

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

AUG 09 2018

**S.C. SUPREME COURT**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

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

On Certiorari to the Court of Appeals of South Carolina

Opinion No: 5419 (S. C. Ct. App. filed June 29, 2016)  
(791 S.E.2d 305)

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

v.

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

---

REPLY BRIEF OF PETITIONERS

---

Capers G. Barr, III  
SC Bar ID# 542  
11 Broad Street  
Charleston, South Carolina 29401  
Telephone: (843) 577-5083  
Facsimile: (843) 723-9039  
[cgb@barrungermcintosh.com](mailto:cgb@barrungermcintosh.com)

ATTORNEY FOR PETITIONERS

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

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

---

On Certiorari to the Court of Appeals of South Carolina

Opinion No: 5419 (S. C. Ct. App. filed June 29, 2016)  
(791 S.E.2d 305)

---

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

v.

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

---

REPLY BRIEF OF PETITIONERS

---

Capers G. Barr, III  
SC Bar ID# 542  
11 Broad Street  
Charleston, South Carolina 29401  
Telephone: (843) 577-5083  
Facsimile: (843) 723-9039  
[cgb@barrungermcintosh.com](mailto:cgb@barrungermcintosh.com)

ATTORNEY FOR PETITIONERS

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS.....	<i>i</i>
TABLE OF AUTHORITIES.....	<i>ii</i>
STATEMENT OF ISSUES ON APPEAL.....	<i>1</i>
STATEMENT OF THE CASE.....	<i>1</i>
STATEMENT OF FACTS.....	<i>1</i>
STANDARD OF REVIEW.....	<i>1</i>
ARGUMENTS.....	<i>2</i>
I.    BECAUSE THE COURT MUST ASSIGN MEANINGS TO CITY COUNCIL’S DELIBERATE USE OF THE SEPARATE TERMS “STABLE” AND “BUILDING” IN THE SAME ORDINANCE SECTION, THE 100 FOOT SEPARATION REQUIRED BY THE SECTION MUST BE MEASURED FROM THE AREA OF USE AS A “STABLE” (RESPONDENTS’ ARGUMENT III)	<i>2</i>
II.   NEITHER THE “OBNOXIOUS COMPONENTS” OF THE STABLE NOR PETITIONERS’ ACTIVITY OF CLEANING, TACKING AND LOADING OF HORSE CARRIAGES AFFECT THE MEASURED DISTANCE TO THE RESIDENTIAL DISTRICT (RESPONDENTS’ ARGUMENT I)	<i>4</i>
III.  THE ISSUE PRESENTED BY THIS APPEAL IS THE CONSTRUCTION OF A ZONING ORDINANCE, A QUESTION OF LAW, NOT OF FACT (RESPONDENT’S ARGUMENT II)	<i>8</i>
IV.  NEITHER THE RECORD NOR COMMON KNOWLEDGE SUPPORT THE CONCLUSION THAT OFFICES, RESTROOMS AND CUSTOMER WAITING AREAS ARE COMMONLY ASSOCIATED WITH HORSE STABLES (RESPONDENTS’ ARGUMENT IV)	<i>10</i>
V.   CONSTRUCTION OF THE ORDINANCE AT ISSUE DOES NOT REQUIRE RESORT TO THE DOCTRINE OF <i>IN PARI MATERIA</i> , AND IN ANY EVENT THE DEFINITIONS FROM THE TOURISM ORDINANCE ARE EXPRESSLY QUALIFIED (RESPONDENTS’ ARGUMENT IV)	<i>11</i>
CONCLUSION.....	<i>12</i>

