 and year 2035 traffic volumes, level of service (LOS), vehicle miles of travel (VMT), and vehicle hours of travel (VHT).

Traffic Volumes

Traffic volume flow maps show projected growth over the 30-year horizon used in the COATS travel demand model. Map 5 shows the 2005 model year volumes and Map 6 shows the 2035 model horizon year volumes.

In Map 5, the highest existing traffic volumes in the study area are located along the Devine Street corridor. Along Devine Street between Beltline and south of Wildcat Road, the existing AADT varies between 33,250 and 46,585 respectively. The I-77 corridor through the study area contains an AADT over 24,000. The traffic volumes for Fort Jackson Boulevard changes greatly in the study area with an

AADT of 20,010 east of Kilbourne, 15,787 west of Kilbourne, and 5,655 at the Fort Jackson/Devine Street intersection. Both Cross Hill Road and Rosewood Boulevard have AADT's over 14,000 in the study area.

COATS 2005 Model
 Daily 2005 Volume
 Half Mile Buffer
 Project Boundary
 COATS Network
VC_RATIO
 0.00 to 0.50
 0.50 to 0.75
 0.75 to 1.00
 1.00 to 1.15
 1.15 to 1.35
 1.35 to 10.00
 Other

0 0.15 0.3 0.45
 Miles

38 | Page

Map 6 - Projected 2035 Traffic Volumes

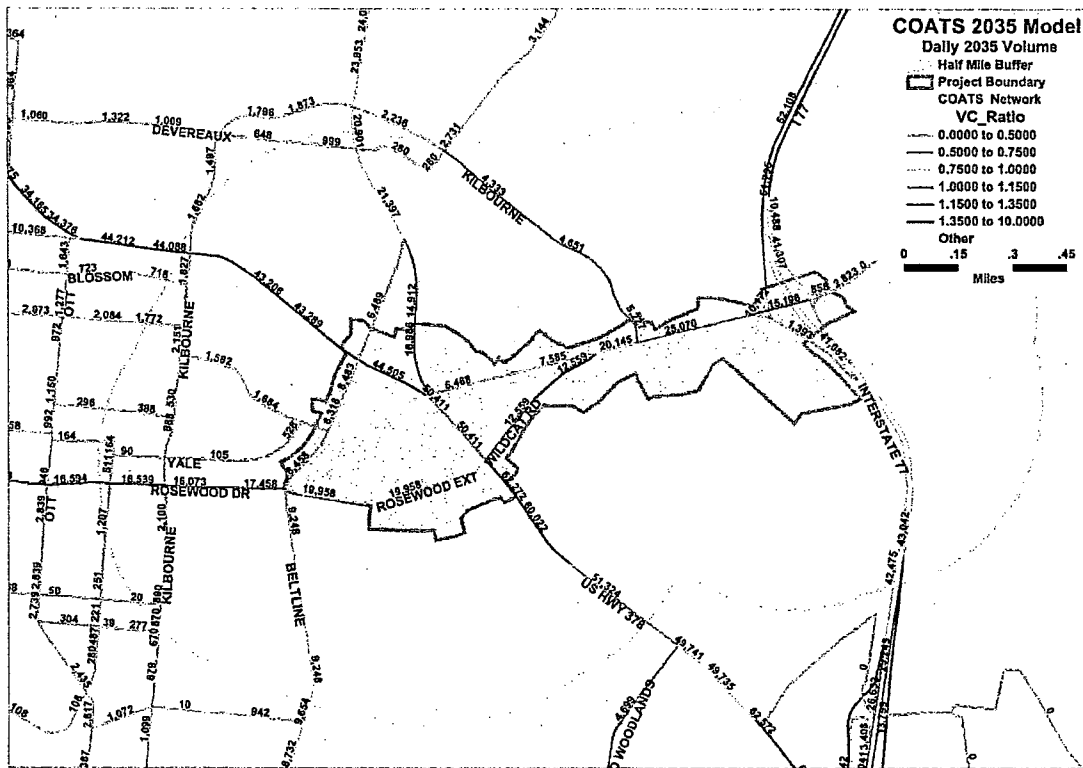


Table 28 shows the 2005 AADT counts and projected 2035 AADT volumes and percent changes on selected roadway segments. The historic AADT values are from the SCDOT traffic count table and the 2035 traffic volumes are derived from the COATS travel demand model. The roadway with the largest AADT growth between 2005 and 2035 is I-77 with count locations around 69 percent. The Devine Street corridor's AADT is projected to grow around 34 percent, while Wildcat Road's growth projection 38 percent.

Table 28 - Major Roadway Traffic Volumes

Major Roadway Segment	VMT		Percent Growth 2005 to 2035
	2005	2035	
I-77 north of Fort Jackson Boulevard	24,388	41,307	69.4%
I-77 south of Fort Jackson Boulevard	24,348	41,082	68.7%
Devine Street between Beltline and Cross Hill Road	33,250	44,505	33.8%
Devine Street between Fort Jackson Boulevard and Wildcat Road	37,461	50,411	34.6%
Devine Street south of Wildcat Road	46,585	62,212	33.5%
Fort Jackson Boulevard between Devine Street and Wildcat Road	5,655	6,468	14.4%
Fort Jackson Boulevard between Wildcat Road and Kilbourne Road	15,787	20,145	27.6%
Fort Jackson between Kilbourne Road and I-77	20,010	25,070	25.3%
Wildcat Road between Devine Street and Fort Jackson Boulevard	9,119	12,559	37.7%
Cross Hill Road between Devine Street and Beltline	14,475	16,986	17.3%
Beltline between Cross Hill and Devine Street	5,936	6,489	9.3%
Beltline between Devine Street and Rosewood Boulevard	7,992	8,483	6.1%
Rosewood Boulevard between Beltline and Devine Street	14,155	19,958	41.0%

Level of Service

Level of service (LOS) is a qualitative measurement from **A** to **F** for describing operational conditions for a given road. On this grading scale, **A** is the best and **F** is the worst for the highway segment. Below is a general description of each LOS category:

- A –** Free flow; conditions where traffic flows at or above the posted speed limit and all motorists have complete mobility between lanes
- B –** Reasonable flow; slightly more congestion with reduced maneuverability
- C –** Stable flow; Ability to pass or change lanes is not assured. Most experienced drivers are comfortable, and posted speed is maintained, but roads are close to capacity.
- D –** Typical of an urban highway during commuting hours. Speeds are somewhat reduced, motorists are hemmed in by other cars and trucks.
- E –** Unstable flow; flow becomes irregular and speed varies rapidly, but rarely reaches the posted limit. On highways, this is consistent with a road over its designed capacity.
- F –** Flow is forced; every vehicle moves in lockstep with the vehicle in front of it, with frequent drops in speed to nearly zero mph. High vehicle delay.

SCDOT uses a LOS of **C** for planning efforts to ensure an acceptable operating service for users. Since LOS is determined by the relationship of roadway volume (traffic on the road) to the roadway's capacity (what the road was designed to handle), each LOS category can be assigned a volume-to-capacity ratio range. At level **C**, this means the roadway volume is equal to the roadway capacity (Volume-to-Capacity Ratio equals 1.0). Below LOS **C** means the roadway volume is under capacity and above LOS **C** the roadway volume is over capacity. The range of Volume-to-Capacity ratios by LOS is shown in **Table 29**.

Table 19 - SCDOT Volume to Capacity Ratios by Level of Service

LOS	V/C Ratio Range
A	0.00 – 0.49
B	0.05 – 0.74
C	0.75 – 1.00
D	1.01 – 1.15
E	1.16 – 1.34
F	> 1.35

Snapshot of the Study Area

According to the 2005 COATS Model displayed in Map 5, segments of Devine Street, Fort Jackson Boulevard, the I-77 ramps, and Wildcat Road have LOS levels of "C" in the study area. All other roadway segments in the study area have a "A" or "B" LOS level.

Shown in Map 6, the projected 2035 COATS Model identifies segments of Devine Street and Wildcat Road has LOS levels of "E" in the study area. The I-77 ramps, Devine Street south of the Fort Jackson intersection and Fort Jackson Boulevard east of the Kilbourne has a projected LOS level of "D". The entire segment of Rosewood in the study area, Fort Jackson Boulevard between Wildcat Road and Kilbourne, and I-77 mainlines have a projected LOS level of "C". All other roadway segments in the study have a projected LOS level of "A" or "B".

Vehicle-Miles and Vehicle-Hours of Travel

The COATS travel demand model was used to estimate the vehicle-miles of travel (VMT) and vehicle-hours of travel (VHT) by roadway type (functional classification). The model calculates BMT by multiplying the length of the roadway links by the assigned volume. The model calculates VHT by multiplying the time $[Time = (Length/Speed) * 60]$ of the roadway links by the assigned volume. **Table 3** shows the VMT, VHT, and congested speed (mph) by roadway type within the study area.

Table 20 - 2005 Vehicle-Miles and Vehicle-Hours of Travel

Roadway Type	Factor	VMT	VHT	Congested Speed (mph)
Interstate	1.0	25,271	396	63.8
Principal Arterial	0.9	31,110	831	37.4
Minor Arterial	3.3	36,135	920	39.3
Collector	0.1	507	13	37.8

Source: COATS Travel Demand Model

The study area is dependent on a reliable road network to function both in and around the study area. As Table 30 shows, the study area road network is largely made up of interstates, principal and minor arterials, and collectors roadways. The principal and minor arterials each have higher VMT and VHT values than the Interstate roadway segments within the study area. The congested speed of the principal and minor arterials and collector roadways are between 37.4 M.P.H and 39.3 M.P.H., while the interstate congested speed is 63.8 M.P.H.

COATS 2035 LRTP Improvements

According to the COATS 2035 Long Range Transportation Plan (LRTP), there are not any currently planned roadway improvements identified and prioritized within a financially constrained plan.

Existing Transit Service

Fixed-route transit service within the study area is provided by the Central Midlands Regional Transit Authority (CMRTA).

Central Midlands Regional Transit Authority (CMRTA)

CMRTA transit services include fixed-routes and paratransit service, Dial-A-Ride (DART), the provide access to jobs, schools, businesses, hospitals, shopping, and entertainment throughout the Columbia Metropolitan area. CMRTA has three routes that service the study area with a fixed one-way fare of \$1.50. Special needs one-way fares are \$0.75 and fares are free for children under the age of five-years old. Transfers between CMRTA routes are \$0.25 and are valid for two hours. The DART paratransit service has a \$3.00 one-way fare.

Existing Routes

As noted above, CMRTA has three fixed –routes which provide service to the study area. Route 3 & 8 is the Rosewood/Rosehill fixed-route which is in service Monday through Saturday and travels between the Downtown Transit Center, University of South Carolina, Rosewood, and the Shoppes at Woodhill. Routes 20 is the Greenlawn fixed-route which is in service Monday through Saturday and travels between the Downtown Transit Center, Benedict College, Allen University, Five Points, Devine Street, Woodhill Mall, VA Hospital, Greenlawn Cemetary, Sumter Highway, Garners Ferry Wal-Mart, and South East Park. Route 21 is the Veterans Hospital fixed-route which is in service on weekdays only and travels

between the Downtown Transit Center, Capitol Complex, Dreher High School, Devine Street, Shoppes at Woodhill, and the VA Hospital. No Sunday service is available for these three fixed-routes which service the study area. Table 31 lists the routes by day of week.

Table 31 - CMRTA Routes by Day of Week

Route Description	Route #	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Rosewood/Rosehill	3 & 8	X	X	X	X	X	X	
Greenlawn	20	X	X	X	X	X	X	
Veterans Hospital	21	X	X	X	X	X		

Source: CMRTA

Route Travel Times and Frequency

The three CMRTA routes which provide weekday service to the study area start service between 5:50 AM and 6:21 AM and end service between 6:39 PM and 8:43 PM. Route 3 & 8 and route 20, the two CMRTA routes which provide Saturday service to the study area start service between 6:50 AM and 6:52 AM and end service between 6:50 PM and 6:52 PM. All three CMRTA routes which service the study area stop in the study area every 60 minutes. CMRTA route 3 & 8 has a roundtrip travel time of 70 minutes, CMRTA route 20 has a 95 minute roundtrip travel time, and CMRTA route 21 has a 65 minute roundtrip travel time. Table 32 shows the route travel times and frequency for the three routes within the study area.

Table 32 - Route Travel Times and Frequency within Study Area

Route #	Route Start Time	Route End Time	Frequency (minutes)	Runs per Day
3 & 8	5:50 AM	6:54 PM	60	14
20	5:52 AM	8:43 PM	60	15
21	6:21 AM	6:39 PM	60	13

Source: CMRTA

Major Stop Locations

There are several popular designations along the three CMRTA routes which serve the study area. Routes 3 & 8 travel between the Downtown Transit Center, University of South Carolina, Rosewood, and the Shoppes at Woodhill. Routes 3 & 8 travels through many roads in the study area, traveling from Rosewood Drive to Beltline Boulevard to Devine Street up to the Shoppes at Woodhill and loops back around on Pelham Drive to Gills Creek Parkway to Rosewood on its route back downtown. Route 20 travels between the Downtown Transit Center, Benedict College, Allen University, Five Points, Devine Street, Woodhill Mall, VA Hospital, Greenlawn Cemetery, Sumter Highway, Garners Ferry Wal-Mart, and

South East Park. Route 20 travels on Devine Street through the study area. Route 21 is the Veterans Hospital fixed-route which is in service on weekdays only and travels between the Downtown Transit Center, Capitol Complex, Dreher High School, Devine Street, Shoppes at Woodhill, and the VA Hospital. Route 21 travels on Devine Street through the study area.

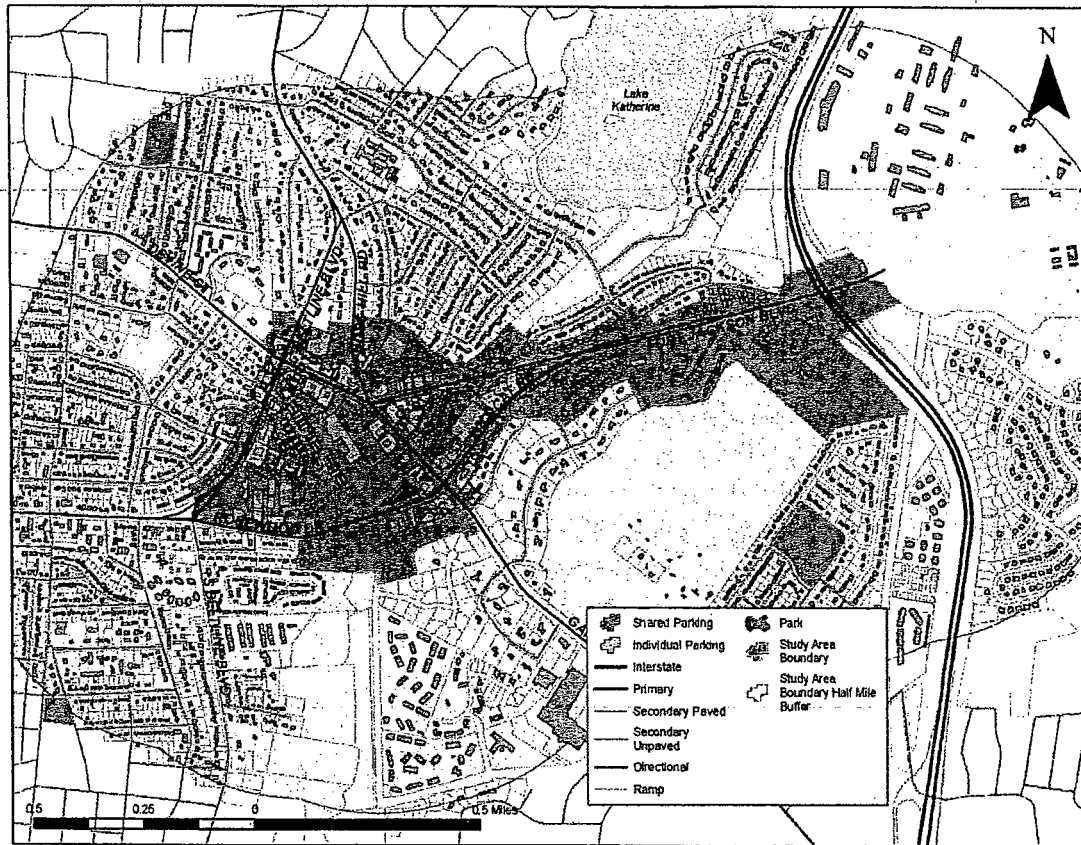
Dial-A-Ride Transit (DART)

CMRTA's DART service offers paratransit service which meets the requirements of the American with Disabilities Act (ADA). DART is a curbside service and requires advance reservations for service. Hours of service for DART are 5:30 AM to 6:30 PM Monday through Saturday.

Existing Bicycle and Pedestrian Facilities

Mobility within a community relies heavily on its citizens' ability to move about using safe facilities for pedestrians and bicycles. As shown in Map 7, sidewalks are located throughout the study area along the main roadways. The Palmetto Trail, a statewide bicycle trail, traverses through the study area traveling along Fort Jackson Boulevard between Kilbourne and Fort Jackson base. In the urban core of the Columbia metropolitan area, the Palmetto Trail is mostly a signed route and travels on the sidewalks in the area. The only on-road bicycle facilities that are located in the study area are the bicycle lanes on Cross Hill Road. Cross Hill Road has one lane traveling in each direction with a center turn lane and bicycle lane on both sides of the roadway. In addition, the City recently adopted Nacto urban bikeway design guidelines.

Map 7 – Existing Bicycle and Pedestrian Facilities in the Study Area

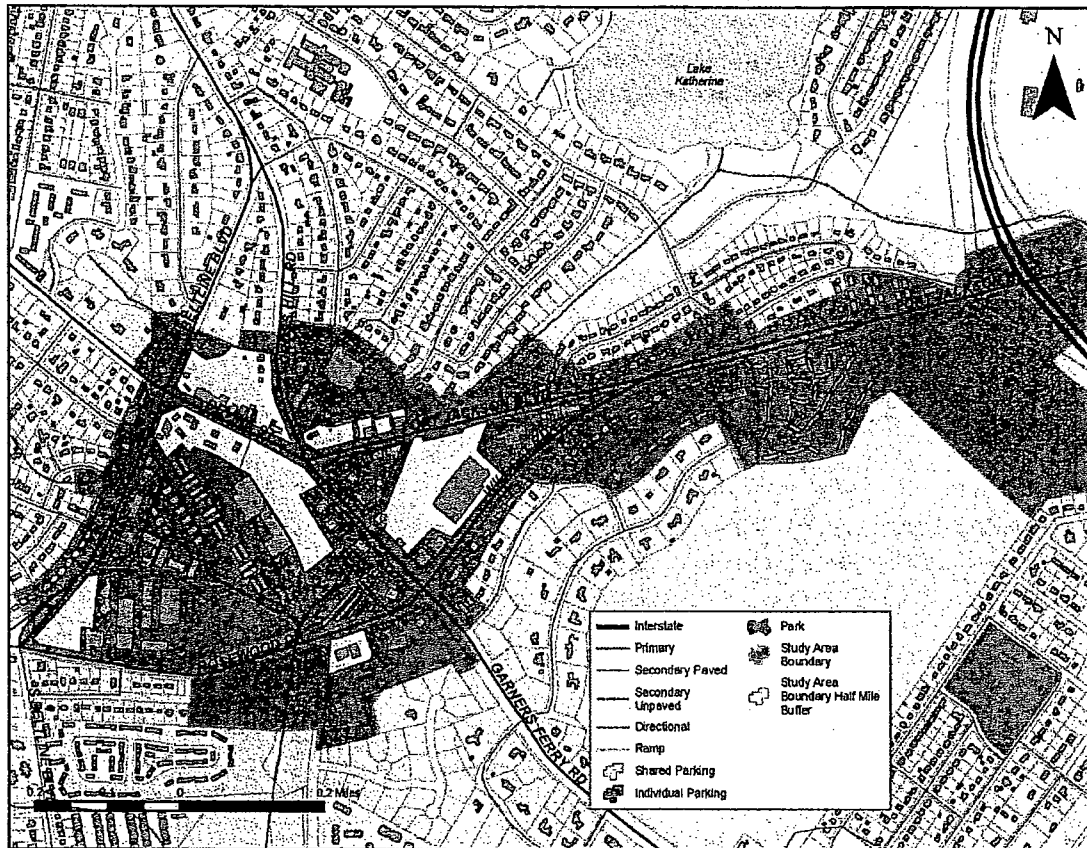


There are no regional greenway connections within the study area. The COATS Bike and Pedestrian Pathways Plan includes plans for three greenways, the Gills Creek Greenway, Leesburg – Fort Jackson Trail and Capital City Trail Greenway, to travel through the study area. The Gills Creek Greenway, which would travel along Gills Creek and would connect to other pathways in the region including the Congaree River Greenway, Bluff Road Bikeway, and Fort Jackson Greenway. The Leesburg – Fort Jackson Trail and Capital City Trail Greenway are both local segments of the statewide Palmetto Trail and connects the study area to Fort Jackson and Downtown Columbia.

Parking Supply

The Devine Street/Fort Jackson study area parking supply is concentrated along the western half of the study area. As shown in Map 8, parking has been categorized as shared parking and individual parking. Shared parking includes commercial land parcels with shared parking lots, while individual parking includes individual commercial land parcels with parking only available for that particular parcel. In the study area, the majority of the commercial parcels have individual parking lots. The study area does include three large shared parking lot sites are located at the Whole Foods, Bi-Lo and former K-Mart locations, along with a few additional smaller shared parking lots spread throughout the study area.

Map 8 - Existing Parking Facilities in the Study Area



Water and Wastewater Infrastructure

According to engineers with the Department of Utilities & Engineering for the City of Columbia, the existing water and wastewater systems that serve the study area are adequate. Beyond regular maintenance, city engineers foresee no need for major infrastructure projects to upgrade the system to serve existing and future development. Map 9 depicts the water and wastewater system in the area.

Natural Resources & Open Space

While there are no formal parks, open spaces or recreation areas in the study area there is a significant natural resource. Gills Creek runs from Lake Katherine through the study area to the Congaree River. It intersects the Capital City Passage of the Palmetto Trail, a statewide trail system, at Kilbourne Road and ultimately connects to the Congaree River Blue Trail.

The creek is part of the larger Gills Creek Watershed which is among the largest urban impaired watersheds in South Carolina. Over time the creek has been channelized. Storm water runoff from development and non-point source pollution threatens the

quality of the waterway. Flooding is a major concern in areas adjacent to the Creek. Development has encroached up on the capacity of the floodplain to perform natural stormwater management function. Increased run-off from development has exacerbated flooding issues associated with limitations of the floodplain. Map 10 highlights the natural and environmental features of the study area.

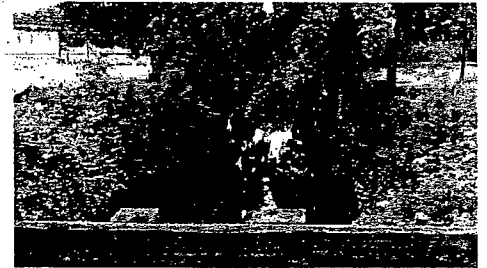
In response to many of the issues, the Gills Creek Watershed Association was established to restore the watershed, "through education, grass roots action, public and private partnerships, remediation projects, and controlled development."

(Source: Gills Creek Watershed Association, www.gillscreekwatershedassociation.org)

The Gills Creek Watershed Association has initiated a study to develop a master plan for the restoration and enhancement of the creek, "the goal is to return the Gills Creek Watershed to a living resource providing recreational opportunities, habitat for native wildlife and plants, and a national model for watershed planning and management." (Source: Gills Creek Watershed Association, www.gillscreekwatershedassociation.org) This study is ongoing and representatives from the Watershed Association are part of the Advisory Committee guiding this plan. The two planning initiatives are integrated and both recognize the goal of restoring the creek to its full environmental, economic and recreational potential.

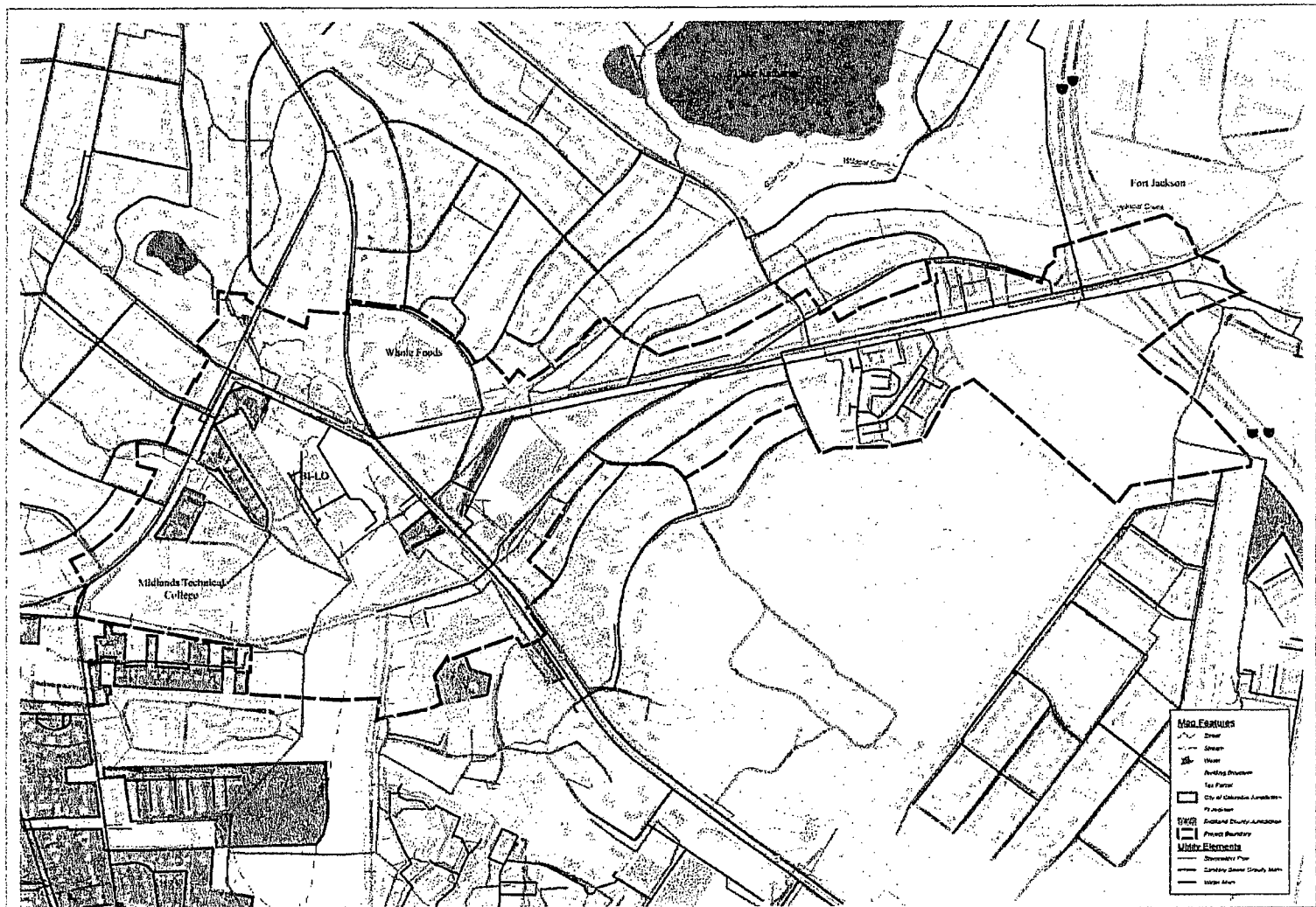


Gills Creek runs through the study area and ultimately feeds into the Congaree River.



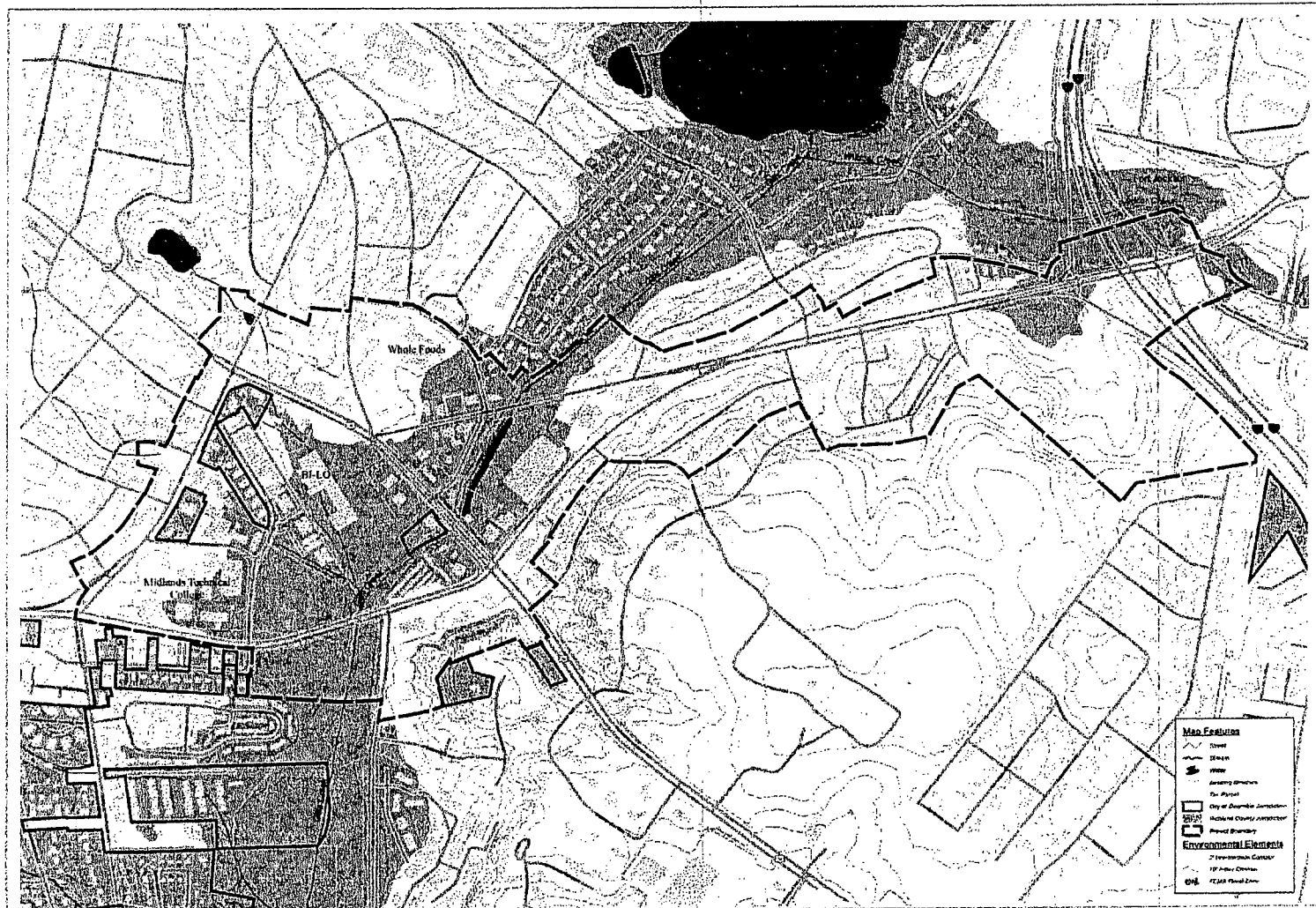
During storm events, the creek regularly floods.

Map 9: Existing Utilities



Snapshot of the Study Area

Map 10: Environmental & Natural Features



Commercial Districts

Arts & Entertainment

The Vista

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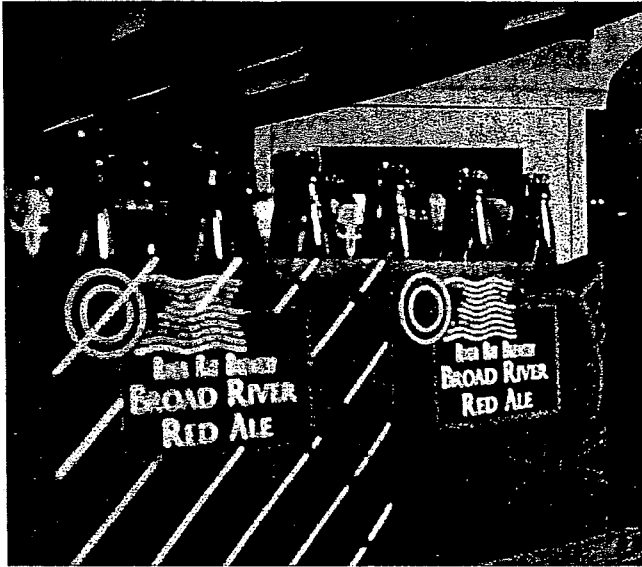
2/15/2016

Shop Around: Rosewood Crossing begins to re-open after flood

HIGHLIGHTS

Rosewood Crossing had just opened when historic rains hit Oct. 4

Michael's, Marshalls and PetSmart expected to open by early March



< 1 of 6 >

Mike van Beyrer is a partner in Bottles Beverage Super Store opening shortly in Columbia. The store is one development in the old K-Mart shopping center, now known as Rosewood Crossing. Tracy Giantz - tgiantz@thestate.com

BY JANET JONES KENDALL
jjkendall@thestate.com

Two months after Gills Creek overflowed in a historic rainstorm, businesses soaked by floodwaters at a shopping center on Devine Street near Rosewood Drive are opening doors finally.

Five stores have opened or will open by early January at Rosewood Crossing, including a liquor, beer and wine superstore that uncorks Wednesday.

The major retailers that were forced to close with the flooding — Marshall's, Michael's and PetSmart — should re-open in the spring.

"It's been a big team effort from everyone in the shopping center and within each business," said Wylie Pearce, who plans to his second Midlands area Sola Salon at the shopping center next month, "but we feel like things are starting to turn around here."

<http://www.thestate.com/news/business/biz-columns-blogs/shop-around/article49769455.h...> 2/15/2016

Rosewood Crossing, on the site of a shuttered Kmart store, is supposed to be part of the retail makeover the area east of downtown Columbia started with the Whole Foods-anchored Cross Hill Market.

The center's three anchor tenants were just starting to draw business when floodwaters that washed away homes and cars rushed through on Oct. 4. Parts of the Columbia area were drenched with as much rain in one day as they received in the previous three months combined.

Parts of Devine Street and Fort Jackson Boulevard were closed as floodwaters remained for days and crews repaired roads.

All three major anchors stores at Rosewood Crossing had nearly eight feet of water damage, resulting in a complete loss of inventory, according to Bright Meyers Development Co., which owns the shopping center. Drywall must be replaced, and electrical systems were damaged.

Work at the three stores is ongoing. They are expected to reopen by early March, Bright Meyers said.

Along Devine Street next to the creek, the Jersey Mike's sandwich shop also re-opened last week.

In the meantime, other stores in Rosewood Crossing shopping center are beginning to open for business — although later than they would have liked.

Kirkland's opened its doors at the shopping center last Tuesday. The home decor store was originally scheduled to open earlier this fall.

Kay Jewelers is expected to open by year's end.

At his salon, Pearce said the new custom cabinets and countertops had been installed just the week before Gills Creek spilled over.

"We had to take everything down to the studs from eight feet down and do a bio cleanse to get all the water pumped out," he said. "We are probably 90 percent done right now and it looks great."

George McLaughlin is ready to open the second location of his Bottles beverage superstore.

Bottles was on schedule to open mid-October.

"When the flood came through, we were about to install shelving and stock the floor," McLaughlin said.

McLaughlin had already waited a year to open as developers worked on the project, including lining up shopping center's other stores.

Since the storm, McLaughlin and his business partners have worked to get the 15,000-square-foot store open before Christmas with thousands of varieties of spirits, wine and beer.

McLaughlin moved to Columbia in 1997 and opened and operated a local McAlister's Deli franchise before selling it in 2007 and moving with his family to Isle of Palms. He developed the idea for Bottles in 2009 and opened shop in Mt. Pleasant in 2011.

"It has been great to watch Columbia evolve in the past 20 years," McLaughlin said. "To me, it is a market that can support new business and is in a constant state of growth. It made perfect sense to open our second store here."

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More Shop Around

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about ccp



City Center Partnership Executive Committee

Our executive committee is committed to revitalizing and energizing Downtown Columbia. They work hard to make sure that Columbia is the best city in the Southeast! Committee members include:

R. Matthew Kennell	President & CEO	City Center Partnership
Tripp Whitener	Chairman	First Citizens Bank
Lee Mashburn	Vice Chairman	Mashburn Construction
Charlie Nutt	Secretary	Free Times
Martha Studstill	Marketing, Chair	Uptown on Main
Ben Arnold	Treasurer	Arnold Companies
Jimmy Chao	Long Range Planning, Chair	Chao and Associates
Marsha Davis	Public Space, Chair	Colliers International
John McArthur	Immediate Past Chairman	Colliers International
Susan McPherson	Member, Executive Committee	Greater Columbia Chamber of Commerce
Dr. Harris Pastides	Member, Executive Committee	University of South Carolina

City Center Partnership Board of Directors

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Charl Butler AgFirst Farm Credit Bank	Glen Caulk Nelson Mullins
Richard H. Cohn Sr. Cohn Construction Services	Ryan Coleman City of Columbia (ex officio)
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Granger Owings

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Richland Library

Hon. Paul Livingston

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Hon. Rev. Edward McDowell, Jr.

City of Columbia

Hon. L. Gregory Pearce, Jr.

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about ccp

What We Do:



Columbia is leading the state in downtown development with South Carolina's first Business Improvement District (BID). City Center Partnership was formed to manage Columbia's downtown BID in the 36-block area bounded by Gervais, Elmwood, Assembly and Marion streets. The organization provides public space management, economic development, marketing services, and public advocacy for downtown Columbia. The Board of Directors oversee the organization's mission — to focus on filling vacancies in commercial properties, retaining existing downtown businesses and recruiting new ones, expanding the downtown residential base, and creating a safe, clean, and friendly downtown environment.

Our staff:



Matt Kennell
President and CEO

Matt@citycentercolumbia.sc

Matt Kennell has worked in urban development and management for almost thirty years in a variety of roles including City Planner, Main Street Manager, Community Development Manager, and in Business Improvement District (BID) management in Florida, Virginia, and South Carolina. He is a graduate of Christopher Newport University in Virginia and Florida Atlantic University where he earned his MPA degree in Environmental Growth Management

He currently serves as the President and CEO of the City Center Partnership in Columbia, SC which provides public space management, economic development, retail recruitment, homeless outreach, public advocacy and planning. Since the Columbia BID was formed in 2002, three new office towers have been constructed, office and residential occupancy has increased, two new hotels have been developed, parking has improved, a comprehensive homeless services facility has opened its doors, and retailers are returning to South Carolina's Main Street. This represents almost \$500 Million in private, taxable investment in the area.

Matt has served on the International Downtown Association (IDA) Board of Directors, is a former President of the Virginia Downtown Development Association, and is a founding member of the ULI South Carolina Center for

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Sustainable Leadership and is on the Midlands Executive Committee for the organization. He is a founding board member of the Midlands Housing Alliance, and is on the boards of the Greater Columbia Chamber of Commerce, the Columbia Film Society, and the Capital City Club. Matt also represents the Carolina's as the Public Alliance Chairman for the International Council of Shopping Centers. He is a member of the Columbia Rotary Club and Chapin United Methodist Church.

He is married and has two college age daughters.



Karel Givens
Vice President, Administration & Development
karel@citycentercolumbia.sc



Lorri-Ann Carter
Director of Marketing
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Jenna Bridgers
Vice President - Recruitment
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Hazel Stokes
Administrative Assistant
hazel@citycentercolumbia.sc

Commercial Districts

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VIA EMAIL TO:

tgoldstein@cobblaw.net

jeffreyfromco@msn.com

February 26, 2016

Thomas Goldstein
Belk, Cobb, Infinger and Goldstein, P.A.
2344 Cosgrove Avenue
Charleston, SC 29405

Jeff White
Taboo Adult Superstore
4716 Devine St.
Columbia, SC 29209

RE: Taboo's Continued Non-Compliance with Zoning Ordinance

Mr. Goldstein and Mr. White,

I am in receipt of Mr. Goldstein's February 22, 2016 letter submitting an Administrative Appeal and an Application for Special Exception, and referencing Taboo's Application for Variance. Please be advised that neither a Variance nor a Special Exception is applicable in this case, and applications for same cannot be processed. Columbia City Code § 17-374(a). Accordingly, I am enclosing the checks submitted with those applications.

Mr. White's February 9, 2016 email to me stated that he "will make any change necessary to comply and to stay open for business." While I would direct Mr. White to you, Mr. Goldstein, for legal advice, I note that our office's observations reveal that Taboo is still operating as a sexual device shop in a prohibited location. If Taboo were to cease selling sexual devices, it would not be operating as a sexual device shop as defined in the zoning ordinance. Per that ordinance, a sexual device is any:

three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs.

-Page 1 of 2-

-Page 2 of 2-
VIA EMAIL TO:
tgoldstein@cobblaw.net
jeffreyfromco@msn.com
February 26, 2016

Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy. Columbia City Code § 17-372.

Please govern yourself accordingly.

Sincerely,



K. Brian Cook
Zoning Administrator



CITY OF COLUMBIA BOARD OF ZONING APPEALS APPLICATION FOR ADMINISTRATIVE APPEAL

OFFICE USE ONLY:

Date Received _____

By _____

Receipt Number _____

Appeal Number _____

APPLICATION MUST BE SUBMITTED AND COMPLETE BY 12:00 NOON ON DEADLINE DATE!

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

1. Address of affected property 4716 Devine Street
Columbia, S.C. 29209
TMS# Page: R13814-09 Block: _____ Lot: _____

2. I (we) allege that the Zoning Administrator did err by ☐ granting ☐ denying an application to
☐ use ☐ occupy ☐ alter ☐ erect ☐ add to ☐ move ☐ demolish for a certificate of
☐ compliance ☐ temporary compliance ☐ compliance-nonconformity
☒ other See attached.
affecting the above listed property.

3. The Zoning Administrator's decisions and reasons therefore were:

See attached.

4. I (we) contend that the Zoning Administrator was **IN ERROR** in that: See attached.

5. I (we) have been aggrieved/affected by this decision in that: See attached.

Appellant (PLEASE PRINT CLEARLY):

Cricket Store 17, LLC by _____

Address: Thomas R. Goldstein

City, State, ZIP: P. O. Box 71121, N. Charleston, S.C. 29415-1121

Office Telephone Number: 843 554 4291

Home Telephone Number: _____

Cellular Telephone Number: _____

Fax Number: 843 554 5566

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

Email Address: tgoldstein@cobblaw.net

Appellant's Signature _____

City of Columbia
Board of Zoning Appeals
Application for Administrative Appeal

1. Address of affected property: 4716 Devine Street, Columbia, SC 29209
 - a. TMS # Page: R13814 Block: 09 Lot: 02
2. We allege that the Zoning Administrator did err by: arbitrarily requiring Taboo to comply strictly with ordinance regulations or face immediate penalties of fines and/or imprisonment rather than to allow Taboo continued operation as a nonconforming use. The City is electing to enforce a provision of its ordinance for "Sexually Oriented Businesses" despite Taboo's record of compliance and compatibility with the surrounding uses in the vicinity of its property.
3. The Zoning Administrator's decisions and reasons therefore were: arbitrary and lacking any rational basis. Terminating Taboo's nonconforming use status on February 5, 2015 is a discretionary act, and as such, the City fails to rationalize why Taboo should cease operating as an adult business when the City cannot produce evidence in fact of any negative secondary effect from Taboo's ongoing operation.
4. We contend that the Zoning Administrator was IN ERROR in that: the Zoning Administrator is requiring strict compliance with an arbitrary ordinance provision without first allowing Taboo (through its owner and/or agent) an opportunity to be heard in a meaningful way, and as a result, Taboo is substantially prejudiced by the City's administrative process.
5. We have been aggrieved/affected by this decision in that: the City forced Taboo's owner to comply immediately with the City's requirements put forth in its letter of January 28, 2016, without the City providing for appeal prior to its enforcement. Upon receiving the City's letter, the owner could only set about immediately transitioning his operation to general retail in order to comply with the City's demand. The City, acting through its Zoning Administrator, caused Taboo significant loss of inventory, loss of sales, and substantial costs to restock empty shelves -- all due to the City's arbitrary and unreasonable enforcement of its zoning requirements without cause, rather than the City exercising discretion to maintain the status quo and allow Taboo a continuing nonconforming use.

Further, the City forced Taboo—without providing an opportunity to be heard—to terminate "voluntarily" its adult business use by the Zoning Administrator's requirements. Taboo's subsequent transition to general retail begins ticking a 30-day clock, after which Taboo loses claim to its

nonconforming use according to the City's ordinance. Taboo immediately informed the Zoning Administrator that it reserved its rights while transitioning to a different use. Taboo hereby again requests an exemption from the effect of this 30-day period, due to the fact that the City imposed its requirements on Taboo arbitrarily and without providing a means of appeal before the City's enforcement. The Zoning Administrator forced Taboo to "terminate voluntarily" its use through no fault of its own. The City's actions failed to provide Taboo's owner the fundamental requirements of due process under the State's due process provisions including notice, an opportunity to be heard in a meaningful way, and judicial review. The City failed to provide sufficient notice of its pending action, leaving Taboo's owner no alternative but to alter immediately the use of his business to avoid criminal penalties affecting his property and liberty interests.

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

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dtcobbaw@hotmail.com

Peggy M. Infinger
pinfinger@cobbaw.net

Thomas R. Goldstein
tgoldstein@cobbaw.net

ATTORNEYS AT LAW
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Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

March 1, 2016

Mr. K. Brian Cook,
Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

Re: Zoning Administrator's ruling dated February 27, 2016

Dear Mr. Cook,

Let me try to bring some order to this case.

On February 2, 2016, I applied to the City of Columbia for a variance.

