RECEIVED

JUN 11 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

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.

APPENDIX
Vol. 1 of 2

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

ATTORNEY FOR THE PETITIONERS

Frances Isaac Cantwell, 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 RESPONDENT

INDEX

Record on Appeal 1
Brief of Appellant 495
Brief of Respondent 518
Reply Brief of Appellant 545
Decision of Court of Appeals (including West's Southeastern Reporter review) 558
Petition for Rehearing and Suggestion for Rehearing *En Banc* 570
Return to petition for Rehearing and Suggestion for Rehearing *En Banc* 579
Order Denying Rehearing 587

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Trial Court Case No. 2013-CP-10- 3864
Appellate Case No. 2014-001466

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

v.

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

RECORD ON APPEAL - VOLUME I

Capers G. Barr, III
Barr, Unger and McIntosh, LLC
P. O. Box 1037
Charleston, S.C. 29401
(843) 577-5083
Attorney for Respondents

Charlton deSaussure, Jr.
Corporation Counsel

Frances I. Cantwell
Assistant Corporation Counsel
50 Broad Street
Charleston, S. C. 29401
(843) 724-3730
Attorneys for Appellants
City of Charleston and City of Charleston Board of Zoning Appeals

Wilbur E. Johnson
Young, Clement, Rivers, LLP
P.O. Box 993
Charleston, S. C. 29402-0993
(843) 724-6659
Attorney for Appellant
Andrew Pinckney Inn

Thomas S. Tisdale, Jr.
Hellman, Yates & Tisdale
105 Broad Street
Charleston, S.C. 29401
(843) 414-9747
Attorney for Appellant
Michael A. Molony

INDEX

	Volume I Page
Corrective Order dated June 19, 2014	1
Motion to Reconsider, Alter or Amend Judgment	14
Petition and Appeal	22
Return, City of Charleston and City of Charleston Board of Zoning Appeals	114
Answer to Petition and Appeal, Andrew Pinckney Inn	119
Return, Michael A. Molony	125
Memorandum of Petitioner on Appeal (Special Exception) dated April 7, 2014.	130
Memorandum of Petitioner on Appeal (Variance) dated April 11, 2014	146
Transcript of Proceedings of April 11, 2014	152
Charleston Zoning Ordinance, Sec. 54-120	213
Charleston Zoning Ordinance, Sec. 54-206 (p)	237
Charleston Tourism Ordinance, Sec. 29-201 – 29-212	238

	Volume II Page
Circuit Court Record on Appeal	251
Certificate of Counsel	488

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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.

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
Case No.: 2013-CP-10-3864

CORRECTED
ORDER ON APPEAL

FILED
2014 JUN 25 PM 4:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS ORDER SUPERSEDES THE COURT'S ORDER OF MAY 30, 2014.

This case came before me for hearing on April 11th, 2014. Petitioners appeared through the persons of Robert R. Knoth and Richard R. Knoth, and with their attorney, Capers G. Barr, III. Respondent City of Charleston Board of Zoning Appeals appeared through Assistant Corporation Counsel Frances I. Cantwell. Respondent Andrew Pinckney Inn appeared through its attorney Wilbur E. Johnson and Respondent Michael A. Molony appeared with his attorney, Thomas S. Tisdale.

The case presents appeals from two orders of the City of Charleston Board of Zoning Appeals ("BZA"). The first is an order denying a special exception use dated June 4th, 2013. The second is an order denying a variance, also dated June 4th, 2013. The Court is informed that the two orders were decided at separate BZA hearing dates.

Because I find and conclude that the Board of Zoning Appeals order denying special exception use must be reversed, it is not necessary that I rule on the variance

appeal, as my ruling on the special exception use becomes dispositive of the case. My findings and conclusions are based upon the following:

Findings of fact:

Petitioner Robert R. Knoth owns and operates Carolina Polo & Carriage Company, one of five franchised horse carriage tour businesses in the City of Charleston. Mr. Knoth has operated the business, the sole source of his support, since 1990, a period of twenty-four years. From 1990 to 1996 the company and its stable were located at 45 Pinckney Street in the City Market District. The company was relocated to another property at 16 Hayne Street in 1996, after it lost its lease at 45 Pinckney. Other carriage companies continued to operate horse carriage stables from 45 Pinckney Street from 1996 until 2009.

In 2013 Mr. Knoth lost his lease at 16 Hayne Street, but was able to purchase his former location at 45 Pinckney Street to continue his business. Title to 45 Pinckney Street was taken in the name of Petitioner, Arkay, LLC.

In the mid 1990's, and after Mr. Knoth had last used 45 Pinckney Street as a stable, Charleston City Council enacted legislation under its zoning chapter (chapter 54) and also under its tourism chapter (chapter 29) that affect and regulate the horse carriage tour business in the city. As for zoning, Section 54-206 of the city ordinances provides that certain activities are permitted as "Special Exception Uses", provided that certain criteria are met. Section 56-206.p provides for stable use as a special exception in a General Business district, and represents the issue at the heart of this case, as later discussed.