TABLE OF AUTHORITIES

CASES:	<u>PAGE</u>
<i>CFRE, LLC vs. Greenville County Assessor</i> 395 S.C. 67, 716 SE2d 877 (S.Ct. 2011).....	2
<i>Hembree vs. One-Thousand, Eight Hundred Forty-Seven Dollars</i> 404 S.C.241, 743 S.E.2d 864 (Ct.App. 2013).....	2
<i>Hadden vs. South Carolina Tax Commission</i> 183 S.C. 38, 190 S.E.249 (1937).....	3
<i>Davenport vs. City of Rock Hill</i> 315 S.C. 114, 117, 432 S.E.2d 451, 453( 1993).....	3, 12
<i>Ravenel vs. Dekle</i> 265 S.C. 364, 218 S.E.2d 521 (S.Ct.).....	3
<i>Fraternal Order of Police vs. South Carolina Department of Revenue</i> 352 S.C. 420, 574 SE2 <sup>nd</sup> 717 (S.Ct. 2002);.....	8
<i>McNeely vs. South Carolina Farm Bureau Mutual Insurance Co.</i> 259 SC 39. 190 SE2 <sup>nd</sup> 499 (1972).....	8
<i>Catawba Indian Tribe of South Carolina vs. State</i> 372 SC 519, 642 SE2 <sup>nd</sup> 751 (S.Ct. 2007) .....	9
<i>Charleston County Parks and Recreation Commission vs. Somers</i> 391 SC 65, 459 SE2 <sup>nd</sup> 841 (1995) .....	9
<i>Rabon vs. S.C. State Highway Department</i> 285 S.C. 154,157, 187 S.E.2d 652,654 (1972) .....	11

**STATEMENT OF ISSUES ON APPEAL**

I BECAUSE THE COURT MUST ASSIGN MEANINGS TO CITY COUNCIL'S DELIBERATE USE OF THE SEPARATE TERMS "STABLE" AND "BUILDING" IN THE SAME ORDINANCE SECTION, THE 100 FOOT SEPARATION REQUIRED BY THE SECTION MUST BE MEASURED FROM THE AREA OF USE AS A "STABLE" (RESPONDENTS' ARGUMENT III)

II NEITHER THE "OBNOXIOUS COMPONENTS" OF THE STABLE NOR PETITIONERS' ACTIVITY OF CLEANING, TACKING AND LOADING OF HORSE CARRIAGES AFFECT THE MEASURED DISTANCE TO THE RESIDENTIAL DISTRICT (RESPONDENTS' ARGUMENT I)

III THE ISSUE PRESENTED BY THIS APPEAL IS THE CONSTRUCTION OF A ZONING ORDINANCE, A QUESTION OF LAW, NOT OF FACT (RESPONDENT'S ARGUMENT II)

IV NEITHER THE RECORD NOR COMMON KNOWLEDGE SUPPORT THE CONCLUSION THAT OFFICES, RESTROOMS AND CUSTOMER WAITING AREAS ARE COMMONLY ASSOCIATED WITH HORSE STABLES (RESPONDENTS' ARGUMENT IV)

V CONSTRUCTION OF THE ORDINANCE AT ISSUE DOES NOT REQUIRE RESORT TO THE DOCTRINE OF *IN PARI MATERIA*, AND IN ANY EVENT THE DEFINITIONS FROM THE TOURISM ORDINANCE ARE EXPRESSLY QUALIFIED (RESPONDENTS' ARGUMENT IV)

**STATEMENT OF THE CASE**

Petitioners incorporate the Statement of the Case as set forth in their principal Brief.

**STATEMENT OF FACTS**

Petitioners' incorporate the Statement of Facts as set forth in their principal Brief.

**STANDARD OF REVIEW**

This appeal presents a question of statutory construction. Petitioners incorporate the Standard of Review set forth in their principal Brief.

## ARGUMENTS

### Introduction:

Petitioners' central appeal argument is that the issue of statutory construction in this case turns upon a reconciliation of the different terms, "stable" in subsection 1 and "building" in subsection 7 of City Ordinance Section 54-206 (p). Because the separate terms must have been used for a reason, and because the reason is to provide for the circumstance in this case where a stable is only one use of several in a larger building, the 100 foot separation must be measured from the area of the stable and not from the building.

Rather than meet the central argument head on, Respondents (hereafter, collectively, the "City", or "Respondents") suggest five discrete appeal issues to this court, burying as appeal issue III their response to Petitioners' central argument. And perhaps for good reason. The City is unable to articulate a plausible construction of the two different terms, other than that argued by Petitioners. Accordingly, Petitioners will first reply to Respondents' Argument III.