On February 15, 2016, I applied to the City of Columbia to appeal your decision of January 28, 2016, and February 1, 2016, and to request a special exception on the grounds provided by State law.

As to the February 2nd application for variance, I wish to withdraw that request. I was unfamiliar with the City's on-line application process and mistakenly assumed the variance application was the general application for all requests, including administrative review and special exception. Please consider my application for variance withdrawn. My intention is: 1) to request a special exception as provided by State law, and 2) to appeal your decisions dated January 28 and February 2, 2016, through administrative review.

In addition, as I understand your most recent letter of February 26, the City is scheduling my appeal for administrative review on April 12th at 10:00 a.m. in Council Chambers. However, by your letter dated February 26, 2016, you are refusing to schedule a hearing on our application for special exception, a procedure afforded to us by State law. This creates a procedural dilemma. Your letter of February 26th does not offer any explanation as to why we are not permitted to apply for a special exception except to say: "... neither a Variance nor a Special Exception is applicable in this case, and applications for same cannot be processed. Columbia city Code § 17-374(a)." (Letter of February 26th, ¶ 1) The City's code does not preclude our applying for a special exception. If you are deciding to refuse our application, then we must appeal that decision to the Board. I am sure you are aware, as Zoning Administrator, that Board of Zoning Appeals is a quasi-judicial body created by the General Assembly, and that, as a quasi-judicial body, it sits to hear appeals or applications from "any person aggrieved."

§ 6-29-800 Powers of board of appeals; variances; special exceptions; stay; hearing; decisions and orders.

The board of appeals has the following powers:

(1) to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance.

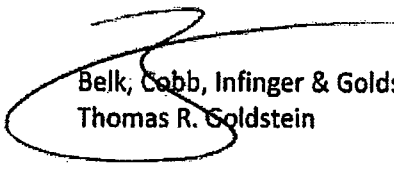
...

(3) to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance; and

(4) appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county.

I do not think the City possesses the power to bar us from appearing before a quasi-judicial body created by the General Assembly to serve the citizens of South Carolina. If, after reconsideration, you fail to accept our application for a special exception hearing, then I ask that you state your reasoning in clear and concise language with a sufficiently particular explanation so that I can ask the Board to review your decision. Please also reconsider your decision that you will not schedule a pre-hearing meeting with staff since, according to your application instructions, meeting with staff prior to the Board hearing is a prerequisite. Finally, if you decline to reconsider your decision and you do issue a written decision that we are not permitted to appear before the Board on an application for Special Exception, then I ask that you allow us to appeal that decision in combination with the appeal of your previous decisions currently-scheduled to be heard on April 12, 2016. Obviously, allowing us to address all the appellate issues at one time conserves judicial resources and makes efficient use of the time already set aside on the 12th. I look forward to hearing from you. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/
cc:
Mr. Andrew Livengood
Deputy Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

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(same as page 265)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

CASE NO.: 16-CP-40- 3478

Cricket Store 17, L.L.C. d/b/a)

Taboo,)

Plaintiff,)

versus)

SUMMONS

) APPEAL FROM BOARD OF ZONING APPEALS

City of Columbia Board of Zoning Appeals,)

(JURY TRIAL DEMANDED)

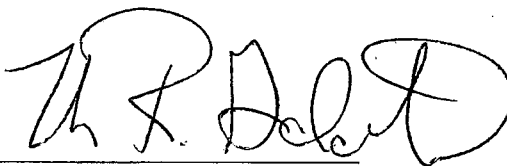
Defendant.)

2016 JUN -6 PM 1:18
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you; and to serve a copy of your Answer to the said Complaint upon the subscribers at their offices at 2344 Cosgrove Avenue, Post Office Box 71121, Charleston, South Carolina, 29415-1121 within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.



June 5, 2016

Thomas R. Goldstein, S. C. Bar I.D. # 2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
N. Charleston, South Carolina 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
ATTORNEYS FOR PLAINTIFF
tgoldstein@cobblaw.net

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CASE NO.: 16-CP-40-
	)	
Cricket Store 17, L.L.C. d/b/a	)	
Taboo,	)	
	)	
Plaintiff,	)	
versus	)	
	)	COMPLAINT
	)	APPEAL FROM BOARD OF ZONING APPEALS
City of Columbia Board of Zoning Appeals,	)	(JURY TRIAL DEMANDED)
	)	
	)	
Defendant.	)	

2016 JUN -6 PM 1:19
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

1. The plaintiff, Cricket Store 17 L.L.C., is a two member limited liability company organized and existing pursuant to the laws of the State of South Carolina with its principal place of business located in the County of Richland, conducting business under the trade name, Taboo, located at 4716 Devine Street, Columbia, S. C. 29209.

2. The defendant is a municipal corporation organized and existing pursuant to the laws of the State of South Carolina and located wholly within Richland County. In accordance with § 6-29-800, S. C. Code of Laws, ann., the City of Columbia created a Board of Zoning Appeals, which is a quasi-judicial body empowered to hear appeals from Zoning Administrators, applications for variances, and applications for special exception.

3. The Honorable Court has jurisdiction of the parties hereto and the subject matter of this lawsuit as provided by § 6-29-820, S. C. Code, Ann., "Appeal from zoning board of appeals to circuit court."

JURISDICTION AND VENUE

4. This Court has jurisdiction over these matters based upon the statutory provisions set forth in the *South Carolina Local Comprehensive Planning Act of 1994*, specifically § 6-29-820, S. C. Code, Ann.: “A person who may have a substantial interest in any decision of the Board of Appeals . . . may appeal from a decision of the board to the circuit court in and for the county. . .” Venue is proper in the Richland County Court of Common Pleas as all of the acts referred to herein occur in Richland County, South Carolina within the City of Columbia.

BACKGROUND FACTS

5. The appeal is from two cases arising out of the Zoning Administrator’s decision to enforce an alleged zoning ordinance violation against the appellant (Case No. 16-010-AA) even though the City of Columbia provides an automatic stay while the case is being appeals. See City ordinance § 11-610(b): “Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City’s enforcement of any denial, suspension, or revocation of a Temporary License or annual license, the Administrator shall immediately issue the respondent a Provisional License.” The second case (Case No. 16-011-AA) is an appeal from the Zoning Administrator’s decision to deny the appellant the right to apply for a special exemption in accordance with § 6-29-800, S. C. Code, which provides to “any person aggrieved” the right to make an application. The Zoning Administrator contends that the appellant is not a person who can appear before the Board of Zoning Appeals.

6. On April 12, 2016, the appellant appeared before the Board on an Appeal from these two decisions of the City of Columbia’s Zoning Administrator because the City Zoning

Administrator refused, and continues to refuse, to authorize the issues of a sexually oriented business license to the plaintiff even though the plaintiff is entitled to it under City Ordinance 11-610(b), and, the City refuses to acknowledge or issue a general retail business license to the plaintiff. Venue is proper in the Richland County Court of Common Pleas as all of the acts referred to herein occur in Richland County, South Carolina within the City of Columbia.

7. On February 2, 15, and March 1, 2016, the plaintiff/appellant requested to appear before the Board on an application for Special Exception as provided for by § 6-29-800, S. C. Code of Laws. The Zoning Administrator refused to accept the plaintiff's application for special exception, which appellant appealed to the Board of Zoning Appeals in Appeal 16-011-AA. The Zoning Administrator refused appellant's application, and refused to allow the appellant to participate in the mandatory pre-hearing meeting with staff. The City also refuses to acknowledge appellant's application for general retail business license.

8. On or about December 5, 2011, the City of Columbia issued to the plaintiff a business license to operate a sexually oriented business at 4716 Devine Street, within the City of Columbia. In reliance upon the issuance of this license, the plaintiff entered into a long term lease of real estate that is commonly referred to as "4716 Devine Street" in the City of Columbia.

9. 4716 Devine Street is situated on a 6-lane U. S. Highway (Highways 76 and 378) running north and south, separated by a large painted median.

10. Immediately following the opening of the plaintiff's business, the City of Columbia began acting in secret, and, the appellant recently learned from discovery provided in a separate *Freedom of Information Act* case pending against the City that the City Council held secret meetings to put into action a plan to put appellant out of business. The City committed numerous *Freedom of Information Act* violations, which continue right up through the time of

the filing of this appeal and which are the subject of another case now pending in the Court of Common Pleas.

11. After the City Zoning Administrator notified appellant that the City would begin criminal prosecutions against the appellant for violation of the City's zoning and licensing ordinances, the appellant requested that the City conform to its automatic stay provisions and that the City grant a hearing to the appellant before the City's Board of Zoning Appeals in order that appellant could request a special exception as provided by state law.

12. The Zoning Administrator refused to stay prosecution despite § 11-610(b) providing for a stay and refused to allow appellant to apply for a special exception. The appellant appealed both decisions to the Board of Zoning Appeals.

13. On April 12, 2016, the appellant appeared before the Board of Zoning Appeals on two cases:

Case 16-010-AA—appeal from Zoning Administrator's refusal to stay prosecution

Case 16-010-AA—appeal from Zoning Administrator's refusal to allow appellant to apply for a special exception.

14. The Board of Zoning Appeals denied appellant's request in each case, and issued a written order in each case on May 11, 2016, copies of which are attached hereto.

15. The respondent's decision denies the appellant the right to participate in a quasi-judicial forum and is contrary to the law of the City of Columbia and the State of South Carolina and should be reversed.

16. The basis for the respondent's decisions are not proper grounds for the determination it made.

17. The respondent failed to apply and misapplied South Carolina law in reaching its decision, and as a result reached improper determinations.

18. The respondent heard evidence and testimony which was irrelevant to the proceedings and designed to inflame the respondent board members to the detriment of the appellant.

19. The respondent failed to follow statutes, its own ordinances, and constitutional provisions applicable to the issues before it, refused to apply the City's own ordinances to governing appellant's case, and refused to allow appellant even the right to appear and be heard and excluded appellant from the City's pre-hearing procedure, as guaranteed by the City's procedures and the enabling statute of the Board of Zoning Appeals, which allows "any person aggrieved" to be heard.

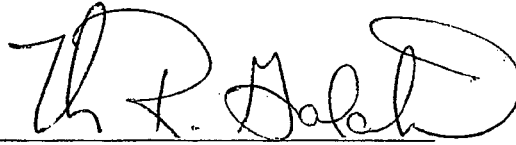
WHEREFORE, the plaintiff prays that this Court issue its Order:

- a. Reversing the decisions of the Board of Zoning Appeals.
- b. Granting an injunction, both temporarily and permanently, requiring the City of Columbia to conform to the automatic stay provisions of § 11-610(b);
- c. Requiring the City of Columbia to issue temporary business licenses to the appellant;
- d. For an award of attorney's fees as allowed by § 15-77-300, 310, S. C. Code, ann.;
- e. Requiring the City to grant the appellant a special exception as he meets all of the statutorily required criteria;
- f. For an award of costs for the prosecution of this action, and
- g. For such other relief as this Court deems just and proper.

BELK, COBB, INFINGER, & GOLDSTEIN, P.A.

June 5, 2016

BY:

A handwritten signature in black ink, appearing to read 'Th R Gold', written over a horizontal line.

Thomas R. Goldstein, S. C. Bar # 2186
(2344 Cosgrove Avenue)

P.O. Box 71121

North Charleston, S.C. 29415-1121 (29405)

(843) 554-4291; (843) 554-5566 (fax)

tgoldstein@cobblaw.net

Board of Zoning Appeals)
)
City of Columbia)

**ORDER
ON AN ADMINISTRATIVE APPEAL**

Date Heard: April 12, 2016
Case Number: 16-010-AA
Subject Property: 4716 Devine Street (TMS#13814-09-02)
Zoning District: C-3, -FP (General Commercial district within a Flood Protective Overlay)
Applicant: Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore)
Other Parties in Interest: None.

The City of Columbia Board of Zoning Appeals held a public hearing on April 12, 2016 to consider the appeal for administrative review of Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore), Applicant, pursuant to §17-111 and §17-112; and §17-371, §17-372, §17-373, and §17-374 of the City of Columbia Code of Ordinances. The applicant alleges that the Zoning Administrator did err by "arbitrarily requiring Taboo to comply strictly with ordinance regulations or face immediate penalties of fines and/or imprisonment rather than to allow Taboo continued operation as a nonconforming use. The City is electing to enforce a provision of its ordinance for "Sexually Oriented Businesses" despite Taboo's record of compliance and compatibility with the surrounding uses in the vicinity of its property."

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

Findings of Fact:

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

The subject property, 4716 Devine Street, TMS # 13814-09-02, is located in the City of Columbia, South Carolina, and is within the C-3 (General Commercial) zoning district.

On January 28, 2016 the Zoning Administrator delivered a written notice of violation letter to Taboo Adult Superstore located at 4716 Devine Street for operating a sexual device shop in violation of the Zoning Ordinance. The notice of violation letter was addressed to owner, Jeff White, and signed/accepted by employee Cheyenne Wiseman. A copy of the letter was presented to the Board. The applicant filed for appeal within 30 days of the January 28 letter.

The Zoning Administrator requested that the determination made in the letter of January 28, 2016 that Taboo Adult Superstore was operating as a sexual device shop, in violation of the Zoning Ordinance, be upheld.

Taboo is located at 4716 Devine Street and is within a C-3 (General Commercial) district. Per §17-374 (b) and (i) of the Zoning Ordinance, a sexually oriented business, including a

sexual device shop, cannot operate within the C-3 district:

(b) A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business outside of a designated M-1 or M-2 district. A sexually oriented business shall be located within an M-1 or M-2 district; however no sexually oriented business shall be permitted to operate within an M-1 or M-2 district appended with a -DD, -ID, -DP, -NC or -PD Overlay district.

(i) Any sexually oriented business lawfully operating as of the date of the ordinance from which this section is derived that is in violation of subsections (b), (c), (d), (e) or (f) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue until and through January 1, 2014, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

The following definitions are found within §17-372 of the Zoning Ordinance:

Sexual device means any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.

Sexually oriented business means an "adult arcade," an "adult bookstore or adult video store," an "adult cabaret," an "adult motel," an "adult motion picture theater," "escort agency," a "semi-nude model studio," or a "sexual device shop."

The Zoning Administrator stated that he "conducted a site visit at Taboo on January 28, 2016 and observed an open establishment that, based on the sexual device inventory displayed, met the definition of a sexually oriented business and a sexual device shop. Predominately displayed were various three dimensional objects designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for

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

16-010-AA

sadomasochistic use or abuse of oneself or others, and also included devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organ." Photographic evidence of the site visit, date stamped January 28, 2016, was provided to the Board and the applicant during the hearing and is included as part of the record as Exhibit B.

Conclusions of Law:

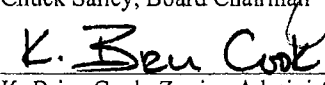
Pursuant to the power and duties of the Board of Zoning Appeals to review administrative decisions and determinations (§17-112), we have heard the testimony and reviewed the Applicant's request for administrative appeal, and find that adequate evidence has been presented that sexual devices have been predominately displayed per the definition for a sexually oriented business and a sexual device shop found in §17-372, the facts and the legal issues have been explored and that the decision that the Zoning Administrator made in his letter of January 28, 2016 was correct based on the facts.

Therefore, based on the foregoing, the Board of Zoning Appeals concludes that the decision of the Zoning Administrator as described above is hereby **AFFIRMED**.

Upon a motion to deny the administrative appeal:

Voting Aye: Hubbard, McKnight, Salley, Young, McMeekin, and Williams.
Voting Nay: None.
Absent: Gregg.

AND IT IS SO ORDERED!

	<u>5/10/16</u>
Chuck Salley, Board Chairman	Date
	<u>5/3/16</u>
K. Brian Cook, Zoning Administrator	Date

Date Mailed to Applicant
and Other Parties of Interest:

5/11/16 ATL

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

16-010-AA

Board of Zoning Appeals)
)
City of Columbia)

**ORDER
ON AN ADMINISTRATIVE APPEAL**

Date Heard: April 12, 2016
Case Number: 16-011-AA
Subject Property: 4716 Devine Street (TMS#13814-09-02)
Zoning District: C-3, -FP (General Commercial district within a Flood Protective Overlay)
Applicant: Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore)
Other Parties in Interest: None.

The City of Columbia Board of Zoning Appeals held a public hearing on April 12, 2016 to consider the appeal for administrative review of Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore), Applicant, pursuant to §17-111 and §17-112; and §17-371, §17-372, §17-373, and §17-374 of the City of Columbia Code of Ordinances.

The applicant alleges that the Zoning Administrator did err by "refusing to accept Taboo's application for special exception, the granting of which the Board of Zoning Appeals is authorized under §6-29-800 (a)(3); and also by the Zoning Administrator's refusal to schedule a pre-hearing conference, which is prerequisite to such applications, per his letter dated February 26, 2016: 'Please be advised that neither a Variance nor a Special Exception is applicable in the case, and applications for same cannot be processed. City Code §17-374(a).' See also Zoning Administrator's email dated February 26, 2016: 'Your administrative appeal request before the Board of Zoning Appeals will be scheduled for April 12th 2016 at 10:00 at 1737 Main Street (Council Chambers). A pre-hearing conference is not required.'"

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

Findings of Fact:

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

The subject property, 4716 Devine Street, TMS # 13814-09-02, is located in the City of Columbia, South Carolina, and is within the C-3 (General Commercial) zoning district.

In a letter dated February 26, 2016, the Zoning Administrator returned fees and applications to the applicant. These applications and fees were for a variance request and special exception request for Taboo Adult Superstore, a sexual device shop and sexually oriented business. This letter stated that the application for special exception could not be processed. The applicant filed for appeal on March 1, 2016, within 30 days of the February 26 letter.

South Carolina Code §6-29-800(A)(3) states that the board of appeals has the power "to permit uses by special exception subject to the terms and conditions for the uses set for

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE NO.: 16-CP-40-3478

Cricket Store 17, L.L.C. d/b/a

Taboo,

Plaintiff,

versus

City of Columbia Board of Zoning Appeals,

Defendant.

SUMMONS

APPEAL FROM BOARD OF ZONING APPEALS

(JURY TRIAL DEMANDED)

RICHLAND COUNTY
FILED
2016 JUN 15 PM 12:39
JEANETTE W. HENDERSON
C.C.P. & G.S.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you; and to serve a copy of your Answer to the said Complaint upon the subscribers at their offices at 2344 Cosgrove Avenue, Post Office Box 71121, Charleston, South Carolina, 29415-1121 within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.



June 5, 2016

Thomas R. Goldstein, S. C. Bar I.D. # 2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
N. Charleston, South Carolina 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
ATTORNEYS FOR PLAINTIFF
tgoldstein@cobblaw.net

JURISDICTION AND VENUE

4. This Court has jurisdiction over these matters based upon the statutory provisions set forth in the *South Carolina Local Comprehensive Planning Act of 1994*, specifically § 6-29-820, S. C. Code, Ann.: "A person who may have a substantial interest in any decision of the Board of Appeals . . . may appeal from a decision of the board to the circuit court in and for the county. . ." Venue is proper in the Richland County Court of Common Pleas as all of the acts referred to herein occur in Richland County, South Carolina within the City of Columbia.

BACKGROUND FACTS

5. The appeal is from two cases arising out of the Zoning Administrator's decision to enforce an alleged zoning ordinance violation against the appellant (Case No. 16-010-AA) even though the City of Columbia provides an automatic stay while the case is being appeals. See City ordinance § 11-610(b): "Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of any denial, suspension, or revocation of a Temporary License or annual license, the Administrator shall immediately issue the respondent a Provisional License." The second case (Case No. 16-011-AA) is an appeal from the Zoning Administrator's decision to deny the appellant the right to apply for a special exception in accordance with § 6-29-800, S. C. Code, which provides to "any person aggrieved" the right to make an application. The Zoning Administrator contends that the appellant is not a person who can appear before the Board of Zoning Appeals even though by state law only the Board of Zoning Appeals can grant a special exception, and by law "any person aggrieved" can appeal to

the Board. Moreover, as set forth more fully below, the appellant meets each one of the statutory requirements for a special exception.

6. On April 12, 2016, the appellant appeared before the Board on an Appeal from these two decisions of the City of Columbia's Zoning Administrator because the City Zoning Administrator refused, and continues to refuse, to allow Taboo continued operation as a nonconforming use and to authorize the release of a provisional sexually oriented business license to the plaintiff even though the plaintiff is entitled to it under City Ordinance 11-610(b). In addition, the City refuses to acknowledge appellant's application for or issue to appellant a general retail business license. Venue is proper in the Richland County Court of Common Pleas as all of the acts referred to herein occur in Richland County, South Carolina within the City of Columbia.

7. On February 2, 15, and March 1, 2016, the plaintiff/appellant requested to appear before the Board on an application for Special Exception as provided for by § 6-29-800, S. C. Code of Laws. The Zoning Administrator refused to accept the plaintiff's application for special exception, which appellant appealed to the Board of Zoning Appeals in Appeal 16-011-AA. The Zoning Administrator refused appellant's application, and refused to allow the appellant to participate in the mandatory pre-hearing meeting with staff, refused to provide the Zoning Department's submissions to the Board until the Zoning Administrator made his oral argument before the Board. The City refused to accept appellant's application for Special Exception and supported the Zoning Administrator's administrative decision to deny appellant an opportunity to participate in the mandatory pre-submission meeting. The City also refuses to acknowledge appellant's application for general retail business license.

8. On or about December 5, 2011, the City of Columbia issued to the plaintiff a business license to operate a sexually oriented business at 4716 Devine Street, within the City of Columbia. In reliance upon the issuance of this license, the plaintiff entered into a long term lease of real estate that is commonly referred to as "4716 Devine Street" in the City of Columbia.

9. 4716 Devine Street is situated on a 6-lane U. S. Highway (Highways 76 and 378) running north and south, separated by a large painted median.

10. Immediately following the opening of the plaintiff's business, the City of Columbia began acting in secret, and, the appellant recently learned from discovery provided in a separate *Freedom of Information Act* case pending against the City that the City Council scheduled secret meetings to put into action a plan to put appellant out of business. The City committed numerous *Freedom of Information Act* violations, which continue right up through the time of the filing of this appeal and which are the subject of another case now pending in the Court of Common Pleas.

11. After the City Zoning Administrator notified appellant that the City would begin criminal prosecutions against the appellant for violation of the City's zoning and licensing ordinances, the appellant requested that the City conform to its automatic stay provisions and issue a provisional license as called for in the City's ordinance. The appellant also requested that the City grant a hearing to the appellant before the City's Board of Zoning Appeals in order that appellant could apply to be heard in a meaningful manner to request a special exception as provided by state law. The appellant meets every statutory criterion for a special exception.

12. The Zoning Administrator refused to stay prosecution despite § 11-610(b) providing for a provisional license and stay and refused to allow appellant to apply for a special exception. The appellant appealed both decisions to the Board of Zoning Appeals.

13. On April 12, 2016, the appellant appeared before the Board of Zoning Appeals on two cases:

Case 16-010-AA—appeal from Zoning Administrator's refusal to stay prosecution

Case 16-010-AA—appeal from Zoning Administrator's refusal to allow appellant to apply for a special exception.

14. The Board of Zoning Appeals denied appellant's request in each case, and issued a written order in each case on May 11, 2016, copies of which are attached hereto.

15. The respondent's decision denies the appellant the right to participate in a quasi-judicial forum and is contrary to the law of the City of Columbia and the State of South Carolina and should be reversed.

16. The basis for the respondent's decisions are not proper grounds for the determination it made.

17. The respondent failed to apply and misapplied South Carolina law in reaching its decision, and as a result reached improper determinations.

18. The respondent heard evidence and testimony which was irrelevant to the proceedings and designed to inflame the respondent board members to the detriment of the appellant.

19. The respondent failed to follow statutes, its own ordinances, and constitutional provisions applicable to the issues before it, refused to apply the City's own ordinances to governing appellant's case, and refused to allow appellant even the right to appear and be heard and excluded appellant from the City's pre-hearing procedure, as guaranteed by the City's procedures and the enabling statute of the Board of Zoning Appeals, which allows "any person aggrieved" to be heard.

20. Despite the controlling provisions of § 6-29-800, the City's Zoning Administrator and the Board of Zoning Appeals refused to consider the appellant's application even though every other property owner in the state is afforded the right to make such application. The City's Board of Zoning Appeals determined that, because the appellant dispenses a protected message, it is not afforded equal protection of the laws and excluded from applying to the Board of Zoning Appeals for relief, a right afforded to every other citizen in the State of South Carolina.

WHEREFORE, the plaintiff prays that this Court issue its Order:

- a. Reversing the decisions of the Board of Zoning Appeals.
- b. Granting an injunction, both temporarily and permanently, requiring the City of Columbia to conform to the provisional license provisions of § 11-610(b);
- c. Requiring the City of Columbia to issue temporary business licenses to the appellant;
- d. For an award of attorney's fees as allowed by § 15-77-300, 310, S. C. Code, ann.;
- e. Requiring the City to grant the appellant a special exception as he meets all of the statutorily required criteria, or, in the alternative, remanding the application back to the Board of Zoning Appeals with instructions to grant a special exception as appellant meets all the statutory requirements for a special exception, , or in the additional alternative, to grant the appellant a meaningful hearing on his application for special exception;
- f. For an award of costs for the prosecution of this action, and
- g. For such other relief as this Court deems just and proper.

BELK, COBB, INFINGER, & GOLDSTEIN, P.A.

June 7, 2016

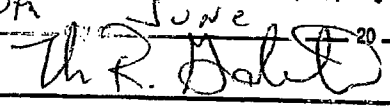
BY: 

Thomas R. Goldstein, S. C. Bar # 2186
(2344 Cosgrove Avenue)
P.O. Box 71121
North Charleston, S.C. 29415-1121 (29405)
(843) 554-4291; (843) 554-5566 (fax)
tgoldstein@cobblaw.net

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
- ☐ handing counsel a copy thereof
- ☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 8th June 2016
BY 

Board of Zoning Appeals)
)
City of Columbia)

**ORDER
ON AN ADMINISTRATIVE APPEAL**

Date Heard: April 12, 2016
Case Number: 16-010-AA
Subject Property: 4716 Devine Street (TMS#13814-09-02)
Zoning District: C-3, -FP (General Commercial district within a Flood Protective Overlay)
Applicant: Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore)
Other Parties in Interest: None.

The City of Columbia Board of Zoning Appeals held a public hearing on April 12, 2016 to consider the appeal for administrative review of Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore), Applicant, pursuant to §17-111 and §17-112; and §17-371, §17-372, §17-373, and §17-374 of the City of Columbia Code of Ordinances. The applicant alleges that the Zoning Administrator did err by "arbitrarily requiring Taboo to comply strictly with ordinance regulations or face immediate penalties of fines and/or imprisonment rather than to allow Taboo continued operation as a nonconforming use. The City is electing to enforce a provision of its ordinance for "Sexually Oriented Businesses" despite Taboo's record of compliance and compatibility with the surrounding uses in the vicinity of its property."

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

Findings of Fact:

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

The subject property, 4716 Devine Street, TMS # 13814-09-02, is located in the City of Columbia, South Carolina, and is within the C-3 (General Commercial) zoning district.

On January 28, 2016 the Zoning Administrator delivered a written notice of violation letter to Taboo Adult Superstore located at 4716 Devine Street for operating a sexual device shop in violation of the Zoning Ordinance. The notice of violation letter was addressed to owner, Jeff White, and signed/accepted by employee Cheyenne Wiseman. A copy of the letter was presented to the Board. The applicant filed for appeal within 30 days of the January 28 letter.

The Zoning Administrator requested that the determination made in the letter of January 28, 2016 that Taboo Adult Superstore was operating as a sexual device shop, in violation of the Zoning Ordinance, be upheld.

Taboo is located at 4716 Devine Street and is within a C-3 (General Commercial) district. Per §17-374 (b) and (i) of the Zoning Ordinance, a sexually oriented business, including a

sexual device shop, cannot operate within the C-3 district:

(b) A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business outside of a designated M-1 or M-2 district. A sexually oriented business shall be located within an M-1 or M-2 district; however no sexually oriented business shall be permitted to operate within an M-1 or M-2 district appended with a -DD, -ID, -DP, -NC or -PD Overlay district.

(i) Any sexually oriented business lawfully operating as of the date of the ordinance from which this section is derived that is in violation of subsections (b), (c), (d), (e) or (f) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue until and through January 1, 2014, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

The following definitions are found within §17-372 of the Zoning Ordinance:

Sexual device means any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.

Sexually oriented business means an "adult arcade," an "adult bookstore or adult video store," an "adult cabaret," an "adult motel," an "adult motion picture theater," "escort agency," a "semi-nude model studio," or a "sexual device shop."

The Zoning Administrator stated that he "conducted a site visit at Taboo on January 28, 2016 and observed an open establishment that, based on the sexual device inventory displayed, met the definition of a sexually oriented business and a sexual device shop. Predominately displayed were various three dimensional objects designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for

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

16-010-AA

sadomasochistic use or abuse of oneself or others, and also included devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organ." Photographic evidence of the site visit, date stamped January 28, 2016, was provided to the Board and the applicant during the hearing and is included as part of the record as Exhibit B.

Conclusions of Law:

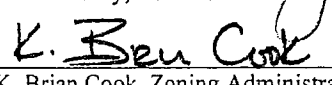
Pursuant to the power and duties of the Board of Zoning Appeals to review administrative decisions and determinations (§17-112), we have heard the testimony and reviewed the Applicant's request for administrative appeal, and find that adequate evidence has been presented that sexual devices have been predominately displayed per the definition for a sexually oriented business and a sexual device shop found in §17-372, the facts and the legal issues have been explored and that the decision that the Zoning Administrator made in his letter of January 28, 2016 was correct based on the facts.

Therefore, based on the foregoing, the Board of Zoning Appeals concludes that the decision of the Zoning Administrator as described above is hereby **AFFIRMED**.

Upon a motion to deny the administrative appeal:

Voting Aye: Hubbard, McKnight, Salley, Young, McMeekin, and Williams.
Voting Nay: None.
Absent: Gregg.

AND IT IS SO ORDERED!

	<u>5/10/16</u>
Chuck Salley, Board Chairman	Date
	<u>5/3/16</u>
K. Brian Cook, Zoning Administrator	Date

Date Mailed to Applicant: _____
and Other Parties of Interest: _____

5/11/16 ATL

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

16-010-AA

Board of Zoning Appeals)

City of Columbia)

ORDER

ON AN ADMINISTRATIVE APPEAL

Date Heard: April 12, 2016

Case Number: 16-011-AA

Subject Property: 4716 Devine Street (TMS#13814-09-02)

Zoning District: C-3, -FP (General Commercial district within a Flood Protective Overlay)

Applicant: Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore)

Other Parties in Interest: None.

The City of Columbia Board of Zoning Appeals held a public hearing on April 12, 2016 to consider the appeal for administrative review of Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore), Applicant, pursuant to §17-111 and §17-112; and §17-371, §17-372, §17-373, and §17-374 of the City of Columbia Code of Ordinances.

The applicant alleges that the Zoning Administrator did err by "refusing to accept Taboo's application for special exception, the granting of which the Board of Zoning Appeals is authorized under §6-29-800 (a)(3); and also by the Zoning Administrator's refusal to schedule a pre-hearing conference, which is prerequisite to such applications, per his letter dated February 26, 2016: 'Please be advised that neither a Variance nor a Special Exception is applicable in the case, and applications for same cannot be processed. City Code §17-374(a).' See also Zoning Administrator's email dated February 26, 2016: 'Your administrative appeal request before the Board of Zoning Appeals will be scheduled for April 12th 2016 at 10:00 at 1737 Main Street (Council Chambers). A pre-hearing conference is not required.'"

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

Findings of Fact:

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

The subject property, 4716 Devine Street, TMS # 13814-09-02, is located in the City of Columbia, South Carolina, and is within the C-3 (General Commercial) zoning district.

In a letter dated February 26, 2016, the Zoning Administrator returned fees and applications to the applicant. These applications and fees were for a variance request and special exception request for Taboo Adult Superstore, a sexual device shop and sexually oriented business. This letter stated that the application for special exception could not be processed. The applicant filed for appeal on March 1, 2016, within 30 days of the February 26 letter.

South Carolina Code §6-29-800(A)(3) states that the board of appeals has the power "to permit uses by special exception subject to the terms and conditions for the uses set for

16-011-AA

such uses in the zoning ordinance". Amongst the location requirements for sexually oriented businesses contained within the Zoning Ordinance of the City of Columbia, §17-374(b) states that, "a person commits a misdemeanor if he operates or causes to be operated a sexually oriented businesses outside a designated M-1 or M-2 district..." The subject property is within the C-3 district, not within either the M-1 or M-2 district, and as such is not permissible at the location.

Further, §17-374(a) states that no variance or special exception regarding any of the location requirements for sexually oriented businesses may be granted by the board, and no other section of the Zoning Ordinance of the City of Columbia allows a sexually oriented business to be permitted by special exception.

The Zoning Administrator testified that the language regarding a pre-application conference was part of the special exception application, was optional, and not part of an application for administrative appeal. The application for special exception could not be accepted and the reasoning for that decision was provided to the applicant in writing. Letters and emails were exchanged between the Zoning Administrator and applicant regarding the applications for administrative appeal.

Conclusions of Law:

Pursuant to the power and duties of the Board of Zoning Appeals to review administrative decisions and determinations (§17-112), we have heard the testimony and reviewed the Applicant's request for administrative appeal, and find it clear that the Zoning Ordinance of the City of Columbia does not permit a special exception to be granted for a sexually oriented business. As the duties of the Board include hearing and deciding only the applications for special exception the Board of Zoning Appeals is specifically authorized to pass upon by terms of the Zoning Ordinance of the City of Columbia, the decision of the Zoning Administrator to not process a special exception application for a sexually oriented business is correct.

Therefore, based on the foregoing, the Board of Zoning Appeals concludes that the decision of the Zoning Administrator as described above is hereby **AFFIRMED**.

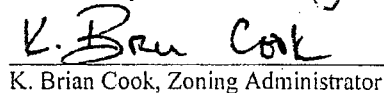
Upon a motion to deny the administrative appeal:

Voting Aye: Hubbard, Young, Salley, McKnight, McMeekin, and Williams.
Voting Nay: None.
Absent: Gregg.

AND IT IS SO ORDERED!


Chuck Salley, Board Chairman

5/10/16
Date


K. Brian Cook, Zoning Administrator

5/3/16
Date

Date Mailed to Applicant
and Other Parties of Interest:

5/11/16 ATL

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

16-011-AA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Cricket Store 17, L.L.C. d/b/a Taboo,)
Plaintiff,)
v.)
City of Columbia Board of Zoning)
Appeals)
Defendant.)
and)
City of Columbia Zoning)
Administrator,)
Counterclaimant,)
v.)
Cricket Store 17, L.L.C. d/b/a Taboo)
Counter-Defendant.)

IN THE COURT OF COMMON PLEAS

Case No. 16-CP-40-3478

**ANSWER
AND COUNTERCLAIM FOR
INJUNCTIVE RELIEF**

FILED
2016 JUL - 8 PM 4:55
JEANETTE W. MCBRIDE
C.C.P. & G.S.

The Defendant City of Columbia Board of Zoning Appeals ("the Board") hereby answers the Amended Complaint of the Plaintiff by stating that every allegation of the Complaint is denied unless hereinafter specifically admitted. Defendant further answers as follows:

FOR A FIRST DEFENSE

1. Answering paragraph 1, the Board lacks knowledge of whether Cricket Store 17, L.L.C. is "a two member limited liability company," but admits the remainder of the allegations in paragraph 1.

2. Answering paragraph 2, the Board denies that it is a "municipal corporation" existing pursuant to state law. The City of Columbia is a municipal corporation, but the City is

not located wholly within Richland County. The remainder of paragraph 2 is a legal conclusion to which no response is required.

3. Answering paragraph 3, the Board admits that jurisdiction is proper in this Court.

4. Answering paragraph 4, the Board admits that jurisdiction and venue is proper in this Court.

5. Answering paragraph 5, the Board admits that this appeal arises out of two cases that went before the Board, Nos. 16-010-AA and 16-011-AA. The Board denies that Chapter 11 of the City Code (including § 11-610(b)), which deals with business licensing, has any applicability to either of the cases that were before the Board of Zoning Appeals. Section 11-610(b) deals with denial of a sexually oriented business license, and appeals therefrom. Taboo has never been denied a sexually oriented business license, and the Board of Zoning Appeals would have no jurisdiction over such an appeal if it were to occur. The Board admits that § 17-374(a) states that no variance or special exception regarding any of the location requirements for sexually oriented businesses may be granted by the Board. In any event, the Board denies that the appellant meets each one of the statutory requirements for a special exception.

6. Answering paragraph 6, the Board admits that Taboo appeared before the board of zoning appeals on April 12, 2016. The Board further answers that the business license issues raised by Taboo in paragraph 6 are not within the purview of the Board. The Board admits that venue is proper in this Court.

7. Answering paragraph 7, the Board admits that Taboo requested to appear before the board on an application for special exception. The Board admits that the Zoning Administrator sent a letter to Taboo stating: "Please be advised that neither a Variance nor a Special Exception is applicable in this case, and the applications for same cannot be processed.

Columbia City Code § 17-374(a). Accordingly, I am enclosing the checks submitted with those applications." The Board denies that the Code imposes any "mandatory pre-hearing meeting with staff," and notes that since no variance or special exception could have been granted, there was no hearing to which a prior meeting with staff would have been applicable. The Board further answers that it is without knowledge of any "general retail business license" that Taboo alleges to have submitted to the City of Columbia.

8. Answering paragraph 8, the Board admits, on information and belief, the first sentence of this paragraph. Further answering, the Board is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of the second sentence and, therefore, denies the same and demands strict proof thereof.

9. Answering paragraph 9, the Board admits only that the business located at 4716 Devine Street is located on a U.S. Highway.

10. Answering paragraph 10, the Board is without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph and, therefore, denies the same and demands strict proof thereof.

11. Answering paragraph 11, the Board denies that the provisional license referenced in the business licensing code applies, and denies that Taboo, a sexually oriented business, was entitled to a hearing on its application for a variance or special exception. The Board denies that Taboo meets every statutory criterion for a special exception.

12. Answering paragraph 12, the Board denies that Taboo is entitled to a provisional license, or that the Zoning Administrator erred in any manner. The Board admits that Taboo appealed to the Board.

13. Answering paragraph 13, the Board admits that Taboo appeared before the Board on April 12, 2016.

14. Answering paragraph 14, the Board admits same, except to state that the orders were issued on May 10, 2016, and mailed to Taboo on May 11, 2016.

15. Answering paragraph 15, the Board denies same.

16. Answering paragraph 16, the Board denies same.

17. Answering paragraph 17, the Board denies same.

18. Answering paragraph 18, the Board denies same, except to state that Taboo injected irrelevant evidence and testimony into the proceedings.

19. Answering paragraph 19, the Board denies same.

20. Answering paragraph 20, the Board denies same.

21. Answering the prayer for relief, the Board denies that Taboo is entitled to any relief whatsoever.

FOR A SECOND DEFENSE

22. The complaint fails to state facts sufficient to constitute a cause of action against this Defendant and should be dismissed, or judgment should be entered on the pleadings or such additional material as submitted and allowed.

FOR A THIRD DEFENSE

23. As to any state court claims, Defendant pleads the pertinent provisions of the South Carolina Torts Claims Act, S.C. CODE ANN. §§15-78-10 through 220 as an affirmative defense which serves as a bar or limits those claims.

FOR A FOURTH DEFENSE

24. The claims asserted by Taboo are barred by the doctrines of estoppel, including but not limited to collateral estoppel, res judicata, equitable estoppel, and judicial estoppel.

FOR A FIFTH DEFENSE

25. Taboo's requested relief is barred by the doctrine of unclean hands.

FOR A SIXTH DEFENSE

26. Defendant denies Taboo is entitled to the relief sought to the extent Taboo seeks relief or asserts error concerning matters or issues that are outside the jurisdiction of the Board of Zoning Appeals.

FOR A SEVENTH DEFENSE

27. Defendant denies Taboo is entitled to the relief requested to the extent that any of the issues raised in the Amended Complaint were not raised to and ruled upon by the Defendant and such issues have been waived.

FOR AN EIGHTH DEFENSE

28. To the extent that the Amended Complaint may contain factual and/or legal matter that was not presented to the Board of Zoning Appeals at the public hearing on April 12, 2016, such matter is not part of the record and should be stricken from the official record and should not be considered by the court in its determination of this appeal.

FOR A NINTH DEFENSE

29. The Board expressly reserves the right to any additional defenses that may become applicable as the lawsuit progresses.

FOR A TENTH DEFENSE

30. In asserting this Answer, the Board, through the secretary to the Board of Zoning Appeals, certifies that it has attached to this Answer a duly certified copy of the proceedings held before the Board. The record of the proceedings before the Board in Case No. 16-010-AA is attached hereto as Exhibit A (Bates numbered 16-010-AA_0001 through 16-010-AA_0101). The record of the proceedings before the Board in Case No. 16-011-AA is attached hereto as Exhibit B (Bates numbered 16-011-AA_0001 through 16-011-AA_0036). Also attached as Exhibit C is a DVD recording of the April 12, 2016 meeting of the Board of Zoning Appeals.

WHEREFORE, the Board of Zoning Appeals prays that the Taboo's appeal(s) be dismissed with costs, and that the relief sought by Taboo be denied.

COUNTERCLAIM OF CITY OF COLUMBIA ZONING ADMINISTRATOR

31. The City of Columbia Zoning Administrator, by counsel, hereby seeks temporary, preliminary, and permanent injunctive relief prohibiting Cricket Store 17, L.L.C. d/b/a Taboo ("Taboo")—as well as its officers, agents, servants, employees, and those persons in active concert or participation with it—from continuing to operate a sexually oriented business at its current location (4716 Devine Street, Columbia) in violation of the City of Columbia Zoning Ordinance. The Zoning Administrator also seeks to recover the attorney fees incurred by the City of Columbia for having to bring this enforcement action.

32. South Carolina Code § 6-29-950(A) provides that:

In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county ... may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land. Each

day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use continues is considered a separate offense.

33. Section 17-89 of City of Columbia Zoning Code provides that:

In case any building or structure is erected, constructed, reconstructed, altered, maintained or used in violation of this article or regulations in furtherance of this article, the city council, city attorney, zoning administrator or any person aggrieved may, in addition to other remedies provided by law, institute injunction, abatement or any other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

34. To obtain an injunction for a zoning violation, the City must show that (1) it has an ordinance covering the situation; and (2) there is a violation of that ordinance. *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278 (2000). "In such circumstances, no showing of irreparable harm need be made by the party seeking the injunction, nor must the court consider whether the injunction is in the public interest." *Cty. of Richland v. Simpkins*, 348 S.C. 664, 669-70, (Ct. App. 2002), *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583 (2010) (holding that "balancing of the equities" is not required on an application for preliminary injunction).

35. Under § 17-374(b) of the Columbia Zoning Ordinance, it is unlawful to operate a sexually oriented business outside of an M-1 or M-2 district.

36. Taboo is not located in an M-1 or M-2 district.

37. Taboo was required, under § 17-374(i) of the Columbia Zoning Ordinance, to cease operating a sexually oriented business at 4716 Devine Street on or before January 2, 2014.

38. After January 2, 2014, Taboo has continued to habitually operate a sexually oriented business at 4716 Devine Street, in violation of the Columbia Zoning Ordinance.

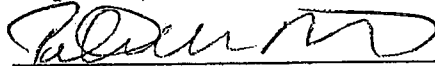
39. Taboo has continued in its violations of the Zoning Ordinance, despite losing its federal court challenge to same in *Cricket Store 17, L.L.C. v. City of Columbia*, Case No. 3:13-

cv-3557-TLW (D.S.C. Mar. 31, 2015) (granting summary judgment to City of Columbia on all issues).

40. Taboo has continued in its violations of the Zoning Ordinance, despite being given a notice of violation on January 28, 2016, and losing its appeal before the Board of Zoning Appeals.

WHEREFORE, the City of Columbia Zoning Administrator prays that the Court grant temporary, preliminary, and injunctive relief prohibiting Taboo from operating a sexually oriented business at 4716 Devine Street. The Zoning Administrator also seeks to recovery attorneys' fees for having to bring this action, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,



Peter M. Balthazor
Riley, Pope, and Laney LLC
P.O. Box 11412
Columbia, SC 29211
803-799-9993

Attorney for City of Columbia
Board of Zoning Appeals and City of
Columbia Zoning Administrator

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Cricket Store 17, L.L.C. d/b/a Taboo,)

Plaintiff,)

Case No. 16-CP-40-3478

v.)

City of Columbia Board of Zoning
Appeals)

Defendant.)

CERTIFICATE OF SERVICE

and)

City of Columbia Zoning
Administrator,)

Counterclaimant,)

v.)

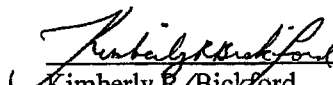
Cricket Store 17, L.L.C. d/b/a Taboo)

Counter-Defendant.)

RICHLAND COOL
FILED
2016 JUL -8 PM 4:55
JEANETTE W. MCBRIDE
S.C.P. & G.S.

This is to certify that I, Kimberly R. Bickford, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the persons named below the attached **ANSWER AND COUNTERCLAIM FOR INJUNCTIVE RELIEF** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

Thomas R. Goldstein, Esquire
BELK, COBB, INFINGER AND GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121



Kimberly R. Bickford
Paralegal

July 8, 2016



We Are Columbia

Planning and Development Services • Zoning Division

1136 Washington Street, Columbia, SC 29201 • Phone: 803-545-3333 • Fax: 803-733-8699

MEMORANDUM

**PLANNING & DEVELOPMENT SERVICES
ZONING DIVISION**

DATE: July 1, 2016
TO: Legal Review
FROM: Brian Cook, Zoning Administrator and Secretary of the City of Columbia Board of Zoning Appeals
CC: Pete Balthazor
Scott D. Bergthold
Andrew Livengood, Deputy Zoning Administrator
RE: C/A NO. 2016-CP-40-3478
Cricket Store 17 v. City of Columbia
[Cricket Store 17 DBA Taboo v City of Columbia Board of Zoning Appeals]

~~Copy to~~ City of Columbia Board of Zoning Appeals (BoZA) Case No. 16-010-AA

Per your request, please find enclosed a copy of the record of the above referenced Administrative Appeal and a DVD recording of the April 12, 2016 meeting of the Board of Zoning Appeals. This case begins at 18:49 of the attached recording.