In oral argument, and from a review of the record, all parties agree that Petitioners comply with six of the seven special exception criteria of Section 54-206.p. The point of dissension is whether Petitioners have complied with Section 54-206.p.1.that "The stable is not located within 100 feet of any residential zone district."

The property at 45 Pinckney Street is built on the "zero lot line" on each of its four sides. The east, west, and south sides share common walls with its neighbors. The front of the building, its north side, is constructed flush with the sidewalk. Photos depict an arched doorway entrance to the building, wide enough to admit a vehicle.

Because the building must also house the business offices of Carolina Polo and the office of an ancillary business, Mr. Knoth proposes to create a horizontal property regime ("HPR") at 45 Pinckney Street. A plot plan depicting the HPR shows the building as 37.89 feet wide at the front. The first 11.5 feet into the depth of the building comprises Unit "B" of the HPR. Unit "B" will be used as offices, and under Petitioners' application would be restricted against use as a stable by recorded deed covenants.

Immediately behind Unit "B" is a common area fourteen feet farther into the building, consisting of a customer waiting area and restrooms. Immediately behind the common area, and twenty-five and a half feet from the front of the building is Unit "A" of the HPR, to be used as a stable. Six stalls will be constructed to keep the horses in Unit "A". Access to the common, customer waiting area and restrooms, and to the stables in Unit "A" in the rear of the building is obtained over an ingress/egress easement across Unit "B".

The HPR configuration described above is also depicted on a plot plan dated November 14, 2012, attached as Tab 5 to the Record on Appeal.

Petitioners also procured a survey that measures the closest point from the facade of 45 Pinckney Street to the nearest residential district (Record on Appeal, Tab 5-5), That closest distance is 93.5 feet. In oral argument Petitioners also showed that the north line of 45 Pinckney Street and the south line of the residential district are not parallel, and that they diverge away from each other. Therefore, for approximately one-half of its length, the façade of 45 Pinckney Street is, in fact, one hundred feet or greater from the residential district.

In any event, the measured distance from the residential district to Unit "A" of the HPR, where the property will be used as the stable, is 119 feet.

At hearing before the BZA, Petitioners argued that the one hundred foot distance to the residential district should be measured from the section of 45 Pinckney Street to be "used" as a stable, which is the 119 foot distance to Unit "A"; and that the measurement should not be taken from the front of the building. Petitioners also filed a five page memorandum with the BZA explaining their rationale that the one hundred foot distance measurement should be taken to the "use" as a stable and not to the physical building within which the stable is contained. (Record on Appeal, Tab 5-3). (Tab 5-3, p 59)

The City of Charleston Zoning Administrator agreed with Petitioners' interpretation, concluding that Section 54-206.p describes a "use", and not a physical structure; and that the one hundred foot measurement should be made to the use and not to the building within which the use is contained. The Zoning Administrator informed the BZA that: "There are other types of land uses that are identified in the same section of the Zoning Ordinance where the wording is such that it specifies that you measure from the building or from the property line. In this case, there is no mention of a building or property line that...that is

where you should take the measurement from. So I think it is appropriate that we should measure from the use; and if that use is not at the front of the building, then you don't have to measure from the front of the building." (Record on Appeal, Tab 2; Transcript, p. 11, line 21 through p. 12, line 21),

The Board of Zoning Appeals disagreed. Of the seven members of the BZA, one member was absent, and two recused themselves. The remaining four members denied the special exception application by a vote of three to one.

In its Order, the BZA concluded that the one hundred foot set-back requirement must be measured from the front of the building at 45 Pinckney Street because the easement across Unit "B" is "appurtenant to, or a part of, the Unit "A", rendering it within the one hundred foot limitation"; and "this Board cannot discern intent to separate the use from its access, when there is but one access to the building..."

Conclusions of Law:

This appeal presents a question of statutory construction. That is to say, what is the construction and the legislative intent of Section 54-206.p.1. of the City of Charleston Zoning Ordinance in its requirement that "The stable is not located within one hundred feet of any residential zoned district"? The more specific question is whether the one hundred foot measurement is to be taken from the building within which the stable is contained; or is it to be measured from the "use" as a stable where, as here, that use is within a building containing other uses?

Issues involving the construction of an ordinance are reviewed under a broader standard of review than is applied to reviewing issues of fact. *Mikell vs. County of Charleston, 386 S.C. 153, 687 S.E.2d 326 (S.Ct. 2009).* Although great deference is

accorded the decisions of those charged with interpreting and applying local zoning ordinances, "a broader and more independent review is permitted when the issue concerns the construction of an ordinance. The determination of legislative intent is a matter of law." *Mikell, supra, citing Charleston County Parks and Recreation Commission vs. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995); Eagle Container Co., LLC vs. County of Newberry, 379 S.C. 564, 666 S.E.2d 892 (S.Ct. 2008).*

The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. *Charleston County PRC vs. Somers, supra; City of Columbia vs. Niagara Insurance Co., 249 S.C. 388, 154 S.E.2d 674 (1967).*

The Plain Language of the Ordinance.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989).* If a statute's language is plain, unambiguous, and conveys clear meaning, then "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).* 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. *Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992); Catawba Indian Tribe of South Carolina v. State, 372 S.C. 519, 642 S.E.2d 751 (2007).*

The ordinance here at issue begins, in pertinent part:

"Sec. 54-206. Special exception uses. (Emphasis added)

"Uses designated in the Table of Permitted Uses and listed below, may be permitted in certain districts where the Board of Zoning Appeals-Zoning after review finds that requirements listed below for such uses are met." (Emphasis added).