**I BECAUSE THE COURT MUST ASSIGN MEANINGS TO CITY COUNCIL'S DELIBERATE USE OF THE SEPARATE TERMS "STABLE" AND "BUILDING" IN THE SAME ORDINANCE SECTION, THE 100 FOOT SEPARATION REQUIRED BY THE SECTION MUST BE MEASURED FROM THE AREA OF USE AS A "STABLE" (RESPONDENTS' ARGUMENT III)**

In their principal brief, Petitioners cited extensive authorities holding for the principle that legislative bodies are presumed to have understood the meaning of the words that they use, and that they intended to use such words; and that no word, clause, sentence, provision or part should be rendered surplusage or superfluous, because the legislative body obviously intended the statute to have some efficacy, or the body would not have enacted it into law. Generally, *CFRE, LLC vs. Greenville County Assessor*, 395 S.C. 67, 716 SE2d 877 (S.Ct. 2011), *Hembree vs. One-Thousand*,

*Eight Hundred Forty-Seven Dollars*, 404 S.C.241, 743 S.E.2d 864 (Ct.App. 2013), *Hadden vs. South Carolina Tax Commission*, 183 S.C. 38, 190 S.E.249 (1937), *Davenport vs. City of Rock Hill*, 315 S.C. 114, 117, 432 S.E.2d 451, 453(1993), *Ravenel vs. Dekle*, 265 S.C. 364, 218 S.E.2d 521 (S.Ct.).

This court must conclude, therefore, that City Council used the different terms for a reason. “It is never supposed that a single word was inserted in the laws of this state without the intention of thereby conveying some meaning.” *Davenport vs. City of Rock Hill*, *supra*. It is not sufficient to merely conclude that because a “stable” may already come under the definition of “building”, that the legislative intent is thereby resolved. Rather, the question is what was the reason that City Council used the separate terms? What was intended? To conclude that it was because one term may include the other would render one or the other meaningless, or surplusage, where the different terms have been used in the same statutory section. Respondents were challenged with meeting this argument.

Respondents’ Argument III, does not even attempt to reconcile Council’s use of the different terms. Instead, Respondents conclude only that “since a building includes a structure for housing animals, the use of that term in Section 54-206 (p) 7 is wholly consistent with the purpose and design of the ordinance, that being to regulate stables”. The argument infers that Council’s use of the different terms was arbitrary; that one term carries the same meaning as the other.

Respondents’ argument does not reconcile Council’s use of the separate terms. Either the use of the different terms was arbitrary, or their use was intended to import different meanings and different intentions to each of the terms. No court could conclude that the use of the different terms was arbitrary, without departing from the overwhelming precedents cited. Admittedly, the City has not affirmatively argued that the terms were arbitrary, but neither has the City offered a

plausible argument why the different terms were used, what they were intended to mean , or how they may be reconciled.

Petitioners suggest there is a single, plausible explanation. City Council intended the different terms to encompass the circumstance such as is found in this case; that is, that in the confined marketplace district of the City of Charleston a “stable” would comprise only one of several uses in a larger “building”. Where that circumstance pertains, the measurement to the nearest residential district is taken from the area of the “stable”, and not from the “building”; and on the other hand, the entire “building” must be adequately ventilated. By this construction the terms are harmonized, as they must be.

On the record of this case, that is the only plausible reconciliation of the different statutory terms.

**II NEITHER THE “OBNOXIOUS COMPONENTS” OF THE STABLE NOR  
PETITIONERS’ ACTIVITY OF CLEANING, TACKING AND LOADING OF HORSE  
CARRIAGES AFFECT THE MEASURED DISTANCE TO THE RESIDENTIAL  
DISTRICT  
(RESPONDENTS’ ARGUMENT I)**

The “obnoxious elements” argument. The City argues that the handling of horse manure and of liquid waste, the obnoxious and unwelcome characteristics of any stable, extend to the front of the building at 45 Pinckney Street, thereby rendering the entire building a stable. The City cites the testimony of Petitioner’s architect, who informed the Board of Zoning Appeals (“BZA”) that approximately three hundred pounds of manure would be generated daily from the keeping of six horses in the stable. Whether that proposition is correct or not, it would likewise apply to every one of the four other carriage horse stables in the Market District. Every stable is required to dispose of like quantities of waste. The City has stipulated, and the BZA found, that Petitioner

complies with the ordinance with respect to the waste disposal elements, and also with ventilation and control of odors. See the BZA findings in its order at R.p. 35.