I certify that the above referenced and attached documents constitute a true, exact, complete and unaltered record of the administrative appeal 16-010-AA as heard by the Board of Zoning Appeals on April 12, 2016.

Should you have any questions, please feel free to contact me at 545-3332 or kbcook@columbiasc.net. You may also contact Andrew Livengood at 545-3220 or atlivengood@columbiasc.net.

Thank you,

K. Brian Cook

K. Brian Cook, Zoning Administrator
Secretary to the Board of Zoning Appeals

July 1, 2016

CITY OF COLUMBIA
BOARD OF ZONING APPEALS MINUTES
April 12, 2016 - 10:00 AM

City Council Chambers
1737 Main Street, 3rd Floor • Columbia, SC

In attendance: Chuck Salley, Pat Hubbard, Reggie McKnight, Calhoun McMeekin, Regina Williams, Preston Young

Absent: Tyler Gregg

Staff: Brian Cook, Andrew Livengood, Andrea Wolfe

I. CALL TO ORDER and DETERMINATION OF QUORUM

Brian Cook, Zoning Administrator, presented a plaque to Ernest Cromartie, III, past Board member and chairperson in appreciation for his years of service. Welcomes were given to Chuck Salley, new chairperson, and new BOZA member Regina Williams was welcomed.

Chuck Salley, chairperson, called the meeting to order at 10:00 AM, introduced the members of the Board of Zoning Appeals (BOZA), and introduced staff.

Mr. Cook confirmed quorum and proceeded with review of the Consent Agenda.

II. CONSENT AGENDA

A. APPROVAL OF MINUTES

1. Approve March 8, 2016 Minutes

B.

C.

Motion by Mr. Hubbard to approve the March 8, 2016 Minutes; *motion seconded by Mr. McKnight.* Minutes approved 6-0.

B. OLD BUSINESS

None.

C. NEW BUSINESS

2. 16-013-SE Dist. 1 5239 Farrow Road (TMS# 11607-06-12) Special Exception to establish a day care facility (Normadean Rodriguez) (RS-3)

No one spoke in favor or opposition of the requests, or requested removal for discussion.

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

Motion approved 6-0.

III. REGULAR AGENDA

A. OLD BUSINESS

None.

B. NEW BUSINESS

3. ~~16-010-AA~~ **Dist. 3 4716 Devine Street (TMS# 13814-09-02)** Appeal of the Zoning Administrator's determination regarding a sexually oriented business (Cricket Store 17, LLC) (C-3, -FP)

Mr. Cook stated the request is an Appeal for Administrative Review. Rules of procedure for conduct of hearing are as follows: an introduction of applicant who presents on the request; staff presents; and the appellant has the opportunity to rebut.

Verbatim from the applicant: The applicant does allege in their application for administrative appeal that the Zoning Administrator did err by:

Arbitrarily requiring Taboo to comply strictly with ordinance regulations or face immediate penalties of fines and/or imprisonment rather than to allow Taboo continued operation as a nonconforming use. The City is electing to enforce a provision of its ordinance for "Sexually Oriented Businesses" despite Taboo's record of compliance and compatibility with the surrounding uses in the vicinity of its property.

The applicant, Thomas R. Goldstein, attorney for Cricket Store 17, LLC aka Taboo Adult Superstore presented on the request for Review of Administrative Appeal.

Mr. Goldstein felt Taboo Adult Superstore was not operating in violation of City Ordinances.

Mr. Cook was sworn in and requested that the determination made in the letter of January 28, 2016 that Taboo Adult Superstore is operating as a sexual device shop in violation of the zoning ordinance be upheld.

No additional persons spoke in favor or opposition of the request. Testimony closed for Board discussion.

Motion made by Mr. Hubbard to deny the appeal of the decision by the Zoning Administrator. The facts and legal issues have been explored and the decision the Zoning Administrator made was correct based on the facts. There is ample evidence that sexual devices were indeed shown, and appeared to be regularly shown there. The legal issues have been addressed and the Zoning Administrator correctly decided.

Motion seconded by Mr. McKnight. Motion to deny passes 6-0, and the determination of the Zoning Administrator was upheld.

4. **16-011-AA Dist. 3 4716 Devine Street (TMS# 13814-09-02)** Appeal of the Zoning Administrator's determination regarding an application for special exception (Cricket Store 17, LLC) (C-3, -FP)

Mr. Cook stated the request is an Appeal for Administrative Review.

The applicant does allege in their application for administrative appeal that the Zoning Administrator did err by:

Refusing to accept Taboo's application for special exception, the granting of which the Board of Zoning Appeals is authorized under §6-29-800 (a)(3); and also by the Zoning Administrator's refusal to schedule a pre-hearing conference, which is prerequisite to such applications, per his letter dated February 26, 2016: "Pleased be advised that neither a Variance nor a Special Exception is applicable in the case, and applications for same cannot be processed. City Code §17-374(a)." See also Zoning Administrator's email dated February 26, 2016: "Your administrative appeal request before the Board of Zoning Appeals will be scheduled for April 12th 2016 at 10:00 at 1737 Main Street (Council Chambers). A pre-hearing conference is not required."

The applicant, Thomas R. Goldstein, attorney for Cricket Store 17, LLC aka Taboo Adult Superstore presented on the request for Review of Administrative Appeal:

Mr. Cook stated that based on the facts presented, the Board of Zoning Appeals has no authority to accept or hear an application for special exception for the operation of a sexually oriented business at 4716 Devine Street, as the Zoning Ordinance does not grant authority for the use to be permitted as a special exception. The Zoning Administrator requested that the determination not to accept an application for special exception be upheld.

No additional persons spoke in favor or opposition of the request. Testimony closed for Board discussion.

Motion made by Mr. Hubbard to deny the appeal of the decision by the Zoning Administrator. The most correct interpretation of the language at issue about the special exception is very clear, in that the BOZA cannot even consider a special exception to establish a sexually oriented business as the Board cannot grant it.

Motion seconded by Mr. Young and Mr. McMeekin. Motion to deny passes 6-0, and the determination of the Zoning Administrator was upheld.

Brief recess taken at 11:20AM with the meeting resumed at 11:28AM.

- 5. 16-012-V Dist. 3 206 South Saluda Avenue (TMS# 11310-17-06)** Variance to the lot coverage requirements for an addition to a single family residence (Judy K and Francis Patrick Hubbard) (RS-3, -CC1)

Mr. Salley noted that Pat Hubbard recused himself from the request as he is a member of the Board of Zoning Appeals, as well as the applicant for the request.

Patrick Hubbard and Judy Hubbard, property owners, and Michael Haigler, architect for the project, were sworn in.

Mr. Hubbard presented on the request for a variance to the lot in order to construct an addition and a one-car garage for a single family residence. Lot coverage of 30% is permitted and the applicant is requesting up to 36% coverage of the lot instead.

Mr. Hubbard reviewed the criteria required for a variance:

Extraordinary and exceptional conditions pertain to the subject property – the area was established pre-zoning, and many of the existing houses, either as a result of variances or having been there as non-conforming exceed the 30% already. Therefore this would be an extraordinary and difficult condition to try to come in to improve and add to the home that others have been able

to do already.

The conditions noted above do not generally apply to other property in the area – Many of the homes in the area currently exceed the 30% coverage as they have two-car garages. The coverage limitations applicable to the lot do not generally apply to other residences in the neighborhood.

Because of the conditions noted above, the requirements of the Zoning Ordinance effectively prohibit or unreasonably restrict the use of the property – *The Comprehensive Plan for Columbia, South Carolina: 2008-2018* recently adopted, expresses a need to address the needs of its "growing and aging" population as well as the need to live on one floor. In addition, prospective buyers would expect certain things in the house for the amount of money that would be spent in resale.

Approval of the variance would not be of substantial detriment to the adjacent property or to the public good, and the character of the district would not be harmed – it would not be inconsistent with existing character of the neighborhood, and would be consistent with *The Comprehensive Plan* that the City "permit an encourage contextual" infill development, new construction or expansion of new construction.

The variance is the minimum necessary.

It is in harmony with the purpose and intent of the Ordinance, and will not be injurious to the neighborhood or public welfare. The look of the house will be preserved as the Hubbards are very into historic preservation.

The proposal was presented to the Hollywood – Rose Hill Neighborhood Association who voted unanimously in favor of the request, and provided a letter of support. Neighbors along South Saluda also provided letters of support, and e-mails were sent to surrounding property owners who voiced support of the project. Contact was made or attempted with all surrounding property owners in the area.

There is an existing house on the property which was built in 1935, and the footprint of the current house will basically remain the same. The additions are primarily on the back, and an entry area will be created within the footprint in the front. The covered one-car garage and greenhouse are included within the footprint and lot coverage.

As no one spoke in favor or against the request, testimony was closed for Board discussion.

Mr. McMeekin complemented the design of the home and spoke in favor of the request.

Motion by Mr. McMeekin to approve the application for variance for 206 South Saluda. This is a smaller lot in the Hollywood Rose Hill area; it will not be a detriment to the neighborhood; to deny would prohibit the right to utilize the property; and the percentage requested is the minimum required. Motion seconded by Mr. McKnight.

Motion seconded by Mr. Young. Motion approved 4-0.

6. 16-014- Dist. 2 522 Devine Street (TMS# 08914-01-02) Special Exception to
Deferred expand a drinking place (Anthony Fusaro, Tapped out of S.C.
Inc., d/b/a Uncle Fester's) (MX-2, -ID)

IV. OTHER BUSINESS

V. ADJOURNMENT

There being no further business, Mr. Hubbard adjourned the March 8, 2016 Board of

Zoning Appeals meeting at 12:23PM.

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

Board of Zoning Appeals)

City of Columbia)

ORDER

ON AN ADMINISTRATIVE APPEAL

Date Heard: April 12, 2016

Case Number: 16-010-AA

Subject Property: 4716 Devine Street (TMS#13814-09-02)

Zoning District: C-3, -FP (General Commercial district within a Flood Protective Overlay)

Applicant: Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore)

Other Parties in Interest: None.

The City of Columbia Board of Zoning Appeals held a public hearing on April 12, 2016 to consider the appeal for administrative review of Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore), Applicant, pursuant to §17-111 and §17-112; and §17-371, §17-372, §17-373, and §17-374 of the City of Columbia Code of Ordinances. The applicant alleges that the Zoning Administrator did err by "arbitrarily requiring Taboo to comply strictly with ordinance regulations or face immediate penalties of fines and/or imprisonment rather than to allow Taboo continued operation as a nonconforming use. The City is electing to enforce a provision of its ordinance for "Sexually Oriented Businesses" despite Taboo's record of compliance and compatibility with the surrounding uses in the vicinity of its property."

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

Findings of Fact:

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

The subject property, 4716 Devine Street, TMS # 13814-09-02, is located in the City of Columbia, South Carolina, and is within the C-3 (General Commercial) zoning district.

On January 28, 2016 the Zoning Administrator delivered a written notice of violation letter to Taboo Adult Superstore located at 4716 Devine Street for operating a sexual device shop in violation of the Zoning Ordinance. The notice of violation letter was addressed to owner, Jeff White, and signed/accepted by employee Cheyenne Wiseman. A copy of the letter was presented to the Board. The applicant filed for appeal within 30 days of the January 28 letter.

The Zoning Administrator requested that the determination made in the letter of January 28, 2016 that Taboo Adult Superstore was operating as a sexual device shop, in violation of the Zoning Ordinance, be upheld.

Taboo is located at 4716 Devine Street and is within a C-3 (General Commercial) district. Per §17-374 (b) and (i) of the Zoning Ordinance, a sexually oriented business, including a

sexual device shop, cannot operate within the C-3 district:

(b) A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business outside of a designated M-1 or M-2 district. A sexually oriented business shall be located within an M-1 or M-2 district; however no sexually oriented business shall be permitted to operate within an M-1 or M-2 district appended with a -DD, -ID, -DP, -NC or -PD Overlay district.

(i) Any sexually oriented business lawfully operating as of the date of the ordinance from which this section is derived that is in violation of subsections (b), (c), (d), (e) or (f) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue until and through January 1, 2014, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

The following definitions are found within §17-372 of the Zoning Ordinance:

Sexual device means any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.

Sexually oriented business means an "adult arcade," an "adult bookstore or adult video store," an "adult cabaret," an "adult motel," an "adult motion picture theater," "escort agency," a "semi-nude model studio," or a "sexual device shop."

The Zoning Administrator stated that he "conducted a site visit at Taboo on January 28, 2016 and observed an open establishment that, based on the sexual device inventory displayed, met the definition of a sexually oriented business and a sexual device shop. Predominately displayed were various three dimensional objects designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for

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

16-010-AA

16-010-AA_0008

sadomasochistic use or abuse of oneself or others, and also included devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organ." Photographic evidence of the site visit, date stamped January 28, 2016, was provided to the Board and the applicant during the hearing and is included as part of the record as Exhibit B.

Conclusions of Law:

Pursuant to the power and duties of the Board of Zoning Appeals to review administrative decisions and determinations (§17-112), we have heard the testimony and reviewed the Applicant's request for administrative appeal, and find that adequate evidence has been presented that sexual devices have been predominately displayed per the definition for a sexually oriented business and a sexual device shop found in §17-372, the facts and the legal issues have been explored and that the decision that the Zoning Administrator made in his letter of January 28, 2016 was correct based on the facts.

Therefore, based on the foregoing, the Board of Zoning Appeals concludes that the decision of the Zoning Administrator as described above is hereby **AFFIRMED**.

Upon a motion to deny the administrative appeal:

Voting Aye: Hubbard, McKnight, Salley, Young, McMeekin, and Williams.
Voting Nay: None.
Absent: Gregg.

AND IT IS SO ORDERED!

	<u>5/10/16</u>
Chuck Salley, Board Chairman	Date
	<u>5/3/16</u>
K. Brian Cook, Zoning Administrator	Date

Date Mailed to Applicant
and Other Parties of Interest:

5/11/16 ATL

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

16-010-AA

16-010-AA_0009

EXHIBIT A

Presenter Tommy Goldstein

Case No. 16-010-AA

Date 4/12/2016

16-010-AA_0010

14-8

TROJAN VIBRATIONS
NEW LOOK
7 LEVELS FOR
VIBRATIONS
NEW
MORE POWER
touch
intense personal massage

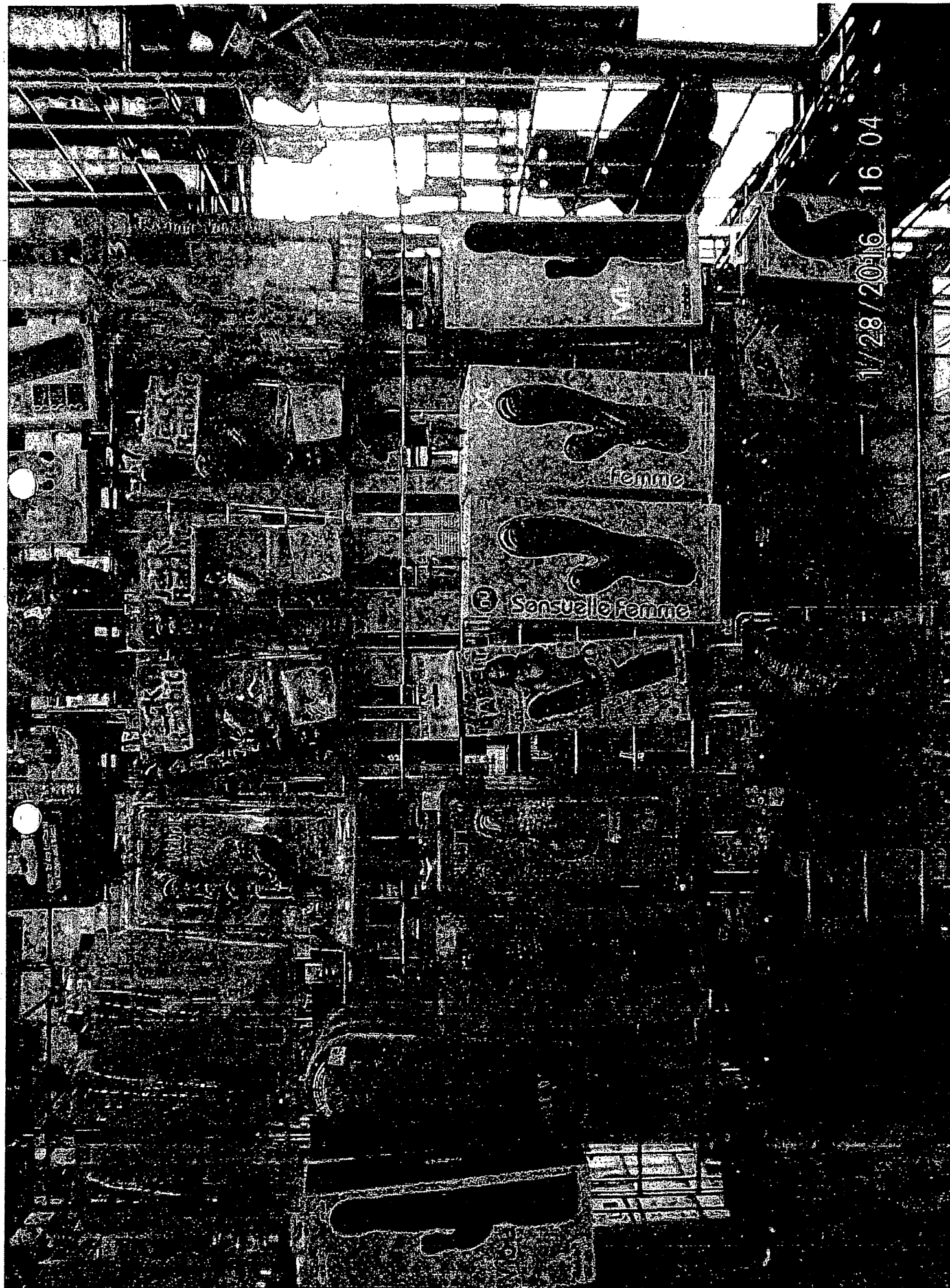
TROJAN VIBE
ULTRA TOUCH MASSAGER
15.73

TROJAN VIBE
PULSE
24.99

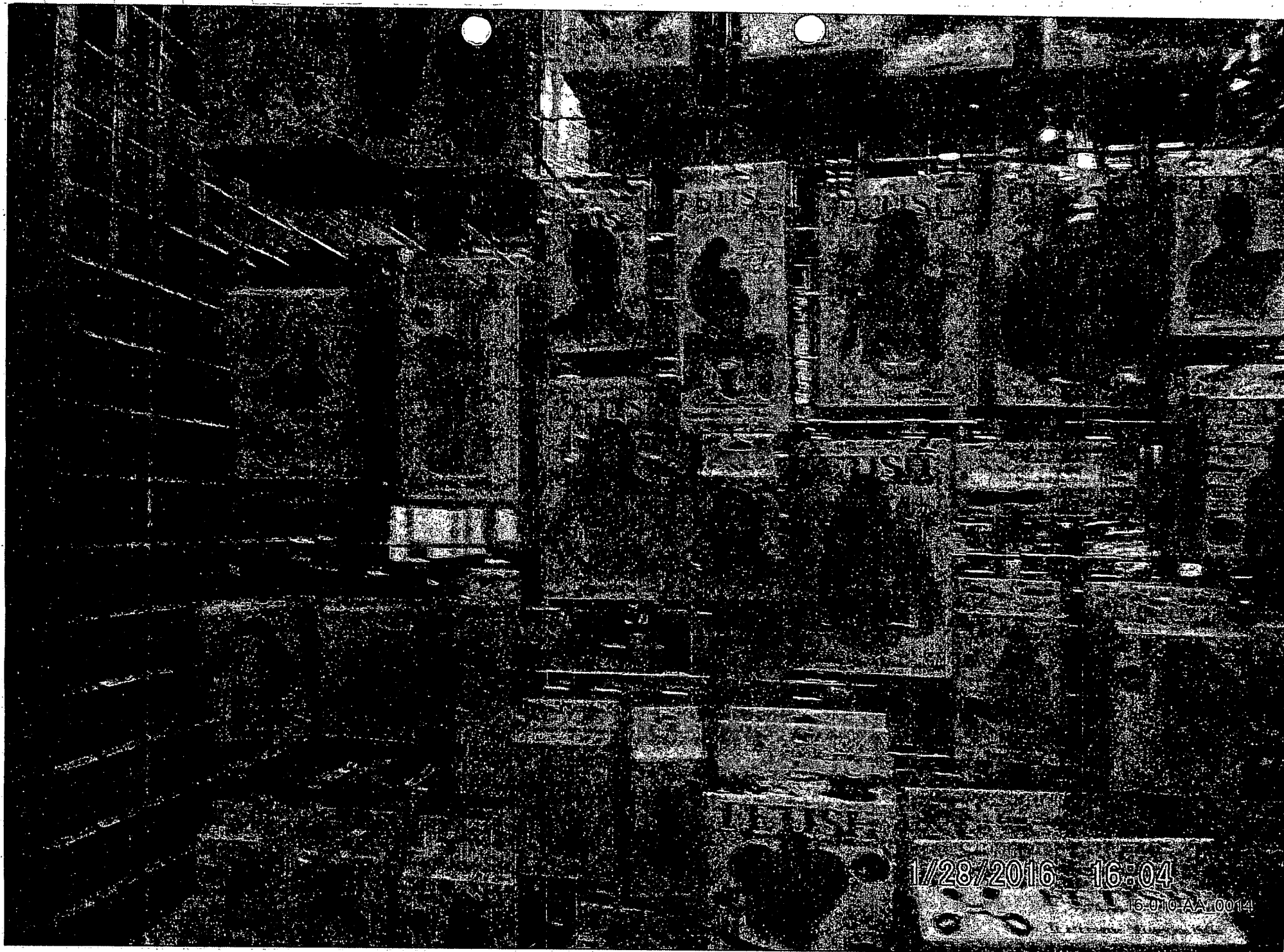
PLYTEX 24CT
FRESH SEX WIPES TRAVEL
6.29

16-010-AA

Exhibit B

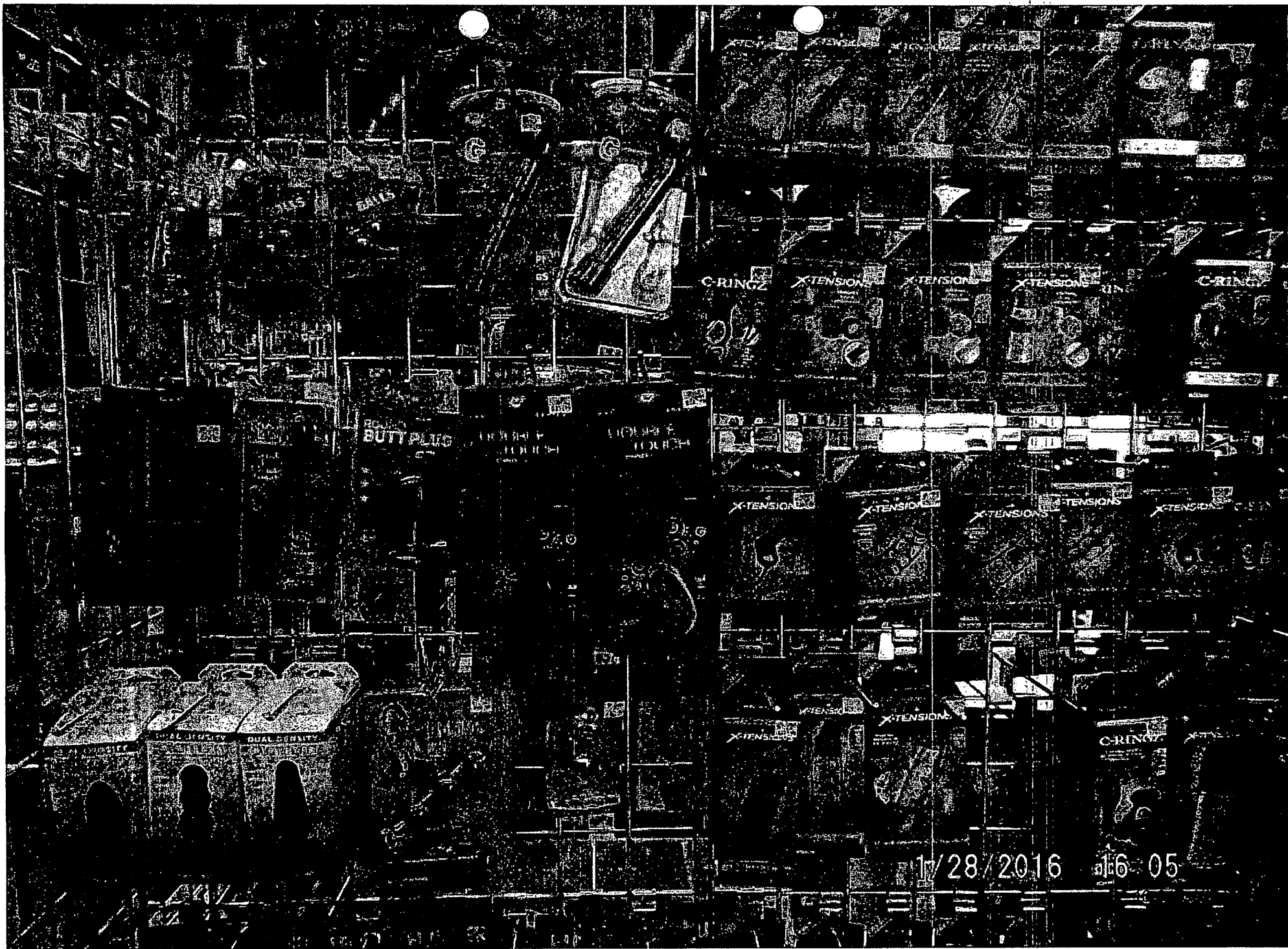


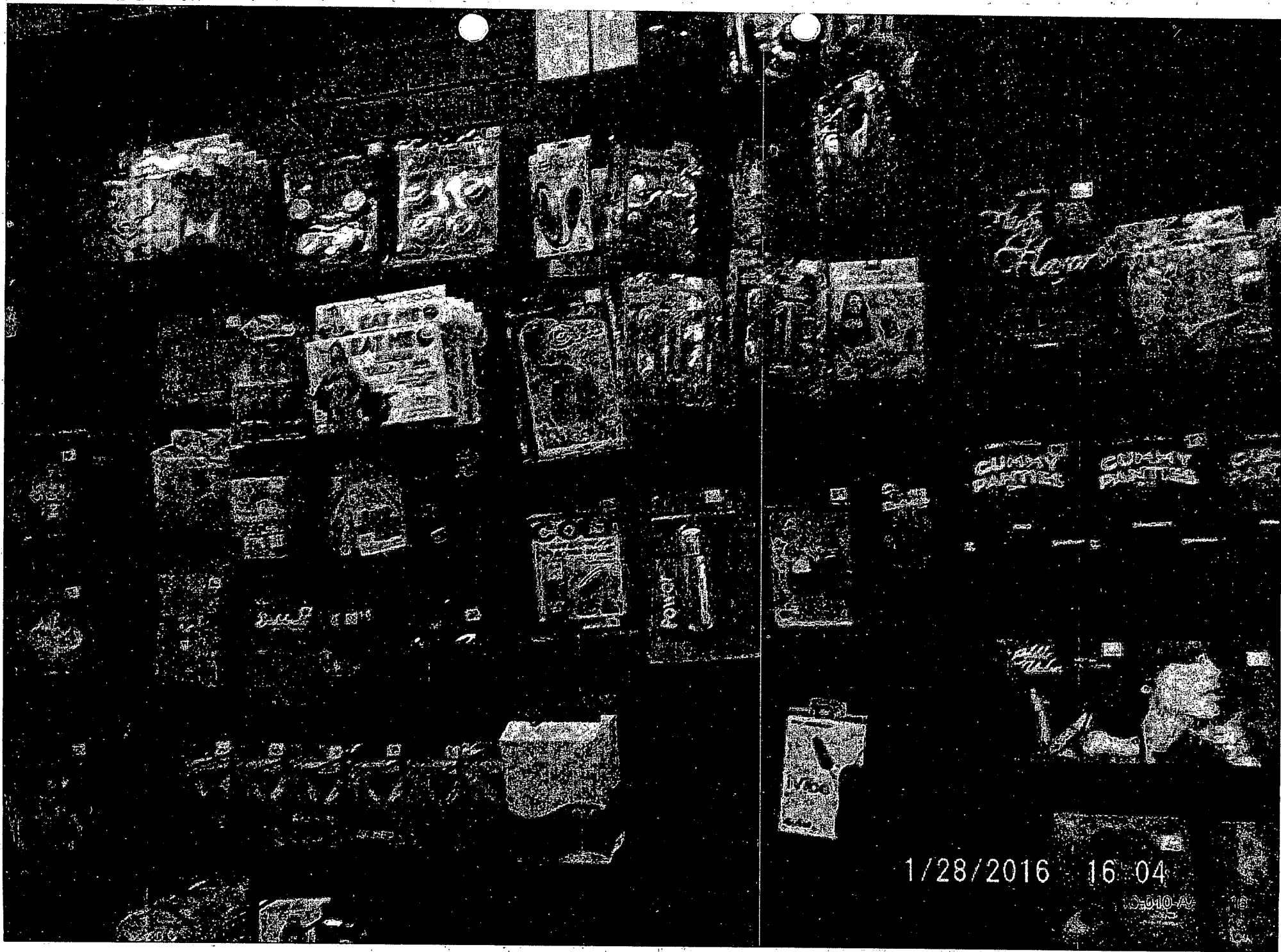
1/28/2016 16:04



1/28/2016 16:04

16-010-AA-0014





1/28/2016 16:04

15-010-AV

16





**BOARD OF ZONING APPEALS
CASE SUMMARY FOR
APPLICATION FOR ADMINISTRATIVE APPEAL**

4716 Devine Street

April 12, 2016 at 10:00 A.M.
City Council Chambers, 1737 Main Street, 3rd Floor
Columbia, South Carolina

Case Number: 16-010-AA
Subject Property: 4716 Devine Street (TMS#13814-09-02)
Zoning District: C-3, -FP (General Commercial district within a Flood Protective Overlay)
Applicant: Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore)
Property Owner: Restaurant Income Properties
Council District: 3
Summary Prepared: 3/30/16

Requested Action: Review for Administrative Appeal.

Applicable Sections of Zoning Ordinance:

Division 11.	Sexually Oriented Businesses (§17-371, §17-372, §17-373, §17-374)
§17-112(1)	The Board of Zoning Appeals shall hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this article.

Case History: None.

Staff Comments:

The applicant does allege in their application for administrative appeal that the Zoning Administrator did err by:

Arbitrarily requiring Taboo to comply strictly with ordinance regulations or face immediate penalties of fines and/or imprisonment rather than to allow Taboo continued operation as a nonconforming use. The City is electing to enforce a provision of its ordinance for "Sexually Oriented Businesses" despite Taboo's record of compliance and compatibility with the surrounding uses in the vicinity of its property.

On January 28, 2016 the Zoning Administrator delivered a written notice of violation letter to Taboo Adult Superstore located at 4716 Devine Street for operating a sexual device shop in violation of the Zoning Ordinance. The notice of violation letter was addressed to owner, Jeff White, and signed/accepted by employee Cheyenne Wiseman. A copy of the letter has been included.

This appeal is and can only be narrowly defined to answer the question of, if on January 28, 2016, was Taboo Adult Superstore operating as a sexual device shop in violation of the Zoning Ordinance.

Per the definitions found in §17-372:

Sexual device means any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.

Sexually oriented business means an "adult arcade," an "adult bookstore or adult video store," an "adult cabaret," an "adult motel," an "adult motion picture theater," "escort agency," a "semi-nude model studio," or a "sexual device shop."

Taboo is located at 4716 Devine Street and is within a C-3 (General Commercial) district, and as such, per §17-374 (b) and (i), cannot operate as a sexually oriented business.

(b) A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business outside of a designated M-1 or M-2 district. A sexually oriented business shall be located within an M-1 or M-2 district; however no sexually oriented business shall be permitted to operate within an M-1 or M-2 district appended with a -DD, -ID, -DP, -NC or -PD Overlay district.

(i) Any sexually oriented business lawfully operating as of the date of the ordinance from which this section is derived that is in violation of subsections (b), (c), (d), (e) or (f) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue until and through January 1, 2014, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

The Zoning Administrator conducted a site visit at Taboo on January 28, 2016 and observed an open establishment that based on the sexual device inventory displayed met the definition of a sexually oriented business and a sexual device shop. Predominately displayed were various three dimensional objects designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others, and also included devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organ. Photographic evidence of the site visit date stamped January 28, 2016 has been included as Exhibit B. Due to the adult nature of the photographs, and the fact that the Board of Zoning Appeals live streams and also later broadcasts the meetings on a public service channel, Exhibit B will be provided to the applicant and Board of Zoning Appeals members at the time of the hearing. Exhibit B will be placed in the case file and made available to the public upon request.

The Zoning Administrator respectfully requests that the determination made in the letter of January 28, 2016 that Taboo Adult Superstore is operating as a sexual device shop in violation of the zoning ordinance be upheld based on the facts and exhibits presented in this case summary.

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

-None.

Zoning Map

Administrative Appeal 16-010-AA

4716 Devine Street
TMS# 13814-09-02



Department of Planning &
Development Services

Legend

— INTERSTATES CITY LIMITS
+ RAILROADS FEMA FP

ZONING	
D-1	MX-2
RS-1	C-1
RS-1A	C-2
RS-1B	C-3
RS-2	C-3A
RS-3	C-4
RD	C-5
RD-2	M-1
RG-1	M-2
RG-1A	PUD-C
RG-2	PUD-LS
RG-3	PUD-LS-E
UJD	PUD-LS-R
MX-1	PUD-R
	OUT OF CITY
DD DISTRICT	
DP DISTRICTS	
PD DISTRICT	
CC OVERLAY	

1 inch = 77 feet

ORIGINAL PREPARATION/DATE:

This map was prepared by:

Ralana Wilson
for
April 12, 2016
BoZA meeting

DISCLAIMER:

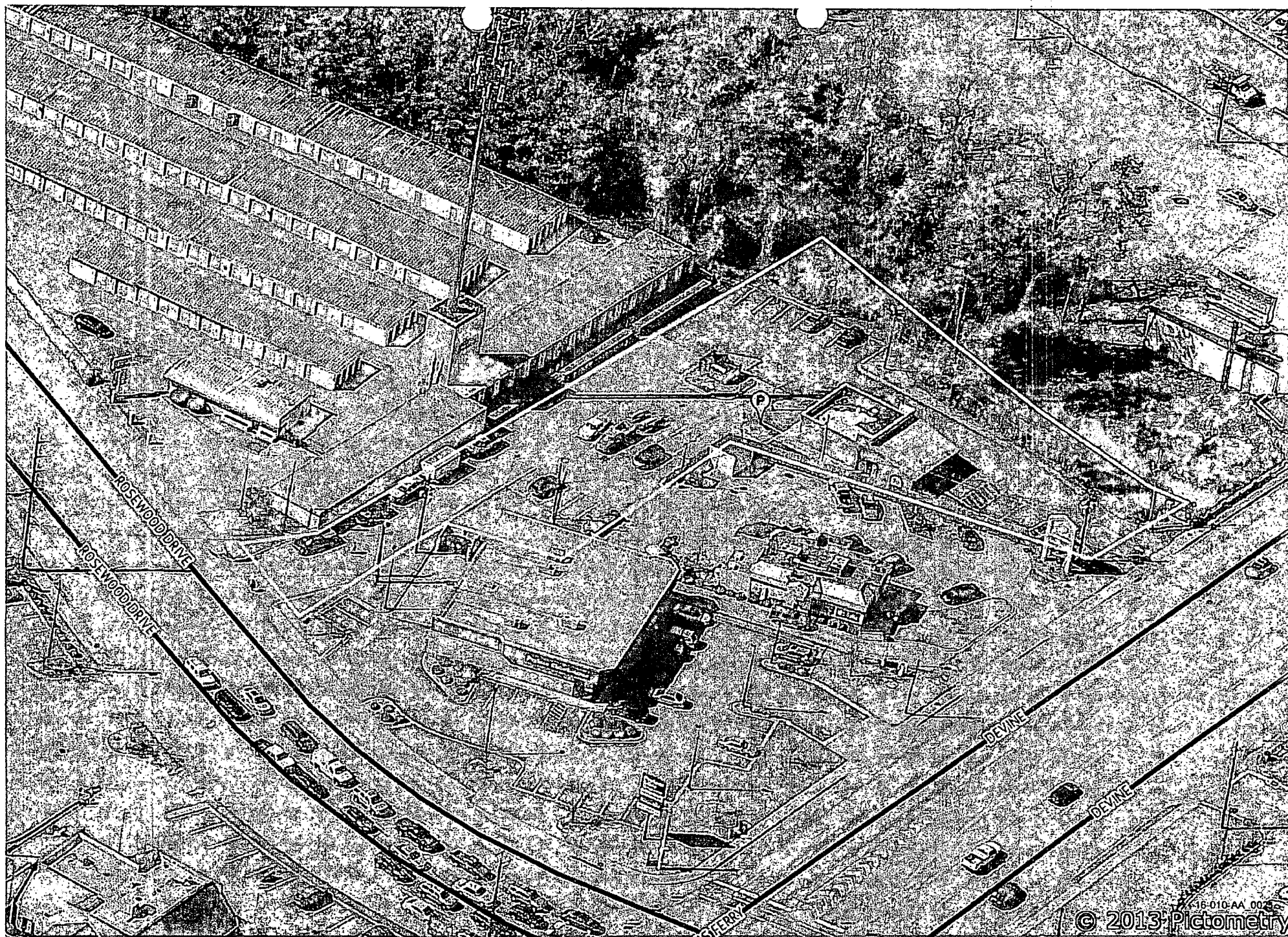
The City of Columbia Department of Planning and Development Services data represented on this map or plan is the product of compilation, as produced by others. It is provided for informational purposes only and the City of Columbia makes no representation as to its accuracy. Its use without field verification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



Sources: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, IGP, swisstopo, and the GIS User Community

16-010-AA_0020

DATA SOURCE: CITY OF COLUMBIA GIS DIVISION





CITY OF COLUMBIA BOARD OF ZONING APPEALS APPLICATION FOR ADMINISTRATIVE APPEAL

OFFICE USE ONLY:
 Date Received 2/22/16
 Receipt Number 16-01613

 By Cook
 Appeal Number 16-010-AA

APPLICATION MUST BE SUBMITTED AND COMPLETE BY 12:00 NOON ON DEADLINE DATE!

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

1. Address of affected property 4716 Devine Street
Columbia, S.C. 29209
 TMS# Page: R13814-09 Block: _____ Lot: _____

2. I (we) allege that the Zoning Administrator did err by ☐ granting ☐ denying an application to
☐ use ☐ occupy ☐ alter ☐ erect ☐ add to ☐ move ☐ demolish for a certificate of
☐ compliance ☐ temporary compliance ☐ compliance-nonconformity
☒ other See attached.
 affecting the above listed property.

3. The Zoning Administrator's decisions and reasons therefore were:

See attached.

4. I (we) contend that the Zoning Administrator was **IN ERROR** in that: See attached.

5. I (we) have been aggrieved/affected by this decision in that: See attached.

Appellant (PLEASE PRINT CLEARLY):

Address: Cricket Store 17, LLC by
Thomas R. Goldstein
 City, State, ZIP: P.O. Box 71121, N. Charleston, S.C. 29415-1121
 Office Telephone Number: 843 554 4291 Home Telephone Number: _____
 Cellular Telephone Number: _____ Fax Number: 843 554 5566
 Do you check email at least once per day? ☒ Y ☐ N Email Address: rgoldstein@cobblaw.net

Appellant's Signature _____

16-010-AA_0022

City of Columbia
Board of Zoning Appeals
Application for Administrative Appeal

1. Address of affected property: 4716 Devine Street, Columbia, SC 29209
 - a. TMS # Page: R13814 Block: 09 Lot: 02
2. We allege that the Zoning Administrator did err by: arbitrarily requiring Taboo to comply strictly with ordinance regulations or face immediate penalties of fines and/or imprisonment rather than to allow Taboo continued operation as a nonconforming use. The City is electing to enforce a provision of its ordinance for "Sexually Oriented Businesses" despite Taboo's record of compliance and compatibility with the surrounding uses in the vicinity of its property.
3. The Zoning Administrator's decisions and reasons therefore were: arbitrary and lacking any rational basis. Terminating Taboo's nonconforming use status on February 5, 2015 is a discretionary act, and as such, the City fails to rationalize why Taboo should cease operating as an adult business when the City cannot produce evidence in fact of any negative secondary effect from Taboo's ongoing operation.
4. We contend that the Zoning Administrator was IN ERROR in that: the Zoning Administrator is requiring strict compliance with an arbitrary ordinance provision without first allowing Taboo (through its owner and/or agent) an opportunity to be heard in a meaningful way, and as a result, Taboo is substantially prejudiced by the City's administrative process.
5. We have been aggrieved/affected by this decision in that: the City forced Taboo's owner to comply immediately with the City's requirements put forth in its letter of January 28, 2016, without the City providing for appeal prior to its enforcement. Upon receiving the City's letter, the owner could only set about immediately transitioning his operation to general retail in order to comply with the City's demand. The City, acting through its Zoning Administrator, caused Taboo significant loss of inventory, loss of sales, and substantial costs to restock empty shelves -- all due to the City's arbitrary and unreasonable enforcement of its zoning requirements without cause, rather than the City exercising discretion to maintain the status quo and allow Taboo a continuing nonconforming use.

Further, the City forced Taboo—without providing an opportunity to be heard—to terminate "voluntarily" its adult business use by the Zoning Administrator's requirements. Taboo's subsequent transition to general retail begins ticking a 30-day clock, after which Taboo loses claim to its

nonconforming use according to the City's ordinance. Taboo immediately informed the Zoning Administrator that it reserved its rights while transitioning to a different use. Taboo hereby again requests an exemption from the effect of this 30-day period, due to the fact that the City imposed its requirements on Taboo arbitrarily and without providing a means of appeal before the City's enforcement. The Zoning Administrator forced Taboo to "terminate voluntarily" its use through no fault of its own. The City's actions failed to provide Taboo's owner the fundamental requirements of due process under the State's due process provisions including notice, an opportunity to be heard in a meaningful way, and judicial review. The City failed to provide sufficient notice of its pending action, leaving Taboo's owner no alternative but to alter immediately the use of his business to avoid criminal penalties affecting his property and liberty interests.

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbaw@hotmail.com

Peggy M. Infinger
pinfinger@cobbaw.net

Thomas R. Goldstein
tgoldstein@cobbaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

March 9, 2016

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

Mr. K. Brian Cook,
Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

Re: Zoning Administrator's ruling dated February 26, 2016

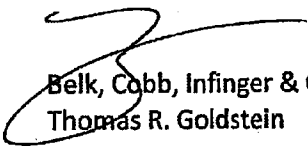
Dear Mr. Cook,

I am in receipt of your electronic mail of March 8, 2016, in which you inform me that you have consolidated all our appeals for 10:00 a.m. on Tuesday, April 12. I first want to thank you for your courtesy in allowing both matters to be heard at the same time. I have not, however, provided you with the grounds for our second appeal, and I think fairness to the City requires me to do that. Therefore, I enclose our 5 grounds of appeal under cover of this letter. Please let me know if you require a second \$75.00 filing fee to process this second appeal, and I will send it to you.

In closing, I want to thank you again for letting both matters go forward at the same time. I have the matter set on my calendar, but, as you are aware, lawyers' appearances are dictated by the courts, and it is possible that the circuit court may preempt the time set for these appeals. I will do my best to make sure that the courts honor your schedule, but if I am called to court, the final decision rests with a judge, not me.

Please let me know if you require anything further to perfect this appeal. With kind regards, I am

Very truly yours,



Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/
enclosure: Application for Administrative Appeal
cc:
Mr. Andrew Livengood
Deputy Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201
(with enclosure)

16-010-AA_0025

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dicobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

March 1, 2016

Mr. K. Brian Cook,
Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

Re: Zoning Administrator's ruling dated February 27, 2016

Dear Mr. Cook,

Let me try to bring some order to this case.

On February 2, 2016, I applied to the City of Columbia for a variance.

On February 15, 2016, I applied to the City of Columbia to appeal your decision of January 28, 2016, and February 1, 2016, and to request a special exception on the grounds provided by State law.

As to the February 2nd application for variance, I wish to withdraw that request. I was unfamiliar with the City's on-line application process and mistakenly assumed the variance application was the general application for all requests, including administrative review and special exception. Please consider my application for variance withdrawn. My intention is: 1) to request a special exception as provided by State law, and 2) to appeal your decisions dated January 28 and February 2, 2016, through administrative review.

In addition, as I understand your most recent letter of February 26, the City is scheduling my appeal for administrative review on April 12th at 10:00 a.m. in Council Chambers. However, by your letter dated February 26, 2016, you are refusing to schedule a hearing on our application for special exception, a procedure afforded to us by State law. This creates a procedural dilemma. Your letter of February 26th does not offer any explanation as to why we are not permitted to apply for a special exception except to say: "... neither a Variance nor a Special Exception is applicable in this case, and applications for same cannot be processed. Columbia city Code § 17-374(a)." (Letter of February 26th, ¶ 1) The City's code does not preclude our applying for a special exception. If you are deciding to refuse our application, then we must appeal that decision to the Board. I am sure you are aware, as Zoning Administrator, that Board of Zoning Appeals is a quasi-judicial body created by the General Assembly, and that, as a quasi-judicial body, it sits to hear appeals or applications from "any person aggrieved."