By its plain language, Section 54-206 regulates uses, by allowing such uses where the listed requirements for such uses are met. Following its introductory language the section describes nineteen different uses that are permitted in the City of Charleston as special exceptions under the zoning code, provided the statutorily designated requirements are met.

With only a few exceptions, the nineteen described special uses set out in Section 54-206 describe a specific form of activity as a special use; for example, cemeteries, churches, dairy farms, daycare centers, drive thru tellers, gas stations, and, as relevant to this case, stables.

The special exception requirements for a stable as set forth in Section 54-206.p. are uniquely focused on stables in the horse carriage tour business. For example, Section 54-206.p.2 requires that "The City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable". This Subsection 2 could only apply to tour carriages in the City. The "Certificate of Appropriateness" issued by the Tourism Commission is described in the tourism chapter of the city ordinances in Section 29-212, *et. seq.* The certificate is not issued for a "stable" at all. Rather, it is issued for an "animal drawn vehicle", i.e. a horse carriage. As it relates to the issue before the court, therefore, the required certificate of appropriateness is but an aspect of the "use" of property in a general

business district as a stable, and has no bearing on the physical structure within which the "use" is contained.

Another provision of Section 54-206.p uniquely relating to the horse carriage tour business is subsection 4 which provides that: "A site plan is provided showing that the cleaning/loading/ tacking area shall not impede traffic flow in the public right-of-way." Subsection 4 describes another aspect of the "use" of an applicant's property as a horse carriage tour business, without reference to any structure within which it is contained. For a stable "use" to comply with subsection 4, the process of attaching horses to bridles, reins and carriages, referred to as "tacking" must not impede automobile traffic on the streets.

Finally, from a "plain language" analysis of Section 54-206.p, it is noteworthy that the seventh special exception requirement for a stable use, expressed in Section 54-206.p.7 states: "Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted." (Emphasis added.) In discerning legislative intent, the Court must assume that City Council used the word "buildings" in subsection 7 advisedly. If it were the legislative intent that "stable" as used in 54-206.p referred to a physical structure, rather than a "use" associated with a property, City Council would have stated in subsection 7 that "stables are designed utilizing appropriate ventilation...etc.". However, by using the word "buildings", I conclude that City Council intended a differentiation, and envisioned a physical circumstance such as is presented in this case, where the use of the property as a "stable" is but one of several uses contained in a larger "building". It is noteworthy that the subsection at issue in this case, 54-206.p.1, does not provide that the "building" be not located within one hundred feet of any residential zoned district, but that the "stable" be so located. It is the "use" as a stable, and the attendant, potentially obnoxious characteristics of

keeping and maintaining animals, that City Council intended to be at least one hundred feet distant from a residential zone district.

Therefore, from a plain language analysis of 54-206.p of the Charleston City Ordinances, I conclude that it was the intent of City Council to describe "stable" as a "use" and not as a physical structure from which the one hundred foot measurement to a residential zoned district should be made. This order is specific to ordinances concerning horse carriage tour businesses and stables and shall not be construed to apply to other types of businesses, such as an adult entertainment store or the like, or have any effect on other special exception uses defined by the zoning laws. As previously stated, one of the primary purposes of the zoning law in regard to stables is to prevent objectionable odors from being emitted in residential areas. In contrast, zoning laws or ordinances that prohibit the establishment of an adult entertainment store in a residential area are concerned with the business use itself and has a fundamentally different purpose. Thus, this Order shall not be construed, in any way, to apply to other types of special exception uses or business establishments.

The Tourism Chapter of the Code of the City of Charleston.

Although not enacted as a part of the zoning ordinances, Sections 29-201, et. seq. of the City Code provide for regulations governing the "Transportation by Animal Drawn Vehicles for Purposes of Touring" in the City of Charleston.

The zoning ordinance providing for stable use as a special exception requires that it must comply with city regulations, which therefore incorporates the provisions of the tourism chapter, Sections 29-201, *et. seq.* In the tourism chapter, the term "stable" is used to

describe both a physical thing, as well as a "use". Section 29-212(b)(12), for example, defines "stable" to mean "the barn where the animals are kept" and in subsection (13), "stall" to mean "individual space where each animal is kept".

However, "stable" is also used to describe a "use". Section 29-212(e)(1)(a) provides for "the individual company's stable (to have) a current written statement by a veterinarian on file that the animal is fit for such work....". In this context, "stable" is used to describe the ongoing business of the carriage tour company.