The City argues that because the manure must be moved from the back of the building to the front where it would be collected daily, that fact renders the front of the building a part of the stable. The City likewise argues that because liquid waste from the back of the property is drained into public sewage, that occurrence also renders the front of the building a part of the “stable”.

Both are strained arguments. Moreover, the City misunderstands the evidence in the record. Petitioners’ architect explained, at R.p. 295 line 1 to p. 296 line 11 that the manure is collected in the stable area and kept in containers at the rear of the building. (See rendering at R.p. 452). On a daily basis a refuse truck backs into the building, into the common area. As stated by the architect, the manure containers are rolled from the rear wall of Unit A at the rear of the building, to the “front”, i.e. to the parked refuse truck in the common area, where the solid waste is unloaded. The empty manure container is then rolled back to the rear of Unit A and the truck hauls away the solid waste. There is no evidence that the disposal process would deposit manure at the front of the building where Petitioners’ offices are located. There is only the City’s speculation to that effect.

As for liquid waste, the drain pipes leading from the building drains to the City’s sewer system are buried beneath a concrete slab that encompasses the entire footprint of the building. Admittedly, the pipes pass under the common area and the access easement, in order to connect to the City’s sewage system; but that configuration, buried in concrete, hardly makes the easement and Mr. Knoth’s offices a “stable”.

The drain ports themselves that collect liquids into the drain system, are located entirely in Unit A. See R.p. 111.

The City's "obnoxious elements" argument is little more than a dramatic red herring to distract away from the plain fact that the City cannot articulate a rationale for its ordinance to have used the separate terms "stable" and "building" in the same section, except that the separate terms clearly demonstrate City Council's intent that "building" and "stable" mean different things, and that the 100 foot separation measurement must be taken from the area of the stable.

The cleaning, loading, and tacking argument. The City further argues that because the cleaning, loading and tacking operations of the carriage company occur in the common area, therefore the common area is also a part of the "stable". "Cleaning, loading and tacking" consists of cleaning of carriages, connecting them to horses ("tacking"), and loading of passengers onto the carriages to commence a carriage tour. Cleaning may also include the hosing down of horses, which occurs entirely within the area of the stable, adjacent to the stalls where there are drain ports to carry away water. (See the renderings at R.pp. 110, 111, and 452.)

The City misconstrues the ordinance in this respect. Subsection 4 of Section 54-206 (p) reads in full: "*A site plan is provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right-of-way.*" R.p. 41. The section does not require that the activity of cleaning, loading and tacking must occur within the physical area of the stable, but only that such activities do not occur so as to impede traffic flow in any public right-of-way.

Because of the ample area available within the building at 45 Pinckney Street, there is sufficient space to perform the cleaning, loading, and tacking activities within the building itself. But because those activities may be accomplished in the building does not mean that the common area of the building is therefore a "stable", as that term is at issue in this case. Indeed, many of the described activities, cleaning, loading and tacking, occur outside of tour carriage stables, for example in parking areas adjacent to public rights-of-way. The operative requirement of

Subsection 4 is only that such activities not impede automobile traffic flow. The ordinance does not require that such activities must be accomplished within the area of a “stable”.

Moreover, there can be no conclusion but that the term “stable” is used in different contexts in Section 54-206 (p). Subsection 1, the principal provision at issue in this case, undoubtedly refers to a physical area from which a measurement may be taken. However, Subsection 2 that reads, “*The City of Charleston Tourism Commission has issued a certificate of appropriateness for the stable*”, does not refer to a physical space, at all. Rather, a “Certificate of Appropriateness” is a document issued by the City for an animal drawn vehicle. See City Ordinance Section 29-219, *et seq*, at R.p. 59.