16-010-AA_0026

§ 6-29-800 Powers of board of appeals; variances; special exceptions; stay; hearing; decisions and orders.

The board of appeals has the following powers:

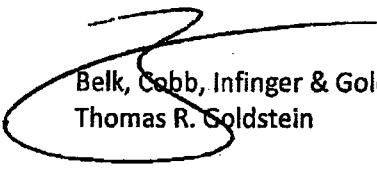
(1) to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance.

(3) to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance; and

(4) appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county.

I do not think the City possesses the power to bar us from appearing before a quasi-judicial body created by the General Assembly to serve the citizens of South Carolina. If, after reconsideration, you fail to accept our application for a special exception hearing, then I ask that you state your reasoning in clear and concise language with a sufficiently particular explanation so that I can ask the Board to review your decision. Please also reconsider your decision that you will not schedule a pre-hearing meeting with staff since, according to your application instructions, meeting with staff prior to the Board hearing is a prerequisite. Finally, if you decline to reconsider your decision and you do issue a written decision that we are not permitted to appear before the Board on an application for Special Exception, then I ask that you allow us to appeal that decision in combination with the appeal of your previous decisions currently scheduled to be heard on April 12, 2016. Obviously, allowing us to address all the appellate issues at one time conserves judicial resources and makes efficient use of the time already set aside on the 12th. I look forward to hearing from you. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/

cc:

Mr. Andrew Livengood
Deputy Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

16-010-AA_0027

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbaw@hotmail.com

Peggy M. Infinger
pinfinger@cobbaw.net

Thomas R. Goldstein
tgoldstein@cobbaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

February 15, 2016

Mailing Address:
P.O. Box 71121
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Ph: (843) 554-4291
Fax: (843) 554-5566

Mr. Andrew Livengood
Deputy Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

Mr. K. Brian Cook,
Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

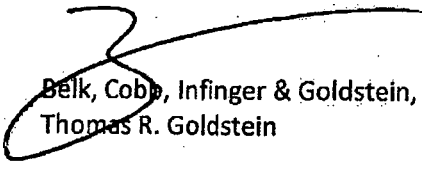
Re: Zoning Administrator's rulings dated January 28, 2016 and February 1, 2016

Dear Mr. Livengood,

I am enclosing one additional appeal and one additional application for special exception to be combined with the original February 2nd application for variance. I also enclose our firm's check in the amount of \$150.00 as the filing fee for each. I am enclosing extra copies so you can return clocked in copies to me in the envelope provided.

Please let me know if you require anything further, and I look forward to scheduling a "pre-application conference with your staff prior to the application deadline to discuss any additional specific requirements. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/
Application for Special Exception
Application for Appeal of Zoning Administrator
Check # 17209
Return envelope

16-010-AA_0028

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

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ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

February 11, 2016

Mailing Address:
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Ph: (843) 554-4291
Fax: (843) 554-5566

Mr. Andrew Livengood
Deputy Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

Mr. K. Brian Cook,
Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

Re: Zoning Administrator's rulings dated January 28, 2015 and February 1, 2015

Dear Mr. Livengood,

On February 2nd, I mailed a request for a variance along with a \$75.00 filing fee for 4716 Devine Street to the Zoning Administrator, Brian Cook. I trust he, in turn, forwarded that submission to you. Since then, I have become more adept at using your on-line application system, and now I realize that there are separate applications for:

Variance
Special Exception
Appeal from Decision of Zoning Administrator.

Because of my unfamiliarity with your web page, I did not realize this last week when I submitted my application. Therefore, I want to let you know that I will be amending our application by sending you separate requests for Special Exception and a Request for Administrative Review of the Zoning Administrator's decisions. I also telephoned your office (803-545-333) to schedule a "pre-application conference with staff prior to the application deadline to discuss your specific case and its requirements." To date, I have not received a return call. I understand the filing deadline is Monday, February 29th (the 30th day falling on Saturday the 27th). Now that I know there is a separate application package for variance, for special exception, and for administrative appeal, I will file with your office next week two additional packages, one for special exception, and one for administrative appeal, to be considered with the application for variance previously submitted. I will look forward to hearing from your office to schedule a pre-application conference with staff. With kind regards, I am

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/

16-010-AA_0029



We Are Columbia

Planning and Development Services • Zoning Division

1136 Washington Street, Columbia, SC 29201 • Phone: 803-545-3333 • Fax: 803-733-8699

VIA HAND DELIVERY

January 28, 2016

Jeff White
Taboo Adult Superstore
4716 Devine St.
Columbia, SC 29209

RE: Required Compliance with Zoning Ordinance

Mr. White,

On January 7, 2016, the U.S. District Court rejected Taboo's remaining claims against the City of Columbia's sexually oriented business regulations. Thus, Taboo is required to comply with these regulations, which it has unsuccessfully challenged since 2013, by February 5, 2016.

If Taboo fails to comply by that date, it will be cited for operating a sexual device shop in violation of the Zoning Ordinance. Taboo may also be cited for any other violations of the City Code occurring on the premises. Please note that violations of the Zoning Ordinance are punishable by a fine of up to \$500.00 or by imprisonment of up to 30 days, or both. Columbia City Code § 1-5(a). Additionally, each day of violation is a separate offense. Columbia City Code § 1-5(b).

Thank you for your attention to this matter.

Sincerely,

K. Brian Cook
Zoning Administrator

ColumbiaSC.net

16-010-AA_0030

From: Jeff White
To: Cook, K Brian; Myers, Roger
Cc: Thomas Goldstein; BRUCESANDY@aol.com; leaadc@aol.com
Subject: Taboo's Notice of Appeal
Date: Thursday, January 28, 2016 5:19:11 PM
Attachments: Brian Cook Letter.pdf

Mr. Cook,

I am in receipt of your letter dated January 28, 2016. I have attached a filed Amended Notice of Appeal (date filed January 19, 2016). Taboo hereby appeals to the United States Court of Appeals for the Fourth Circuit from the District Court's denial of Taboo's request for a preliminary injunction dated February 10, 2014, and entered February 10, 2014, at ECF 19 and the District Court's denial of Taboo's motion for reconsideration dated September 26, 2014, and entered September 26, 2014, at ECF 59.

Will the City respect the Judicial process and allow Taboo to operate until the United States Court of Appeals either accepts or rejects Taboo's claims?

Thanks,

Jeffrey White
803-479-0651

16-010-AA_0031



We Are Columbia

Planning and Development Services • Zoning Division

1136 Washington Street, Columbia, SC 29201 • Phone: 803-545-3333 • Fax: 803-733-8699

VIA EMAIL

jeffreyfromco@msn.com

February 1, 2016

Jeff White
Taboo Adult Superstore
4716 Devine St.
Columbia, SC 29209

RE: Required Compliance with Zoning Ordinance

Mr. White,

Thank you for your email on 1/28/16 (attached). The judicial process resulted in a federal court judgment upholding the City's ordinances. Taboo's filing of an appeal of that judgment does not excuse ongoing violations of the City's ordinances. Per my prior correspondence (attached), the City intends to enforce its ordinances beginning February 5, 2016, and asks that you comply by that date.

Sincerely,

K. Brian Cook

K. Brian Cook
Zoning Administrator

DIVISION 11. - SEXUALLY ORIENTED BUSINESSES⁽⁵⁾

Footnotes:

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Editor's note—Ord. No. 2012-093, adopted Nov. 13, 2012, amended former Div. 11, §§ 17-371—17-373, 17-381—17-384, in its entirety to read as herein set out. Former Div. 11 pertained to similar subject matter and derived from Code of 1979 and the following ordinances: Ord. No. 95-6, 1-18-95; Ord. No. 98-33, 6-17-98; Ord. No. 2000-029, 6-28-00; Ord. No. 2000-031, 6-28-00; Ord. No. 2003-16, 3-19-03.

Sec. 17-371. - Purpose; findings and rationale.

Purpose. It is the purpose of this division to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this division have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this division to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market, neither is it the intent nor effect of this division to condone or legitimize the distribution of obscene material.

Findings and rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the city council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and,

Imaginary Images, Inc. v. Evans, 612 F.3d 736 (4th Cir. 2010); *D.G. Restaurant, Inc. v. City of Myrtle Beach*, 953 F.2d 140 (4th Cir. 1991); *Giovani Carandola, Ltd. v. Fox*, 470 F.3d 1074 (4th Cir. 2006); *Independence News, Inc. v. City of Charlotte*, 568 F.3d 148 (4th Cir. 2009); *Steakhouse, Inc. v. City of Raleigh*, 166 F.3d 634 (4th Cir. 1999); *Hart Bookstores, Inc. v. Edmisten*, 612 F.2d 821 (4th Cir. 1979); *Wall Distributors, Inc. v. City of Newport News*, 782 F.2d 1165 (4th Cir. 1986); *Restaurant Row Associates v. Horry County*, 516 S.E.2d 442 (1999); *Condor, Inc. v. Board of Zoning Appeals*, 493 S.E.2d 342 (1997); *Rothschild v. Richland County Bd. of Adjustment*, 420 S.E.2d 853 (1992); *Centaur, Inc. v. Richland County*, 392 S.E.2d 165 (1990); and,

Ocello v. Koster, - S.W.3d -, 2011 WL 5547027 (Mo. Nov. 15, 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995);

Fantasy Ranch, Inc. v. City of Arlington, 459 F.3d 546 (5th Cir. 2006); Illinois One News, Inc. v. City of Marshall, 477 F.3d 461 (7th Cir. 2007); G.M. Enterprises, Inc. v. Town of St. Joseph, 350 F.3d 631 (7th Cir. 2003); Richland Bookmart, Inc. v. Knox County, 555 F.3d 512 (6th Cir. 2009); Richland Bookmart, Inc. v. Nichols, 137 F.3d 435 (6th Cir. 1998); Spokane Arcade, Inc. v. City of Spokane, 75 F.3d 663 (9th Cir. 1996); City of New York v. Hommes, 724 N.E.2d 368 (N.Y. 1999); Taylor v. State, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); Z.J. Gifts D-4, L.L.C. v. City of Littleton, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); People ex rel. Deters v. The Lion's Den, Inc., Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); Reliable Consultants, Inc. v. City of Kennedale, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); Hart Book Stores, Inc. v. Edmisten, 612 F.2d 821 (4th Cir. 1979); and,

based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Tucson, Arizona - 1990; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Ft. Worth, Texas - 2004; Kennedale, Texas - 2005; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; Jackson County, Missouri - 2008; Louisville, Kentucky - 2004; New York, New York Times Square - 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas - 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); and "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011),

the city council finds:

- (1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- (2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
- (3) Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this division, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the city's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city. The city finds that the cases and documentation relied on in this division are reasonably believed to be relevant to said secondary effects.

The city hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

(Ord. No. 2012-093, 11-13-12)

Sec. 17-372. - Definitions.

Introduction

The commercial area at the intersection of Devine Street, Fort Jackson Boulevard and Cross Hill Road is changing. Presently, the area consists primarily of strip shopping centers with national and local retailers and fast-food restaurants. This area will most likely continue to contain a mix of commercial uses that meet the needs of the area residents, students, employees, visitors, and military personnel.

However, there is potential for a more diverse mix of uses and improvements in the quality of the development with reinvestment in the area. Some reinvestment, including the development of the Cross Hill Market shopping center which includes a Whole Foods grocery store, has already occurred. A key element that will likely redefine this area is the revitalization that is anticipated along the banks of Gills Creek as a result of implementing the Gills Creek Middle Watershed Plan. The potential environmental, economic and recreational opportunities of Gills Creek could make it a critical centerpiece of this redevelopment area.

To maintain the momentum, a concerted effort to position such areas as competitive business locations is sometimes needed to increase the appeal and attract businesses and other uses that, combined, strengthen the economic diversity and vibrancy of the area. Therefore, the City has initiated a planning process to study the node and prepare a master plan and supporting implementation strategies. By defining a direction forward with the participation of the community members and other stakeholders, public investment decisions can be better informed and result in catalyst projects that will improve the area's vibrancy, walkability and aesthetics and will potentially stimulate subsequent private investment. This will strengthen the opportunity for this commercial node to act as a welcoming gateway into the City, a destination in the City, a neighborhood center, and a place that people and businesses want to be.

The resulting plan will create a clear vision for the future of the node; address development design, transportation, and other issues; establish standards for future development to ensure cohesiveness; and outline strategies so the public and private sectors can jointly implement the plan.

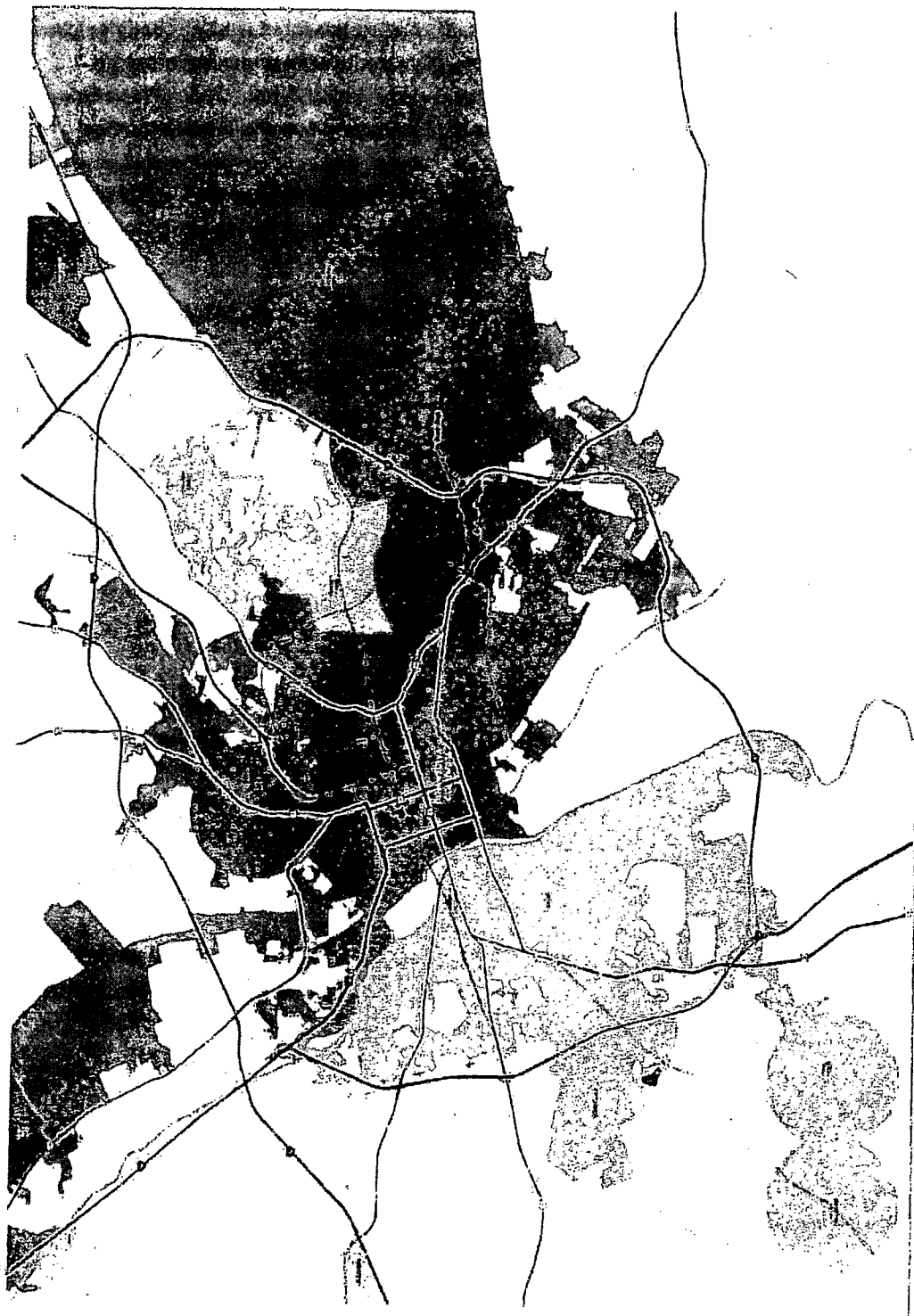
Context

The Devine Street/Fort Jackson Boulevard commercial node is a key location for commercial development in the city. Businesses benefit from traffic generated by four main institutional neighbors: Fort Jackson, Midlands Technical College, the University of South Carolina Medical School and the Dorn VA Medical Center. In addition, the node is surrounded by several Columbia neighborhoods. The node also serves as a gateway into Columbia. Garners Ferry Road which changes names to Devine Street at the study area's eastern edge is one of the main east/west connections for those traveling from Sumter, Shaw Air Force Base and points east to downtown Columbia.

Study Area

The heart of the study area is the intersection of Devine Street, Fort Jackson Boulevard, and Cross Hill Road. The study area extends east along Fort Jackson Boulevard to the gate at Fort Jackson. The properties adjacent to Beltline Boulevard form the western border of the area. The southern edge includes Midlands Technical College and the properties adjacent to Rosewood Drive. Map 1 illustrates the study area extent.

Map 1: Study Area



16-010-AA_0044

Planning Process

The process to develop the plan is divided into five phases. Phase One includes project initiation tasks such as data collection and initial meetings with City staff. An assessment of existing conditions occurs in Phase Two and includes a review of data, regulations, plans and studies and initial mapping.

~~Development concepts and supporting imagery are developed in Phase Three. During Phase Four the~~ project team will work with City staff to develop a set of recommendation and implementation strategies that support the plan and provide a framework of real, creative economic development, land use, urban design and transportation solutions. Based on the results of the two previous phases the Devine Street/Fort Jackson Boulevard Commercial Node Plan will be finalized in Phase Five.

Advisory Committee

The development of the Devine Street/Fort Jackson Boulevard Commercial Node Plan is informed by an Advisory Committee made up of a diversity of stakeholders including local developers, neighborhood advocates, Gills Creek Watershed representatives and Richland County staff. This group meets regularly through the process to provide feedback and advise the project team on plan concepts and recommendations.

Public Involvement

Community participation and input helps shape the Devine Street/Fort Jackson Boulevard Commercial Node Plan. Understanding community values today ensures that this plan can support recommendations to maintain those priorities in the future. The process includes two community meetings held at critical points during the process.

Stakeholder Interviews

Stakeholder interviews were conducted to verify and supplement the data gathered and mapped, to explain the conditions observed and to further understand the issues and opportunities that affect the study area and the plan. Their input supplements the input received directly from citizens and property owners participating in the process. The stakeholders include key personnel from City departments as well as representatives of interest groups who can address questions about the following topics: real estate development, neighborhoods, and Gills Creek.

Data Collection and Research

The plan is informed by existing plans, reports, policies and regulations. In addition, the project team analyzed data and created maps to further examine the study area's existing condition. The following topics are included in the analysis: market conditions, land use, urban design, transportation infrastructure, water and waste water infrastructure and natural resources and open space.

In addition to data collected for mapping purposes, data were also collected to gain a better understanding of the conditions reflected on maps. Many of these additional data were gathered through a review of relevant documents, interviews of key stakeholders, a study area tour, and conversations with City staff.

Study Area Tour

The project team participated in a study area tour with City staff, elected officials and Advisory Committee members. The purpose was to make observations and gather photos throughout the study area. Also, data gathered and information shown on preliminary mapping were verified. Observations made were intended to understand the study area context and document the established character of the built environment, including the development pattern.

About this Memo

The primary purpose of this memo is to provide a snapshot of the existing conditions of the node to gain an understanding of the potential impacts of various factors on the future growth and development of the area. By documenting the existing conditions in this memo, those involved in the process can identify the potential issues and opportunities, which will be the basis for Devine Street/Fort Jackson Commercial Node Plan.

Market Conditions

Current Market Conditions

For the purpose of this analysis a trade area was defined for the Devine Street/Fort Jackson Boulevard Commercial Node. The trade area is defined by a five-minute drive time from the intersection of Devine Street, Fort Jackson Boulevard and Cross Hill Road. Map 2 illustrates the trade area boundary.

Population

The trade area contains an estimated 28,961 residents, or 3.7% of the six-county Columbia Metropolitan Statistical Area (MSA). The 1,374 new residents in the trade area added between 2000 and 2012 equated to a growth rate of 5.0%. Richland County increased 23.3% to 395,322 residents during this same time period. The trade area contains established in-town neighborhoods close to downtown, the University of South Carolina (USC), and Fort Jackson; resulting in a lower Compound Annual Growth Rate (CAGR) of 0.4% compared to 1.8% for Richland County and 1.7% for the Columbia MSA.

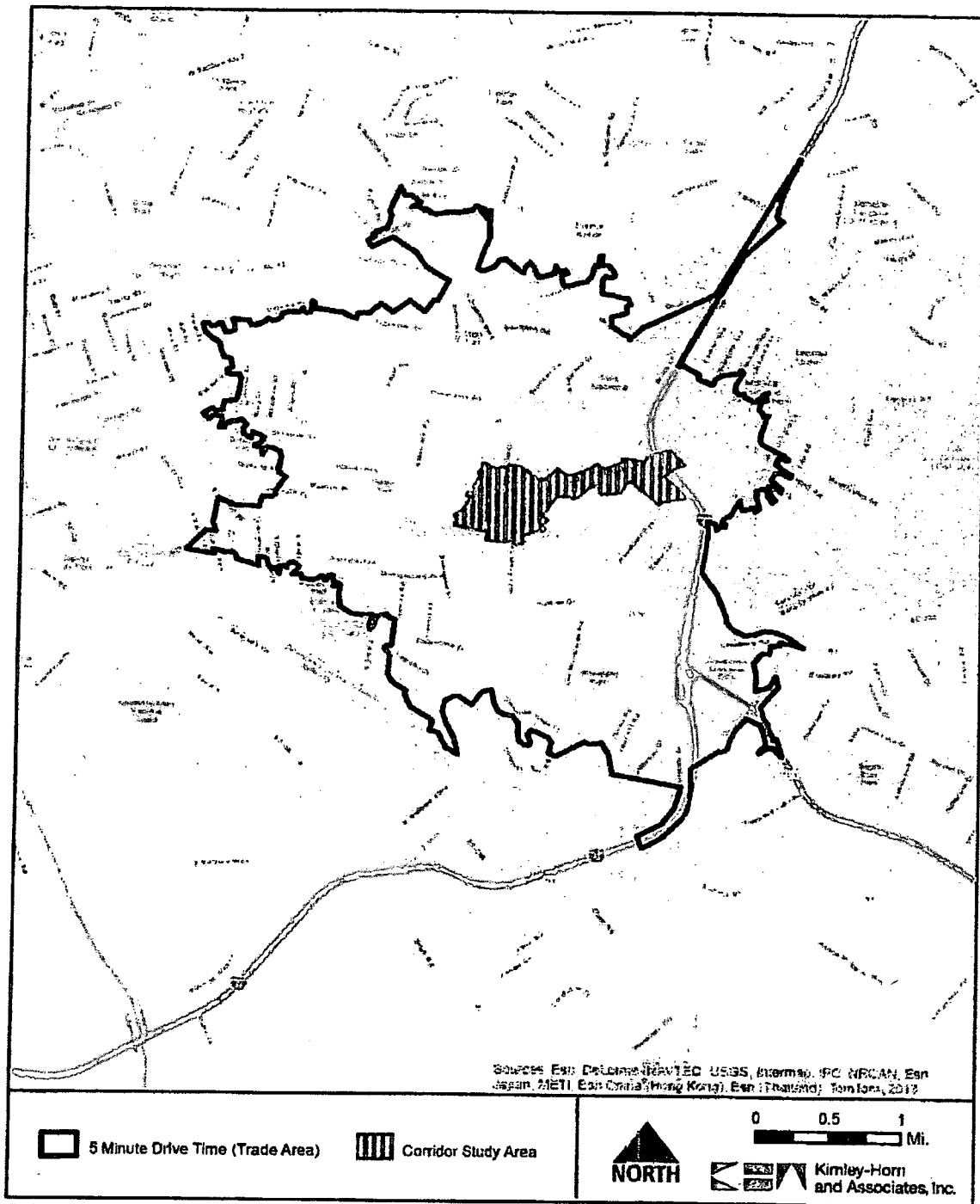
Table 1: Comparison of Population Trends, 2000-2012

Area	2000	2012	2000-2012 Δ		
			#	%	CAGR
Trade Area	27,587	28,961	1,374	5.0%	0.4%
Richland County	320,677	395,322	74,645	23.3%	1.8%
Columbia MSA	647,158	788,418	141,260	21.8%	1.7%
Trade Area % of MSA	4.3%	3.7%	1.0%		

Note: The Trade Area is defined as a five minute drive from the intersection of Devine Street and Fort Jackson Boulevard.

Source: ESRI; Kimley-Horn and Associates

Map 2: Trade Area



*Drive times were produced by ESRI's Business Analyst Online program using posted speed limits for local roads.

Snapshot of the Study Area

Reflective of national trends, Generation Y (included in 15-34 age cohorts) and Baby Boomers (included in 45-64 age cohorts) make up the majority of the trade area. The 15-24 age group comprises almost 20% of the trade area, reflecting presence of USC and other colleges. This age group also grew 20% over the 12-year period, adding almost 1,000 residents. Residents age 55-64 experienced the largest absolute and percent increases between 2000 and 2012 suggesting that Baby Boomers are aging in place. In addition, a decline in children between ages 5 and 14, as well as Generation X between ages 35 and 44 indicates loss of families with children. Table 2 provides these details.

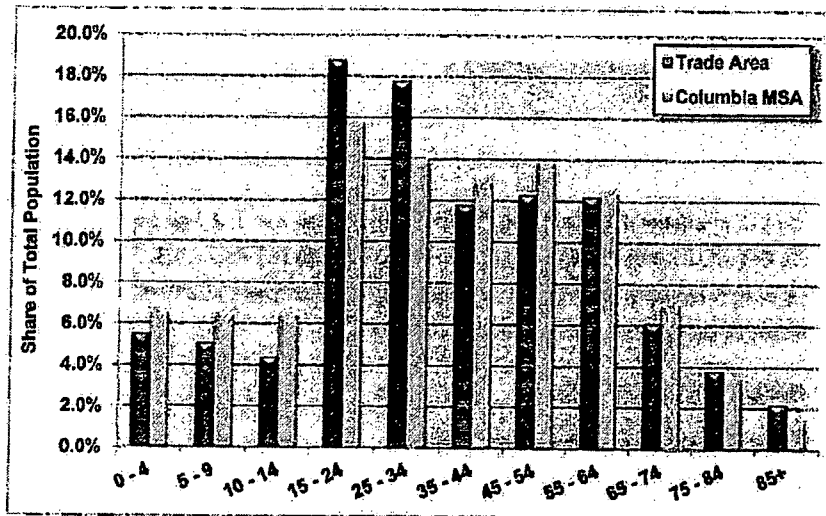
Table 2: Population by Age Cohort Trade Area, 2000-2012

Cohort	2000	2012	2000-2012 Δ		
			#	%	
0 - 4	1,545	1,593	48	3.1%	Generation Y
5 - 9	1,462	1,477	15	1.0%	
10 - 14	1,517	1,274	-243	-16.0%	
15 - 24	4,552	5,445	893	19.6%	Generation X
25 - 34	5,048	5,155	107	2.1%	
35 - 44	4,221	3,417	-803	-19.0%	
45 - 54	3,779	3,562	-217	-5.7%	Baby Boomers
55 - 64	2,041	3,533	1,492	73.1%	
65 - 74	1,572	1,767	194	12.3%	
75 - 84	1,462	1,101	-362	-24.7%	Greatest (Silent) Generation
85+	386	637	251	65.0%	
Total	27,587	28,961	1,374	5.0%	

Source: ESRI; Kimley-Horn and Associates

In comparison to the larger Columbia MSA, the trade area has notably higher shares of residents aged 15-34 (students and young professionals). This young cohort could drive demand for a variety of housing, retail goods and services, and entertainment in pedestrian friendly environments. Alternatively, the MSA has higher shares of school-aged children, Generation X (aged 35-44), and younger Baby Boomers.

Chart 1: Comparison of Shares of Population by Age Cohort, 2012



The area remains mostly white, but is becoming more ethnically diverse. Approximately 94% of residents in the trade area classify themselves as White or Black, similar to the larger MSA. Residents classifying themselves as having Hispanic origin (categorized separately) in the area doubled from 772 people in 2000 to 1,535 in 2012, but still only 5% of total population.

Table 3: Change in Shares of Population by Race, Trade Area, 2000-2012

Race/Ethnicity	2000	2012	'00-'12 Change
White Alone	78.8%	76.1%	-2.7%
Black Alone	16.8%	17.9%	1.1%
American Indian Alone	0.3%	0.3%	0.0%
Asian/Pacific Islander Alone	1.4%	1.9%	0.5%
Other Race Alone	1.4%	2.2%	0.8%
Two or More Races Alone	1.3%	1.7%	0.4%
Total	100.0%	100.1%	

Source: ESRI, Kimley-Horn and Associates

Snapshot of the Study Area

Table 4: Population by Race, Trade Area, 2000-2012

Race/Ethnicity	2000	2012	2000-2012 Δ	
			#	%
White Alone	21,739	22,039	301	1.4%
Black Alone	4,635	5,184	549	11.8%
American Indian Alone	83	87	4	5.0%
Asian/Pacific Islander Alone	386	550	164	42.5%
Other Race Alone	386	637	251	65.0%
Two or More Races Alone	359	492	134	37.3%
Total	27,587	28,961	1,374	5.0%
Hispanic Origin (Any Race)	772	1,535	762	98.7%

Source: ESRI, Kimley-Horn and Associates

Households

There were an estimated 13,098 households in the trade area in 2012, an increase of 2.3% since 2000. Richland County experienced a faster 24.6% growth rate, similar to the Columbia MSA's 23.5%. With its older established neighborhoods near downtown and USC, the trade area captured only 0.5% of the total household growth in the larger Columbia MSA between 2000 and 2012.

Table 5: Comparison of Household Trends, 2000-2012

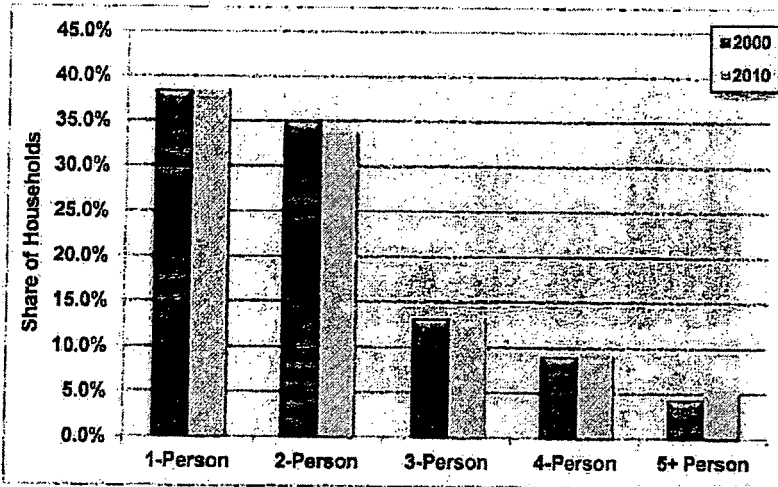
Area	2000	2012	2000-2012 Δ		
			#	%	CAGR
Trade Area	12,801	13,098	297	2.3%	0.2%
Richland County	120,101	149,679	29,578	24.6%	1.9%
Columbia MSA	245,347	303,015	57,668	23.5%	1.8%
Planning Area % of MSA	5.2%	4.3%	0.5%		

Note: The Trade Area is defined as a five minute drive from the intersection of Devine Street and Fort Jackson Boulevard.

Source: ESRI, Kimley-Horn and Associates

Nationally, average household size slightly declined from 2.59 to 2.58 people from 2000 to 2010. Growing Baby Boomer and Generation Y age cohorts typically have smaller household sizes than Generation X. The current average household size in the trade area of 2.06 is much lower than the U.S., due to higher shares of one- and two-person households that are typical of established urban and inner suburban areas.

Chart 2: Share of Households by Size, Trade Area, 2000-2010



Households earning \$50,000 to \$74,999 represent the largest cohort in the trade area, at 17.4% of the total. There is currently no dominant income cohort, indicating a diversity of housing demand and spending potential. However, the area is becoming more affluent; households earning \$100,000 to \$149,999 generated the predominant share of growth between 2000 and 2012. Continuation of 2000-2012 trends would result in the \$100,000-\$149,999 cohort being the largest in the trade area by 2017.

Table 6: Households by Income Cohort, Trade Area 2000-2012

Cohort	2000-2012 Δ			
	2000	2012	#	%
< \$15,000	1,869	1,768	-101	-5.4%
\$15,000 - \$24,999	1,613	1,375	-238	-14.7%
\$25,000 - \$34,999	1,792	1,624	-168	-9.4%
\$35,000 - \$49,999	2,087	1,873	-214	-10.2%
\$50,000 - \$74,999	2,291	2,279	-12	-0.5%
\$75,000 - \$99,999	1,178	1,284	106	9.0%
\$100,000 - \$149,999	1,114	1,729	615	55.2%
\$150,000 - \$199,999	320	537	217	67.8%
\$200,000 +	550	537	-13	-2.4%
Total	12,801	13,098	193	1.5%

Source: ESRI; Kimley-Horn and Associates

The trade area has a higher share of households earning \$100,000+ than the Columbia MSA; the gap between shares over \$100,000 will escalate as the trade area becomes more affluent. With the exception of the \$25,000-\$34,999 cohort, the trade area has lower shares of households earning less than \$99,999 annually than the MSA.

Chart 3: Comparison of Households by Income Cohort, 2012

Snapshot of the Study Area

Housing Units

Housing inventory in the trade area increased by approximately 816 units, or 5.9%, between 2000 and 2012. Richland County grew at a faster 28.1% rate, and housing units in the larger MSA increased by 26.3% during the same time period. The area accounted for 1.2% of new housing unit growth in the MSA which indicates residential development focused in suburban areas of Richland County versus infill locations like the trade area's established neighborhoods.

Table 8: Comparison of Housing Unit Trends, 2000-2012

Area	2000	2012	2000-2012 Δ		
			#	%	CAGR
Planning Area	13,818	14,634	816	5.9%	0.5%
Richland County	129,793	166,230	36,437	28.1%	2.1%
Columbia MSA	269,244	339,948	70,704	26.3%	2.0%
Planning Area % of CSA	5.1%	4.3%	1.2%		

Source: ESRI; Kimley-Horn and Associates

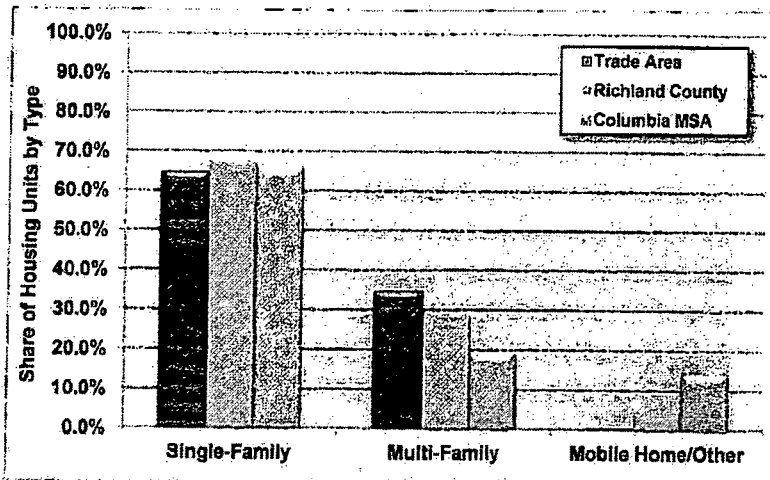
The majority of housing units in the trade area are single-family detached, making up 62.3% of the inventory. The area includes several established single-family neighborhoods such as Shandon and Sherwood Forest. Multi-family units in the trade area declined over the last 12 years as older product was demolished. The area has a relatively comparable share of single-family detached units to Richland County and the Columbia MSA and a higher share of multi-family units than Richland County or MSA.

Table 9: Housing Unit Trends, Trade Area, 2000-2012

Type	2000	2012	2000-2012 Δ	
			#	%
Single-Family, Detached	7,558	9,117	1,559	20.6%
Single-Family, Attached	359	351	-8	-2.2%
Multi-Family	5,886	5,093	-794	-13.5%
Mobile Home/Other	14	73	59	429.5%
Total	13,818	14,634	816	5.9%

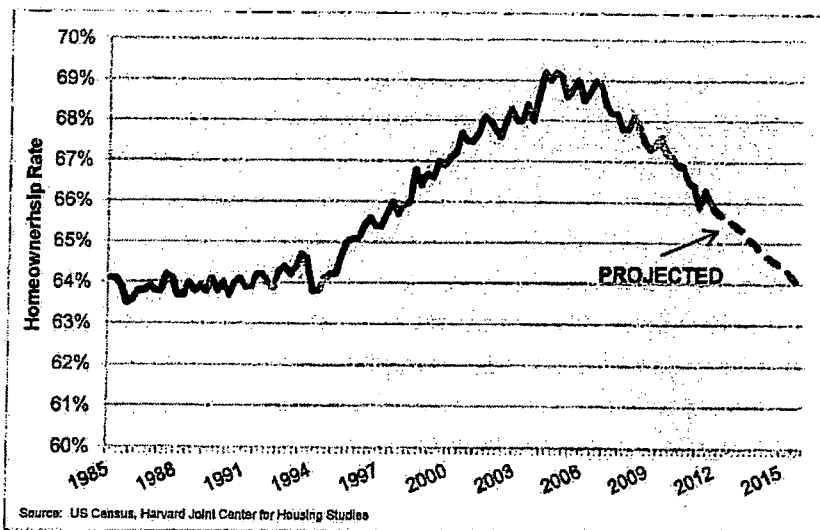
Source: ESRI; Kimley-Horn and Associates

Chart 4: Comparison of Housing Unit Trends, 2012



Since the 2007-2009 Recession and housing crisis, the national homeownership rate has declined sharply from a peak of approximately 69% in the mid-2000s. Decline was due to loss of jobs, foreclosures, severe drops in values, difficulties qualifying for a mortgage, and the Generation Y cohort showing a preference for apartments that offer urban lifestyles and greater mobility. The homeownership rate is expected to continue to decline over the next two to three years, reaching the long-term average of approximately 64%.

Chart 5: Homeownership Rate, United States, 1985-2015 (Projected)

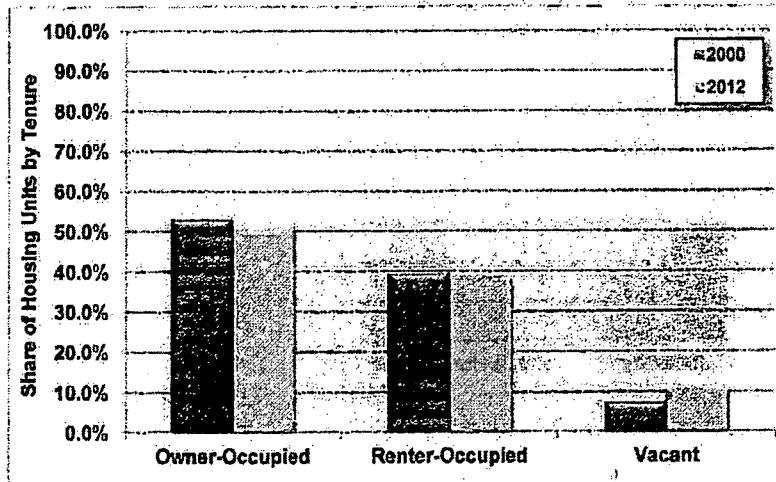


Similar to national trends, the share of owner-occupied housing units in the trade area decreased between 2000 and 2012. During the same time period, the renter-occupied share also declined,

Snapshot of the Study Area

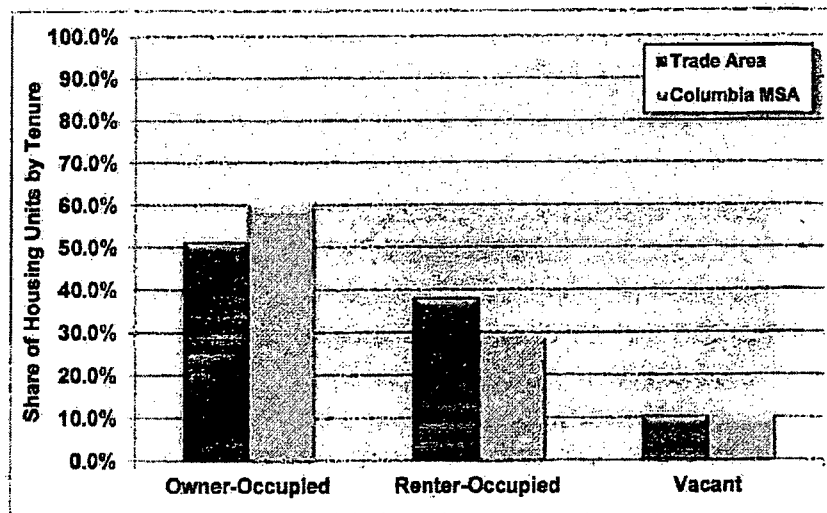
partially due to the demolition of older multi-family product. Vacant units made up approximately 10% of the area in 2012, increasing from 7.5% in 2000.

Chart 6: Housing Unit Tenure, Trade Area, 2000-2012



Owner-occupied units accounted for approximately 50% of all units in the trade area in 2012, lower than 60% for the Columbia MSA. As a result, the area's renter-occupied share is higher than the MSA. As the trade area and MSA have similar shares of single-family detached units, it is likely that many of the single-family units in the area are investor-owned rental units.

Chart 7: Housing Unit Tenure Comparison, 2012



Employment

Excluding the military, the largest employers in Richland County are the State of South Carolina, Palmetto Health, Blue Cross Blue Shield, and the University of South Carolina. Significant employment sectors include Government, Education, Healthcare, and Insurance; these industries did not experience the extreme losses exhibited by Manufacturing, Construction, and Wholesale Trade/Warehousing during the 2007-2009 Recession.

Table 10: Major Employers, Richland County, 2012

Employer	Industry	Estimated Employment
State of South Carolina	Government	24,791
Palmetto Health	Healthcare	9,000
Blue Cross Blue Shield of SC	Insurance	6,459
University of South Carolina	Education	5,997
S.C. Department of Transportation	Government	4,418
Richland County School District 1	Education	4,038
S.C. Department of Mental Health	Healthcare	3,798
Richland County School District 2	Education	3,300
S.C. Department of Health and Environmental Control	Government	3,096
AT&T	Call Centers/Customer Service	2,400
City of Columbia	Government	2,150
Humana/TriCare	Insurance	2,100
Providence Hospitals	Healthcare	2,075
Palmetto GBA	Insurance	1,900
Richland County	Government	1,708
Midlands Technical College	Education	1,600
Wells Fargo	Financial Services	1,549
Verizon Communications	Call Centers/Customer Service	1,500

Source: Central SC

The military is one of the area's largest employers. Fort Jackson is home to the US Army's largest Initial Entry Training Center. The installation trains over 36,000 basic and 8,000 advanced soldiers annually including 50% of Army's basic combat units and 60% of women entering the Army. More than 3,500 active duty soldiers are assigned to Fort Jackson, but deployment affects the total on-base population at any given time. In addition the base supports a total of 16,460 jobs, earning approximately \$856 million in compensation. The Fort hosts numerous graduations each year and attracts over 120,000 out-of-state visitors annually.

Richland County had a total of 203,844 annualized full-time jobs at place of employment in 2012, a decrease of 5.8% since 2007. Healthcare and Social Assistance made up the largest share of Richland County employment in 2012 at nearly 15%. Educational Services, related to both K-12 facilities and colleges/universities, experienced the largest absolute growth over the last five years. The largest declines were noted in Construction; Retail Trade; and Transportation, Warehousing, and Utilities.

Snapshot of the Study Area

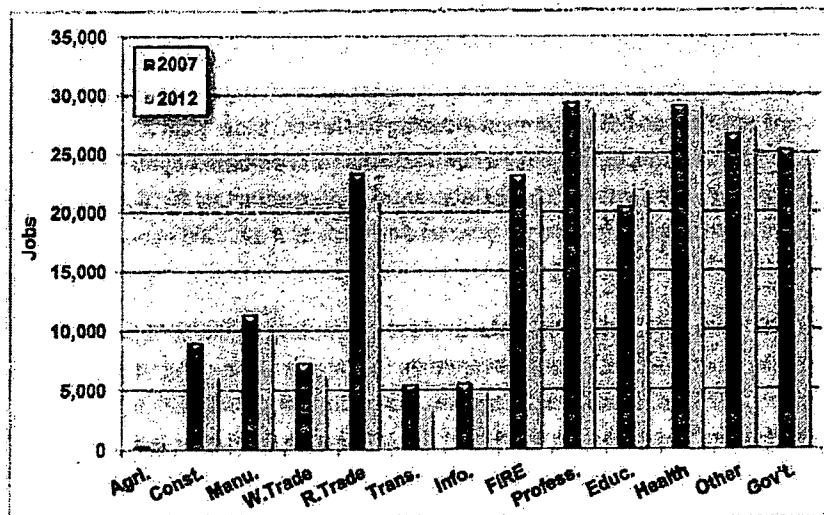
Table 11: At-Place Employment by Industry, Richland County, 2007-2012

Industry	2007	2012	2007-2012 Δ	
			#	%
Agriculture and Mining	385	675	290	75.3%
Construction	9,031	6,129	-2,902	-32.1%
Manufacturing	11,366	9,976	-1,390	-12.2%
Wholesale Trade	7,322	6,171	-1,151	-15.7%
Retail Trade	23,307	20,916	-2,391	-10.3%
Transportation, Warehousing & Utilities	5,499	3,323	-2,176	-39.6%
Information	5,590	4,778	-812	-14.5%
F.I.R.E.	23,142	21,288	-1,854	-8.0%
Professional Services	29,344	28,479	-865	-2.9%
Educational Services	20,444	21,844	1,400	6.8%
Healthcare and Social Assistance	29,057	28,983	-74	-0.3%
Other Services	26,581	27,281	700	2.6%
Public Administration	25,276	24,001	-1,275	-5.0%
Total	216,344	203,844	-12,500	-5.8%

Source: SC Employment Securities Commission; Kimley-Horn and Associates

Education and Other Services experienced increases between 2007 and 2012. Because of the Recession, most employment sectors noted declines over the last five years, with the largest losses in Construction, Retail Trade, and Transportation, Warehousing, and Utilities. A review of more recent quarterly trends demonstrates a stabilization of jobs in Richland County (between 4Q2011 and 4Q2012 Richland County added over 2,000 jobs.)