The tourism chapter is also relevant to a contextual perspective of the zoning ordinance. Section 29-212(i)(2) of the tourism chapter provides that stables shall be located within "walking distance" of the Medallion Gate at the corner of Church and North Market Streets. The "Medallion Gate" forms the central queue at which laden horse tour carriages must line up to receive from city tourism employees a medallion that assigns each specific, laden horse carriage a sector of the city that the carriage may enter for the purpose of conducting each successive tour. Medallions are assigned by lot. Therefore, no carriage operator, or his passengers, knows in advance, until the carriage receives a medallion, what sector of the city will be assigned for a specific tour. (The device is intended to avoid overcrowding the more favorite historic sections of the city with horse carriages.)

Although "walking distance" is not defined in the tourism ordinance, the ordinance describes the "Market Zone" within which passengers may be loaded or discharged, as being bounded by Pinckney Street to the north, Cumberland Street to south, East Bay Street to the east and Meeting Street to the west. (Section 29-206(b)). It is reasonable to conclude, therefore, that "walking distance" would bear some logical relationship to the

"Market Zone". Under the tourism chapter stables must be located within "walking distance"; therefore, within the Market Zone.

The record reflects Petitioners' description to the BZA, as well as to this Court in oral argument, of the physical parameters and composition of the "Market Zone" which surrounds the Medallion Gate at North Market and Church Streets. The Court takes note that the placement of a stable in this dense, urban context is markedly different from a stable placed in a rural setting; and that it was in this urban context that City Council adopted the zoning ordinance relating to stables.

Legislative Intent.

In interpreting a statute the court's primary purpose is to ascertain the intent of the legislature. *Beattie v. Aiken County Dept. of Soc. Serv., 319 S.C. 449, 452, 462 S.E.2d 276, 278 (1995).* "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers." *Id. (citing Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992)).*

It seems clear to this Court that the intent of Charleston City Council in enacting Section 54-206.p was to ensure that the specific and potentially obnoxious aspects of keeping and maintaining horses in a stable would be maintained at a distance no closer than one hundred feet from a residential zone district. The enumerated aspects of 54-206.p are cleaning/loading/tacking of horses and carriages (but as to this issue, only to ensure that automobile traffic is not impeded)(Subsection (4)); the handling of refuse (Subsection (5)); drainage (Subsection (6)); and ventilation to prevent objectionable odors from being emitted (Subsection (7)).

As for the stable "use" itself, I conclude that it is appropriate to consider the definition from the tourism code (the barn "where the animals are kept"), which is also consistent with a dictionary definition. In this urban context, the operatively important phrase is "where the animals are kept"; "kept", in this context, meaning "preserved or maintained".

The area of 45 Pinckney Street where stalls will be constructed, and where horses will be "kept" is Unit "A" of the horizontal property regime depicted on the plot plan in this record. That area, and the "use" of that area, is 119 feet distant from the residential zone district.

I find and conclude that the Board of Zoning Appeals committed an error of law in construing Section 54-206.p.1 otherwise. The one hundred foot measurement to the residential zone district should be made from the "use" as a stable and not from the façade of the building where no such "use" will be conducted; and where, to the contrary, offices will be placed in an area that by deed covenant may not be used as a stable.

As for the BZA's reliance on the access easement as forming the point of measurement, I likewise conclude that the Board has erroneously construed the ordinance. First, and in addition to my conclusion that the measurement must be taken from the "use" as a stable, the easement is to be titled with Unit "B" of the horizontal property regime and it is not exclusive to Unit "A". Occupants of the adjoining offices, as well as customers will be utilizing the same easement for ingress and egress to offices, customer waiting area and to restrooms. Secondly, however, the horses will no more be "kept" on the access easement then they would be "kept" on the streets of Charleston through which they come and go every day, and from which they enter 45 Pinckney Street.

It is a strained and forced construction of Section 54-206.p.1. to say that the potentially obnoxious aspects of maintaining horses in a stable where they are kept, applies as well to the way of their coming and going to the stable; and that is true whether the way be a driveway, street, alley, or, as in this case, a non-exclusive easement also shared with humans.

For the foregoing reasons, it is:

ORDERED AND ADJUDGED that the Order of the Board of Zoning Appeals dated June 4, 2013 on the Application of Petitioners for a Special Exceptions Use be and the same is hereby REVERSED; and it is further,

ORDERED that this cause be remanded to the City of Charleston Board of Zoning Appeals for entry of an order granting the special exception use consistent with the conclusions hereof, and imposing upon Petitioners' special exception use permit such conditions as are consistent with Petitioners' application and with the findings of this Court, including but not limited to the requirement that the Petitioners form and file the horizontal property regime as proposed, as a condition of the special exception use permit.

AND IT IS SO ORDERED.

J.C. Nicholson, Jr.
Presiding Judge

Charleston, South Carolina
~~April~~ JUNE 19, 2014

STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON))) ARKAY, LLC and) ROBERT R. KNOTH, its member,) Petitioners,)) v.)))) CITY OF CHARLESTON, CITY) BOARD OF ZONING APPEALS) ANDREW PINCKNEY INN and) MICHAEL MOLONY) Respondents.))	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2013-CP-10- 3864 MOTION TO ALTER, AMEND OR RECONSIDER ORDER (ALL RESPONDENTS)

FILED
2014 JUN 26 PM 12: 12
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Respondents hereby move pursuant to Rule 59 (e), SCRCP for an order from this Court amending or reconsidering its Order issued in the within matter dated May 29, 2014 and entered on May 30, 2014. City Respondents received written notice of entry of the Order on June 6, 2014.