Therefore, the term “stable” as it is used in Section 54-206 (p)(2) refers not to the physical space within which animals are located, but rather to the operational state of a horse tour carriage business. In that respect, and again contrary to what the City argues, the certificate of appropriateness relates not to “the use of land or building as a stable”, but rather to the operational activity of a tour carriage business.

The City also argues in this part that the BZA found that “*all uses and activities*” associated with a stable must comply with the 100 foot separation, not just the stalls. (Respondents’ Brief p. 15.) A careful reading of the BZA order reveals no such finding. The single factor cited by the BZA as its basis for holding that the building is the point of measurement for the 100 foot separation is the existence of the access easement by which horses ingress and egress the stable.. See R.p. 36. The circuit court rejected the BZA’s rationale that the easement was the connective link, because the easement is non-exclusive, used by occupants of adjacent offices, the carriage company’s customers, as well as by the users of the stable, and that horses will no more be “kept” on the easement than they would be “kept” on the streets of Charleston over which they pass daily.

Such way of passage, the circuit court found, was not potentially obnoxious. R.pp. 12-13. Although the City addressed the circuit court's holding in this respect in its motion to alter or amend (R.p. 22), the access easement issue was not addressed by the Court of Appeals.

Finally, even if the common area in this case were deemed to be a part of the "stable", it is nevertheless more than 100 feet distant from the residential district.

**III THE ISSUE PRESENTED BY THIS APPEAL IS THE CONSTRUCTION OF A ZONING ORDINANCE, A QUESTION OF LAW, NOT OF FACT**  
**(RESPONDENT'S ARGUMENT II)**

For the first time in the history of this case, the City argues that the Board of Zoning Appeals made a factual finding that the uses and activities associated with the stable extend to the front of the building, and that because there is evidence in the record to support the finding of fact, Petitioner's appeal should be denied.

(a) The issue is not preserved. The City neither raised this as an issue of law in its motion to the Circuit Court to alter, amend, or reconsider the order appealed from in this case (R.p. 17); nor did the City raise the issue in its briefs to the Court of Appeals. (R.pp. 519 and 545). Neither did the Court of Appeals conclude, as suggested by the heading of the City's Argument II, that the Board of Zoning Appeals had made any such "factual finding".

It is a fundamental precept of appellate law that an issue may not be raised for the first time on appeal. Generally, claims or defenses not presented in the pleadings will not be considered on appeal. *Fraternal Order of Police vs. South Carolina Department of Revenue* 352 S.C. 420, 574 SE2<sup>nd</sup> 717 (S.Ct. 2002); citing *McNeely vs. South Carolina Farm Bureau Mutual Insurance Co.* 259 SC 39. 190 SE2<sup>nd</sup> 499 (1972).

The City has never disputed the proposition that this case presents a question of statutory construction. See, for example, the City's introductory sentence in its brief to the Court of Appeals: "*This case concerns the construction of a zoning ordinance.*" (R.p. 507) The issue of the interpretation of a statute is a question of law for the Court. *Catawba Indian Tribe of South Carolina vs. State* 372 SC 519, 642 SE2nd 751 (S.Ct. 2007), citing *Charleston County Parks and Recreation Commission vs. Somers* 391 SC 65, 459 SE2nd 841 (1995).

(b) There were no findings of fact made by the Board of Zoning Appeals upon which to preserve any such issue. The Board of Zoning Appeals concluded that because the access easement was required for Unit A, the stable, to have access to a public street, or to a common area leading to a public street, and because the common area and easement are appurtenant to Unit A, that the "stable" is thereby within 100 feet of the residential district. See R.p. 36. These were clearly findings of law, not of fact.

(c) In any event, the access agreement is not a part of the "stable". Petitioners do not suggest that an easement is beyond the reach of a zoning ordinance. Rather, and as found by the Circuit Court in this case, it is merely the way by which Petitioners, and also customers who are members of the public, as well as other users of the property, gain access to and from a public way.

As with its Argument I, the City here seeks to bootstrap the activities of waste disposal argued in that previous argument as a factual predicate to argue that the easement is also "used" as a stable. The argument is more than a stretch, without a credible basis, for the reasons argued.

As concluded by the Circuit Judge, horses will no more be kept on the access easement than they would be "kept" on the public streets of Charleston as they pull carriages touring its historic neighborhoods.