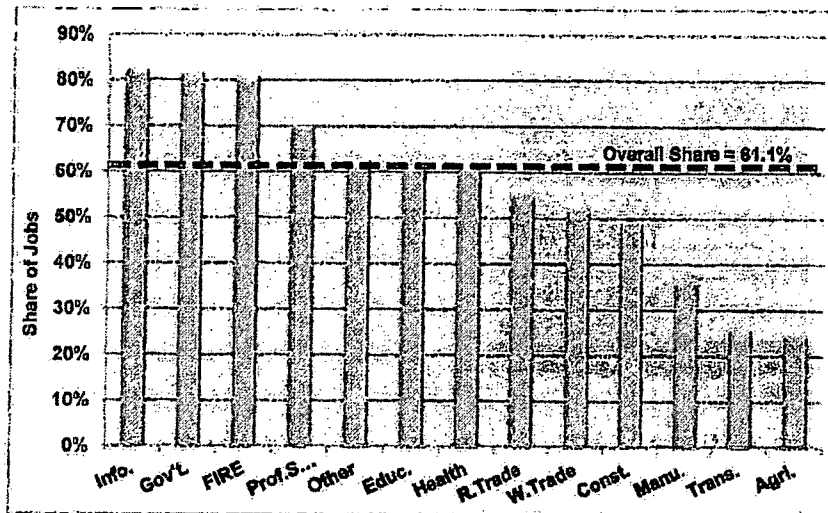
Chart 8: At-Place Employment by Industry, Richland County, 2007-2012



Jobs located in Richland County make up approximately 61.1% of the total in the six-county Columbia MSA. Industries in Richland County exceeding the overall 61.1% share of MSA jobs include Information;

Government; Finance, Insurance and Real Estate (FIRE); and Professional Services. The County's 61.1% share of MSA jobs was higher than its 50.1% share of population in 2012, reflecting the concentration of jobs in Columbia.

Chart 9: Richland County Shares of Columbia MSA Employment, 2012



In 2012, the trade area had an estimated 11,461 jobs, comprising 5.6% of the Richland County total. The trade area had a 7.3% share of the County's population in 2012, showing a higher concentration of people than jobs. Other Services, which includes Accommodation and Food Services, made up 18.2% of the total jobs in the trade area, followed by Public Administration (15.1%), Retail Trade (14.6%), and Professional Services (14.4%). A majority of trade area jobs are in service-related industries.

Snapshot of the Study Area

Table 12: Annual Employment by Industry, Trade Area, 2012

Industry	Jobs	% of Total
Agriculture and Mining	20	0.2%
Construction	391	3.4%
Manufacturing	137	1.2%
Wholesale Trade	302	2.6%
Retail Trade	1,678	14.6%
Transportation, Warehousing & Utilities	142	1.2%
Information	274	2.4%
F.I.R.E.	889	7.8%
Professional Services	1,647	14.4%
Educational Services	1,389	12.1%
Healthcare and Social Assistance	772	6.7%
Other Services	2,086	18.2%
Public Administration	1,734	15.1%
Total	11,461	100.0%

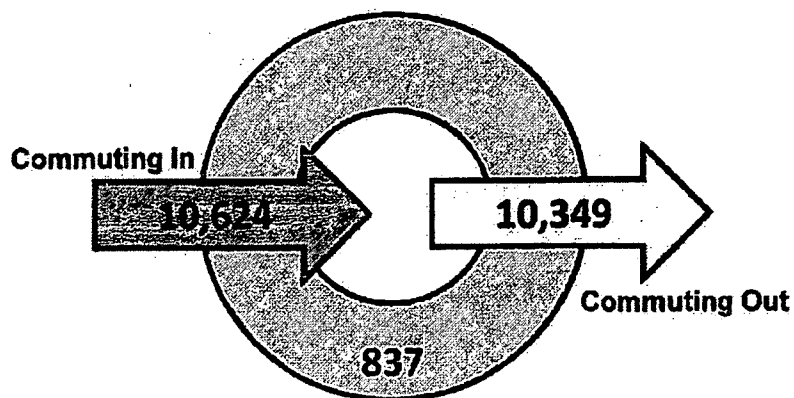
Source: ESRI; Kintley-Horn and Associates

There are an estimated 11,461 jobs at place of employment in the trade area, with 10,624 positions filled by in-commuters (93%) and 837 jobs held by residents (7%). Of the 11,186 employed residents of the trade area, an estimated 10,349 people, or 93%, commute elsewhere. The combination of 10,624 in-commuters and 10,349 out-commuters results in a net inflow of 275 workers to the area.

Table 12: Employment Inflow/Outflow, Trade Area, 2012

Trade Area Jobs Filled by In-Commuters	10,624
Trade Area Jobs Filled by Residents	837
Total Trade Area Jobs	11,461
Trade Area Employed Residents	11,186
Net Inflow/Outflow	-275

Source: ESRI; U.S. Census; Kintley-Horn and Associates



The Devine Street Trade Area has a 0.78 jobs/housing unit ratio. Fewer jobs than housing units is indicative of a predominantly residential development pattern and a comparatively high commuter share. Commuting distances and times have not been analyzed for the area, but the jobs/housing disconnect strains transportation infrastructure during peak hours. As the primary employment center in the MSA, Richland County has a 1.23 jobs/housing unit ratio. The Columbia MSA reports a comparatively balanced 0.98 jobs/unit.

Table 13: Jobs/Housing Unit Ratio Comparison, 2012

Geography	At-Place Jobs	Housing Units	Jobs/ Unit
Trade Area	11,461	14,634	0.78
Richland County	203,844	166,230	1.23
Columbia MSA	333,754	339,948	0.98

Source: US Census; NCES; Kirley-Horn and Associates

Future Market Conditions

Residential

Two residential growth scenarios were evaluated to forecast population, households, and housing units for the trade area through 2032:

- Scenario 1 (Baseline): Uses a 0.7% CAGR as a basis for increasing population; this measure is slightly higher than 0.4% annually demonstrated between 2000 and 2012
- Scenario 2 (Accelerated Growth): Scenario 2 forecast accelerated post-2015 to indicate improvements to the economy following the recession and continued attraction by the Gen Y to live in urban areas providing multiple transportation options

This analysis utilized a straight average of the two scenarios as the basis for the residential demand forecast. Housing unit forecasts are based on average household sizes and a 9% vacancy rate, reported by ESRI. Population in the trade area could increase by 2,800 people, equating to an annual growth rate of 0.9%. Population growth will likely be limited by land availability. Preferences of Gen Y will positively impact areas the study area, due to proximity to the urban core, pedestrian access to retail, and access to available transportation options.

Table 14: Average Residential Forecast, Trade Area, 2012-2032

Scenario				2012-2032 Δ		
	2012	2022	2032	#	%	CAGR
Scenario 1	14,630	15,980	17,220	2,590	17.7%	0.8%
Scenario 2	14,630	16,060	17,650	3,020	20.6%	0.9%
Average	14,630	16,020	17,430	2,800	19.1%	0.9%

Source: ESRI, Kirley-Horn & Associates

Snapshot of the Study Area

The study area could capture 10%-15% of the population growth in the trade area, equating to approximately 280 to 420 new residential units between 2012 and 2032. Housing demand is likely to break out as follows:

- **Single-Family Detached** construction will primarily be comprised of infill opportunities, based on existing land use this could be 10-20 units over the next 20 years
- **Townhouse**, or attached, units could provide an alternative to single-family detached units in established neighborhoods; approximately 50 to 75 attached units could be supported in the Study Area
- **Apartments/Multi-Family** are expected to comprise the majority of new residential development in the Study Area; approximately 220 to 325 units could be supported in smaller infill communities

Table 15: Housing Demand Forecast, Study Area, 2012-2032

Unit Type	Projected Unit Growth (2012-2032)	
Single-Family Detached	10 -	20
Townhouse	50 -	75
Multi-Family	220 -	325
Total	280 -	420

Source: Kimley-Horn & Associates

The 2012-2032 land demand for new residential units is based on assumed ranges for units per acre by type. Density assumption for single-family detached in the study area is approximately eight units per acre, equating to demand of one to three acres. Townhouses are assumed to have a density of 15 units per acre, with total land demand of three to five acres. Assuming a density of 25 units per acre, multi-family would have land demand of nine to 13 acres, comprising the largest share of demand of all residential types. In total, the 2012-2032 residential land demand range from 13 to 21 acres. The majority of residential demand will be accommodated in infill or redevelopment opportunities, within walking distance of retail and restaurants.

Table 16: Residential Land Demand, Study Area, 2012-2032

Type	Land Demand	
	Low	High
Single-Family ¹	1	3
Townhouse ²	3	5
Multi-Family ³	9	13
Total	13	21

¹ Assumes eight units per acre.

² Assumes 15 units per acre.

³ Assumes 25 units per acre.

Source: Kimley-Horn and Associates

Retail

As of second-quarter 2013, Columbia has an inventory over 12.5 million square feet of multi-tenant retail space. Retail occupancy has remained constant in the Columbia Market, reporting 8.36% in second-quarter 2013, a slight reduction from 9.45% two years earlier. Colliers International defines a smaller Southeast Submarket, which incorporates the intersection of Devine Street and Fort Jackson Boulevard. Within this Submarket there is over 1.0 million square feet of multi-tenant retail inventory. The current overall retail vacancy rate is estimated at less than 5%; there is extremely limited vacancy in anchor and junior anchor space in the Submarket. Average small-shop rents generally range from \$10-\$12/square foot.

Table 17: Retail Trends, Columbia Market, 2011-2013

Columbia Market						
Reporting Period	Inventory	Vacancy Rate	Quoted Rent/Sq.Ft.			
			Anchor	Jr. Anchor	Sm. Shop	
Q2 2011	11,978,792	9.45%	\$14.45	\$9.39	\$13.08	
Q2 2012	12,373,368	8.34%	\$7.63	\$13.09	\$14.13	
Q2 2013	12,505,119	8.36%	\$7.28	\$6.47	\$13.06	

Note: * indicates that there is no space available in order to obtain a quoted rent

Source: Colliers International

Edens provided detail on three competitive retail developments in the vicinity of the trade area:

- **Trenholm Plaza**
 - 4840 Forest Drive
 - 99% occupancy; anchored by Publix
 - Quoted rent/sq.ft. from \$32 to \$38
- **Cross Hill Market**
 - Devine Street/Cross Hill Road
 - 100% occupancy; anchored by Whole Foods
 - Two outparcels available
 - Quoted rent/sq.ft. from \$28-\$35
- **Shoppes at Woodhill**
 - 6090 Garners Ferry Road
 - 97% occupancy; anchored by Target
 - Quoted rent/sq.ft. from \$24 to \$28

Competitive retail demonstrates high-performing centers that are likely to attract additional opportunities nearby.

The 2012-2032 retail demand for the Trade area was forecasted using the following method:

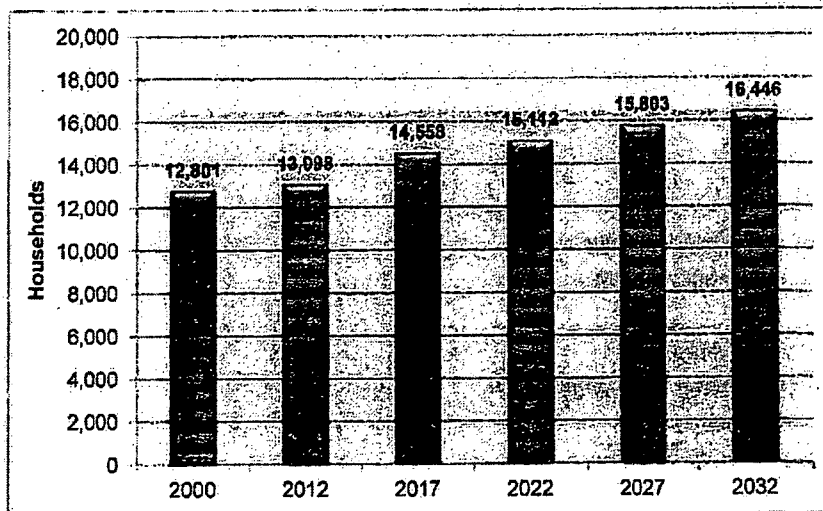
- Calculating the trade area's total household income in 2012 and 2032 by applying the forecasted households to average income projections derived from ESRI trends and proprietary population forecasts

Snapshot of the Study Area

- Estimating Richland County's expenditure potential based on data from the South Carolina Department of Revenue that indicates the percentage of income spent on various goods and services
- Determining the trade area sales capture in five-year increments through 2032, taking into account leakage resulting from resident commuting patterns
- Estimating sales inflow from non-trade area residents, including those who work there and commuters
- Converting retail sales to square feet based on sales per square feet data by type of retail

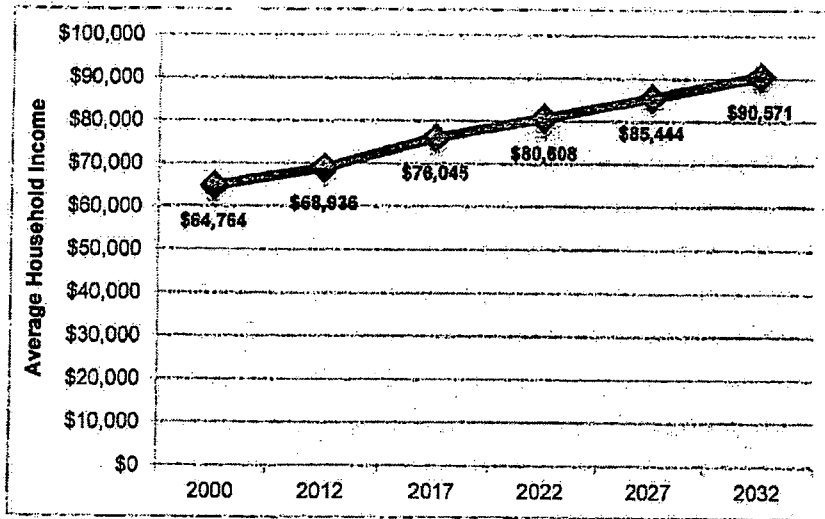
Based on the population forecast presented in the residential demand forecast, the trade area is expected to add 3,645 new households through 2032, a 25.6% increase over 20 years. In 2032, a total of 16,446 households could be located in the trade area. Although, the increase of new households will likely be limited by land availability.

Chart 10: Household Forecast, Trade Area, 2012-2032



Retail demand forecasts generally rely on average household income, which is typically higher than the median income statistics. According to ESRI, the trade area had an average income of \$68,936 in 2012, a 6.4% increase from \$64,764 in 2000. Based on income projections derived from ESRI trends, the average household income in the trade area could increase to \$90,571 by 2032.

Chart 11: Average Household Income Forecast, Trade Area, 2012-2032



The Trade Area has a forecasted demand of approximately 224,000 square feet of new retail space between 2012 and 2032. Demand for net new retail space is expected to hold constant throughout the forecast period; however, as available land for retail development declines new construction could also slow. Supermarkets, Building Materials, and Restaurants make up the largest growth categories for net new demand. The trade area is likely to accommodate one small grocery store through 2032.

Table 18: Net New Retail Demand, Trade Area, 2012-2032

Retail Category	Retail Demand (Sq.Ft.)				2012-2032 Change	% of Total
	2012-2017	2017-2022	2022-2027	2027-2032		
Supermarkets & Other Groceries	7,954	8,377	8,443	8,075	32,849	14.7%
Building Material & Supply Dealers	7,683	8,092	8,156	7,801	31,732	14.2%
Food Services - Restaurants	7,116	7,495	7,554	7,225	29,392	13.1%
Other General Merchandise Stores	5,297	5,579	5,623	5,378	21,876	9.8%
Pharmacies & Drug Stores	4,352	4,583	4,619	4,418	17,972	8.0%
Clothing Stores	3,670	3,865	3,896	3,726	15,157	6.8%
Discount Department Stores	2,880	3,033	3,057	2,924	11,895	5.3%
Department Stores	1,930	2,032	2,048	1,959	7,969	3.6%
Furniture Stores	1,734	1,826	1,841	1,761	7,162	3.2%
Electronics & Appliances	1,673	1,762	1,776	1,698	6,909	3.1%
All Other	9,951	10,481	10,564	10,104	41,101	18.3%
Total	54,239	57,127	57,577	55,069	224,012	100.0%

Source: Kimley-Horn and Associates

Similar to the residential forecast, two capture rate scenarios were prepared to demonstrate a range of demand for the Devine Street/Fort Jackson Boulevard Commercial Node Study Area. The more conservative scenario, defined as 'low', has capture rates ranging from 20% to 25% for the study area. Capture rates for the 'high' scenario ranges from 30% to 35%. Capture rates are based on the geographic size of the study area, the transportation network, and estimated share of current inventory.

Snapshot of the Study Area

Capture rates are expected to decline towards the end of the analysis period due to land availability in the study area. These rates equate to a net retail demand of 50,500 to 72,900 square feet between 2012 and 2032.

Table 19: Retail Capture Rates, Study Area, 2012-2032

Scenario	Time Period			
	2012-2017	2017-2022	2022-2027	2027-2032
Low	20%	25%	25%	20%
High	30%	35%	35%	30%

Source: Kimley-Horn and Associates

Retail land demand is based on floor area ratios (FAR) of 0.25, a typical industry standard for retail development. Applying the assumed FAR to the forecasted 2012-2032 net square footage for the study area equates to a land demand of approximately five to seven acres through 2032. New retail will likely be attracted to sites with superior visibility and access from Devine Street or Fort Jackson Boulevard. This acreage could also be accommodated in mixed-use developments.

Table 20: Retail Land Demand, Study Area, 2012-2032

Density Assumption	2012-2032	
	Forecast (Sq. Ft.)	Land (Acres)
Low	50,500	5
High	72,900	7

Source: Kimley-Horn and Associates

New retail tenants will likely be attracted to the momentum in the study area started by Whole Foods, and other high-end restaurants. Potential tenants might include:

- **Jr. Anchors:** Similar to Kohl's, TJ Maxx, Marshalls
- **Pharmacy:** Potential for another store, in addition to existing Walgreens
- **Restaurants:** Independent and chain; stores could locate as free-standing outparcels or in-line spaces
- **Small Shops/Specialty:** Independent clothing, home accessory, and gift stores

Given the presence of Whole Foods and Bi-Lo, it is unlikely that the study area would attract a third grocery store, although forecasted demand supports one in the larger trade area.

Office

The Columbia market reported a second-quarter 2012 inventory of over 9.4 million square feet of multi-tenant office. Nearly 50% of the inventory is located in the Central Business District (CBD). Although improvement has been noted between 2011 and 2013, vacancy rates remain elevated at 19.71%. Over the last three years annual (12-month) absorption has averaged approximately 115,000 square feet per year. Class A rents have remained steady at approximately \$18.50 per square foot. Inventory in the

"East Columbia" Submarket, as defined by Colliers, includes only 84,183 square feet of multi-tenant Class C space, with a vacancy rate of over 35%.

Table 21: Multi-Tenant Office Trends, Columbia Market, 2011-2013

Columbia Market						
Reporting Period	6-Month Inventory	6-Month Absorption	Vacancy Rate	Quoted Rent/Sq. Ft.		
				ClassA	ClassB	ClassC
Q2 2011	9,828,371	20,223	20.40%	\$18.59	\$15.21	\$14.44
Q2 2012	9,975,599	94,306	23.31%	\$18.48	\$15.45	\$13.92
Q2 2013	9,425,679	59,533	19.71%	\$18.64	\$15.40	\$12.90

Source: Colliers International

Office demand for the trade area is based on office-occupying employment growth as reported for Richland County by Woods & Poole. Richland County is expected to add over 50,000 jobs over the next 20 years, a 24.6% increase. This equates to approximately 2,500 new jobs on an annual basis. The strongest growth is expected in Health Care, Professional and Business Services, and Education.

Table 22: Employment Forecast, Richland County, 2012-2032

Industry	2012	2017	2022	2027	2032	2012-2032 Δ	
						#	%
Agriculture Forestry Fishing & Hunting	590	596	602	614	626	36	6.1%
Mining	85	85	88	88	88	1	0.8%
Transportation, Warehousing, and Utilities	3,323	3,388	3,437	3,467	3,481	158	4.8%
Construction	6,129	6,270	6,420	6,575	6,732	603	9.8%
Manufacturing	9,976	9,977	9,952	9,932	9,912	-64	-0.6%
Wholesale Trade	6,171	6,280	6,379	6,465	6,539	368	6.0%
Retail Trade	20,916	21,282	21,548	21,772	21,933	1,017	4.9%
Information	4,778	4,864	4,940	5,004	5,057	279	5.8%
Finance and Insurance	18,178	18,214	18,269	18,324	18,379	201	1.1%
Real Estate and Rental and Leasing	3,110	3,249	3,384	3,514	3,639	529	17.0%
Professional and Business Services	28,479	31,327	35,086	40,349	46,401	17,922	62.9%
Educational Services	21,844	23,089	24,359	25,650	26,933	5,089	23.3%
Health Care and Social Assistance	28,983	31,881	35,707	41,063	47,633	18,650	64.3%
Arts Entertainment and Recreation	3,004	3,160	3,318	3,484	3,651	647	21.6%
Accommodation and Food Services	18,374	19,278	20,151	20,984	21,770	3,396	18.5%
Other Services	5,903	6,181	6,450	6,707	6,951	1,048	17.8%
Public Administration/Government	24,001	24,073	24,145	24,194	24,242	241	1.0%
Total	203,844	213,176	224,234	238,183	253,966	50,122	24.6%

Sources: SCESC; Woods & Poole; Kintley-Horn and Associates

To determine the forecasted increase in office-occupying employment, office shares were applied to each industry projection. Finance and Insurance and Professional and Business Services have the highest shares of office-occupying employment at 95%. Richland County is expected to have an increase of 26,964 office-occupying employees, or 30%, between 2012 and 2032.

Snapshot of the Study Area

Table 23: Office-Occupying Employment Forecast, Richland County, 2012-2032

Industry	Office Share						12-32 Change	
		2012	2017	2022	2027	2032	#	%
Agriculture Forestry Fishing & Hunting	5.0%	30	30	30	31	31	2	0.0%
Mining	5.0%	4	4	4	4	4	0	0.0%
Transportation, Warehousing, and Utilities	25.0%	831	847	859	867	870	40	4.8%
Construction	10.0%	613	627	642	657	673	60	9.8%
Manufacturing	5.0%	499	499	498	497	496	-3	-0.6%
Wholesale Trade	25.0%	1,543	1,570	1,595	1,616	1,635	92	6.0%
Retail Trade	10.0%	2,092	2,126	2,155	2,177	2,193	102	4.9%
Information	30.0%	1,433	1,459	1,482	1,501	1,517	84	5.8%
Finance and Insurance	95.0%	17,269	17,304	17,356	17,408	17,460	191	1.1%
Real Estate and Rental and Leasing	85.0%	2,644	2,762	2,877	2,987	3,093	450	17.0%
Professional and Business Services	95.0%	27,055	29,761	33,332	38,332	44,081	17,026	62.9%
Educational Services	30.0%	6,553	6,927	7,308	7,695	8,080	1,527	23.3%
Health Care and Social Assistance	35.0%	10,144	11,158	12,487	14,372	16,672	6,528	64.3%
Arts Entertainment and Recreation	15.0%	451	474	498	523	548	97	21.6%
Accommodation and Food Services	10.0%	1,837	1,928	2,015	2,098	2,177	340	18.5%
Other Services	25.0%	1,476	1,545	1,612	1,677	1,738	262	17.8%
Public Administration/Government	70.0%	16,801	16,851	16,902	16,935	16,969	169	1.0%
Total		91,273	95,872	101,661	109,377	118,237	26,964	29.5%

Sources: SCESC; Woods & Poole; Kinley-Horn and Associates

Forecasted office-occupying jobs have been used to estimate square footage demand. National trends indicate declining space per employee; estimates for office demand are based on square feet per employee averages, as follows:

- 2012-2017: 220 square feet/employee
- 2017-2022: 215 square feet/employee
- 2022-2027: 210 square feet/employee
- 2027-2032: 205 square feet/employee

Office demand in Richland County is expected to increase by 5.7 million square feet.

Table 24: Net New Office Demand, Richland County, 2012-2032

	Net Office Demand (Sq. Ft.)				2012-2032
	2012-2017	2017-2022	2022-2027	2027-2032	Total
Jobs	4,598	5,789	7,716	8,860	26,964
Square Feet	1,011,664	1,244,680	1,620,396	1,816,342	5,693,082

* Assumes declining square foot need per employee for each five-year period.

Source: Kinley-Horn and Associates; Woods & Poole

The trade area capture of Richland County demand is based on recent trends as presented by Colliers for the 'East Columbia' and 'Forest Acres' submarkets. This analysis assumes capture rates ranging from 2%-3% of the County total; capture rates are expected to decline as the trade area continues to build-out. Demand generators in the trade area will likely be existing office and retail in the Forest Acres neighborhood, competitive retail developments (Cross Hill, Trenholm, and Woodhill), and Five

Points/USC. In total, the trade area is expected to have a demand for approximately 136,000 square feet of office space through 2032.

Table 25: Net New Office Demand, Trade Area, 2012-2032

	Net Office Demand (Sq.Ft.)				2012-2032
	2012-2017	2017-2022	2022-2027	2027-2032	Total
Jobs	138	174	154	177	643
Square Feet	30,350	37,340	32,408	36,327	136,425

* Assumes increasing capture for each five-year period.

Source: Kimley-Horn and Associates; Woods & Poole

Two scenarios were prepared for office demand: a more conservative (low) and an aggressive (high). The study area's potential capture of office demand is expected to decline due to land availability. Capture rates are based on the geographic size of the study area, surrounding employment generators, and the transportation network. Capture rates are expected to range from:

- 15%-30% for the low scenario
- 30%-45% for the high scenario

Based on the assumed capture rates the Devine Street/Fort Jackson Boulevard Commercial Node study area could support approximately 30,300 to 50,800 square feet of net new office space between 2012 and 2032. The lack of Class A or B office space in the Study Area would likely result in new construction.

Table 26: Office Capture Rates, Study Area, 2012-2032

Scenario	Time Period			
	2012-2017	2017-2022	2022-2027	2027-2032
Low	30%	25%	20%	15%
High	45%	40%	35%	30%

Source: Kimley-Horn and Associates

Similar to retail, land demand for office is based on industry-standard floor area ratio (FAR) of approximately 0.30. Applying the assumed FARs to the forecasted 2012-2032 spare footage equates to office land demand of approximately two to four acres through 2032 in the study area. New office developments will likely be attracted to pedestrian access to retail services and restaurants. This acreage could also be accommodated in mixed-use developments.

Table 27: Office Land Demand, Study Area, 2012-2032

Density Assumption	2012-2032	
	Forecast Land (Sq.Ft.)	(Acres)
Low	30,300	2
High	50,800	4

Source: Kimley-Horn and Associates

Snapshot of the Study Area

Demand of approximately 30,000 to 50,000 square feet of office space in the study area would be attractive to smaller professional tenants including:

- Real estate brokers
- Mortgage firms
- Financial advisors
- Insurance agents
- Architects/design firms
- Marketing/PR consultants
- Non-profit agencies

Pedestrian access to Whole Foods, and other neighborhood restaurants, would be an attractive amenity to employees of these tenants.

Land Use & Development Characteristics

The Devine Street/ Fort Jackson Boulevard Commercial Node is an eclectic mix of new and old, of traditional strip retail centers and village-scale commercial, of apartments, condominiums and single-family residences. Over the past fifty years the area has developed as a regional commercial destination and a neighborhood-serving center. Land uses in the study area include a mixture of primarily retail and residential developments.

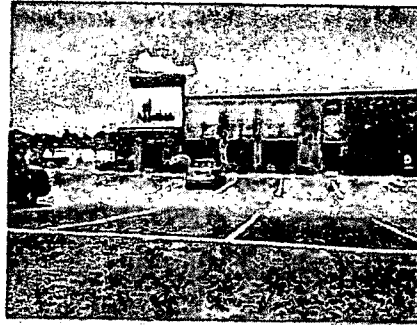
Map 4 shows the land uses of the study area at the parcel level. The following describes the variation in development within each land use type and the characteristics of development, providing details about the scale and quality of the architecture and site features.

Commercial (Retail and Office)

Commercial uses are centered on the main intersection of Devine Street, Fort Jackson Boulevard and Cross Hill Road. The character of development surrounding this commercial heart of the node is traditional large footprint retailers center surrounded by out parcels and mainly quick-service restaurants, the type of auto-centric development that can be described as "Anywhere USA." However, the Cross Hill Market redevelopment defines a new character for the area. While the development pattern is the same (large footprint anchor, surrounded by retail outparcels) the attention to detail creates a new sense of place for this corner of the study area. Regionally inspired landscaping materials such as Palmetto trees and native grasses cultivate a unique retail experience. The development balances private businesses with public gathering spaces to encourage community interaction. Sidewalk connections to the surrounding neighborhood allow a pedestrian-friendly route that can be used as a precedent for new redevelopment. Ceiling fans, light paint colors, shaded seating and landscaped green spaces provide a place to escape from Columbia's summer heat.

The character of the retail development changes as you move west out of the main intersection. An eclectic mix of smaller footprint retail flank Devine Street west of the intersection. Local retailers line narrow sidewalks. Diagonal parking separates the pedestrian from vehicular movements. Many of the storefronts along this section of Devine Street are blighted or vacant. There is no streetscape and the sidewalks are in various states of disrepair. Turning the corner on Beltline, the retail again changes character. Larger footprint stores are surrounded by parking lots. Sidewalks are directly adjacent to the roadway making the pedestrian feel exposed and potentially unsafe. Much of the development in the area was constructed in the 1970s and is wearing the face of time.

East of the main intersection of Devine Street and Fort Jackson Boulevard is the Crowson Road commercial wedge. The area that fronts Devine has been redeveloped into a few national eateries. The development along Fort Jackson Boulevard and Crowson Road is smaller scale. Buildings of various sizes and shapes are surrounded by parking lots. Crowson Road lacks a definitive edge as pavement bleeds out on both sides, giving way to parking areas and sidewalks that are not delineated.



Many of the outparcels along Devine Street have recently redeveloped.



Whole Foods anchors the recently redeveloped Cross Hill Market shopping center.



A number of small, local businesses are located along Devine Street near the Intersection at Beltline Boulevard.

Snapshot of the Study Area

Residential

From the main intersection at Fort Jackson Boulevard, Devine Street and Cross Hill Road, the character of the study area quickly transitions from commercial to residential. There are a number of neighborhoods in close proximity to the study area including Shandon, Sherwood Forest, Cross Hill, Hampton Hills, Heyward Park and Heathwood. These neighborhoods are primarily single-family and owner-occupied. The neighborhoods range from modest one-story homes to large single-family residences. Some of the most expensive residential product in the Columbia market is located in adjacent neighborhoods.

In addition, there are a few condominium and apartment complexes located within the study area. Near the intersection of I-77 and Fort Jackson Boulevard, there are two complexes. Nestled behind the commercial areas along Devine Street and Beltline Boulevard are a set of two-story apartment complexes. The apartments appear to be occupied but are in various states of disrepair.

Civic/Institutional

Midlands Technical College anchors the southern portion of the study area. The campus offers a variety of degree and certificate programs and serves as a feeder school to the University of South Carolina.



Historic Heathwood is just one of the many neighborhoods adjacent to the study area.



The multi-family product in the study area was built in the 1970s and is in need of renovation.



Midlands Technical College anchors the southern portion of the study area.

Transportation Infrastructure

Existing Roadway Conditions

This section of the report examines the roadway conditions and characteristics in the study area. Major intersections and travel behavior were evaluated based on field review and local expertise from the Advisory Committee.

Roadway Classification

The identification of roadway classification is a necessary step in assessing and evaluating the effectiveness of the roadway network. Federal Functional Classification System is used by SCDOT to classify roads in the study area by categorizing a road section on attributes common to its role and function within the roadway network.

- **Interstates** – Defined as significant highways featuring limited access and continuous, high-speed movements for a wide variety of traffic types. Interstates account for 1.0 miles as I-77 travels through the northeast part of the study area. The Annual Average Daily Traffic (AADT) on this roadway segment north of the I-77/Fort Jackson Boulevard Interchange is 24,388 vehicles per day (VPD), while south of the I-77/Fort Jackson Boulevard Interchange is 24,348 VPD.
- **Arterials** – Classified as major or minor arterials, these roads connect activity centers and carry large volumes of traffic at moderate speeds. The arterial system in the study area totals approximately 4.2 miles. Devine Street had highest traffic counts for arterials in the study area with an AADT of 46,585 southeast of the Devine Street and Wildcat intersection. Fort Jackson Boulevard has an AADT of 20,010 east of the intersection with Kilbourne and an AADT of 5,655 near the intersection with Devine Street.
- **Collectors** – Collectors typically allow access to activity centers from residential areas. Collectors can also be categorized as major and minor. Their purpose is to collect traffic from streets in residential and commercial areas and distribute it to the arterial system. The collector system in the study area consists of 0.1 total miles.

Roadway Statistics

Roadway statistics evaluated in this study include year 2005 and year 2035 traffic volumes, level of service (LOS), vehicle miles of travel (VMT), and vehicle hours of travel (VHT).

Traffic Volumes

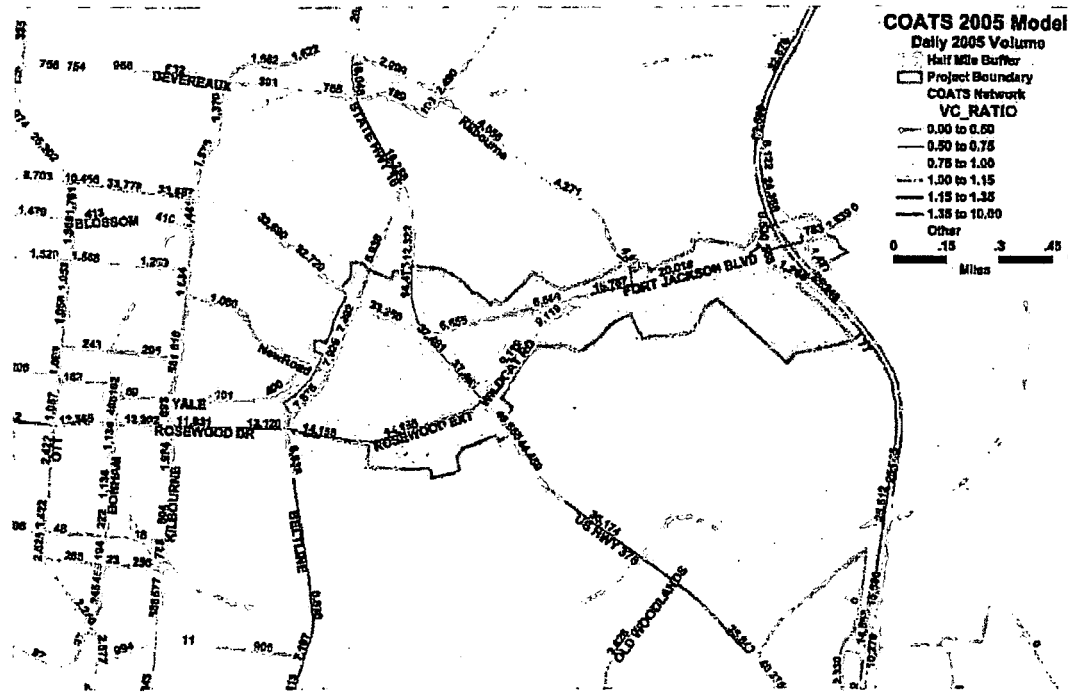
Traffic volume flow maps show projected growth over the 30-year horizon used in the COATS travel demand model. Map 5 shows the 2005 model year volumes and Map 6 shows the 2035 model horizon year volumes.

In Map 5, the highest existing traffic volumes in the study area are located along the Devine Street corridor. Along Devine Street between Beltline and south of Wildcat Road, the existing AADT varies between 33,250 and 46,585 respectively. The I-77 corridor through the study area contains an AADT over 24,000. The traffic volumes for Fort Jackson Boulevard changes greatly in the study area with an

Snapshot of the Study Area

AADT of 20,010 east of Kilbourne, 15,787 west of Kilbourne, and 5,655 at the Fort Jackson/Devine Street intersection. Both Cross Hill Road and Rosewood Boulevard have AADT's over 14,000 in the study area.

Map 5 – 2005 Traffic Volumes



In Map 6, the highest projected traffic volumes in the study area are located along the Devine Street corridor. The projected AADT along Devine Street between Beltline and south of Wildcat Road are between 44,505 and 62,272 respectively. The I-77 corridor through the study area projects an AADT over 41,000. The traffic volumes for the Fort Jackson Boulevard corridor projects an AADT of 25,070 east of Kilbourne, 20,145 west of Kilbourne, and 6,468 at the Fort Jackson/Devine Street intersection. The projected Cross Hill Road and Rosewood Boulevard have AADT's over 14,000 in the study area.

Map 6 - Projected 2035 Traffic Volumes

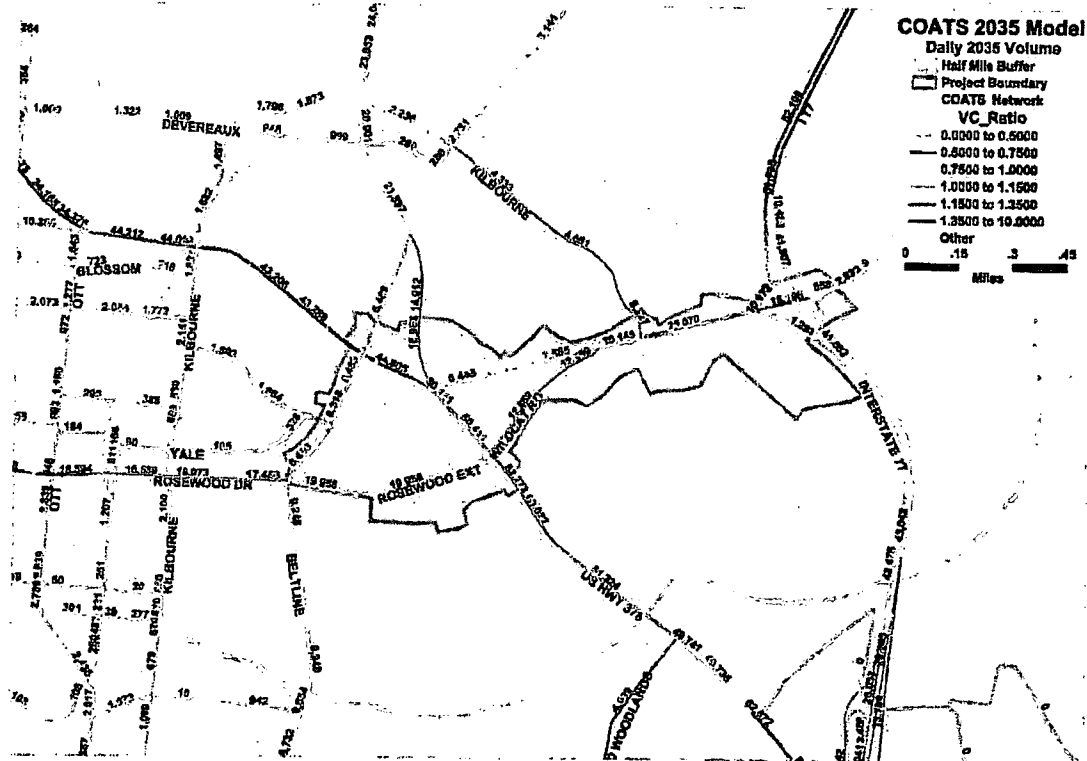


Table 28 shows the 2005 AADT counts and projected 2035 AADT volumes and percent changes on selected roadway segments. The historic AADT values are from the SCDOT traffic count table and the 2035 traffic volumes are derived from the COATS travel demand model. The roadway with the largest AADT growth between 2005 and 2035 is I-77 with count locations around 69 percent. The Devine Street corridor's AADT is projected to grow around 34 percent, while Wildcat Road's growth projection 38 percent.

Snapshot of the Study Area

Table 28 - Major Roadway Traffic Volumes

I-77 north of Fort Jackson Boulevard	24,388	41,307	69.4%
I-77 south of Fort Jackson Boulevard	24,348	41,082	68.7%
Devine Street between Beltline and Cross Hill Road	33,250	44,505	33.8%
Devine Street between Fort Jackson Boulevard and Wildcat Road	37,461	50,411	34.6%
Devine Street south of Wildcat Road	46,585	62,212	33.5%
Fort Jackson Boulevard between Devine Street and Wildcat Road	5,655	6,468	14.4%
Fort Jackson Boulevard between Wildcat Road and Kilbourne Road	15,787	20,145	27.6%
Fort Jackson between Kilbourne Road and I-77	20,010	25,070	25.3%
Wildcat Road between Devine Street and Fort Jackson Boulevard	9,119	12,559	37.7%
Cross Hill Road between Devine Street and Beltline	14,475	16,986	17.3%
Beltline between Cross Hill and Devine Street	5,936	6,489	9.3%
Beltline between Devine Street and Rosewood Boulevard	7,992	8,483	6.1%
Rosewood Boulevard between Beltline and Devine Street	14,155	19,958	41.0%

Level of Service

Level of service (LOS) is a qualitative measurement from A to F for describing operational conditions for a given road. On this grading scale, A is the best and F is the worst for the highway segment. Below is a general description of each LOS category:

- A – Free flow; conditions where traffic flows at or above the posted speed limit and all motorists have complete mobility between lanes
- B – Reasonable flow; slightly more congestion with reduced maneuverability
- C – Stable flow; Ability to pass or change lanes is not assured. Most experienced drivers are comfortable, and posted speed is maintained, but roads are close to capacity.
- D – Typical of an urban highway during commuting hours. Speeds are somewhat reduced, motorists are hemmed in by other cars and trucks.
- E – Unstable flow; flow becomes irregular and speed varies rapidly, but rarely reaches the posted limit. On highways, this is consistent with a road over its designed capacity.
- F – Flow is forced; every vehicle moves in lockstep with the vehicle in front of it, with frequent drops in speed to nearly zero mph. High vehicle delay.

SCDOT uses a LOS of C for planning efforts to ensure an acceptable operating service for users. Since LOS is determined by the relationship of roadway volume (traffic on the road) to the roadway's capacity (what the road was designed to handle), each LOS category can be assigned a volume-to-capacity ratio range. At level C, this means the roadway volume is equal to the roadway capacity (Volume-to-Capacity Ratio equals 1.0). Below LOS C means the roadway volume is under capacity and above LOS C the roadway volume is over capacity. The range of Volume-to-Capacity ratios by LOS is shown in Table 29.

Table 19 - SCDOT Volume to Capacity Ratios by Level of Service

A	0.00 – 0.49
B	0.05 – 0.74
C	0.75 – 1.00
D	1.01 – 1.15
E	1.16 – 1.34
F	> 1.35

Snapshot of the Study Area

According to the 2005 COATS Model displayed in Map 5, segments of Devine Street, Fort Jackson Boulevard, the I-77 ramps, and Wildcat Road have LOS levels of "C" in the study area. All other roadway segments in the study area have a "A" or "B" LOS level.

Shown in Map 6, the projected 2035 COATS Model identifies segments of Devine Street and Wildcat Road has LOS levels of "E" in the study area. The I-77 ramps, Devine Street south of the Fort Jackson intersection and Fort Jackson Boulevard east of the Kilbourne has a projected LOS level of "D". The entire segment of Rosewood in the study area, Fort Jackson Boulevard between Wildcat Road and Kilbourne, and I-77 mainlines have a projected LOS level of "C". All other roadway segments in the study have a projected LOS level of "A" or "B".

Vehicle-Miles and Vehicle-Hours of Travel

The COATS travel demand model was used to estimate the vehicle-miles of travel (VMT) and vehicle-hours of travel (VHT) by roadway type (functional classification). The model calculates BMT by multiplying the length of the roadway links by the assigned volume. The model calculates VHT by multiplying the time $[Time = (Length/Speed) * 60]$ of the roadway links by the assigned volume. Table 3 shows the VMT, VHT, and congested speed (mph) by roadway type within the study area.

Table 20 - 2005 Vehicle-Miles and Vehicle-Hours of Travel

Interstate	1.0	25,271	396	63.8
Principal Arterial	0.9	31,110	831	37.4
Minor Arterial	3.3	36,135	920	39.3
Collector	0.1	507	13	37.8

Source: COATS Travel Demand Model

The study area is dependent on a reliable road network to function both in and around the study area. As Table 30 shows, the study area road network is largely made up of interstates, principal and minor arterials, and collectors roadways. The principal and minor arterials each have higher VMT and VHT values than the Interstate roadway segments within the study area. The congested speed of the principal and minor arterials and collector roadways are between 37.4 M.P.H and 39.3 M.P.H., while the interstate congested speed is 63.8 M.P.H.

COATS 2035 LRTP Improvements

According to the COATS 2035 Long Range Transportation Plan (LRTP), there are not any currently planned roadway improvements identified and prioritized within a financially constrained plan.

Existing Transit Service

Fixed-route transit service within the study area is provided by the Central Midlands Regional Transit Authority (CMRTA).