The grounds for this motion are as follows:

At issue in this case is the application by Petitioners for a special exception to establish a horse stable at 45 Pinckney Street, in downtown Charleston. A criterion that must be met to qualify for the special exception is that the stable must not be located within 100 feet of a residentially zoned district.

It is undisputed but that one building exists at 45 Pinckney Street, and the building covers the entire site. It is undisputed that the northern façade of the building is within 100 feet of a residentially zoned area. This Court held that the 100 foot measurement was to be taken from the place within the building where the stabling activities are proposed to occur and not from the building itself, and because these activities were beyond the 100 foot separation requirement of the ordinance, the Board of Zoning Appeals (the "Board") committed an error of law in denying the application for a special exception.

The Court's Order is premised on the term "stable" being construed as a verb, and since the stabling activities are to be confined to an area of the building beyond the 100 foot separation requirement, the 100 foot separation requirement was met. Amendment and reconsideration of the Order is sought because zoning does not govern uses in a vacuum. It governs the use as it relates to land, building or structures. S. C .Code Ann. § 6-29-720 (Rev. 2004). Thus, the stable regulations must be applied to the land, building or structure at Pinckney Street. All of 45 Pinckney is covered by a building. That building, by Petitioners' own evidence, is within 100 feet of a residentially zoned district.

Amendment and reconsideration of the Order is sought because, in Sec. 54-206 (p) of the Charleston Zoning Ordinance, the term "stable" is used as a noun. When used as a noun, a stable is a building. See Webster's Encyclopedic Unabridged Dictionary of the English Language, New Revised Edition 1996, p.1382: "Stable: a building for the lodging and feeding of horses, cattle, etc." That City Council intended for the term to be construed as a noun is borne out by the following provisions of the Sec. 54-206 (p):

1. The introductory clause of Sec. 54-206 (p) provides that "Stables shall be permitted...". In this provision of the ordinance, Council used the term as a noun, not as a verb or adjective. As a noun, a stable is a building.
2. The word "stable" only appears in subsections (1), (2) and (3) of the ordinance. In each of these subsections, the term is used as a noun. Had Council intended for the term to apply to the act of stabling (as urged by the Petitioners), the term would have been used in an active tense or as a modifier. The term was not so used, clearly evincing intent that it was to be construed as a noun. As a noun, a stable is a building.
3. Subsection (7) of the ordinance is telling. It provides that "Buildings are designed...". All provisions of a statute must be read together. In light of the Council using the term stable as a noun, and thus a building, throughout Sec. 54-206, its use of the term "buildings" in subsection (7) is wholly consistent with an intent that the term be construed as a structure, not just an activity within a structure.

The Court made note that Sec. 54-206 (p) (2) requires the Tourism Commission to issue a Certificate of Appropriateness for the stable, but reasoned that since Certificates of Appropriateness are issued for animal drawn carriages, that the Certificate was an "aspect of the 'use' of the property in general", and has no bearing on the physical structure in which the use is contained. Respectfully, this finding requires amendment or reconsideration at is disregards the clear use of the term in the Zoning Ordinance as a noun (as described above), and as fundamentally, how the term is used in the Tourism Ordinance.

The Tourism Ordinance imposes specific requirements for stables located downtown that are used in the tourism industry. These requirements are in addition to those of Sec. 54-206 (p). The reference in the Zoning Ordinance to a Certificate of Appropriateness for the stable undoubtedly intended to capture requirements of the Tourism Ordinance for stables used in that industry. The Certificate of Appropriateness is the means by which conformance with the Tourism Ordinance is secured.

And, the Tourism Ordinance leaves no room for interpretation as to what is meant by a stable. The ordinance defines a stable in unequivocal terms. It defines "stable" as the "barn where animals are kept". Sec. 29-212 (b) (12). The Tourism Ordinance also defines stall, that being the "individual space within the barn where the animals are kept". Sec. 29-212 (13). Thus there is no doubt but that, under the Tourism Ordinance, a stable is a structure that includes stalls where the animals are kept. Reference to the provisions of the Tourism Ordinance specific to stables brings the point home: stables must be lighted, ventilated and protected from the weather; stables must be free of leaks, including from roofs or plumbing; the interior and exterior of the stable must be kept clean; and there can be no smoking "in" stables. Sec. 29-212 (i) (1) (a), (e), (i) and (j). None of these provisions makes sense outside the context of a stable being a structure. The Court's reference to Sec. 29-212 (e) (1) (a) of the Tourism Ordinance for the proposition that the term stable in the Ordinance is not always to be construed as a structure is unavailing because subsection (e) of the ordinance addresses how animals are cared for. It is subsection (i) that defines and addresses what a stable is. In construing statutes, specific statutes are given preference over general ones.