**IV NEITHER THE RECORD NOR COMMON KNOWLEDGE SUPPORT THE  
CONCLUSION THAT OFFICES, RESTROOMS AND CUSTOMER WAITING AREAS  
ARE COMMONLY ASSOCIATED WITH HORSE STABLES  
(RESPONDENTS' ARGUMENT IV)**

In Section IV the City argues that the existence of waiting areas for customers, restrooms, and offices for the tour carriage business operations do not change the character of the entire building as a “stable”.

As Petitioners argued in their principal brief, there is no basis in the record of this case, or from common knowledge or by definition that would support the erroneous conclusion of the Court of Appeals that offices and customer waiting areas and restrooms are areas “commonly associated with horse stables”. The City makes no real effort to dispute Petitioners’ argument in this respect, except to say that “nor is it beyond pale for a stable to incorporate” such spaces. The point remains that there is no record evidence of that fact.

The City goes further to argue, however, that because Petitioners concede the business offices are a part of the carriage tour business, that fact supports the Board of Zoning Appeal’s conclusion that “activities associated with the *stable* extend to the front of the *building*”. In the first place, the City’s Freudian slip is revealing: Its statement acknowledges a difference between a “stable”, on the one hand, and a “building” on the other.

More substantively, however, it cannot be credibly argued that the 100 foot separation requirement was intended to apply to anything other than the obnoxious activities associated with the keeping of horses. It is clear that the ordinances state no such requirement. Moreover, it is absurd to suggest that City Council also intended that the business operations of a carriage tour businesses must also maintain the same 100 foot separation distance. Offices, customer waiting areas and restrooms in the building at 45 Pinckney Street, because they are manifestly not

obnoxious conditions, must necessarily belie the conclusion that they are a part of or are ordinary components of a “stable” that must meet the 100 foot separation requirement.

**V CONSTRUCTION OF THE ORDINANCE AT ISSUE DOES NOT REQUIRE  
RESORT TO THE DOCTRINE OF *IN PARI MATERIA*, AND IN ANY EVENT THE  
DEFINITIONS FROM THE TOURISM ORDINANCE ARE EXPRESSLY QUALIFIED  
(RESPONDENTS’ ARGUMENT V)**

In their final argument, the City comes to rest upon the definitions of “stable” and “stall” from the tourism ordinance, arguing that these definitions undermine Petitioners’ theory that City Council’s deliberate use of the separate terms “building” and “stable” in the same section signify that they intend different things. Here the City argues the doctrine of construing statutes *in pari materia*.

As Petitioner has argued in chief, use of the interpretive concept *in pari materia* need not apply in this case, where the statute may be reconciled on its own terms. *Rabon vs. S.C. State Highway Department*, 285 S.C. 154,157, 187 S.E.2d 652,654 (1972). Here, a construction of the ordinance may be achieved from the words of Sections 54-209 (p)(1) and (7) themselves. City Council used the terms “stable” and “building” disjunctively and advisedly, to signify that they mean different things. If City Council had intended that the 100 foot separation must be measured from the building, it would have so provided. Had City Council intended that only a “stable” be adequately ventilated, it would have so provided. The subsections are reconcilable: “the “building” is the larger space within which a “stable” may be contained; and in that circumstance, the 100 foot measurement must be taken from the space from within the “building” that consists of the “stable” to the nearest residential district.

The City’s *in pari materia* argument is further weakened by the fact that the definitions upon which the City relies, which are contained in the tourism ordinance, are by the ordinance’s

express provision conditional: Section 29-212 (b) provides: “Definitions. Except where the context clearly indicates otherwise, the following terms and phrases as used in this section shall have the following meanings: ....” (R.p. 49). “Context” in this case is the fact that there are uses in the building at 45 Pinckney Street not ordinarily associated with the keeping of horses. Therefore, here, the “stable” is contained within a larger “building” with other uses.