Central Midlands Regional Transit Authority (CMRTA)

CMRTA transit services include fixed-routes and paratransit service, Dial-A-Ride (DART), the provide access to jobs, schools, businesses, hospitals, shopping, and entertainment throughout the Columbia Metropolitan area. CMRTA has three routes that service the study area with a fixed one-way fare of \$1.50. Special needs one-way fares are \$0.75 and fares are free for children under the age of five-years old. Transfers between CMRTA routes are \$0.25 and are valid for two hours. The DART paratransit service has a \$3.00 one-way fare.

Existing Routes

As noted above, CMRTA has three fixed –routes which provide service to the study area. Route 3 & 8 is the Rosewood/Rosehill fixed-route which is in service Monday through Saturday and travels between the Downtown Transit Center, University of South Carolina, Rosewood, and the Shoppes at Woodhill. Routes 20 is the Greenlawn fixed-route which is in service Monday through Saturday and travels between the Downtown Transit Center, Benedict College, Allen University, Five Points, Devine Street, Woodhill Mall, VA Hospital, Greenlawn Cemetary, Sumter Highway, Garners Ferry Wal-Mart, and South East Park. Route 21 is the Veterans Hospital fixed-route which is in service on weekdays only and travels

Snapshot of the Study Area

between the Downtown Transit Center, Capitol Complex, Dreher High School, Devine Street, Shoppes at Woodhill, and the VA Hospital. No Sunday service is available for these three fixed-routes which service the study area. Table 31 lists the routes by day of week.

Table 31 - CMRTA Routes by Day of Week

Location	Route	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Rosewood/Rosehill	3 & 8	X	X	X	X	X	X	
Greenlawn	20	X	X	X	X	X	X	
Veterans Hospital	21	X	X	X	X	X		

Source: CMRTA

Route Travel Times and Frequency

The three CMRTA routes which provide weekday service to the study area start service between 5:50 AM and 6:21 AM and end service between 6:39 PM and 8:43 PM. Route 3 & 8 and route 20, the two CMRTA routes which provide Saturday service to the study area start service between 6:50 AM and 6:52 AM and end service between 6:50 PM and 6:52 PM. All three CMRTA routes which service the study area stop in the study area every 60 minutes. CMRTA route 3 & 8 has a roundtrip travel time of 70 minutes, CMRTA route 20 has a 95 minute roundtrip travel time, and CMRTA route 21 has a 65 minute roundtrip travel time. Table 32 shows the route travel times and frequency for the three routes within the study area.

Table 32 - Route Travel Times and Frequency within Study Area

Route	Start Time	End Time	Travel Time (min)	Frequency (min)
3 & 8	5:50 AM	6:54 PM	60	14
20	5:52 AM	8:43 PM	60	15
21	6:21 AM	6:39 PM	60	13

Source: CMRTA

Major Stop Locations

There are several popular designations along the three CMRTA routes which serve the study area. Routes 3 & 8 travel between the Downtown Transit Center, University of South Carolina, Rosewood, and the Shoppes at Woodhill. Routes 3 & 8 travels through many roads in the study area, traveling from Rosewood Drive to Beltline Boulevard to Devine Street up to the Shoppes at Woodhill and loops back around on Pelham Drive to Gills Creek Parkway to Rosewood on its route back downtown. Route 20 travels between the Downtown Transit Center, Benedict College, Allen University, Five Points, Devine Street, Woodhill Mall, VA Hospital, Greenlawn Cemetery, Sumter Highway, Garners Ferry Wal-Mart, and

South East Park. Route 20 travels on Devine Street through the study area. Route 21 is the Veterans Hospital fixed-route which is in service on weekdays only and travels between the Downtown Transit Center, Capitol Complex, Dreher High School, Devine Street, Shoppes at Woodhill, and the VA Hospital. Route 21 travels on Devine Street through the study area.

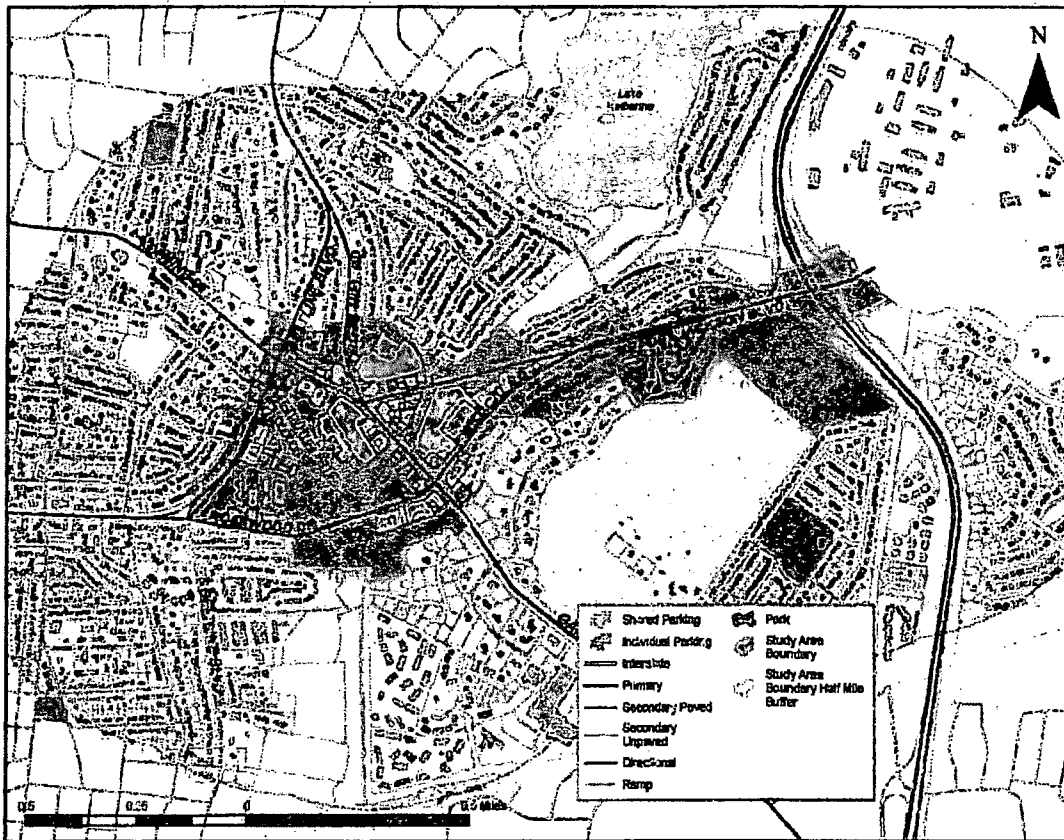
Dial-A-Ride Transit (DART)

CMRTA's DART service offers paratransit service which meets the requirements of the American with Disabilities Act (ADA). DART is a curbside service and requires advance reservations for service. Hours of service for DART are 5:30 AM to 6:30 PM Monday through Saturday.

Existing Bicycle and Pedestrian Facilities

Mobility within a community relies heavily on its citizens' ability to move about using safe facilities for pedestrians and bicycles. As shown in Map 7, sidewalks are located throughout the study area along the main roadways. The Palmetto Trail, a statewide bicycle trail, traverses through the study area traveling along Fort Jackson Boulevard between Kilbourne and Fort Jackson base. In the urban core of the Columbia metropolitan area, the Palmetto Trail is mostly a signed route and travels on the sidewalks in the area. The only on-road bicycle facilities that are located in the study area are the bicycle lanes on Cross Hill Road. Cross Hill Road has one lane traveling in each direction with a center turn lane and bicycle lane on both sides of the roadway. In addition, the City recently adopted Nacto urban bikeway design guidelines.

Map 7 – Existing Bicycle and Pedestrian Facilities in the Study Area

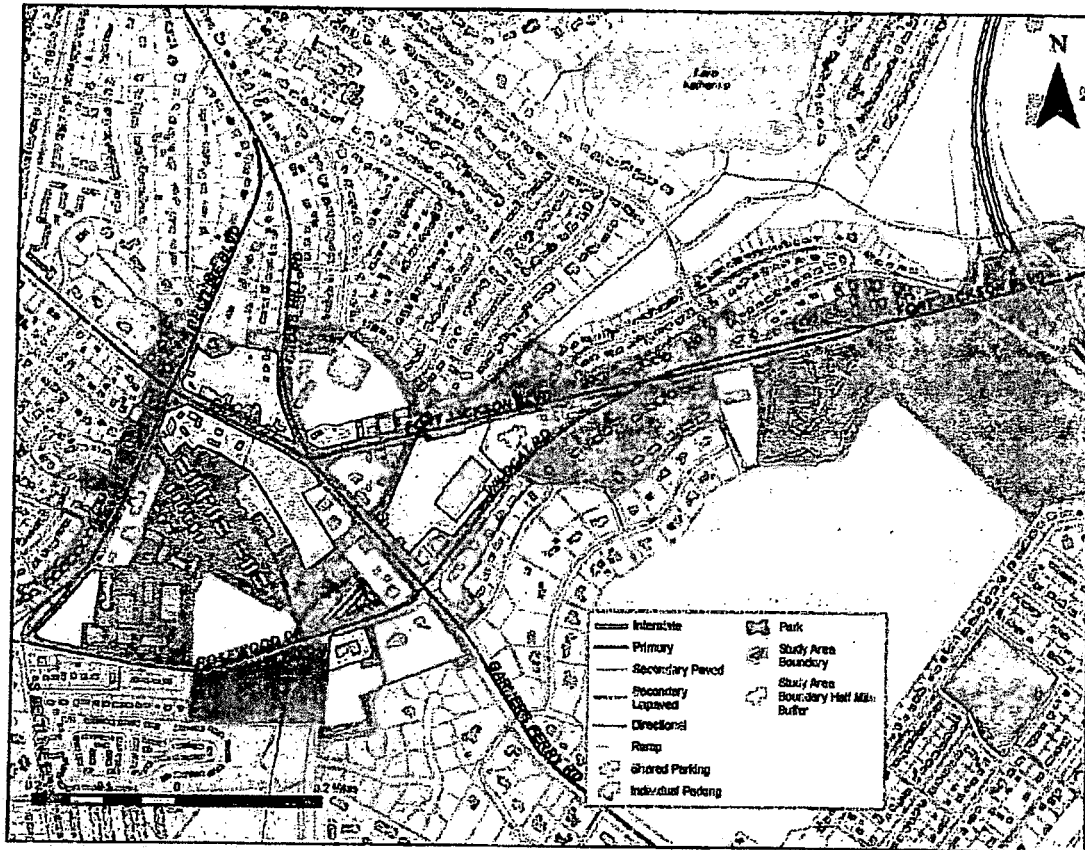


There are no regional greenway connections within the study area. The COATS Bike and Pedestrian Pathways Plan includes plans for three greenways, the Gills Creek Greenway, Leesburg – Fort Jackson Trail and Capital City Trail Greenway, to travel through the study area. The Gills Creek Greenway, which would travel along Gills Creek and would connect to other pathways in the region including the Congaree River Greenway, Bluff Road Bikeway, and Fort Jackson Greenway. The Leesburg – Fort Jackson Trail and Capital City Trail Greenway are both local segments of the statewide Palmetto Trail and connects the study area to Fort Jackson and Downtown Columbia.

Parking Supply

The Devine Street/Fort Jackson study area parking supply is concentrated along the western half of the study area. As shown in Map 8, parking has been categorized as shared parking and individual parking. Shared parking includes commercial land parcels with shared parking lots, while individual parking includes individual commercial land parcels with parking only available for that particular parcel. In the study area, the majority of the commercial parcels have individual parking lots. The study area does include three large shared parking lot sites are located at the Whole Foods, Bi-Lo and former K-Mart locations, along with a few additional smaller shared parking lots spread throughout the study area.

Map 8 - Existing Parking Facilities in the Study Area



Water and Wastewater Infrastructure

According to engineers with the Department of Utilities & Engineering for the City of Columbia, the existing water and wastewater systems that serve the study area are adequate. Beyond regular maintenance, city engineers foresee no need for major infrastructure projects to upgrade the system to serve existing and future development. Map 9 depicts the water and wastewater system in the area.

Natural Resources & Open Space

While there are no formal parks, open spaces or recreation areas in the study area there is a significant natural resource. Gills Creek runs from Lake Katherine through the study area to the Congaree River. It intersects the Capital City Passage of the Palmetto Trail, a statewide trail system, at Kilbourne Road and ultimately connects to the Congaree River Blue Trail.

The creek is part of the larger Gills Creek Watershed which is among the largest urban impaired watersheds in South Carolina. Over time the creek has been channelized. Storm water runoff from development and non-point source pollution threatens the

quality of the waterway. Flooding is a major concern in areas adjacent to the Creek. Development has encroached up on the capacity of the floodplain to perform natural stormwater management function. Increased run-off from development has exacerbated flooding issues associated with limitations of the floodplain. Map 10 highlights the natural and environmental features of the study area.

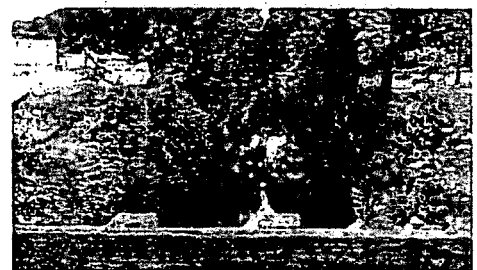
In response to many of the issues, the Gills Creek Watershed Association was established to restore the watershed, "through education, grass roots action, public and private partnerships, remediation projects, and controlled development."

(Source: Gills Creek Watershed Association, www.gillscreekwatershedassociation.org)

The Gills Creek Watershed Association has initiated a study to develop a master plan for the restoration and enhancement of the creek, "the goal is to return the Gills Creek Watershed to a living resource providing recreational opportunities, habitat for native wildlife and plants, and a national model for watershed planning and management." (Source: Gills Creek Watershed Association, www.gillscreekwatershedassociation.org) This study is ongoing and representatives from the Watershed Association are part of the Advisory Committee guiding this plan. The two planning initiatives are integrated and both recognize the goal of restoring the creek to its full environmental, economic and recreational potential.

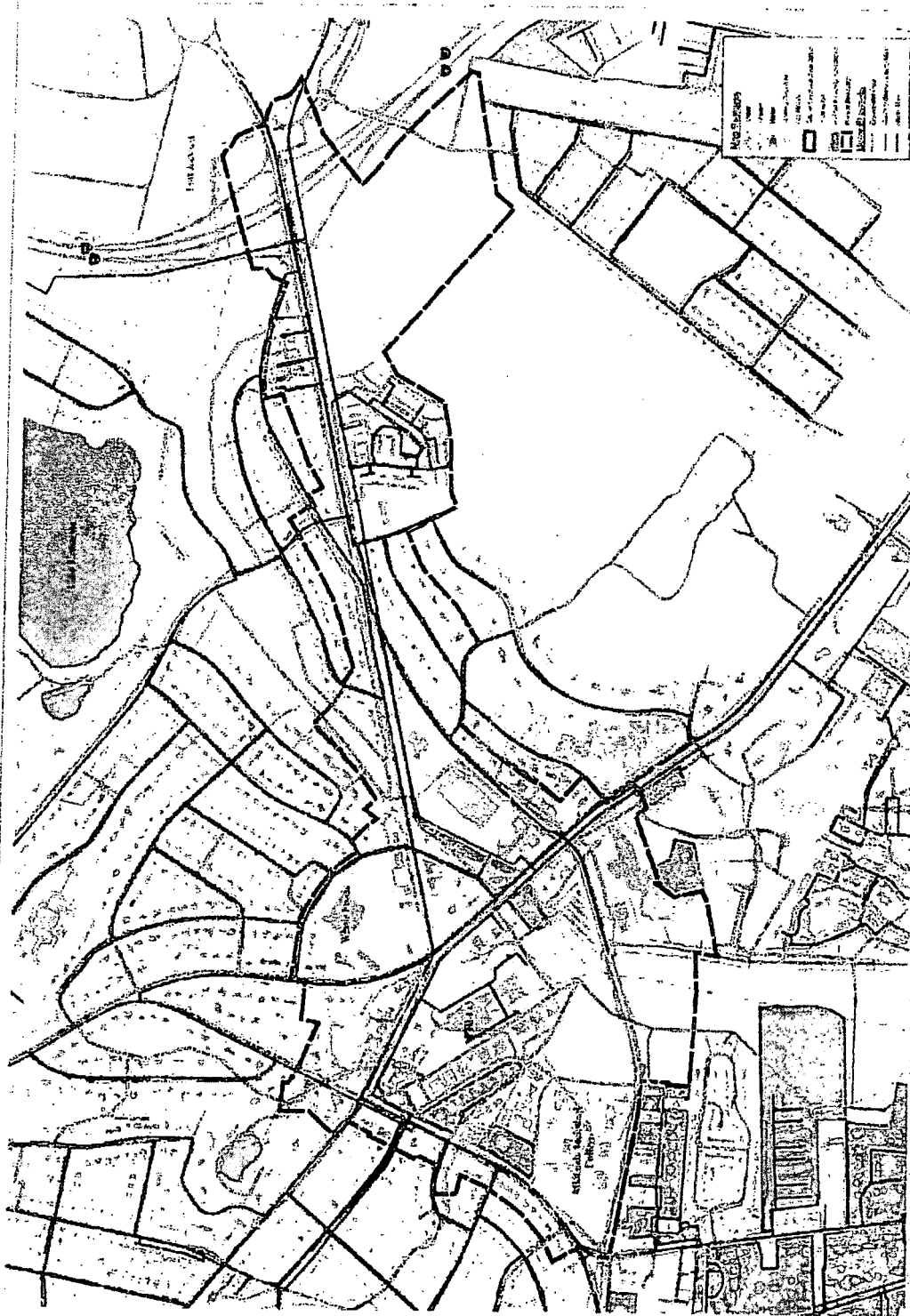


Gills Creek runs through the study area and ultimately feeds into the Congaree River.

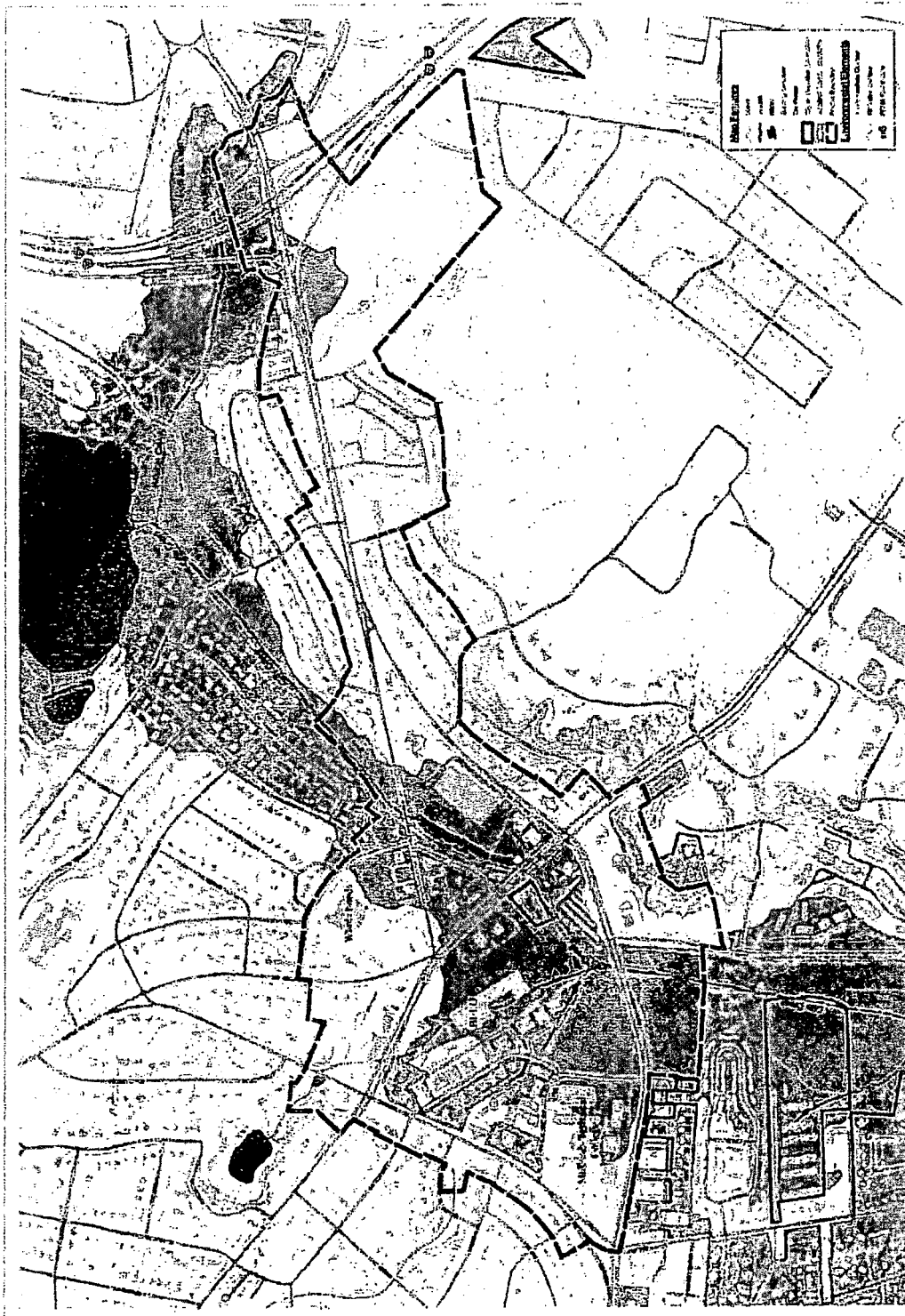


During storm events, the creek regularly floods.

Map 9: Existing Utilities



Map 10: Environmental & Natural Features



Commercial Districts

Arts & Entertainment

The Vista

This is Columbia's Arts, Entertainment, and Convention District. Once a bustling cotton warehouse district and commercial railroad terminal, the Vista area of downtown Columbia had declined severely by the late 1970s. Today, the Vista is vibrant with over 50 restaurants and bars, and more than 60 art galleries and specialty shops. Columbia's newest additions, the Colonial Center arena, the Columbia Metropolitan Convention Center and Hotel, the State Museum, Edventure the Children's Museum the Riverwalk and hundreds of creative businesses shape the southern boundary of the Vista. The Publix Market, located in the historic South Carolina State Dispensary warehouse, has ushered in a new era of urban residential development previously unheard of in Columbia.

Five Points

From ox carts to streetcars, to modern modes of transportation, this bustling area has never lost its charm and appeal. Five Points has been a commercial district for more than 75 years where many locally owned businesses are proudly serving their third generation of loyal customers. Eclectic Five Points buzzes daily with foot traffic as business professionals enjoy an open-air lunch, artists paint scenes and sell their wares in unique galleries and young and old shop for the perfect outfit or special gift. Five Points has over 40 restaurants and bars and boutique shopping, live music, festivals, and outdoor entertainment. Five Points is next to the University of South Carolina and surrounded by some of the cities best neighborhoods.

Main Street

Enjoy the heart of the capital city as you stroll down historic Main Street. Unique shops, stylish residences, luxurious hotels and bold office towers line Main and its side streets where you will find upscale men's clothing, fine jewelry, ladies' boutiques, trendy accessories, children's clothing, and much more! Many festivals are held throughout the year, such as the Main Street Marketplace, and arts abound with the Columbia Museum of Art, Richland County Public Library, and the Nickelodeon Theatre- all within walking distance. Main Street is a vibrant and growing center of commerce with over 30,000 people working here each day. Apartments and condos above stores and cultural venues like the Columbia Museum of Art, the SC State House and government offices create a vibrant and historic place to visit or do business.

Retail & Mixed Use

Devine Street

Columbia's Devine Street retail district is located downtown in the heart of the historic Shandon area. Devine Street offers a variety of upscale specialty shopping, dining, entertainment, service, and commercial businesses in a neighborhood environment. It's hard to know where to start on this street. Are you looking for art, furniture, backpacking and camping supplies, audio electronics, bicycles or clothing? How about something to eat - fish taco, gyro, braised quail, pizza - maybe sushi? Come and enjoy a day or night-on-the-town Devine Street.

Rosewood

One of the cities up-and-coming commercial corridors Rosewood Drive offers dining, shopping and service businesses serving both the Shandon and Rosewood neighborhoods and USC. Do your banking, buy jewelry, buy groceries and enjoy delicious meals here. New and renovated homes, new condominium construction, new branch office of First Citizens Bank, remodeled shopping center (Publix) and several shops that have renovated their interior and exterior facades have been the difference maker along this boulevard. Rosewood is rich with restaurants, retail and residential. See for yourself why everyone is talking about Rosewood!

Millwood Avenue

Millwood Avenue is a unique boulevard in Columbia that is lined with professional and personal services -- some of which are law offices, advertising, landscape architects, realtors, automotive care, paint store, veterinarian, hair salons, pottery shop and florists. If you like healthy living you will find it here. The great neighborhoods of Shandon, Melrose Heights and Heathwood surround this healthy living district.

Assembly-Huger-Whaley

Assembly Street is a major north-south street between the Vista and Main, and brings visitors to USC, the Arena, the Convention Center and USC Stadium. Huger is near the River on the west side of the Vista with access to the State Museum, riverfront and Edventure. Street areas are home to the Richland County Public Library, Koger Performing Arts Center, Carolina Coliseum, various government buildings, hotels and public parking facilities, all with a splash of retail and restaurants. This is a fast growing commercial office district with mid-rise office buildings along with a sprinkling of light manufacturing businesses.

Innovation & Industrial

Owens Field

The "Owens Field" area is a real "high-flyer" being home to the Columbia Owens Downtown Airport and light industrial area along the southeastern edge of the Rosewood Neighborhood. Just off Rosewood Drive the Owens Industrial Area has everything you need to buy, build, or decorate a house. Commercial contractors, cabinet makers, rug dealers, artists and realtors populate this neighborhood. Also here is Owens Field, the cities downtown airport. This general aviation airport has meeting rooms, 5,000 foot runway and corporate and private airplane hangar storage. The light industrial area is home to an art studio and gallery, cabinet and furniture makers, kitchen designers, automotive transmission and import car repair as well as the City of Columbia Owens Recreational Complex and Memorial Stadium.

Innovista

Watch the energy happen in the University of South Carolina Innovista Innovation District. USC is developing a mix of public and private research facilities, classrooms, residential, and service businesses. Innovista is the center of next energy and hydrogen fuel cell research. A fast-paced research environment -- a slow-flowing river -- a vibrant, urban lifestyle with a moderate cost of living and a friendly culture within a diverse, increasingly global community. With Innovista, the University of South Carolina has reinvented the notion of how and where researchers will live and work-in the process creating a destination for innovation, creativity, entertainment, culture, and more. [Explore Innovista online.](#)

Waterfront District

Columbia's Waterfront District is taking shape. The Congaree River borders this area where a plan has been crafted to redevelop 500 acres as the Innovista Waterfront District. A waterfront park, development sites, the USC Baseball Stadium and lots of residential development will predominate this

new frontier. CanalSide, a mix of unique architecture types situated along tree-lined streets cohabitate with hip retail shops, contemporary restaurants, a premier waterfront location and refreshing park amenities, is breaking ground in 2007.

Canal Front Park

Canal Front will feature a pedestrian connector under the beautiful, historic Gervais Street Bridge, an open corridor to the Historic Canal Hydroelectric Plant, and green space for recreating and dining. Canal Front Park will feature ample green space with direct access to EdVenture Children's Museum and the SC State Museum.



911 Lady Street, Suite C, Columbia, SC 29201
P.O. Box 734 (29202)
Phone: (803) 988-8040
Fax: (803) 988-8039

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City Gallery

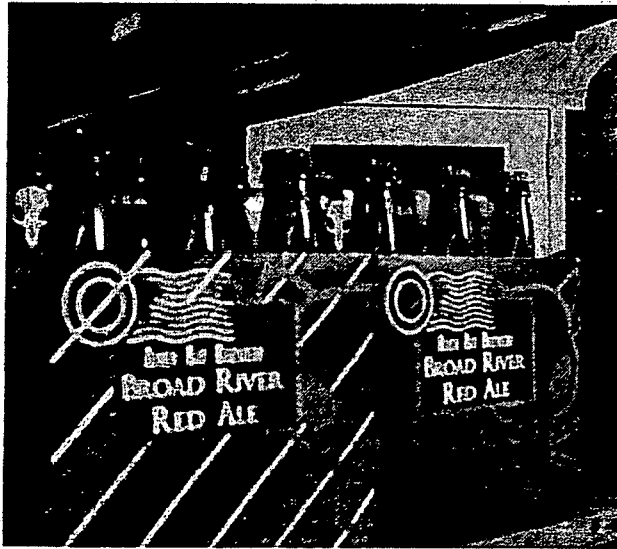
SHOP AROUND DECEMBER 14, 2015 8:15 PM

Shop Around: Rosewood Crossing begins to re-open after flood

HIGHLIGHTS

Rosewood Crossing had just opened when historic rains hit Oct. 4

Michael's, Marshalls and PetSmart expected to open by early March



< 1 of 6 >

Mike van Beyrer is a partner in Bottles Beverage Super Store opening shortly in Columbia. The store is one development in the old K-Mart shopping center, now known as Rosewood Crossing. Tracy Glantz - tglantz@thestate.com

BY JANET JONES KENDALL
jjkendall@thestate.com

Two months after Gills Creek overflowed in a historic rainstorm, businesses soaked by floodwaters at a shopping center on Devine Street near Rosewood Drive are opening doors finally.

Five stores have opened or will open by early January at Rosewood Crossing, including a liquor, beer and wine superstore that uncorks Wednesday.

The major retailers that were forced to close with the flooding — Marshall's, Michael's and PetSmart — should re-open in the spring.

"It's been a big team effort from everyone in the shopping center and within each business," said Wylie Pearce, who plans to his second Midlands area Sola Salon at the shopping center next month, "but we feel like things are starting to turn around here."

Rosewood Crossing, on the site of a shuttered Kmart store, is supposed to be part of the retail makeover the area east of downtown Columbia started with the Whole Foods-anchored Cross Hill Market.

The center's three anchor tenants were just starting to draw business when floodwaters that washed away homes and cars rushed through on Oct. 4. Parts of the Columbia area were drenched with as much rain in one day as they received in the previous three months combined.

Parts of Devine Street and Fort Jackson Boulevard were closed as floodwaters remained for days and crews repaired roads.

All three major anchors stores at Rosewood Crossing had nearly eight feet of water damage, resulting in a complete loss of inventory, according to Bright Meyers Development Co., which owns the shopping center. Drywall must be replaced, and electrical systems were damaged.

Work at the three stores is ongoing. They are expected to reopen by early March, Bright Meyers said.

Along Devine Street next to the creek, the Jersey Mike's sandwich shop also re-opened last week.

In the meantime, other stores in Rosewood Crossing shopping center are beginning to open for business — although later than they would have liked.

Kirkland's opened its doors at the shopping center last Tuesday. The home decor store was originally scheduled to open earlier this fall.

Kay Jewelers is expected to open by year's end.

At his salon, Pearce said the new custom cabinets and countertops had been installed just the week before Gills Creek spilled over.

"We had to take everything down to the studs from eight feet down and do a bio cleanse to get all the water pumped out," he said. "We are probably 90 percent done right now and it looks great."

George McLaughlin is ready to open the second location of his Bottles beverage superstore.

Bottles was on schedule to open mid-October.

"When the flood came through, we were about to install shelving and stock the floor," McLaughlin said.

McLaughlin had already waited a year to open as developers worked on the project, including lining up shopping center's other stores.

Since the storm, McLaughlin and his business partners have worked to get the 15,000-square-foot store open before Christmas with thousands of varieties of spirits, wine and beer.

McLaughlin moved to Columbia in 1997 and opened and operated a local McAlister's Deli franchise before selling it in 2007 and moving with his family to Isle of Palms. He developed the idea for Bottles in 2009 and opened shop in Mt. Pleasant in 2011.

"It has been great to watch Columbia evolve in the past 20 years," McLaughlin said. "To me, it is a market that can support new business and is in a constant state of growth. It made perfect sense to open our second store here."

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City Center Partnership Executive Committee

Our executive committee is committed to revitalizing and energizing Downtown Columbia. They work hard to make sure that Columbia is the best city in the Southeast! Committee members include:

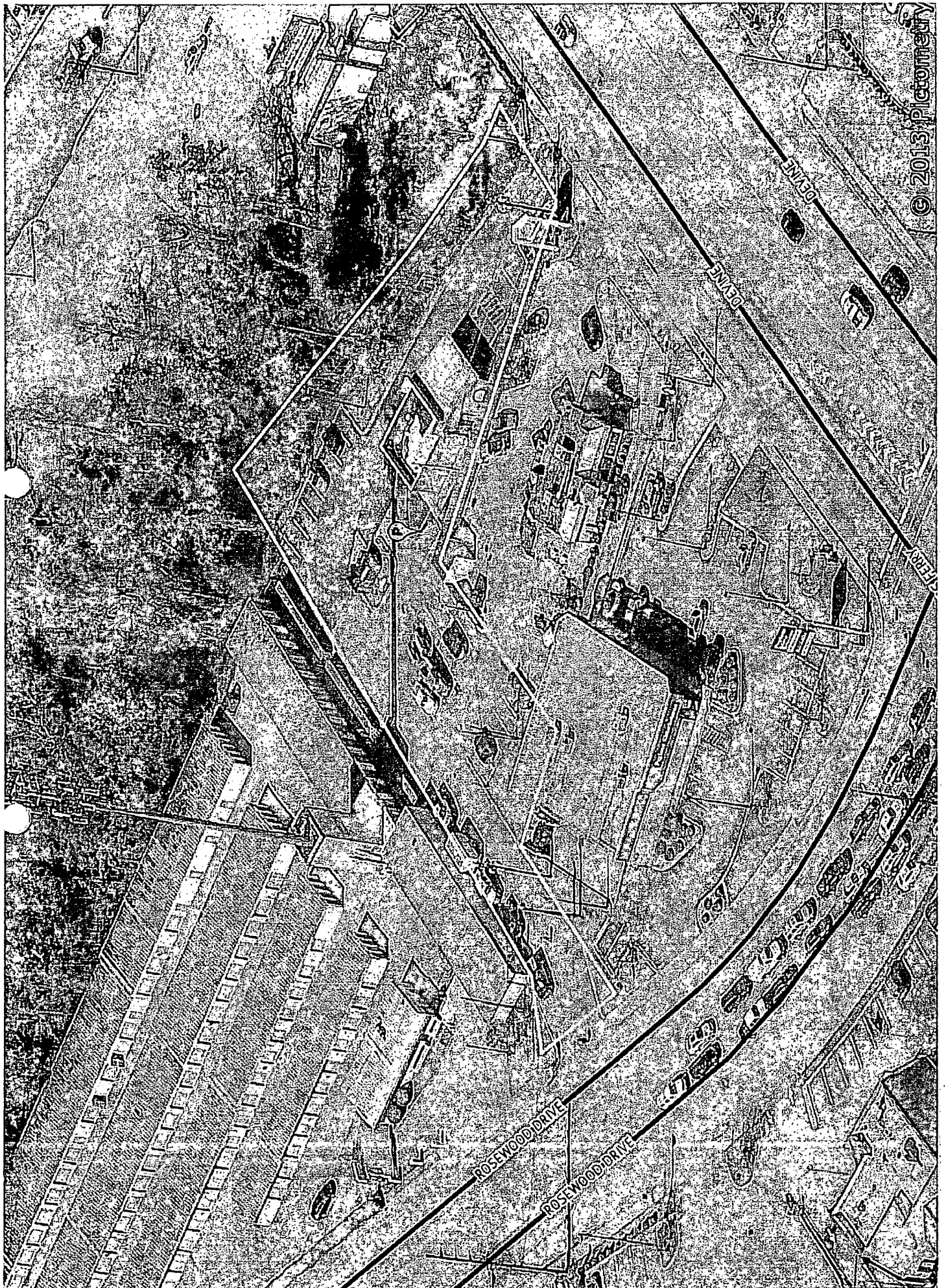
R. Matthew Kennell	President & CEO	City Center Partnership
Tripp Whitener	Chairman	First Citizens Bank
Lee Mashburn	Vice Chairman	Mashburn Construction
Charlie Nutt	Secretary	Free Times
Martha Studstill	Marketing, Chair	Uptown on Main
Ben Arnold	Treasurer	Arnold Companies
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John McArthur	Immediate Past Chairman	Coillers International
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CITY OF COLUMBIA BOARD OF ZONING APPEALS APPLICATION FOR ADMINISTRATIVE APPEAL

OFFICE USE ONLY:Date Received 2/22/16Receipt Number 16-01613By CookAppeal Number 16-010-AA + 16-011-AA

APPLICATION MUST BE SUBMITTED AND COMPLETE BY 12:00 NOON ON DEADLINE DATE!

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

1. Address of affected property 4716 Devine Street
Columbia, S.C. 29209
TMS# Page: R13814-09 Block: _____ Lot: _____

2. I (we) allege that the Zoning Administrator did err by ☐ granting ☐ denying an application to
☐ use ☐ occupy ☐ alter ☐ erect ☐ add to ☐ move ☐ demolish for a certificate of
☐ compliance ☐ temporary compliance ☐ compliance-nonconformity
☒ other See attached.
affecting the above listed property.

3. The Zoning Administrator's decisions and reasons therefore were:

See attached.

4. I (we) contend that the Zoning Administrator was **IN ERROR** in that: See attached.

5. I (we) have been aggrieved/affected by this decision in that: See attached.

Appellant (PLEASE PRINT CLEARLY):

Cricket Store 17, LLC by _____

Address: Thomas R. Goldstein

City, State, ZIP: P. O. Box 71121, N. Charleston, S.C. 29415-1121

Office Telephone Number: 843 554 4291

Home Telephone Number: _____

Cellular Telephone Number: _____

Fax Number: 843 554 5566

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

Email Address: rgoldstein@cobblaw.net

Appellant's Signature _____

16-011-AA_0013

granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(D) The board must fix a reasonable time for the hearing of the appeal or other matter referred to the board, and give at least fifteen days' public notice of the hearing in a newspaper of general circulation in the community, as well as due notice to the parties in interest, and decide the appeal or matter within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney.

(E) In exercising the above power, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board, in the execution of the duties specified in this chapter, may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

(F) All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 2, eff June 2, 2003.

Pages 287-318 intentionally left blank



We Are Columbia

Planning and Development Services • Zoning Division
1136 Washington Street, Columbia, SC 29201 • Phone: 803-545-3333 • Fax: 803-733-8699

MEMORANDUM

**PLANNING & DEVELOPMENT SERVICES
ZONING DIVISION**

DATE: July 1, 2016
TO: Legal Review
FROM: Brian Cook, Zoning Administrator and Secretary of the City of Columbia Board of Zoning Appeals
CC: Pete Balthazor
Scott D. Bergthold
Andrew Livengood, Deputy Zoning Administrator
RE: C/A NO. 2016-CP-40-3478
Cricket Store 17 v. City of Columbia
[Cricket Store 17 DBA Taboo v City of Columbia Board of Zoning Appeals]
City of Columbia Board of Zoning Appeals (BoZA) Case No. 16-011-AA

Per your request, please find enclosed a copy of the record of the above referenced Administrative Appeal and a DVD recording of the April 12, 2016 meeting of the Board of Zoning Appeals. This case begins at 01:08:23 of the attached recording.

I certify that the above referenced and attached documents constitute a true, exact, complete and unaltered record of the administrative appeal 16-011-AA as heard by the Board of Zoning Appeals on April 12, 2016.

Should you have any questions, please feel free to contact me at 545-3332 or kbcook@columbiasc.net. You may also contact Andrew Livengood at 545-3220 or atlivengood@columbiasc.net.

Thank you,

K. Brian Cook
K. Brian Cook, Zoning Administrator
Secretary to the Board of Zoning Appeals

July 1, 2016

The applicant does allege in their application for administrative appeal that the Zoning Administrator did err by:

Refusing to accept Taboo's application for special exception, the granting of which the Board of Zoning Appeals is authorized under §6-29-800 (a)(3); and also by the Zoning Administrator's refusal to schedule a pre-hearing conference, which is prerequisite to such applications, per his letter dated February 26, 2016: "Pleased be advised that neither a Variance nor a Special Exception is applicable in the case, and applications for same cannot be processed. City Code §17-374(a)." See also Zoning Administrator's email dated February 26, 2016: "Your administrative appeal request before the Board of Zoning Appeals will be scheduled for April 12th 2016 at 10:00 at 1737 Main Street (Council Chambers). A pre-hearing conference is not required."

The applicant, Thomas R. Goldstein, attorney for Cricket Store 17, LLC aka Taboo Adult Superstore presented on the request for Review of Administrative Appeal.

Mr. Cook stated that based on the facts presented, the Board of Zoning Appeals has no authority to accept or hear an application for special exception for the operation of a sexually oriented business at 4716 Devine Street, as the Zoning Ordinance does not grant authority for the use to be permitted as a special exception. The Zoning Administrator requested that the determination not to accept an application for special exception be upheld.

No additional persons spoke in favor or opposition of the request. Testimony closed for Board discussion.

Motion made by Mr. Hubbard to deny the appeal of the decision by the Zoning Administrator. The most correct interpretation of the language at issue about the special exception is very clear, in that the BOZA cannot even consider a special exception to establish a sexually oriented business as the Board cannot grant it.

Motion seconded by Mr. Young and Mr. McMeekin. Motion to deny passes 6-0, and the determination of the Zoning Administrator was upheld.

Brief recess taken at 11:20AM with the meeting resumed at 11:28AM.

5. 16-012-V Dist. 3 206 South Saluda Avenue (TMS# 11310-17-06) Variance to the lot coverage requirements for an addition to a single family residence (Judy K and Francis Patrick Hubbard) (RS-3, -CC1)

Mr. Salley noted that Pat Hubbard recused himself from the request as he is a member of the Board of Zoning Appeals, as well as the applicant for the request.

Patrick Hubbard and Judy Hubbard, property owners, and Michael Haigler, architect for the project, were sworn in.

Mr. Hubbard presented on the request for a variance to the lot in order to construct an addition and a one-car garage for a single family residence. Lot coverage of 30% is permitted and the applicant is requesting up to 36% coverage of the lot instead.

Mr. Hubbard reviewed the criteria required for a variance:

Extraordinary and exceptional conditions pertain to the subject property – the area was established pre-zoning, and many of the existing houses, either as a result of variances or having been there as non-conforming exceed the 30% already. Therefore this would be an extraordinary and difficult condition to try to come in to improve and add to the home that others have been able

to do already.

The conditions noted above do not generally apply to other property in the area – Many of the homes in the area currently exceed the 30% coverage as they have two-car garages. The coverage limitations applicable to the lot do not generally apply to other residences in the neighborhood.

Because of the conditions noted above, the requirements of the Zoning Ordinance effectively prohibit or unreasonably restrict the use of the property – *The Comprehensive Plan for Columbia, South Carolina: 2008-2018* recently adopted, expresses a need to address the needs of its “growing and aging” population as well as the need to live on one floor. In addition, prospective buyers would expect certain things in the house for the amount of money that would be spent in resale.

Approval of the variance would not be of substantial detriment to the adjacent property or to the public good, and the character of the district would not be harmed – it would not be inconsistent with existing character of the neighborhood, and would be consistent with *The Comprehensive Plan* that the City “permit an encourage contextual” infill development, new construction or expansion of new construction.

The variance is the minimum necessary.

It is in harmony with the purpose and intent of the Ordinance, and will not be injurious to the neighborhood or public welfare. The look of the house will be preserved as the Hubbards are very into historic preservation.

The proposal was presented to the Hollywood – Rose Hill Neighborhood Association who voted unanimously in favor of the request, and provided a letter of support. Neighbors along South Saluda also provided letters of support, and e-mails were sent to surrounding property owners who voiced support of the project. Contact was made or attempted with all surrounding property owners in the area.

There is an existing house on the property which was built in 1935, and the footprint of the current house will basically remain the same. The additions are primarily on the back, and an entry area will be created within the footprint in the front. The covered one-car garage and greenhouse are included within the footprint and lot coverage.

As no one spoke in favor or against the request, testimony was closed for Board discussion.

Mr. McMeekin complemented the design of the home and spoke in favor of the request.

Motion by Mr. McMeekin to approve the application for variance for 206 South Saluda. This is a smaller lot in the Hollywood Rose Hill area; it will not be a detriment to the neighborhood; to deny would prohibit the right to utilize the property; and the percentage requested is the minimum required. Motion seconded by Mr. McKnight.

Motion seconded by Mr. Young. Motion approved 4-0.

6. 16-014- Dist. 2 522 Devine Street (TMS# 08914-01-02) Special Exception to
Deferred expand a drinking place (Anthony Fusaro, Tapped out of S.C.
Inc., d/b/a Uncle Fester's) (MX-2, -ID)

IV. OTHER BUSINESS

V. ADJOURNMENT

There being no further business, Mr. Hubbard adjourned the March 8, 2016 Board of

such uses in the zoning ordinance". Amongst the location requirements for sexually oriented businesses contained within the Zoning Ordinance of the City of Columbia, §17-374(b) states that, "a person commits a misdemeanor if he operates or causes to be operated a sexually oriented businesses outside a designated M-1 or M-2 district..." The subject property is within the C-3 district, not within either the M-1 or M-2 district, and as such is not permissible at the location.

Further, §17-374(a) states that no variance or special exception regarding any of the location requirements for sexually oriented businesses may be granted by the board, and no other section of the Zoning Ordinance of the City of Columbia allows a sexually oriented business to be permitted by special exception.

The Zoning Administrator testified that the language regarding a pre-application conference was part of the special exception application, was optional, and not part of an application for administrative appeal. The application for special exception could not be accepted and the reasoning for that decision was provided to the applicant in writing. Letters and emails were exchanged between the Zoning Administrator and applicant regarding the applications for administrative appeal.