Aside from the use of the term stable as a noun in the Zoning Ordinance, the import of all other provisions of the Ordinance is clear that the term was meant to apply to a structure that was used as a stable. Subsection (4) of Sec. 54-206 (p) applies to the layout of the stable that being its tacking **area,** not the act of tacking, cannot impede the flow of traffic. A tacking area is a physical attribute of a structure. Subsection (6) requires a drainage plan for the property. This has nothing to do with the "activity" of stabling. Subsection (5) requires a plan for the handling of refuse. This provision, and only this provision, is arguably related to the operation of a stable. In balance, when all provisions of Sec. 54-206 (p) are read together, the clear import of the ordinance is that a stable was the use to which a structure or property is put. Here, both the property and its structure are within 100 feet of a residentially zoned area.

Amendment and reconsideration is sought of the Court's finding that City Council adopted the Zoning Ordinance relating to stables in the context of an urban setting. The Zoning Ordinance applies city-wide. It applies in the downtown area as much as it does in the less dense areas of the City, such as John's Island, the Cainhoy Peninsula and the plantation areas up Highway 61. While stables outside the tourist district need not comply with the tourism regulations, they must comply with every other provision of Sec. 54-206 (p). Unimpeded traffic flow, the collection and disposal of refuse, drainage, foul odors and the distance requirement all have efficacy in both urban and non-urban contexts. The Zoning Ordinance and Tourism Ordinance are separate and distinct. That the Petitioners must comply with both sets of regulations does not render either ordinance subservient to or tied to the hip of the other.

Moreover, if, as the Court found, the Tourism Ordinance is relevant to a "contextual perspective" of the Zoning Ordinance, then the Ordinances must be read in *para materi* and reconciled. That would require the adoption of the definition of stable in the Tourism Ordinance, the only ordinance that defines the term. The proof on this issue is clear. A stable is a barn, i.e. a structure.

Amendment and reconsideration is sought of the Court's ruling that the Board erred in its assessment of the relation of the access easement to the back unit of the Horizontal Property Regime (HPR) to be created at 45 Pinckney Street, the reason being that by law, units of a HPR must have access to a street, either directly or by way of an appurtenant easement. The common area access easement proposed for the back unit at 45 Pinckney Street will run with the fee to the unit and will be essential to its use.

Reconsideration or amendment of the Order is sought because of a seemingly inconsistency. If stable in the zoning context means the act of stabling, independent of the building where that act occurs, then there would be no need to require a HPR. This is so because a HPR is but a form of ownership and does not result in a new lot or a separate building.

Reconsideration or amendment of the Order is sought because, notwithstanding the attempt to limit the reach of the Order to horse carriage tour business stables, the zoning ordinance at issue makes no such distinction. Sec. 54-206 (p) applies to all stables, whether for use in the carriage industry or as part of an equestrian center or as part of a breeding enterprise.

Reconsideration or amendment of the Order is sought because there is an inconsistency in how the Zoning Ordinance and Tourism Ordinances interplay with one another. On the one hand, the Order relies on the tourism regulations to limit the import of the zoning stable regulations to an urban setting, but then rejects the very definition of stable in the tourism regulations. If the Tourism Ordinances have relevance, then all its provisions are in play, including its definition of a stable as a "barn" where animals are kept.

Reconsideration or amendment of the Order is sought because the separation requirement is not solely limited to mitigating odors. The separation requirement also has efficacy in how the structure relates to nearby residential districts in the context of its location and its effect on traffic and drainage.

Zoning governs the use of land, buildings or structures. The zoning regulations contemplate a stable as the use of a building for the purpose of housing animals. Reconsideration or amendment of the Court's order finding to the contrary is requested.

Charleston, S.C.
June 16, 2014

Frances I. Cantwell

Frances I. Cantwell
Assistant Corporation Counsel
50 Broad Street
Charleston, S.C. 29401
Tel. 843-724-3730
Attorney for City of Charleston and
City of Charleston Board of Zoning Appeals

Wilbur E Johnson by FE

Wilbur E. Johnson
Young Clement Rivers, LLP
P.O. Box 993
Charleston, S.C. 29402-0993
Tel. 843-724-6659
Attorney for Andrew Pinckney Inn

Thomas S. Tisdale, Jr. by FE

Thomas S. Tisdale, Jr.
Hellman, Yates & Tisdale
105 Broad Street
Charleston, S.C. 29401
Tel. 843-266-9099
Attorney for Michael Molony

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	Case No.: 2013-CP-10-
)	
ARKAY, LLC and)	
ROBERT R. KNOTH, its member,)	
Petitioners,)	
)	
v.)	
)	
CITY OF CHARLESTON,)	PETITION AND APPEAL FROM
CITY OF CHARLESTON BOARD)	THE BOARD OF ZONING APPEALS
OF ZONING APPEALS, ANDREW)	(SPECIAL EXCEPTION ORDER)
PINCKNEY INN, and MICHAEL A.)	
MOLONY,)	
)	
Respondents.)	

FILED
2013 JUL -1 PM 4:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Petitioners allege:

PARTIES

1. ARKAY, LLC is a South Carolina limited liability company and Robert R. Knoth is its sole member. Petitioners are citizens and residents of the City of Charleston; and Petitioner ARKAY holds title to 45 Pinckney Street, the real property at issue in this case.