**CONCLUSION**

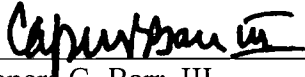
At the heart of this appeal is the principle of law that City Council used the separate terms “stable” and “building” advisedly, and with the intention of conveying a separate meaning for each of them. *Davenport vs. City of Rock Hill, supra*. Because the 100 foot distance measurement must be taken from the stable and not from the building, Petitioners have shown that they comply with the City Ordinance.

Moreover, common sense dictates that Council did not intend to require that offices, customer waiting areas and restrooms must maintain the same separation from a residential district as the stable.

The decision of the Court of Appeals should be reversed.

Respectfully submitted,

Charleston, South Carolina  
August 8, 2018

  
Capers G. Barr, III  
Barr, Unger & McIntosh, LLC  
11 Broad Street  
Charleston, SC 29401

ATTORNEY FOR PETITIONERS

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

AUG 09 2018

**S.C. SUPREME COURT**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

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

On Certiorari to the Court of Appeals of South Carolina

Opinion No: 5419 (S. C. Ct. App. filed June 29, 2016)  
(791 S.E.2d 305)

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

v.

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

PROOF OF SERVICE

I certify that I have served the Reply Brief of Petitioners on Respondents by depositing a copy of same in the United States Mail, postage prepaid, on June 8, 2018, addressed to Respondents' attorneys of record:

Frances Isaac Cantwell, Esq.  
Daniel S. McQueeney, Esq.  
City of Charleston  
50 Broad Street  
Charleston, SC 29401

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

Wilbur E. Johnson, Esq.  
Young Clement Rivers, LLP  
PO Box 993  
Charleston, SC 29402-0993

ATTORNEYS FOR RESPONDENTS



---

Capers G. Barr, III  
Barr, Unger & McIntosh, LLC  
11 Broad Street  
Charleston, SC 29401

ATTORNEY FOR PETITIONERS

# FedEx

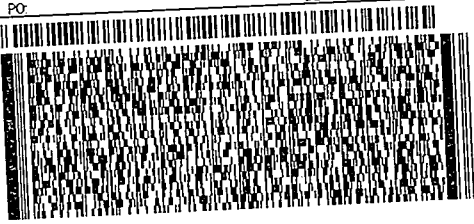
RT 104  
FZ 106  
10:30  
E  
0071  
08.09

ORIGIN ID: RBWA (843) 577-5083  
ROBIN ANDERSON  
11 BROAD STREET  
CHARLESTON, SC 29401  
UNITED STATES US

SHIP DATE: 08AUG18  
ACTWGT: 3.00 LB  
CAD: 5219409/INET4040  
BILL SENDER

TO HONORABLE DANIEL E. SHEAROUSE  
SUPREME COURT OF SOUTH CAROLINA  
SUPREME COURT BUILDING  
1231 GERVAIS STREET  
COLUMBIA SC 29201

(803) 734-1080 REF: 2012-1128  
BY: PO DEPT:



FedEx Ship Manager - Print Your Label(s)

THU - 09 AUG 10:30A  
PRIORITY OVERNIGHT

TRK# 7729 2490 0071  
0201

28 USCA

29201  
SC-US CAE

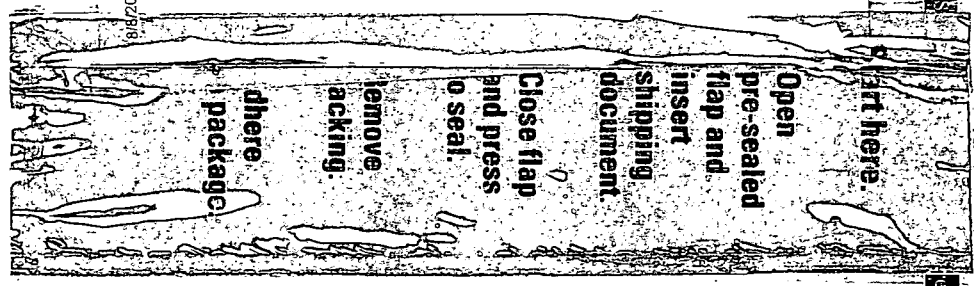


The World On Time

BOX  
Medium

Align bottom of Peel and Stick Adhesive for Airbill Pockets here

Align top of FedEx Powers



open



552116309DCV5

9/8/2018