Conclusions of Law:

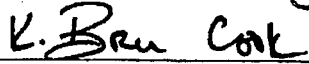
Pursuant to the power and duties of the Board of Zoning Appeals to review administrative decisions and determinations (§17-112), we have heard the testimony and reviewed the Applicant's request for administrative appeal, and find it clear that the Zoning Ordinance of the City of Columbia does not permit a special exception to be granted for a sexually oriented business. As the duties of the Board include hearing and deciding only the applications for special exception the Board of Zoning Appeals is specifically authorized to pass upon by terms of the Zoning Ordinance of the City of Columbia, the decision of the Zoning Administrator to not process a special exception application for a sexually oriented business is correct.

Therefore, based on the foregoing, the Board of Zoning Appeals concludes that the decision of the Zoning Administrator as described above is hereby **AFFIRMED**.

Upon a motion to deny the administrative appeal:

Voting Aye: Hubbard, Young, Salley, McKnight, McMeekin, and Williams.
Voting Nay: None.
Absent: Gregg.

AND IT IS SO ORDERED!

	5/10/16
Chuck Salley, Board Chairman	Date
	5/3/16
K. Brian Cook, Zoning Administrator	Date

Date Mailed to Applicant
and Other Parties of Interest:

5/11/16 AtL

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

16-011-AA

16-011-AA_0008



**BOARD OF ZONING APPEALS
CASE SUMMARY FOR
APPLICATION FOR ADMINISTRATIVE APPEAL**

4716 Devine Street

April 12, 2016 at 10:00 A.M.
City Council Chambers, 1737 Main Street, 3rd Floor
Columbia, South Carolina

Case Number: 16-011-AA
Subject Property: 4716 Devine Street (TMS#13814-09-02)
Zoning District: C-3, -FP (General Commercial district within a Flood Protective Overlay)
Applicant: Thomas R. Goldstein, attorney for Cricket Store 17, LLC (Taboo Adult Superstore)
Property Owner: Restaurant Income Properties
Council District: 3
Summary Prepared: 3/30/16

Requested Action: Review for Administrative Appeal.

**Applicable Sections
of Zoning Ordinance:**

Division 11.	Sexually Oriented Businesses (§17-371, §17-372, §17-373, §17-374)
§17-112(1)	The Board of Zoning Appeals shall hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this article.
§17-112(2)(a)(1)	Powers and duties of the board of zoning appeals – special exception [duties].
§17-112(2)(b)(1)	Powers and duties of the board of zoning appeals – special exception [procedures].

Case History: None.

Staff Comments:

The applicant does allege in their application for administrative appeal that the Zoning Administrator did err by:

Refusing to accept Taboo's application for special exception, the granting of which the Board of Zoning Appeals is authorized under §6-29-800 (a)(3); and also by the Zoning Administrator's refusal to schedule a pre-hearing conference, which is prerequisite to such applications, per his letter dated February 26, 2016: "Pleased be advised that neither a Variance nor a Special Exception is applicable in the case, and applications for same cannot be processed. City Code §17-374(a)." See also Zoning Administrator's email dated February 26, 2016: "Your administrative appeal request before the Board of Zoning Appeals will be scheduled for April 12th 2016 at 10:00 at 1737 Main Street (Council Chambers). A pre-hearing conference is not required."

South Carolina Code §6-26-800(A)(3) does authorize BOZA to permit uses by special exception subject to terms and conditions for the uses set forth for such uses in the zoning ordinance if the municipality so chooses. As permitted by State Code, the City of Columbia Zoning Ordinance does not permit a sexually oriented business by

special exception, but instead outlines the zoning districts where permitted and other applicable regulations. A sexually oriented business is not a permitted use at 4716 Devine Street because it does not meet the applicable zoning regulations. Application for special exception for a sexually oriented business cannot be accepted as there is no section in the Zoning Ordinance for which the special exception may be obtained, and as such BOZA has no standing to hear and decide applications for special exceptions in this case.

As to the applicant's allegation regarding the Zoning Administrator refusal to schedule a pre-hearing conference, the application for special exception states that: "You should schedule a pre-application conference with staff (803-545-3333) prior to the application deadline to discuss your specific case and its requirements." The purpose of the optional meeting is so that staff can better understand the request if needed. In this case, the application for special exception could not be accepted and the reasoning for that decision was provided to the applicant in writing. We have an open public counter that anyone has the ability to speak to staff at any time during business hours.

S.C. State Code authorizes a board of appeals to:

- Permit uses by special exception subject to terms and conditions for the uses set forth for such uses in the zoning ordinance. *South Carolina Code §6-29-800(A)(3)*

The City of Columbia Zoning Ordinance states:

- No variance from any of the provisions of this section [Sexually Oriented Business – Location] may be granted by the zoning board of adjustment. No special exception regarding any of the requirements of this section may be granted by the zoning board of adjustment. *City of Columbia Code §17-374 (a)*
- The Board of Zoning Appeals shall: Hear and decide only the applications for special exceptions as the board of zoning appeals is specifically authorized to pass upon by terms of this article. *City of Columbia Code §17-112(2)(a)(1)*
- A written application for a special exception shall be submitted indicating the section of this article under which the special exception is sought and stating the grounds on which it is requested. *City of Columbia Code §17-112(2)(b)(1)*
- A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business outside of a designated M-1 or M-2 district. A sexually oriented business shall be located within an M-1 or M-2 district; however no sexually oriented business shall be permitted to operate within an M-1 or M-2 district appended with a -DD, -ID, -DP, -NC or -PD Overlay district. *City of Columbia Code §17-374 (b)*
- Any sexually oriented business lawfully operating as of the date of the ordinance from which this section is derived that is in violation of subsections (b), (c), (d), (e) or (f) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue until and through January 1, 2014, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming. *City of Columbia Code §17-374 (i)*

Based on the facts presented in this case summary, the Board of Zoning Appeals has no authority to accept or hear an application for special exception for the operation of a sexually oriented business at 4716 Devine Street, as the Zoning Ordinance does not grant authority, nor the use to be permitted as a special exception. The Zoning Administrator respectfully requests that the determination not to accept application for special exception be upheld.

Persons expressing support or concern about this application submitted the documents outlined below to staff. All documents are attached hereto and made a part of the record of the public hearing. -None

Zoning Map

Department of Planning & Development Services

Administrative Appell 16-010-AA

4716 Devine Street
TMS# 13814-09-02

Legend

INTERSTATES CITY LIMITS
RAILROADS FEMA PP

ZONING

MX-2
D-1
RS-1
RS-1A
RS-1B
RS-2
RS-3
RD
RD-2
RD-2
RD-1
RD-1A
RD-2
RD-3
UD
MX-1
DD DISTRICT
DP DISTRICTS
PD DISTRICT
CC OVERLAY

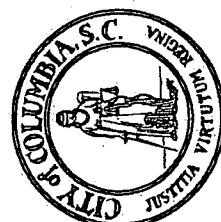
1 inch = 77 feet

ORIGINAL PREPARATION/DATE:

This map was prepared by:
Ralana Wilson
for
April 12, 2016
BoZA meeting

DISCLAIMER:

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



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, SPT, Swisstopo, and the GIS User Community





CITY OF COLUMBIA BOARD OF ZONING APPEALS APPLICATION FOR ADMINISTRATIVE APPEAL

OFFICE USE ONLY:Date Received 2/22/16Receipt Number 16-01613By CookAppeal Number 16-010-AA + 16-011-AA

APPLICATION MUST BE SUBMITTED AND COMPLETE BY 12:00 NOON ON DEADLINE DATE!

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

1. Address of affected property 4716 Devine Street
Columbia, S.C. 29209
TMS# Page: R13814-09 Block: _____ Lot: _____

2. I (we) allege that the Zoning Administrator did err by ☐ granting ☐ denying an application to
☐ use ☐ occupy ☐ alter ☐ erect ☐ add to ☐ move ☐ demolish for a certificate of
☐ compliance ☐ temporary compliance ☐ compliance-nonconformity
☒ other See attached.
affecting the above listed property.

3. The Zoning Administrator's decisions and reasons therefore were:

See attached.

4. I (we) contend that the Zoning Administrator was **IN ERROR** in that: See attached.

5. I (we) have been aggrieved/affected by this decision in that: See attached.

Appellant (PLEASE PRINT CLEARLY):

Cricket Store 17, LLC by _____

Address: Thomas R. Goldstein

City, State, Zip: P. O. Box 71121, N. Charleston, S.C. 29415-1121

Office Telephone Number: 843 554 4291 Home Telephone Number: _____

Cellular Telephone Number: _____ Fax Number: 843 554 5566

Do you check email at least once per day? ☒ Y ☐ N Email Address: rgoldstein@cobblaw.net

Appellant's Signature _____

16-011-AA_0013

City of Columbia
Board of Zoning Appeals
Application for Administrative Appeal

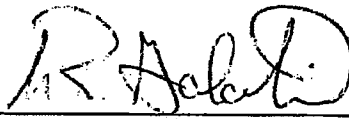
1. Address of affected property: 4716 Devine Street, Columbia, S.C. 29209
 - a. TMS # Page: R13814 Block: 09 Lot: 02
2. We allege that the Zoning Administrator did err by: refusing to accept Taboo's application for special exception, the granting of which the Board of Zoning Appeals is authorized under § 6-29-800(A)(3); and also by the Zoning Administrator's refusal to schedule a pre-hearing conference, which is prerequisite to such applications, per his letter dated February 26, 2016: "Please be advised that neither a Variance nor a Special Exception is applicable in this case, and applications for same cannot be processed. City Code § 17-374(a)." See also Zoning Administrator's e-mail dated February 26, 2016: "Your administrative appeal request before the Board of Zoning Appeals will be scheduled for April 12th 2016 at 10:00am at 1737 Main Street (Council Chambers). A pre-hearing conference is not required."
3. The Zoning Administrator's decisions and reasons therefore were: controlled by an error of law. The Zoning Administrator does not have the authority to prevent an aggrieved person from making an application for judicial relief under state law. Furthermore, the Zoning Administrator erred in failing to schedule a pre-hearing conference if, in fact, such a conference is a prerequisite to a successful Board of Zoning Appeals hearing.
4. We contend that the Zoning Administrator was IN ERROR in that: State law provides that any aggrieved party may apply for a special exception to the Board of Zoning Appeals. Under state law, only the Board of Zoning Appeals may permit uses by exception. § 6-29-800(A)(3): ". . . to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the Zoning Ordinance. . .". State law provides that the Board of Zoning Appeals has the sole authority to consider an application for special exception with appeal to the Circuit Court. The City of Columbia's ordinance § 17-374(a) provides: "No special exception regarding any of the requirements of this section may be granted by the zoning board of adjustment." (emphasis added) Only the Board possesses the authority to grant or not grant a special exception, but the Zoning Administrator will not

permit the matter to be placed before the Board. This decision to not allow the applicant to appear and be heard in a meaningful manner exceeds the Zoning Administrator's authority. Moreover, the governing body of a municipality cannot adopt an ordinance to contradict a statutory procedure and right created by the General Assembly. In addition, the governing body of a municipality cannot predetermine the outcome of a hearing before a quasi-judicial body pertaining to granting special exceptions.

5. We have been aggrieved/affected by this decision in that: The Zoning Administrator has unlawfully prevented the applicant from applying to and being heard by a quasi-judicial body. Taboo is being prevented by the City and its Zoning Administrator from participating in a statutory and constitutionally protected judicial process that is available to every citizen. ("No person shall be finally bound by a juridical or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; . . ." Article I, §22, S. C. Constitution)

Respectfully submitted,

March 9, 2016



Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein, S. C. Bar #2186
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobbblaw.net

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbaw@hotmail.com

Peggy M. Infinger
pinfinger@cobbaw.net

Thomas R. Goldstein
tgoldstein@cobbaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

March 9, 2016

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

Mr. K. Brian Cook,
Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

Re: Zoning Administrator's ruling dated February 26, 2016

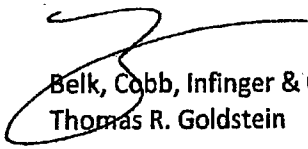
Dear Mr. Cook,

I am in receipt of your electronic mail of March 8, 2016, in which you inform me that you have consolidated all our appeals for 10:00 a.m. on Tuesday, April 12. I first want to thank you for your courtesy in allowing both matters to be heard at the same time. I have not, however, provided you with the grounds for our second appeal, and I think fairness to the City requires me to do that. Therefore, I enclose our 5 grounds of appeal under cover of this letter. Please let me know if you require a second \$75.00 filing fee to process this second appeal, and I will send it to you.

In closing, I want to thank you again for letting both matters go forward at the same time. I have the matter set on my calendar, but, as you are aware, lawyers' appearances are dictated by the courts, and it is possible that the circuit court may preempt the time set for these appeals. I will do my best to make sure that the courts honor your schedule, but if I am called to court, the final decision rests with a judge, not me.

Please let me know if you require anything further to perfect this appeal. With kind regards, I am

Very truly yours,



Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/
enclosure: Application for Administrative Appeal
cc:
Mr. Andrew Livengood
Deputy Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201
(with enclosure)

16-011-AA_0016

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

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pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

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Ph: (843) 554-4291
Fax: (843) 554-5566

March 1, 2016

Mr. K. Brian Cook,
Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

Re: Zoning Administrator's ruling dated February 27, 2016

Dear Mr. Cook,

Let me try to bring some order to this case.

On February 2, 2016, I applied to the City of Columbia for a variance.

On February 15, 2016, I applied to the City of Columbia to appeal your decision of January 28, 2016, and February 1, 2016, and to request a special exception on the grounds provided by State law.

As to the February 2nd application for variance, I wish to withdraw that request. I was unfamiliar with the City's on-line application process and mistakenly assumed the variance application was the general application for all requests, including administrative review and special exception. Please consider my application for variance withdrawn. My intention is: 1) to request a special exception as provided by State law, and 2) to appeal your decisions dated January 28 and February 2, 2016, through administrative review.

In addition, as I understand your most recent letter of February 26, the City is scheduling my appeal for administrative review on April 12th at 10:00 a.m. in Council Chambers. However, by your letter dated February 26, 2016, you are refusing to schedule a hearing on our application for special exception, a procedure afforded to us by State law. This creates a procedural dilemma. Your letter of February 26th does not offer any explanation as to why we are not permitted to apply for a special exception except to say: "... neither a Variance nor a Special Exception is applicable in this case, and applications for same cannot be processed. Columbia city Code § 17-374(a)." (Letter of February 26th, ¶ 1) The City's code does not preclude our applying for a special exception. If you are deciding to refuse our application, then we must appeal that decision to the Board. I am sure you are aware, as Zoning Administrator, that Board of Zoning Appeals is a quasi-judicial body created by the General Assembly, and that, as a quasi-judicial body, it sits to hear appeals or applications from "any person aggrieved."

16-011-AA_0017

§ 6-29-800 Powers of board of appeals; variances; special exceptions; stay; hearing; decisions and orders.

The board of appeals has the following powers:

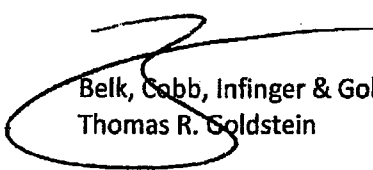
(1) to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance.

(3) to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance; and

(4) appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county.

I do not think the City possesses the power to bar us from appearing before a quasi-judicial body created by the General Assembly to serve the citizens of South Carolina. If, after reconsideration, you fail to accept our application for a special exception hearing, then I ask that you state your reasoning in clear and concise language with a sufficiently particular explanation so that I can ask the Board to review your decision. Please also reconsider your decision that you will not schedule a pre-hearing meeting with staff since, according to your application instructions, meeting with staff prior to the Board hearing is a prerequisite. Finally, if you decline to reconsider your decision and you do issue a written decision that we are not permitted to appear before the Board on an application for Special Exception, then I ask that you allow us to appeal that decision in combination with the appeal of your previous decisions currently scheduled to be heard on April 12, 2016. Obviously, allowing us to address all the appellate issues at one time conserves judicial resources and makes efficient use of the time already set aside on the 12th. I look forward to hearing from you. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/
cc:
Mr. Andrew Livengood
Deputy Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

16-011-AA_0018

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

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pinfinger@cobbblaw.net

Thomas R. Goldstein
tgoldstein@cobbblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

February 15, 2016

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

Mr. Andrew Livengood
Deputy Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

Mr. K. Brian Cook,
Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

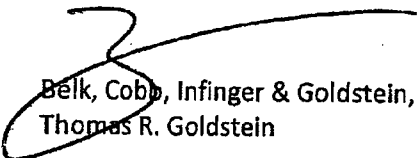
Re: Zoning Administrator's rulings dated January 28, 2016 and February 1, 2016

Dear Mr. Livengood,

I am enclosing one additional appeal and one additional application for special exception to be combined with the original February 2nd application for variance. I also enclose our firm's check in the amount of \$150.00 as the filing fee for each. I am enclosing extra copies so you can return clocked in copies to me in the envelope provided.

Please let me know if you require anything further, and I look forward to scheduling a "pre-application conference with your staff prior to the application deadline to discuss any additional specific requirements. With kind regards, I am

Very truly yours,



Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/
Application for Special Exception
Application for Appeal of Zoning Administrator
Check # 17209
Return envelope

16-011-AA_0019

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
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Thomas R. Goldstein
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2344 COSGROVE AVENUE
CHARLESTON, SC 29405

February 11, 2016

Mailing Address:
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Ph: (843) 554-4291
Fax: (843) 554-5566

Mr. Andrew Livengood
Deputy Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

Mr. K. Brian Cook,
Zoning Administrator
City of Columbia Zoning Division
1136 Washington Street
Columbia, S. C. 29201

Re: Zoning Administrator's rulings dated January 28, 2015 and February 1, 2015

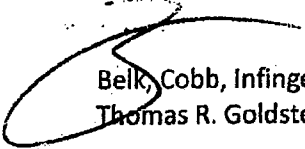
Dear Mr. Livengood,

On February 2nd, I mailed a request for a variance along with a \$75.00 filing fee for 4716 Devine Street to the Zoning Administrator, Brian Cook. I trust he, in turn, forwarded that submission to you. Since then, I have become more adept at using your on-line application system, and now I realize that there are separate applications for:

Variance
Special Exception
Appeal from Decision of Zoning Administrator.

Because of my unfamiliarity with your web page, I did not realize this last week when I submitted my application. Therefore, I want to let you know that I will be amending our application by sending you separate requests for Special Exception and a Request for Administrative Review of the Zoning Administrator's decisions. I also telephoned your office (803-545-333) to schedule a "pre-application conference with staff prior to the application deadline to discuss your specific case and its requirements." To date, I have not received a return call. I understand the filing deadline is Monday, February 29th (the 30th day falling on Saturday the 27th). Now that I know there is a separate application package for variance, for special exception, and for administrative appeal, I will file with your office next week two additional packages, one for special exception, and one for administrative appeal, to be considered with the application for variance previously submitted. I will look forward to hearing from your office to schedule a pre-application conference with staff. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/

16-011-AA_0020



We Are Columbia

Planning and Development Services • Zoning Division
1136 Washington Street, Columbia, SC 29201 • Phone: 803-545-3333 • Fax: 803-733-8699

VIA EMAIL TO:
tgoldstein@cobblaw.net
jeffreyfromco@msn.com

February 26, 2016

Thomas Goldstein
Belk, Cobb, Infinger and Goldstein, P.A.
2344 Cosgrove Avenue
Charleston, SC 29405

Jeff White
Taboo Adult Superstore
4716 Devine St.
Columbia, SC 29209

RE: Taboo's Continued Non-Compliance with Zoning Ordinance

Mr. Goldstein and Mr. White,

I am in receipt of Mr. Goldstein's February 22, 2016 letter submitting an Administrative Appeal and an Application for Special Exception, and referencing Taboo's Application for Variance. Please be advised that neither a Variance nor a Special Exception is applicable in this case, and applications for same cannot be processed. Columbia City Code § 17-374(a). Accordingly, I am enclosing the checks submitted with those applications.

Mr. White's February 9, 2016 email to me stated that he "will make any change necessary to comply and to stay open for business." While I would direct Mr. White to you, Mr. Goldstein, for legal advice, I note that our office's observations reveal that Taboo is still operating as a sexual device shop in a prohibited location. If Taboo were to cease selling sexual devices, it would not be operating as a sexual device shop as defined in the zoning ordinance. Per that ordinance, a sexual device is any:

three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs.

-Page 1 of 2-

-Page 2 of 2-
VIA EMAIL TO:
tgoldstein@cobblaw.net
jeffreyfromco@msn.com
February 26, 2016

Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy, Columbia City Code § 17-372.

Please govern yourself accordingly.

Sincerely,



K. Brian Cook
Zoning Administrator

From: [Cook, K Brian](#)
To: [Cook, K Brian](#)
Subject: FW: 4716 Devine Street (Taboo - 2-26-16)
Date: Wednesday, April 06, 2016 10:59:14 AM
Attachments: [Devine St 4716 \(Taboo-2-26-16\).pdf](#)
[Image001.png](#)

From: Cook, K Brian
Sent: Friday, February 26, 2016 3:02 PM
To: tgoldstein@COBBLAW.NET; Jeffrey (jeffreyfromco@msn.com)
Subject: 4716 Devine Street (Taboo - 2-26-16)

Mr. Goldstein,

Good afternoon. Please find attached with this email a letter regarding 4716 Devine Street (Taboo).

Your administrative appeal request before the Board of Zoning Appeals will be scheduled for April 12th 2016 at 10:00am at 1737 Main Street (Council Chambers). A pre-hearing conference is not required.

Sincerely,

Brian Cook

K. Brian Cook, Zoning Administrator
Planning and Development Services

1136 Washington Street, Columbia, SC 29201

Phone: 803-545-3332

www.columbiaplanning.net

From: Thomas Goldstein [<mailto:tgoldstein@COBBLAW.NET>]
Sent: Friday, February 26, 2016 9:36 AM
To: Livengood, Andrew
Subject: 4716 Devine Street

Dear Mr. Livengood,

I have previously submitted an application for variance, special exception, and administrative appeal from a zoning decision. As directed by your rules, I telephoned your Department several times to schedule a pre-appeal conference with the staff. To date, I have received no response. Could you please advise me of the status of our applications and let me know who I should contact to schedule the pre-hearing conference?

Tommy Goldstein
843 554-4291

16-011-AA_0023

Characterized by means describing the essential character or quality of an item. As applied in this division, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Escort means a person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort agency means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

Establish or establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

Floor space means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

Influential interest means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, (2) ownership of a financial interest of 30 percent or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license.

Nudity means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

Operator means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Premises means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

Regularly means the consistent and repeated doing of an act on an ongoing basis.

Semi-nude or semi-nudity means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

Semi-nude model studio means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:

- (1) By a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) In a structure:
 - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
 - b. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

Sexual device means any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.

Sexually oriented business means an "adult arcade," an "adult bookstore or adult video store," an "adult cabaret," an "adult motel," an "adult motion picture theater," "escort agency," a "semi-nude model studio," or a "sexual device shop."

Specified anatomical areas means and includes:

- (1) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activity means and includes any of the following:

- (1) Intercourse, oral copulation, masturbation or sodomy; or
- (2) Excretory functions as a part of or in connection with any of the activities described in (1) above.

Substantial enlargement of a sexually oriented business means the increase in floor areas occupied by the business by more than 25 percent, as the floor areas exist on July 1, 1990.

Transfer of ownership or control of a sexually oriented business means any of the following:

- (1) The sale, lease or sublease of the business;
- (2) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. No. 2012-093, 11-13-12)

Sec. 17-373. - Classification.

Sexually oriented businesses are classified as follows:

- (1) Adult arcade;
- (2) Adult bookstore or adult video store;
- (3) Adult cabaret;
- (4) Adult motel;
- (5) Adult motion picture theater;
- (6) Escort agency;
- (7) Semi-nude model studio; and
- (8) Sexual device shop.

(Ord. No. 2012-093, 11-13-12)

Sec. 17-374. - Location.

- (a) ~~No variance from any of the provisions of this section may be granted by the zoning board of adjustment. No special exception regarding any of the requirements of this section may be granted by the zoning board of adjustment.~~
- (b) ~~A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business outside of a designated M-1 or M-2 district. A sexually oriented business shall be located within an M-1 or M-2 district, however no sexually oriented business shall be permitted to operate within an M-1 or M-2 district appended with a -DD, -ID, -DP, -NC or -PD Overlay district.~~
- (c) A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business within 900 feet of:
 - (1) A church;
 - (2) A boundary of any residential district;
 - (3) Any outdoor recreational facility at which minors are likely to congregate;
 - (4) A lot devoted to residential use;
 - (5) A day care facility;
 - (6) A cemetery.
- (d) A person commits a misdemeanor if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of another sexually oriented business.
- (e) A person commits a misdemeanor if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,250 feet of a public or private elementary or secondary school.
- (f) A person commits a misdemeanor if he causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.
- (g) For purposes of subsections (c) and (e), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure where a sexually oriented business is conducted, to the nearest boundary of a residential district, or to the

nearest property line of the premises of a church, day care facility, cemetery, outdoor recreational facility at which minors are likely to congregate, a lot devoted to residential use, or a public or private elementary or secondary school.

- (h) For purposes of subsection (d) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(i) Any sexually oriented business lawfully operating as of the date of the ordinance from which this section is derived that is in violation of subsections (b), (c), (d), (e) or (f) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue until and through January 1, 2014, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established business(es) is nonconforming.

- (j) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a land use within the distances set forth in subsection (c), (d), or (e) above. This provision applies only to the renewal of a valid license, and does not apply when a completed application for a license is filed after a license has expired or has been revoked.

(Ord. No. 2012-093, 11-13-12)

Sec. 17-375. - Adult motels.

- (a) Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this division.
- (b) For purposes of subsection (a) of this section, the terms "rent" and "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(Ord. No. 2012-093, 11-13-12)

Secs. 17-376—17-400. - Reserved.

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

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

- (1) Administrative review. The board of zoning appeals shall hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article, provided that those appeals must be taken within 30 days after the order, requirement, decision or determination which is alleged to be in error is made.

(2) Special exceptions.

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

1. Hear and decide only the applications for special exceptions as the board of zoning appeals is specifically authorized to pass upon by terms of this article;
2. Decide the questions as are involved in determining whether special exceptions should be granted; and,
3. Prescribe appropriate conditions and safeguards in conformity with this article including, but not limited to items like the following: (1) hours of operation; (2) landscaping; and (3) screening of activities or structures.

b. Procedures in consideration of special exception applications.

1. A written application for a special exception shall be submitted indicating the section of this article under which the special exception is sought and stating the grounds on which it is requested.
 2. Notice of public hearing shall be posted on the property for which special exception is sought and shall be published at least 15 days prior to the public hearing in a newspaper of general circulation in the city.
 3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
 4. The board of zoning appeals shall not vary the conditions and/or provisions of sections 17-259 through 17-274 and 17-283 that establish specific standards that must be met prior to the establishment of several principal uses that require a special exception.
 5. The board of zoning appeals may prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both.
- c. Criteria for special exceptions. In addition to definitive standards applicable to the proposed use in this article, the board of zoning appeals shall approve an application for special exception only upon a finding that the following criteria are met:
1. The proposed special exception will not have a substantial adverse impact on vehicular traffic or vehicular and pedestrian safety and adequate provisions are made in the proposed exception for parking and for loading and unloading.
 2. The proposed special exception will not have a substantial adverse impact on adjoining properties in terms of environmental factors such as noise, lights, glare, vibration, fumes, odors, obstruction of air or light, and litter;
 3. The proposed special exception will not have a substantial adverse impact on the aesthetic character of the area, to include a review of the orientation and spacing of buildings.

4. The proposed special exception will not have a substantial adverse impact on public safety or create nuisance conditions detrimental to the public interest or conditions likely to result in increased law enforcement response;
 5. The establishment of the proposed special exception does not create a concentration or proliferation of the same or similar types of special exception use, which concentration may be detrimental to the development or redevelopment of the area in which the special exception use is proposed to be developed;
 6. The proposed special exception is consistent with the character and intent of the underlying district as indicated in the zoning district description, with any applicable zoning overlay district goals and requirements;
 7. The proposed special exception is appropriate for its location and compatible with the permitted uses adjacent to and in the vicinity of the property; and
 8. The proposed special exception will not adversely affect the public interest.
- d. Effect of failure to meet conditions.
1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which a special exception is granted, shall be deemed a violation of this article, punishable under the penalties established in this article.
 2. Failure to begin or complete, or begin and complete, an action for which a special exception is required, within the time limit specified, when such time limit is made a part of the terms under which the special exception is granted, shall void the special exception.

(3) Variances.

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

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

b. Procedures in consideration of request for variance.

1. A written application for a variance shall be submitted demonstrating that:
 - (i) There are extraordinary and exceptional conditions pertaining to the piece of property;
 - (ii) These conditions do not generally apply to other property in the vicinity;
 - (iii) Because of these conditions, the application of this division to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

- (iv) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.
- 2. The board may not grant a variance the effects of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably should a variance be granted, may not be considered grounds for a variance.
- 3. Notice of public hearing shall be given as described in subsection (2)b.2. of this section.
- 4. The hearing shall be held. Any party may appear in person, or by agent or by attorney.
- 5. The board of zoning appeals shall make findings that the requirements of subsection (3)b.1. of this section have been met by the applicant for a variance.
- 6. The board of zoning appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
- 7. The board of zoning appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- 8. The board of zoning appeals may prescribe a time limit within which the action for which the variance is requested shall be begun or completed, or both.
- c. Effect of failure to meet conditions.
 - 1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article, punishable under penalties established in this article.
 - 2. Failure to begin or complete, or begin and complete, an action for which a variance is granted, within the time limit specified, when such time limit is made a part of the terms under which the variance is granted, shall void the variance.
- (4) Joint applications for special exception and variance(s). Whenever in conjunction with an application for special exception, an applicant files an application for variance, the board of zoning appeals may combine the applications and consider them simultaneously, provided that the procedures established for special exceptions and variances within this section 17-112 shall not be varied.

(Ord. No. 2012-096, 10-16-12; Ord. No. 2013-110, 10-1-13)

SECTION 6-29-800. Powers of board of appeals; variances; special exceptions; remand; stay; hearing; decisions and orders.

(A) The board of appeals has the following powers:

(1) to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;

(2) to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:

(a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;

(b) these conditions do not generally apply to other property in the vicinity;

(c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

(d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

(i) The board 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 extend physically a nonconforming use of land or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance. Other requirements may be prescribed by the zoning ordinance.

A local governing body by ordinance may permit or preclude the granting of a variance for a use of land, a building, or a structure that is prohibited in a given district, and if it does permit a variance, the governing body may require the affirmative vote of two-thirds of the local adjustment board members present and voting. Notwithstanding any other provision of this section, the local governing body may overrule the decision of the local board of adjustment concerning a use variance.

(ii) In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare;

(3) to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance; and

(4) to remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review. A party's motion for remand may be denied if the board determines that the record is sufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties. The board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

(B) Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of appeals notice of appeal specifying the grounds for the appeal. If no time limit is provided, the appeal must be taken within thirty days from the date the appealing party has received actual notice of the action from which the appeal is taken. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(C) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed other than by a restraining order which may be

granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(D) The board must fix a reasonable time for the hearing of the appeal or other matter referred to the board, and give at least fifteen days' public notice of the hearing in a newspaper of general circulation in the community, as well as due notice to the parties in interest, and decide the appeal or matter within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney.

(E) In exercising the above power, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board, in the execution of the duties specified in this chapter, may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

(F) All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 2, eff June 2, 2003.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

CASE NO.: 16-CP-40-03478

Cricket Store 17, L.L.C. d/b/a)

Taboo,)

Plaintiff,)

versus)

City of Columbia Board of Zoning Appeals,)

Defendant.)

REPLY TO COUNTERCLAIM

(JURY TRIAL DEMANDED)

RICHLAND COUNTY
FILED
2016 AUG -9 PM 1:43
JEANETTE W. MCBRIDE
C.C.P. & G.S.

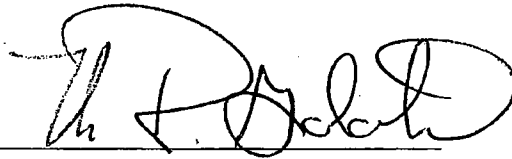
The plaintiff replies to the Counterclaim as follows:

1. The plaintiff denies paragraph, 31 and shows further that there is no statutory provision for an award of attorney's fees for the City. (See § 15-77-300, S. C. Code, ann.)
2. The plaintiff admits paragraphs 32, 33, and 36.
3. The plaintiff denies paragraphs 34, 35, 37, 38, 39, and 40 and shows further that the City's application for injunction mischaracterizes the dispute now before the Court and is premature. The undisputed procedural facts are that the Board of Zoning Appeals refused to consider Taboo's application for Special Exception and never reached the issue of whether Taboo does or does not meet every statutory criterion." The plaintiff attempted to file an application to the Board of Zoning Appeals for an application for Special Exception. The Zoning Administrator determined that the plaintiff is not permitted to appear before the Board, which the plaintiff contains is a Bill of Attainder. The Board of Zoning Appeals refused to allow the plaintiff to be heard in a meaningful manner. The issue before the Court is whether the Board of Zoning Appeals has the authority to deny a citizen the right to participate in an

application for a special exception, which is a statutory procedure provided by the General Assemble "for any person aggrieved." (The City's Answer blurs the distinction between being heard and not being heard. The Board refused to hear the plaintiff. See paragraph 11 of the City's Answer where the City alleges "The Board denies that Taboo meets every statutory criterion for a special exception." The Board never heard plaintiff's application for Special Exception.) The City's application for injunction calls upon this Court to make the determination that is the duty and statutory responsibility of the Board of Zoning Appeals. The Board of Zoning Appeals determined nothing except that the plaintiff is not entitled to be heard.

Wherefore, having set forth its reply to counterclaim, the plaintiff renews its prayer for relief as set forth in the complaint and prays that the City's Counterclaim be dismissed with costs to the plaintiff.

August 5, 2016



BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein, S. C. Bar #2186
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobblaw.net

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☐ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
- ☐ handing counsel a copy thereof
- ☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 5th day of August, 2016
BY Thomas R. Goldstein

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

Cricket Store 17, L.L.C. d/b/a Taboo)

Plaintiff,)

vs.)

City of Columbia)

Board of Zoning Appeals)

Defendant.)

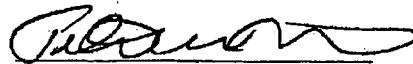
IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 26-CP-40-3478

MOTION IN SUPPORT OF
PRO HAC VICE APPLICATION

RICHLAND COUNTY
FILED
2016 SEP -1 PM 3:16
JEANETTE W. MCBRIDE
CLERK, P. & O.S.

COMES NOW Defendants City of Columbia Board of Zoning Appeals, by its undersigned counsel and pursuant to SC Rule 404, and moves the Court for an order that Scott **Dean Bergthold** be admitted *pro hac vice* in the above-captioned case. Mr. Bergthold's Verified Petition for Admission *Pro Hac Vice* in the State of South Carolina is attached hereto and incorporated by reference.



Peter M. Balthazor
S.C. Bar #: 68244

Riley, Pope, and Laney LLC
2838 Devine St.
Columbia, South Carolina 29205

*Attorney for the Defendants,
Columbia, South Carolina*

pd -
9-1-16
mm

**VERIFIED APPLICATION FOR ADMISSION *PRO HAC VICE*
IN THE STATE OF SOUTH CAROLINA**

Cricket Store 17, L.L.C. 16-CP-40-3478 Richland County Court of Common Pleas
Plaintiff Case No. Tribunal

vs.

Mailing Address of Tribunal: 1701 Main Street, Room 205
City of Columbia Board of Zoning Appeals P. O. Box 2766
Defendant Columbia, SC 29202

Comes now Scott D. Berathold, applicant herein, and respectfully represents the following:

1. Applicant resides at:

534 Turtle Crossing
Street Address
Ooltewah Hamilton Tennessee 37363
City County State Zip Code
Telephone _____

RICHLAND COUNTY
FILED
2006 SEP - 1 PM 3:16
JEANNETTE W. MCBRIDE
C.C.P. & C.S.

2. Applicant is an attorney and a member of the law firm of (or practices law under the name of)

Law Office of Scott D. Bergthold, PLLC, with offices at
2290 Ogletree Avenue, Suite 106

Street Address
Chattanooga Hamilton Tennessee 37421
City County State Zip Code
423-899-3025 423-802-9459 423-899-3029 sbergthold@sdblawnfirm.com
Primary Telephone Cell Phone Fax Number Email Address

3. Applicant has been retained personally or as a member of the above-named law firm by

City of Columbia Board of Zoning Appeals to provide legal representation in connection with the above case now pending before the above-named tribunal of the State of South Carolina.

4. Since April of 2004, applicant has been, and presently is, a member in good standing of the bar of the highest court of the District of Columbia or the State of Tennessee where applicant regularly practices law. Attached is a certificate of good standing dated within the last 90 days from the bar of the highest court of the District of Columbia or the State where applicant regularly practices law.

5. Applicant has been admitted to practice before the following courts: (List all of the following courts applicant has been admitted to practice before: United States District Courts; United States Circuit Courts of Appeals; the Supreme Court of the United States; and courts of other states or the District of Columbia.)

Court:	Date Admitted:
See Attached	

Court:	Date Admitted:

Applicant is presently a member in good standing of the bars of those courts listed above, except as listed below: (List any court named in the preceding paragraph that applicant is no longer admitted to practice before.)

6. Applicant presently is not subject to any suspension or disbarment proceedings, and has not been formally notified of any complaints pending before a disciplinary agency, except as provided below (give particulars, e.g., jurisdiction, court date):

7. Applicant never has had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked, except as provided below (give particulars, e.g., date, court, docket number, judge, circumstances; attach a copy of any order of denial or revocation):

8. Applicant never has had any certificate or privilege to appear and practice before any court or administrative body suspended or revoked, except as provided below (give particulars, e.g., date, court, administrative body, date of suspension and reinstatement):

9. Local counsel of record associated with applicant in this case is Peter M. Balthazor of the Riley, Pope, and Laney, LLC law firm, which has offices at:

2838 Devine Street

Street Address

Columbia

City

803-223-9791

Primary Telephone

No. 68244

South Carolina Bar Number

Richland

County

803-467-9003

Cell Phone

South Carolina

State

803-239-1414

Fax Number

29205

Zip Code

peteb@rplfirm.com

Email Address

10. Applicant has previously filed an application to appear *pro hac vice* in the following South Carolina cases (give case name and status of litigation, date of application, local counsel of record in each case, and state whether application is pending or was granted).

See Attached

11. Applicant agrees to comply with the applicable statutes, laws and rules of the State of South Carolina and will familiarize him/herself with and comply with the South Carolina Rules of Professional Conduct. Applicant consents to the jurisdiction of the South Carolina courts and Commission on Lawyer Conduct.

12. Applicant respectfully requests to be admitted to practice in the above-named tribunal for this case only.

DATED this 10th day of August, 20 16



APPLICANT

VERIFICATION

STATE OF Tennessee)

COUNTY OF Hamilton)

I, Scott D. Bergthold, do hereby swear and affirm under penalty of perjury that I am the applicant in the above-styled matter; that I have read the foregoing application and know the contents thereof, and that the contents are true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe them to be true. I understand that I am under a continuing duty to promptly update the information provided in the application until the tribunal has ruled on the motion for admission pro hac vice. Further, if the motion is granted, I understand that I am under a continuing duty to promptly update the information provided in the application as long as I continue to appear pro hac vice in the action or proceeding. Any updated information shall be provided to both the tribunal that granted the motion and to the tribunal in which the action or proceeding may then be pending.

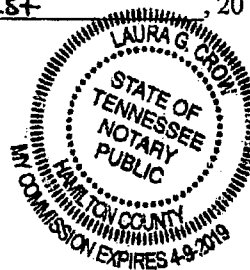
[Signature]
APPLICANT/AFFIANT

Subscribed and sworn to before me this 10th day of August, 20 16

Laura H. Crow

Notary Public for the State of Tennessee

My Commission Expires: 4-9-2019



LOCAL COUNSEL CONSENT

I hereby consent, as local counsel of record, to the association of applicant in this cause pursuant to Rules Governing Admission *Pro Hac Vice* to the South Carolina Bar.

DATED this 17 day of August, 20 16

[Signature] Peter M. Balhazon #68244
LOCAL COUNSEL OF RECORD

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this application upon the South Carolina Supreme Court by mail addressed to: South Carolina Supreme Court Office of Bar Admissions, PO Box 11330, Columbia, SC 29211, accompanied by payment of the \$250 filing fee payable to the South Carolina Supreme Court on this

17 day of August, 20 16

[Signature]
APPLICANT/AFFIANT

5. Scott D. Bergthold is a member in good standing in the following courts:

Court	Date Admitted
Supreme Court of Arizona	October 18, 1997
Supreme Court of Tennessee	April 22, 2004
Supreme Court of Georgia	January 21, 2014
Supreme Court of the United States	November 28, 2000
U. S. Court of Appeals – Second Circuit	June 4, 2014
U. S. Court of Appeals – Fourth Circuit	October 17, 2014
U. S. Court of Appeals – Fifth Circuit	August 28, 2002
U. S. Court of Appeals – Sixth Circuit	June 23, 2000
U. S. Court of Appeals – Seventh Circuit	January 27, 1999
U. S. Court of Appeals – Ninth Circuit	January 25, 2000
U. S. Court of Appeals – Tenth Circuit	September 3, 2002
U. S. Court of Appeals – Eleventh Circuit	April 25, 2005
U. S. District Court – District of Arizona	October 28, 2002
U.S. District Court – District of Nebraska	July 24, 2015
U. S. District Court – Western District of Michigan	April 24, 2002
U. S. District Court – Eastern District of Michigan	September 22, 2009
U. S. District Court – Northern District of Ohio	November 20, 2002
U. S. District Court – Northern District of Indiana	December 28, 2001
U. S. District Court – Southern District of Indiana	June 25, 2009
U. S. District Court – Eastern District of Tennessee	October 20, 2005
U. S. District Court – Northern District of Texas	May 2, 2008
U. S. District Court – Western District of Texas	June 16, 2008
U. S. District Court – Northern District of Florida	December 13, 2010
U. S. District Court – Southern District of Illinois	February 24, 2011
U. S. District Court – Northern District of Georgia	November 18, 2013
U.S. District Court – Eastern District of Wisconsin	November 3, 2015

10. Previous *pro hac vice* applications:

Horry County Court of Common Pleas	Date of Application	Local Counsel of Record	Application Pending/Granted
<i>Horry County, SC v. Inlet Gifts LLC</i>	1/28/16	Arrigo Carotti	Granted 4/25/16
<i>Kelvin Lewis, agent for K & T Holdings, LLC</i>	1/12/16	Wesley Covington	Granted 2/24/16

Municipal Hearing	Date of Application	Local Counsel of Record	Application Pending/Granted
<i>IN RE: Cricket Store 17, LLC dba Taboo, Application for Hardship Extension</i>	11/14/13	Peter M. Balthazor	Granted 11/21/13

S. District Court Cases	Date of Application	Local Counsel of Record	Application Pending/Granted
<i>Terrie Eddie Land v. The City of Sumter, et al.</i> Case No. 12-02845	1/21/13	Murrell Smith	Granted 1/22/13
<i>MJJG Restaurant, LLC et al. v. Horry County, SC</i> Case No. 13-00885	5/17/13	Michael Battle	Granted 5/23/13
<i>Cricket Store 17, LLC v. City of Columbia</i> Case No. 13-03557	12/27/13	Peter M. Balthazor	Granted 12/30/13
<i>Myrtle Beach Holdings, LLC v Horry County, SC</i> Case No. 14-01127	3/31/14	James R. Battle	Granted 4/1/14

CLERK OF THE SUPREME COURT

STATE OF TENNESSEE

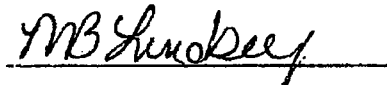
RICHLAND COUNTY
FILED
2016 SEP - 1 PM 3: 10
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

I, James M. Hivner, Clerk of the Supreme Court, do hereby certify that SCOTT DEAN BERGTHOLD is a licensed and practicing attorney of the Courts of this State, having taken the oath as prescribed by law, is enrolled as an attorney of this Court, and is in good standing. The Supreme Court is the Court of last resort in Tennessee.

Date of Enrollment: April 22, 2004

In testimony whereof, I have set my hand and affixed the seal of the Court on this the 15th day of July, 2016.

James M. Hivner, Clerk



By: MaryBeth Lindsey, D.C.

**CERTIFICATE OF THE CLERK OF THE SUPREME COURT
OF THE
STATE OF ARIZONA**

RICH AND COUNTY
FILED
2006 SEP - 1 PM 3:45
JEANETTE W. MCCOY
Clerk of the Court

I, Janet Johnson, Clerk of the Supreme Court of the State of Arizona, hereby certify that
according to the records of my office and upon the recommendation of the Disciplinary
Clerk of the Supreme Court of Arizona

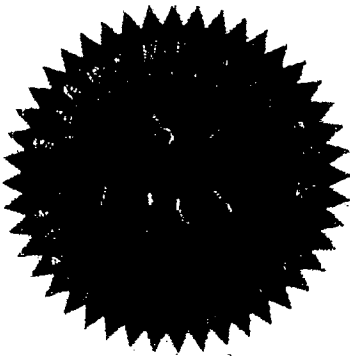
SCOTT DEAN BERGTHOLD

was on the 18th day of October, 1997, duly admitted to practice as an Attorney and
Counselor at Law in all the courts of Arizona; that no disciplinary proceedings are
pending against this attorney in the Arizona Supreme Court as of the date of this
certificate; and that this name now appears on the Roll of Attorneys in this office as an
active member of the Bar in good standing.

Given under my hand and the seal of
said Court this 28th day of June,
2016.