2. Respondent City of Charleston is a corporate body politic which, through its City Council, has adopted a Zoning Ordinance hereinafter described; and the said Respondent City has created and formed the Respondent City of Charleston Board of Zoning Appeals, as hereafter alleged. Petitioners believe that the City of Charleston is a necessary party hereto.

3. Respondent City of Charleston Board of Zoning Appeals ("BZA") is an appointed board created by the City Council of Charleston under the authority of the

South Carolina Code of Laws for 1976 as amended, Section 6-29-780. The BZA is empowered in accordance with Section 6-29-800 of the South Carolina Code with the authority and power to hear and decide zoning matters, including applications for Special Exception and Variance and other matters as set forth in the Code. Appeals from Defendant BZA are heard by the Charleston County Circuit Court, pursuant to Code Section 6-29-820.

4. Respondents Andrew Pinckney Inn and Michael A. Molony are property owners near the property at issue in this case, who have stated an interest in the manner in which 45 Pinckney St. is used. Petitioners believe they are necessary or are at least interested parties to the within action.

5. This is an Appeal from a decision by the City of Charleston Board of Zoning Appeals orally made at hearing on April 16, 2013 and formalized in writing by Order dated June 4, 2013, (See Ex. "A"), which was mailed to the undersigned as attorney for Petitioners by letter dated June 7, 2013 and received by the undersigned on June 12, 2013. Accordingly, this Court has jurisdiction over the subject matter and parties to the within action, pursuant to Code Section 6-29-820.

EXHIBITS TO THE APPEAL

6. The following exhibits are attached, to which reference will be made in this Petition:

a. Ex. "A": BZA Order dated June 4, 2013;

b. Ex. "B": "BZA TABLE OF CONTENTS" dated April 16, 2013, including Tabs 1-10;

c. Ex. "C": Memorandum, September 4, 2012.

d. Ex. "D": Application for Special Exception Use dated March 18, 2013.

PROCEDURAL HISTORY AND UNDERLYING FACTS

7. The Zoning Ordinance for the City of Charleston provides in Section 54-206.p. that Stables are permitted in a General Business District as a Special Exception Use, provided that seven Special Exception criteria are met. (See Ex."B", Tab 1).

8. One of the special exception criteria, and the one central to the issue in this appeal, is that "the stable is not located within 100 feet of any residential zoned district."

9. The property at 45 Pinckney Street consists of a building constructed on the "zero lot line" of the underlying lot. That is to say, the building occupies the entire footprint of its underlying lot.

10. The façade of 45 Pinckney Street therefore immediately abuts the public sidewalk of Pinckney Street, on the northern boundary of the property.

11. The surveyed distance from the façade of 45 Pinckney Street to the nearest residential zone district is 93.5 feet. (See Ex. "B", Tab 5).

12. On September 4, 2012, the undersigned as attorney for Petitioner Knoth submitted a memorandum to Lee Batchelder, the Zoning Official for the City of Charleston, and to Frances Cantwell, City Attorney. The memorandum discussed the provisions of City Ordinance 54-206.p., and more specifically the special exception criteria relating to the 100 foot distance to any residential zoned district. A copy of the Memorandum is attached as Exhibit "C". The Memorandum argues that the provision for a stable "use" in the Special Exception Use Ordinance describes a stable as a "use", rather than as a structure. Therefore, the 100 foot distance requirement of 54-206.p.

should be measured from the use as a stable and not necessarily measured from the building within which the use is contained.

13. The same arguments expressed to Mr. Batchelder and Ms. Cantwell in Exhibit "C" were also presented to the BZA in a slightly different form of memorandum. See Exhibits "B", Tab 3 and "D")

14. At the time of presenting the Memorandum to Mr. Batchelder in September 2012, Petitioner ARKAY did not then hold title to 45 Pinckney Street, but Petitioner Knoth had a contract to buy the property.

15. The concept proposed to the Zoning Official by Exhibit "C" and to the BZA by Exhibit "B", Tab 3 and Exhibit"D" is this:

a. A necessary component to the operation of the business of Carolina Polo & Carriage Company, as would be almost any business, is that there must exist an office space for desks, chairs, filing cabinets, computers, telephones, fax machines, and copy machines.

b. Therefore, 45 Pinckney Street would be subjected to a horizontal property regime under which the front 25 feet of the building would be used and partitioned for offices, restrooms and a waiting area for customers. The front 25 feet would be restricted by a recorded covenant prohibiting the use of that unit as a stable.

c. The rear most 44.71 feet would be a separate condominium unit, to be used as a stable. Access to Unit B, the stable unit, would be obtained by easement across Unit A, the office use.

d. By the condominium configuration, the stable "use" of the property would be 119 feet distant from the nearest residential zoned district.

e. Further rationale was given to Zoning Official Batchelder and the BZA in the memoranda, which positions are incorporated herein by reference.

16. Prior to March 15, 2012, Zoning Official Batchelder informed the undersigned attorney for Petitioners that he concurred with the rationale that the concept of an urban stable in the downtown area of the City of Charleston could be measured from its "use", rather than from the building within which the use is contained.

17. On March 15, 2012, Petitioner Knoth closed the purchase of 45 Pinckney Street, title to which was taken in the name of Petitioner ARKAY.