JANET JOHNSON, Clerk

By Sara Jones
Sara Jones
Deputy Clerk Supervisor

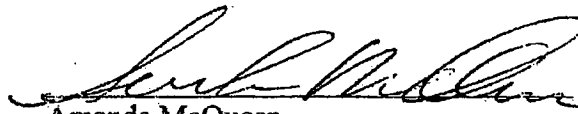


CERTIFICATE OF GOOD STANDING
ISSUED BY THE DISCIPLINARY CLERK
FOR AND ON BEHALF OF
THE SUPREME COURT OF ARIZONA

RICH AND COURT
FILED
2016 SEP -1 PM 3:15
JEANETTE W. MCQUEEN
C.C.P. & O.S.

The Disciplinary Clerk pursuant to Rule 74, Rules of the Supreme Court of Arizona, hereby certifies that according to the records of the State Bar, **SCOTT DEAN BERGTHOLD** duly admitted to practice as an attorney and counselor at law in all courts of Arizona by the Supreme Court of Arizona on October 18, 1997 and is now, as of the date of this Certificate, an active member of the State Bar of Arizona in good standing.

Given under the seal of the Disciplinary
Clerk of the Supreme Court of Arizona
this June 24, 2016.



Amanda McQueen
Disciplinary Clerk



State Bar of Georgia

Lawyers Serving the Public and the Justice System

Mr. Scott Dean Bergthold
Law Office of Scott D. Bergthold PLLC
2290 Ogletree Avenue, Suite 106
Chattanooga, TN 37421

CURRENT STATUS: Active Member-Good Standing
DATE OF ADMISSION: 09/24/2013
BAR NUMBER: 202030
TODAY'S DATE: 06/20/2016

Listed below are the public disciplinary actions, if any, which have been taken against this member:

State Disciplinary Board Docket #	Supreme Court Docket #	Disposition	Date
N/A	N/A	N/A	N/A

The prerequisites for practicing law in the State of Georgia are as follows:

- Certified by the Office of Bar Admissions, either by Exam, or on Motion (Reciprocity).
- Sworn in to the Superior Court in Georgia, highest court required to practice law in Georgia.
- Enrolled with the State Bar of Georgia, arm of the Supreme Court of Georgia.

Attorneys licensed in Georgia and whose current status is Active are eligible to practice law in Superior Court. Attorneys may, upon application, apply for admission to the Supreme, District and State Court of Appeals.

Under the privacy/confidentiality provision of the Bar Rule 4-221(d), any complaint against a member resolved prior to the filing and docketing of a disciplinary case in the Supreme Court is not a matter of public record, and may not be revealed without a waiver from the member. It is the policy of the State Bar of Georgia to answer any inquiry about a member by disclosing only those complaints that have been docketed in the Supreme Court. With respect to matters that are currently pending as active, undocketed cases, when an inquiry is received, the State Bar of Georgia shall not disclose the existence of those complaints. Such non-disclosure should not be construed to confirm the existence of confidential complaints since the vast majority of members in good standing are not the subjects of such confidential complaints.

This member is currently in "good standing" as termed and defined by State Bar Rule 1-204. The member is current in license fees and is not suspended or disbarred as of the date of this letter.



STATE BAR OF GEORGIA

Brinda Luvorn

Official Representative of the State Bar of Georgia

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Fax 229-382-7435

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO.: 16-CP-40-03478

Cricket Store 17, L.L.C. d/b/a
Taboo,
Plaintiff,
versus

City of Columbia Board of Zoning Appeals,
Defendant.

**OBJECTION TO CITY'S MOTION
FOR ADMISSION *PRO HAC VICE***

FILED
2016 SEP -6 PM 2:06
CLERK OF COURT
RICHLAND COUNTY

TO PETER M. BALTHAZOR, ATTORNEY FOR THE CITY OF COLUMBIA:

The plaintiff/appellant objects to the City's application for admission of Scott B. Bergthold as an attorney in this case, *pro hac vice*. The Court should deny the request. The grounds for this objection are:

1.

This case involves only local legal issues

The legal issues in this case are matters of state and local law only. The issues involve the application of the *South Carolina Local Government Comprehensive Planning Enabling Act of 1994*, § 6-29-310, *et. seq.*, particularly § 6-29-800, which provides that "any person aggrieved" may make application to the State created Board of Zoning Appeals, as applied to the City of Columbia municipal ordinances: "(4) appeals to the board may be taken by any person aggrieved or by any office, department, board, or bureau of the municipality or county." Mr. Bergthold is an out-of-state law consultant who sells nationwide a pre-packaged adult use ordinance as part of religious based attack on fundamental freedoms. Mr. Bergthold drafted and sold to the City of Columbia the ordinance that the City contends forbids an adult business owner from appearing before the Board

of Appeals. Mr. Bergthold has no expertise in local or state matters. He either does not understand, or intentionally violates the *South Carolina Freedom of Information Act*. The ordinance he prepared and sold to the City, a pre-packaged ordinance he sells nationwide ignores the fact that the General Assembly created the state-wide Board of Zoning Appeals that exists for "any person aggrieved." A lawyer familiar with South Carolina law would not draft an ordinance that is in direct conflict with state law and which purports to overrule state law. See *City of N. Charleston v. Harper*, 306 S.C. 153, 410 S.E.2d 569 (1991): "A city ordinance conflicts with state law when its conditions, express or implied, are inconsistent or irreconcilable with state law. [citations omitted] Where there is a conflict between a state statute and a city ordinance, the ordinance is void."

Because Mr. Bergthold is the author of the ordinance being challenged and not conversant with South Carolina law, he is not appearing as counsel giving independent legal advice, but rather as the author of an ordinance in conflict with state law that he sold to the City of Columbia (and municipalities nationwide) as part of a fundamentalist, religious view seeking to curtail fundamental freedoms, he is in no position to be admitted to handle this case. He has no expertise on South Carolina law that is equal to or superior to the level of legal advice provided to the City by any number of the City's excellent local counsel. Mr. Bergthold has demonstrated either an unconcern for, or a woeful unfamiliarity with the *South Carolina Freedom of Information Act* and has committed numerous violations of the letter and spirit of the Act and has been and continues to practice law in this State without a license to do so.

2.

Bergthold is outside vendor and a witness

Mr. Bergthold is a witness in matters raised by this action. Mr. Bergthold is the outside vendor who created (and sells nationwide) Columbia's pre-packaged adult use ordinance. One of

the more interesting aspects of Mr. Bergthold's marketing strategy is to sell a municipality an ordinance he knows will promote litigation and then bill the municipality for the defense of his ordinance. In short, as the author and creator of the ordinance, which he prepares and sells to municipalities, he has a direct conflict of interest with the City of Columbia because he is defending his work product and not the City (and, as discussed more fully below, preventing any meaningful settlement discussion). As a result, Mr. Bergthold has a personal, cultural, and vested interest in his ordinance and in the litigation it creates. He short, rather than acting as a lawyer providing independent advice to a client, he is defending his product and lacks the dispassionate analysis that a lawyer brings to a client. In essence, he is representing himself in order to promote the sales of his product.

3.

Bergthold's failure to adhere to South Carolina Law

Mr. Bergthold has demonstrated a willingness to violate South Carolina law in the defense of his product. Such willful violations include knowingly violating the *South Carolina Freedom of Information Act*, and repeatedly practicing law in South Carolina without a license. As recently as April 12, 2016, Bergthold attempted to appear before the City of Columbia's Board of Zoning Appeals to argue before the Board of Zoning Appeals despite not being a licensed South Carolina attorney.

4.

Continuing Practice of Law Without a License

The plaintiff is informed and believes that Mr. Bergthold is regularly providing legal advice to the City of Columbia, including the City of Columbia's Planning Department, and the City of Columbia's Board of Zoning Appeals, which is practicing law without a license. Mr. Bergthold

regularly appears in South Carolina and gives advice to the City of Columbia without being licensed to do so. Mr. Bergthold's habit of flouting licensing laws is not an isolated occurrence, as may be seen by the 2009 Petition raising similar concerns in the circuit court of Coweta County, Georgia. (See Starship Enterprises' objection in the Georgia Superior Court attached here as Exhibit 1.)

5.

Failure to Contribute to Community as Required by Licensing Regulations

Mr. Bergthold regularly practices law in South Carolina without being a licensed attorney, and he derives a substantial income from his practice of law without a license. However, Mr. Bergthold escapes the responsibility all licensed lawyers share in by contributing to the legal system through their availability to represent indigent clients. By practicing without a license, Bergthold contributes nothing to the State through Bar membership fees or by service to indigent clients and is not subject to assignment for litigants who cannot afford an attorney. The average South Carolina lawyer contributes hundreds, if not thousands, of hours during the course of her career to the service of unrepresented, indigent clients as part of the privilege of holding a license.

In addition, because he is not a member of the South Carolina Bar, Mr. Bergthold is free from the normal, professional constraints that govern the interaction between fellow members of the Bar. The incentive for the ordinary imperative to cooperate, which acts as a governor on zealous representation and allows our adversary system to achieve a measure of equilibrium, is absent. Because Mr. Bergthold is not part of the legal community and does not routinely interact with members of the Bar, he lacks the normal incentive to solve a legal problem by cooperation or any incentive to explore the possibility of a mutually beneficial, but voluntary, solution. This is the result of Mr. Bergthold not representing clients, but representing his product. Instead of working toward a common goal of solving a legal problem, Mr. Bergthold's concern is on defending his

product, thus destroying any hope of achieving equilibrium. Mr. Bergthold's focus is not on representing a client, but in protecting his record to facilitate the sale of his product to other municipalities.

6.
Conflict of Interest

Mr. Bergthold's representation is a conflict of interest on two fronts:

A.
Berthold as Fact Witness

It is undisputed that Mr. Bergthold is the author and vendor of the municipal ordinance that has spawned so much litigation. The circumstances under which the City of Columbia purchased the ordinance from Mr. Bergthold are not in dispute—and in fact, recorded on a City Council video recording—and it is likewise undisputed that the City's "legislative history" is the pre-packaged disc provided by Mr. Bergthold to the City Council as part of his sale. Since the entire ordinance is premised upon nothing more than Mr. Bergthold's presentation, he is a witness. Because of his unfamiliarity with the General Assembly's *Comprehensive Planning Enabling Act*, he sold to the City of Columbia an ordinance that is in direct conflict with a right provided by the General Assembly to all citizens. Mr. Bergthold is so consumed with his desire to suppress every adult message nationwide, that he sold the City of Columbia an ordinance that is in direct conflict with a right granted by the State.

B.
Bergthold as Agent of Change

It is undisputed that Mr. Bergthold is on a religious/ethical mission to use the courts—again nationwide—to instruments of social change to promote his religious based view of municipal law

as an agent of morality. The starting point for Mr. Bergthold's court appearances is that any adult message conflicts with his strict religious views on morality, and rather than bringing a lawyer's independent analysis to the evaluation of legal issues or rather than evaluating the facts as they exist on a case-by-case basis, he sells a pre-packaged, one-size-fits-all ordinance to by-pass the normal legislative process. Mr. Bergthold's one-size-fits-all adult use ordinance is designed to suppress every opportunity for an adult message, but here, because of his unfamiliarity with the General Assembly's creation of the Board of Zoning Appeals, he attempts to occupy one bridge too far. By imposing a nationwide template on a local legislative, the canned ordinance spawns litigation over a legal principle that is clear. In other words, Mr. Bergthold is not representing the interests of a client, but rather using the courts to promote a narrow religious view that includes portraying any expression of any adult message as being harmful, even to the point of purporting to strip the rights of an adult business owner to appear and be heard. Lawyers are supposed to represent the interests of clients, not use the courts as a means to proselytize a narrow, outdated view that paints common expressions of human sexuality as evil or dangerous.

Conclusion

Mr. Bergthold is taking advantage of the generosity of the State of South Carolina. He is practicing law regularly here without being licensed and in violation of South Carolina law. He is creating controversy where there should be none. He is an obvious witness. In addition to the seven South Carolina cases disclosed on his application for admission *pro hac vice*, he is providing on-going and regular legal services in South Carolina without being licensed, as demonstrated by his attempt to handle the Board of Zoning Appeals appearance on April 12, 2016, in this case. As may be seen by the attached Reply in Coweta County case, this is not an isolated occurrence. Mr. Bergthold has no expertise in South Carolina law involving purely state and local matters that

This modification was made because we wanted to make it clear. We could have said "except that" but we wanted to make it clear that adult uses are governed by all the limitations that apply to nonconforming uses.... We do not want there to be any confusion... We want to make it clear that they both have to comply with those limitations.... We had specified some timeframes in the ordinance. The version we had in your packets....

In fact, Exhibit 6 is a working copy of the April 21, 2009 Sandy Springs Adult Establishments Ordinance that appeared for a time on the Sandy Springs website. Following the cover sheet, the first sixteen pages show changes made to the previous ordinance, and following that are an additional six pages, clearly indicating that no less than twenty-five changes were made by Mr. Bergthold. Plainly, Mr. Bergthold assisted in the preparation of Sandy Springs' April 21, 2009 ordinances regulating adult businesses. Ordinances are "legal instruments" whereby legal rights are secured to Sandy Springs.

Mr. Bergthold's entire participation in advising Sandy Springs, drafting its ordinance and appearing before the Council to promote the ordinance that he participated in drafting proves that he engaged in "the preparation of legal instruments...whereby a legal right is secured," "giving legal advice," and participated in "action[s] taken for others in [matters] connected with the law." That is, Mr. Bergthold clearly engaged in the practice of law in regard to the Sandy Springs matter, as he has in Coweta County.

D. Conclusion

The Respondents have argued that Mr. Bergthold did not engage in the practice of law without a license in this State because he worked with attorneys who are licensed in Georgia. However, no provision in the Uniform Superior Court Rules, Georgia case law or Georgia

statutes sanctions the practice of law, adding one's name to pleadings, drafting ordinances, providing legal advice to city councils and county commissions in this State without a *pro hac vice* application and payment of a fee to the Georgia State Bar.

Uniform Superior Court Rule 4.4 D(3) (e) provides that a *pro hac vice* application should be granted unless the court finds reason to believe that such admission may be detrimental to the prompt, fair and efficient administration of justice. The facts stated above clearly demonstrate that Mr. Bergthold has continually engaged in the practice of law in this State without permission or sanction from any court or from the State Bar. Such activities should provide the court with ample reason to believe that his admission as counsel in this case would be detrimental to the prompt, fair and efficient administration of justice.

Respectfully submitted, this ____ day of September, 2009,

ALAN I. BEGNER
Georgia State Bar no. 046975

CORY G. BEGNER
Georgia State Bar no. 046980

BEGNER & BEGNER, P.C.
1280 West Peachtree Street
Suite 230
Atlanta, GA 30309
(404) 872-5727 voice
(404) 872-5763 fax

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

CASE NO.: 16-CP-40-03478

Cricket Store 17, L.L.C. d/b/a
Taboo,

Plaintiff,

versus

City of Columbia Board of Zoning Appeals,

Defendant.

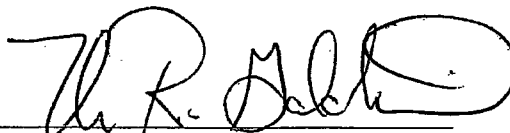
DEMAND FOR PRE-HEARING MEDIATION

RICHLAND COUNTY
FILED
2016 SEP 20 PM 12:17
JEANETTE W. MCBRIDE
C.P. & G.S.

The plaintiff/appellant demands pre-hearing mediation as required by § 6-29-825, S. C. Code,

ann.

September 12, 2016



BELK, COBB, INFINGER & GOLDSTEIN, P.A.

Thomas R. Goldstein, S. C. Bar #2186

P. O. Box 71121

N. Charleston, S. C. 29415-1121

(843) 554-4291

(843) 554-5566 (fax)

tgoldstein@cobblaw.net

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

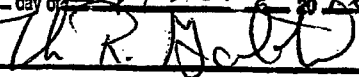
☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon

☐ handing counsel a copy thereof

☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 13th day of September, 2016

BY



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE NO.: 16-CP-40-03478

Cricket Store 17, L.L.C. d/b/a
Taboo,

Plaintiff,

versus

City of Columbia Board of Zoning Appeals,

Defendant.

MOTION FOR RECONSIDERATION

RICHLAND COUNTY
FILED
2017 FEB 21 AM 9:44
JANETTE W. MCERRILL
C.C.P. & G.S.

TO: PETER M. BALTHAZOR, ATTORNEY FOR THE CITY OF COLUMBIA:

YOU WILL PLEASE TAKE NOTICE that the plaintiff, Cricket Store 17, L.L.C. d/b/a Taboo, by and through its undersigned attorneys, will move, ten days after notice hereof, or as soon thereafter as Counsel may be heard for an Order reconsidering the Order dated February 1, 2017, filed February 6, 2017, and received by counsel for the appellant on February 7, 2017, (Order admitting S. Bergthold received February 14, 2017) on the following grounds:

1. This appeal does not involve a constitutional challenge to the City's ordinance. It involves the application of 6029-800, Code of Laws to the instant action.
2. The Court applies the wrong standard of review. The issue is the application of a clear state statute and city ordinance, and that is the only issue. Before the Board of Zoning Appeals, plaintiff argued that the plain language of both allow it to appear and be heard. As discussed below, the court substitutes "shall" for "may," a mistake that is an error of law, not fact. Since the appeal involves the construction of an ordinance, the court should review the decision as a matter of law de

novo: "Determining the proper interpretation of a statute is a question of law, and this Court review questions of law *de novo*. *Town of Summerville, v. City of N. Charleston*, 378 S.C. 107, 662 S.E.2d 40, 41 (2008) Even the Board of Zoning Appeals conceded this point:

Hubbard: I think I's an interesting point you've raise, the "may" versus "shall," probably would have been better to say shall. So now we're in the wonderful game of statutory interpretation. Do you want to make a record on that?

Goldstein: Well, the rules of statutory construction are so clear that—

Hubbard: Oh.

Goldstein: --that when an ordinance is clear, you can't apply a forced construction to it. You've gotta give the words their ordinary and plain meaning. And when the—when your ordinance says may not, well, it doesn't say shall not. So may is permissive by reference to the City of Columbia Ordinance definitions.

Hubbard: Okay, fine.

Goldstein: --and rules of construction—

Hubbard: I, that's a great argument. First, but not following it complicates everything because now it's may—if they had said they may grant it, then we would be . . . but when it say may not, that makes it not so clear. If we get to not so clear, we're gonna read the thing as a whole, right? That's another—that's fun about statutory construction.

Goldstein: Well, you're concluding is ambiguous. I disagree. I don't' thing it's ambiguous at all.

Hubbard: This is a good one. You can take it to court if you want, okay?

Goldstein: Right.

Hubbard: I move to deny the administrative appeal. I think the most correct interpretation of the language at issue about the special exception is pretty darn clear that we are not supposed to consider—even consider this because we cannot grant them, and so I think that's the —the fairly simple thing. But I think that's the correct interpretation.

Thus, there is no question the main issue before the court is one of statutory construction, which is a matter of law and subject to a broader and more independent review when the issue concerns the construction of an ordinance. The court erred with it quotes the City's ordinance using a mandatory "shall" in place of the ordinance's true language, the permissive "may," when quoting the provision for special exception application for a sexually oriented business. Also the court applied the wrong standard of review to the issue before it. The court need not give deference to the Board's findings of fact when the issue is one of statutory construction, which is a matter of law and reviewed *de novo*.

3. This appeal does not involve a constitutional challenge to the City's ordinance because the ordinance is clear and unambiguous on its face, and the Order under review misstates the ordinance being analyzed. The Ordinance says:

(a) No variance from any of the provisions of this section may be granted by the zoning board of adjustment. No special exception regarding any of the requirements of this section may be granted by the zoning board of adjustment.
§ 17-374 (South Carolina does not have a "Zoning Board of Adjustment." It has a "Zoning Board of Appeals.")

The Order under review does not analyze the ordinance as it is written. Instead, it rewrites the ordinance into the statement that no special exception shall be granted. The court is required to apply the ordinance in conformity with the rules of statutory construction, which require that the Court apply the words used in the state statute and in the City's ordinance in their plain and ordinary meaning. "The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Azar v. City of Columbia*, 414 S.C. 307, 778 S.E.2d 315 (2015).

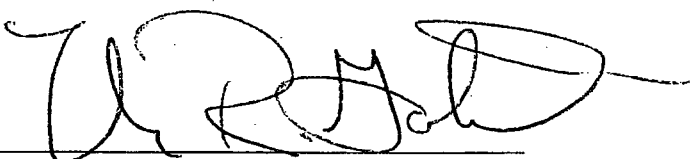
4 The Order under review does not acknowledge, address or analyze the appellant's claims that the Board of Zoning Appeals violated appellant's due process rights by excluding him from a pre-hearing conference available to everyone else, which prevented the appellant from seeing the evidence presented against him until the time of the City's rebuttal statements.

5. The Order granting application of out-of-state counsel admission pro hac vice over plaintiff's objections does not acknowledge or address the objections of the plaintiff.

In conclusion, the Orders under review are erroneous because the Court overlooks the words used in the City's ordinance and denies appellant's appeal because the Court rewrites the City's ordinance and fails to apply § 6-29-800, which allows "any person aggrieved" to appear before the Board.

Respectfully submitted,

February 15, 2017


Thomas R. Goldstein, S. C. Bar #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
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(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobblaw.net

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon

☐ handing counsel a copy thereof

☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 15 day of February, 2017

BY Th R Gold

RICHLAND COUNTY
FILED
2017 FEB 21 AM 9:44
JEANETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Cricket Store 17, L.L.C. d/b/a Taboo,

Plaintiff,

v.

City of Columbia Board of Zoning Appeals,

Defendant,

and

City of Columbia Zoning Administrator,

Counterclaimant,

v.

Cricket Store 17, L.L.C. d/b/a Taboo,

Counterdefendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-03478

**DEFENDANT'S / RESPONDENT'S
REPLY TO PLAINTIFF'S
OBJECTIONS TO *PRO HAC VICE*
COUNSEL AND MOTION TO
VACATE**

RICHLAND COUNTY
FILED
2016 OCT 28 AM 11:12
JEANNETTE W. MCGRID
C.C.P. & G.S.

The Columbia Board of Zoning Appeals and the City of Columbia Zoning Administrator (collectively, the "City") respond to Taboo's objections to the Chief Administrative Judge's September 1, 2016 order granting the *pro hac vice* application of the City's counsel.

Taboo's objections are a series of unprofessional, *ad hominem* attacks that are wholly without merit in fact and law. None of Taboo's arguments show that the Chief Administrative Judge erred in granting the motion. Thus, its objections fail.

I. Taboo's argument should be rejected because the *pro hac vice* application and the order granting it complied with SCR 404—a rule that Taboo never mentions.

South Carolina Rule 404 explicitly provides for out-of-state counsel to be admitted in a South Carolina state court case. The Supreme Court provides forms for out-of-state counsel and

local counsel (with whom the out-of-state counsel must associate) to complete. The completed, verified application shows that Mr. Bergthold is a member in good standing of the Tennessee, Georgia, and Arizona bars, and has never been disciplined by any disciplinary agency or court. Mr. Balthazor—a South Carolina attorney with whom Mr. Bergthold has been co-counsel for years in Taboo’s predecessor federal case—signed on as local counsel per the Rule. The Court maintains an internal check list for *pro hac vice* admissions. *See* Exhibit A at 4 (of 16 pages). All of the Rule’s requirements were met, so the Chief Administrative Judge correctly granted the application. *Id.*; *see also id.* at 2 (Order Granting Attorney Scott D. Bergthold Admission *Pro Hac Vice*, Sept. 1, 2016.)

In its seven-page response, Taboo never cites *any* portion of Rule 404 that the application did not comply with—indeed, it never mentions Rule 404—nor does it identify any error in the Chief Administrative Judge’s order granting the application. For that reason alone, Taboo’s objections to the motion should be overruled.

II. Taboo’s *ad hominem* arguments against Mr. Bergthold’s *pro hac vice* admission are legally irrelevant, unsupported, and without merit.

A. Taboo’s argument that Mr. Bergthold regularly practices law in South Carolina is without merit.

The application also shows that Mr. Bergthold has filed for admission *pro hac vice* in South Carolina state courts on only two (2) occasions prior to the present case. Exh. A at 12. This is well below the threshold of applications allowed under SC Rule 404(f): “Notwithstanding any other provision herein, an attorney who files more than six applications for admission *pro hac vice* in a calendar year, including applications for purposes of Rule 404(k), is considered regularly engaged in the practice of law in South Carolina.”

Thus, Taboo's repeated claim that "Mr. Bergthold regularly practices law in South Carolina" is without merit under the clear rule that Taboo ignores.

B. Taboo also ignores Rule of Professional Conduct 5.5, which allows Mr. Bergthold to temporarily provide legal services in association with a South Carolina lawyer.

Just as Taboo ignores SCR 404, it also wholly ignores South Carolina Rule of Professional Conduct ("RPC") 5.5(c), which states in relevant part:

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter; [or]

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

Mr. Bergthold, an attorney who is admitted in Georgia, Tennessee, and Arizona, and who is not disbarred or suspended from practice in any jurisdiction, is permitted under RPC 5.5 to provide legal services on a temporary basis in association with any attorney who is admitted in South Carolina and who actively participates.

In this case, Mr. Balthazor is the South Carolina attorney with whom Mr. Bergthold has associated to defend the City of Columbia's sexually oriented business ordinances and the City's actions taken thereunder. Taboo does not dispute that; rather, its objections confirm that.

Additionally, and independently, Mr. Bergthold was permitted to provide any legal services concerning the events leading up to this case, as those services were: (a) "reasonably related to a ... potential proceeding before a tribunal in this or another jurisdiction....," (b) Mr. Bergthold "reasonably expect[ed]" to be authorized—and was properly authorized—to appear by

pro hac vice order in this proceeding, and (c) separately, “the person the lawyer is assisting [Mr. Balthazor], is authorized by law ... to appear in [this] proceeding.”

Under this separate rule that Taboo ignores, Mr. Bergthold’s actions were proper.

C. Taboo’s remaining arguments are meritless.

1. Taboo’s argument numbered 1—that “this case involves only local legal issues”—is irrelevant. There is no “local legal issues” exception to SCR 404 or RPC 5.5.

Indeed, many clients hire out-of-state counsel for their experience in a particular kind of matter (*e.g.*, traumatic brain injury), even though the legal issues are governed by South Carolina law (*e.g.*, tort law).

In this case, if Taboo’s argument that Mr. Bergthold drafted the City’s sexually oriented business zoning and licensing ordinances is true, then Taboo’s argument fails because the case involves local legal issues in which Mr. Bergthold has substantial experience (though that is not a requirement for *pro hac vice* admission).

Taboo’s claim that Mr. Bergthold violates the state FOIA is irrelevant to this proceeding and is wholly unsupported.

So is Taboo’s claim that the zoning ordinance contravenes state law. That is a legal argument that Taboo may assert in this proceeding, but it is not an argument that shows error in the order granting *pro hac vice* admission.

Moreover, the argument is barred by *res judicata*. Taboo already challenged the validity of the City’s ordinances in federal court and lost. *Cricket Store 17, LLC v. City of Columbia*, 97 F. Supp. 3d 737 (D.S.C. 2015). Under the doctrine of *res judicata*, “[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” *Hilton Head Center of South Carolina, Inc. v. Public Service*

Comm'n of South Carolina, 294 S.C. 9, 11 (1987). Whatever claims Taboo may have had against the validity of the zoning ordinance, those claims have been extinguished by the federal court judgment between Taboo and the City.

Finally, the City will not resort to Taboo's *ad hominem* attacks about alleged religious beliefs, motives, *etc.* They are irrelevant to the legal issues and contrary to the "measure of equilibrium" which Taboo claims is so important in the profession.

2. Taboo's second argument, that Mr. Bergthold is a "vendor and a witness" is irrelevant and without merit. It is irrelevant because it argues against the validity of the City's ordinances, which is the matter that has already been settled by the federal court's judgment that is res judicata to Taboo's attempts to re-litigate their validity.

The argument is without merit because Mr. Bergthold is an attorney and was providing legal services consistent with the rules cited above as well as the federal court's order granting him *pro hac vice* admission in that matter. Under Taboo's theory, all attorneys are vendors because they "sell" their services, which result in written work "product[s]" such as contracts, complaints, settlement agreements, *etc.* There is no support for Taboo's theory.

3. Taboo's third argument is a repeat of its prior arguments, which are refuted above. The City also notes that Mr. Bergthold did not address the Board of Zoning Appeals on April 12, 2016. Nevertheless, even if he had, such activity would have been permitted under RPC 5.5.

4. Taboo's argument that Mr. Bergthold is "flouting licensing laws" stems from Taboo's refusal to acknowledge SCR 404 or RPC 5.5—which itself is a violation of the Rules of Professional Conduct. *See* RPC 3.3 (requiring candor toward the tribunal, including disclosing legal authority known to the lawyer to be directly adverse to the client's position).

Nor does attaching another sexually oriented business's brief from a Georgia case aid Taboo's cause. The brief is not evidence. Moreover, the trial court in that case *rejected* the sexually oriented business's arguments and granted Mr. Bergthold *pro hac vice* admission. Of course, Taboo fails to disclose that as well.

5. Taboo's argument that Mr. Bergthold "contributes nothing to the State through Bar membership fees" is misleading because, consistent with SCR 404(e), Mr. Bergthold paid a fee of \$250 to the South Carolina Supreme Court Office of Bar Admissions when he submitted his *pro hac vice* application for this case. He also paid the same fee in two other South Carolina state court cases, bringing his contribution to the State to \$750 this year.

6. Taboo's "conflict of interest" arguments are makeweight. First, they are repeat arguments against the City's ordinances. The arguments were rejected in the federal court's 50-page summary judgment order, and are claim-barred from being raised in this case. Second, they are a repeat of Taboo's unsupported and irrelevant arguments about motivations behind the City's constitutional arguments. The U.S. Supreme Court has repeatedly refused to strike down laws on the basis of an alleged illicit motive of a legislator. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1986). *A fortiori*, the alleged motives of an attorney, who did not even vote on a piece of legislation, is also irrelevant. Taboo's arguments are thus without merit.

III. Conclusion

The *pro hac vice* application complied with SCR 404 and was properly granted. Taboo's arguments for vacating that order are without merit, and its motion should be denied.

Respectfully submitted,

s/ Peter M. Balthazor

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Chattanooga, TN 37421
423-899-3025

Attorneys for City of Columbia
Board of Zoning Appeals and City of
Columbia Zoning Administrator

CERTIFICATE OF SERVICE

I certify that on October ___, 2016, I served the foregoing document upon opposing counsel by depositing same in the U.S. Mail, with first-class postage fully prepaid thereon, and addressed to opposing counsel:

Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
P.O. Box 71121
Charleston, S.C. 29415-1121
tgoldstein@cobblaw.net

Peter M. Balthazor

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Robert E. Hood, Circuit Court Judge

Case No. 2016-CP-40-03478

RECEIVED

MAR 06 2017

SC Court of Appeals

Cricket Store 17, L.L.C. d/b/a Taboo Appellant,

vs.

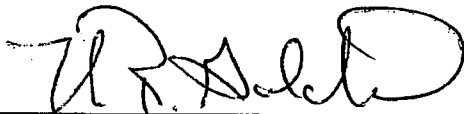
City of Columbia Board of Zoning Appeals..... Respondent.

NOTICE OF APPEAL

Cricket Store 17, L.L.C. appeals the Final Orders of the Honorable Robert E. Hood, dated January 26, 2017, (filed 1, 2017) and February 1, 2017, (filed February 6, 2017), both Orders received by counsel on February 16, 2017, and thereafter the Order denying Reconsideration dated February 22, 2017, (filed February 28, 2017), and received by counsel on March 2, 2017.

March 2, 2017

Other counsel of Record:
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Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2016-CP-40-03478

RECEIVED

MAR 06 2017

SC Court of Appeals

Cricket Store 17, L.L.C. d/b/a Taboo, ... Appellant,

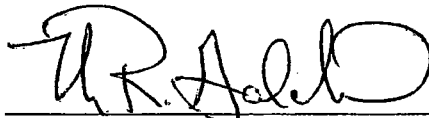
vs.

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

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, City of Columbia, by depositing a copy of it in the United States Mail, postage prepaid, on March 2, 2017, addressed to its attorney of record, Peter M. Balthazor, Riley, Pope & Laney, L.L.C. at P. O. Box 11412, Columbia, S. C. 29205.

March 2, 2017



Thomas R. Goldstein, #2186
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(843) 554-4291
Attorneys for Appellant

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Cricket Store 17, L.L.C. d/b/a Taboo,)
)
Plaintiff,)
)
vs.)
)
City of Columbia Board of Zoning)
Appeals,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-03478

**DEFENDANT'S ANSWERS TO
PLAINTIFF'S REQUESTS TO ADMIT**

TO: THOMAS R. GOLDSTEIN, ESQUIRE, Attorney for Plaintiff:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Defendant City of Columbia Board of Zoning Appeals hereby responds to Plaintiff's Requests to Admit as follows:

GENERAL OBJECTION TO PLAINTIFF'S REQUESTS TO ADMIT

Defendant objects to these requests to the extent that Plaintiff may be attempting to supplement the record or to submit additional evidence to the court concerning Plaintiff's appeals from decisions of the City of Columbia Board of Zoning Appeals. Defendant's responses to these requests are not intended to waive, and do not waive, Defendant's objections to the admissibility of this information if Plaintiff attempts to introduce such information in pursuing its appeals from the Board of Zoning Appeals.

1. Admit that the City of Columbia Ordinance § 11-610(b) requires the City to issue the plaintiff a "provisional license" while the plaintiff is challenging the licensing ordinance: § 11-610(b): "Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of any denial, suspension, or revocation of a Temporary License or annual license, the Administrator shall immediately issue the respondent a Provisional License."

ANSWER:

Defendant objects to this request on the grounds that it is not relevant to the issues before the Court in this appeal from decisions of the City of Columbia Board of Zoning Appeals, and that the information sought will not lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Defendant answers as follows: Denied.

2. Admit that the plaintiff has pending a court action "to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of any denial, suspension, or revocation."

ANSWER:

Defendant objects to this request on the grounds that it is not relevant to the issues before the Court in this appeal from decisions of the City of Columbia Board of Zoning Appeals, and that the information sought will not lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Defendant answers as follows: Denied.

3. Admit that in the case against the City of Columbia now on appeal to the Fourth Circuit, the United States District Court held in part:

Prior restraint

Taboo has asserted that the ordinances act as a prior restraint in violation of the First Amendment. A licensing ordinance for sexually oriented businesses is not an unconditional prior restraint as long as it (1) avoids unbridled discretion in the licensing decision maker; (2) places limits on the time within which the decision maker must issue the license; and (3) provides for prompt judicial review of an adverse decision. See *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 225028 (1990).

The City's ordinances meet that standard. The City may deny a license based only on "reasonably objective, nondiscretionary criteria unrelated to the content of the expressive materials." *Z.J. Gifts*, 541 U.S. at 783, including whether the applicant is underage, has submitted false information, or has been convicted of certain crimes within the past five years, see Columbia, S.C., Code § 11-605(a). Thus, the ordinances present no concern of unbridled discretion. The ordinances also place limits on the time within which the decision maker must act on an application by requiring the license to be issued or denied within 20 days after application. *Id.* Finally, the ordinances provide for prompt judicial review by providing that, if the applicant appeals to a hearing officer and the hearing officer denies the license, the applicant may appeal the decision to a court of competent decision and that the hearing officer's decision does not become effective until the 30th day after it is rendered. *Id.* § 11-610(a). **Furthermore, the ordinances provide that if any court action is initiated to appeal, challenge, restrain, or**

otherwise enjoin the City's enforcement of any license denial, suspension, or revocation, the City is required to issue the applicant a provisional license that allows the applicant to operate until the court issues a judgment on the matter. § 11-610(b). For these reasons, the Court concludes that the City's ordinances do not operate as unconstitutional prior restraints.

Order of U. S. District Court, Entry 82, page 43-44, March 31, 2015 (emphasis added)

ANSWER:

Defendant objects to this request on the grounds that it is not relevant to the issues before the Court in this appeal from decisions of the City of Columbia Board of Zoning Appeals, and that the information sought will not lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Defendant answers as follows: Defendant admits that Petitioner has correctly quoted a portion of the order entered by the United States District Court in *Cricket Store 17, LLC d/b/a Taboo v. City of Columbia*, 97 F.Supp.3d 737, 764-65 (D.S.C. Mar. 31, 2015), and that the District Court concluded that the City's ordinances do not operate as unconstitutional prior restraints.

4. Admit that the plaintiff has made demands on the City for a provisional license.

ANSWER:

Defendant objects to this request on the grounds that it is not relevant to the issues before the Court in this appeal from decisions of the City of Columbia Board of Zoning Appeals, and that the information sought will not lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Defendant answers as follows: Defendant admits that Plaintiff has made demands on the City for a provisional license, but denies that Plaintiff is entitled to a provisional license.

5. Admit that the plaintiff has made demands on the City for a general retail license.

ANSWER:

Defendant objects to this request on the grounds that it is not relevant to the issues before the Court in this appeal from decisions of the City of Columbia Board of Zoning Appeals, and that

the information sought will not lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Defendant answers as follows: Denied to the extent that the City does not have a "general retail license." Defendant admits that Plaintiff has made a demand for a "business license," but Defendant denies that Plaintiff is entitled to a business license.

6. Admit that the City refuses to issue any kind of license to the plaintiff.

ANSWER:

Defendant objects to this request on the grounds that it is not relevant to the issues before the Court in this appeal from decisions of the City of Columbia Board of Zoning Appeals, and that the information sought will not lead to the discovery of admissible evidence. Defendant further objects to this request on the grounds that it poses a speculative hypothetical containing no facts on which to base a response, and on the grounds that this request is too vague and ambiguous to form a response. To the extent that a response may be required, Defendant answers as follows: Denied.

7. Admit that the City has not responded to the plaintiff's efforts to secure a license in writing.

ANSWER:

Defendant objects to this request on the grounds that it is not relevant to the issues before the Court in this appeal from decisions of the City of Columbia Board of Zoning Appeals, and that the information sought will not lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Defendant answers as follows: Denied.

8. Admit that there have been no arrests at 4716 Devine Street for loitering, disorderly conduct, prostitution, or drug or for alcohol offenses since the plaintiff began operating as Taboo.

ANSWER:

Defendant objects to this request on the grounds that it is not relevant to the issues before the Court in this appeal from decisions of the City of Columbia Board of Zoning Appeals, and that the information sought will not lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Defendant answers as follows: Admitted.

9. Admit that South Carolina Code contains § 6-29-800, creates a quasi-judicial body called the Board of Zoning Appeals.

ANSWER:

Defendant objects to this request on the grounds that it states a proposition of law to which no response is required. Subject to, and without waiving these objections, Defendant answers as follows: Denied. South Carolina Code § 6-29-800 speaks for itself.

10. Admit that South Carolina Code § 6-29-800, provides that "any person aggrieved" may appear before the quasi-judicial body called the Board of Zoning Appeals.

ANSWER:

Defendant objects to this request on the grounds that it states a proposition of law to which no response is required. Subject to, and without waiving these objections, Defendant answers as follows: Denied. South Carolina Code § 6-29-800 speaks for itself.

11. Admit that the City of Columbia Board of Zoning Appeals refused to allow the plaintiff to be heard on the merits of his application for special exception.

ANSWER:

Qualified admission. The Board of Zoning Appeals did not hear Plaintiff's application for special exception, but an application for special exception was not before the Board of Zoning

Appeals on April 12, 2016, and Plaintiff failed to enter any application into the record. The Board did, however, hear Plaintiff's appeal from the Zoning Administrator's determination that an application for a special exception to operate a sexually oriented business could not be heard by the Board of Zoning Appeals because the Columbia Zoning Ordinance, § 17-374(a), provides in relevant part: "No special exception regarding any of the requirements of this section may be granted by the zoning board of adjustment."

12. Admit that the plaintiff meets all of the statutory requirements for a Special Exception.

ANSWER:

Defendant objects to this request on the grounds that it is vague, confusing, and ambiguous, requires Defendant to make assumptions in order to respond, and does not provide sufficient information for Defendant to admit or deny the matter. Defendant also objects to this request on the grounds that it states a proposition of law to which no response is required. Subject to, and without waiving these objections, Defendant answers as follows: Denied.

13. Admit that the City of Columbia Board of Zoning Appeals refused to consider the plaintiff's application for Special Exception.

ANSWER:

Qualified admission. The Board of Zoning Appeals did not hear Plaintiff's application for special exception, but an application for special exception was not before the Board of Zoning Appeals on April 12, 2016, and Plaintiff failed to enter any application into the record. The Board did, however, hear Plaintiff's appeal from the Zoning Administrator's determination that an application for a special exception to operate a sexually oriented business could not be heard by the Board of Zoning Appeals because the Columbia Zoning Ordinance, § 17-374(a), provides

in relevant part: "No special exception regarding any of the requirements of this section may be granted by the zoning board of adjustment."

14. Admit that the City of Columbia hired Scott Bergthold to assist the Columbia Board of Zoning Appeals.

ANSWER:

Defendant objects to this request on the grounds that it is vague, confusing, and ambiguous, requires Defendant to make assumptions in order to respond, and does not provide sufficient information for Defendant to admit or deny the matter. Subject to, and without waiving these objections, Defendant answers as follows: Denied as stated. It is admitted only that Scott Bergthold has been retained to represent the Board of Zoning Appeals in this Case No. 16-CP-40-03478.

15. Admit that Scott Bergthold is not a licensed attorney in the State of South Carolina.

ANSWER:

Defendant admits only that Scott Bergthold is not licensed as a regular member of the South Carolina Bar. Rather, he has performed services pursuant to pro hac vice admissions and South Carolina Supreme Court Rule 5.5.

16. Admit that Scott Bergthold was present for the plaintiff's attempted presentation to the Board of Zoning Appeals on April 12, 2016.

ANSWER:

Defendant admits only that Scott Bergthold was present at the Board of Zoning Appeals hearing held on April 12, 2016.

16. Admit that the City of Columbia provides a desk and chairs for the Zoning Administrator's presentation before the Board of Zoning Appeals.

ANSWER:

Defendant admits only that the Zoning Administrator sat in a chair at a desk while performing the Administrator's official duties in appearing before the Board of Zoning Appeals on April 12, 2016.

17. Admit that the City of Columbia provides no desk or chairs for applicants appearing before the Board of Zoning Appeals.

ANSWER:

Denied.

18. Admit that the City of Columbia paid Scott Bergthold fees and expenses for his attendance at the May 11, 2016, appearance before the Board of Zoning Appeals

ANSWER:

Denied.

19. Admit that Scott Bergthold drafted the Board of Zoning Appeals' May 11, 2016, written Orders.

ANSWER:

Denied.

20. Admit that the City of Columbia cannot suspend rights provided to its citizens by the South Carolina Constitution.

ANSWER:

Defendant objects to this request on the grounds that it is vague, confusing, ambiguous, requires Defendant to make assumptions in order to respond, and does not provide sufficient information

for Defendant to admit or deny the matter. Defendant also objects to this request on the grounds that it states a proposition of law to which no response is required. Subject to, and without waiving these objections, Defendant answers as follows: Admitted as a general proposition of law, and denied that Defendant has suspended any rights provided to its citizens by the South Carolina Constitution.

21. Admit that the City of Columbia cannot suspend rights afforded to its citizens by statewide statutory law.

ANSWER:

Defendant objects to this request on the grounds that it is vague, confusing, ambiguous, requires Defendant to make assumption in order to respond, and does not provide sufficient information for Defendant to admit or deny the matter. Defendant also objects to this request on the grounds that it states a proposition of law to which no response is required. Subject to, and without waiving these objections, Defendant answers as follows: Admitted as a general proposition of law, and denied that Defendant has suspended any rights provided to its citizens by statewide statutory law.

22. Admit that "any person aggrieved" may appeal to the Board of Zoning Appeals.

ANSWER:

Defendant admits only the terms of S.C. Code Ann. § 6-29-800 (1976, as amended).

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for Defendant to admit or deny the matter. Defendant also objects to this request on the grounds that it states a proposition of law to which no response is required. Subject to, and without waiving these objections, Defendant answers as follows: Admitted as a general proposition of law, and denied that Defendant has suspended any rights provided to its citizens by the South Carolina Constitution.

21. Admit that the City of Columbia cannot suspend rights afforded to its citizens by statewide statutory law.

ANSWER:

Defendant objects to this request on the grounds that it is vague, confusing, ambiguous, requires Defendant to make assumption in order to respond, and does not provide sufficient information for Defendant to admit or deny the matter. Defendant also objects to this request on the grounds that it states a proposition of law to which no response is required. Subject to, and without waiving these objections, Defendant answers as follows: Admitted as a general proposition of law, and denied that Defendant has suspended any rights provided to its citizens by statewide statutory law.

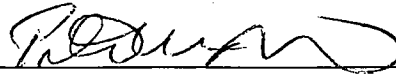
22. Admit that "any person aggrieved" may appeal to the Board of Zoning Appeals.

ANSWER:

Defendant admits only the terms of S.C. Code Ann. § 6-29-800 (1976, as amended).

[SIGNATURE APPEARS ON NEXT PAGE]

RILEY POPE & LANEY, LLC



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Attorneys for Defendant City of Columbia Board of
Zoning Appeals

Columbia, South Carolina
September 28, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Cricket Store 17, L.L.C. d/b/a Taboo,)
)
)
Plaintiff,)
)
vs.)
)
City of Columbia Board of Zoning)
Appeals,)
)
Defendant.)
_____)

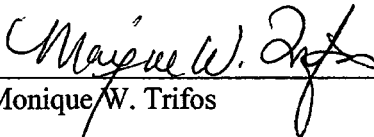
IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-03478

CERTIFICATE OF SERVICE

This is to certify that I, Monique W. Trifos, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the persons named below the attached **DEFENDANT'S ANSWERS TO PLAINTIFF'S REQUESTS TO ADMIT** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

Thomas R. Goldstein, Esquire
Belk Cobb Infinger & Goldstein, PA
PO Box 71121
Charleston, SC 29415



Monique W. Trifos

Columbia, South Carolina
September 28, 2016