18., On March 18, 2013, Petitioner ARKAY made its application in writing to the Respondent BZA, seeking approval of a Special Exception Use of the property at 45 Pinckney Street as a stable, in accordance with City Code Section 54-206.p. See Ex. "D", Application.

19. A hearing was held before the BZA on April 16, 2013, at which Zoning Official Batchelder reported to the BZA that he recommended approval of the application, reporting further to the BZA his opinion that the Zoning Ordinance of the City should be interpreted in the context of the downtown city environment, and that it was appropriate to measure the stable from its use, rather than from the building in which the use was contained.

20. The BZA disagreed with and overruled the positions of the Petitioner and Mr. Batchelder and denied the application for special exception use on the ground that the distance of 100 feet should be measured from the façade of the building, rather than from the "use" of the stable within. (See Ex. "A").

GROUNDS FOR APPEAL

21. Petitioners file this Petition in accordance with Section 6-29-820 of the Code of Laws of South Carolina for 1976, as amended, and respectfully allege that the decision of the City of Charleston BZA is contrary to the law in the following particulars:

a. As a matter of law and fact the BZA erred by its holding that the "stable" proposed by Petitioners must be measured from the façade of the building to the nearest residential zone district, in order to comply with the 100 foot distance requirement, rather than from Unit A within the building, which contains "the space where the animals are to be kept"; and further:

(1) The error being that Section 54-206 .p. of the City of Charleston Zoning Ordinance uses the term "stable" to define a use, rather than to describe a building;

(2) The error being that no other reasonable construction of the term "stable" can be applied in light of other provisions in the city ordinances; including but not limited to Section 54-206.p. 2 & 4, that confirms the legislative intent that the Special Exception Use as a stable applies only to carriage tour stables; also, Section 29-201, *et. seq.* requiring that stables be within walking distance of the Medallion Gate at Church and North Market Streets; also, Section 29-206.b., providing that carriages are to load/off-load carriage passengers in the "Market District". Also, in further light of the unavailability of property in the Market District, as set forth in Affidavits of Robert and Richard Knoth. (See Exhibit "B", tabs 6 and 7);

(3) For the reasons argued in Petitioners' memo to the BZA. (Exhibit "B", tab 3);

(4) For the reasons verbally argued to the BZA (to be provided with the transcript of record from the BZA).

b. The BZA further erred in its holding that the 100 foot measurement should include the access easement that passes from Pinckney Street through Unit A and into Unit B; the error being that the access easement is no more than that, a driveway, alley, or in this case easement, but is not in any way a "place where the animals are kept", which is the statutory definition of "stable" as the term is used in the Tourism Ordinance, but not in the Zoning Ordinance. The access easement is no more "a place where the animals are kept", than are the office spaces within Unit "B".

c. The BZA further erred by failing to view the clear legislative intent of the ordinance: that is to say, to keep the spaces involving stables and stalls where animals are "kept" at least 100 feet distant from a residential zoned district. Because the stables and stalls where animals are "kept", here, are greater than 100 feet from the nearest Residential Zoned District, the BZA committed error in denying the application.

d. The BZA further erred by failing to accept, and by overruling, the Zoning Official's construction of Section 54-206.p., more specifically the Zoning Official's conclusion and opinion that "stable" as used in the Statute defines a "use", and that it is appropriate to measure from that "use" as a stable to the

nearest Residential Zoning District; it being clear that no animals would be "kept" in the offices of Unit B fronting on Pinckney Street.

WHEREFORE, based upon the grounds stated herein, and for the reasons argued herein and to be argued and briefed at hearing, the decision of the Board of Zoning Appeals should be reversed by the Circuit Court; a Special Exception Use permit should be ordered; together with such further relief as the Court deems just and proper in the circumstances.

BARR UNGER & McINTOSH

Adam E. Barr
For Capers G. Barr, III

Capers G. Barr, III
S. C. Bar ID: 542
11 Broad Street
Charleston, SC 29401
Telephone: (843) 577-5083
Facsimile: (843) 723-9039
ATTORNEY FOR PETITIONERS

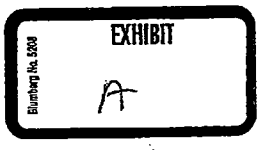
Charleston, South Carolina
July 1, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CITY OF CHARLESTON
BOARD OF ZONING APPEALS

IN RE:)
)
)
45 Pinckney Street)
)
)
)

ORDER



The matter before the Board is an application by Arkay, LLC (herein "Applicant") for a special exception to locate a horse stable at 45 Pinckney Street. A hearing was held on April 16, 2013. After having heard the testimony, reviewed the exhibits and other evidentiary matter and the applicable law, the Board denies the application.

FACTS

Forty-five Pinckney Street is located in downtown Charleston. A building occupies the entire site. There is only one entrance to the building, that being on Pinckney Street.

The site is abutted on the west by the Andrew Pinckney Inn, on the east by a multi-story parking garage and on the south by Nos.14 and 16 Hayne Street. Across Pinckney Street to the north of the site are single family homes.

Forty-five Pinckney Street is zoned General Business (GB), as are the properties to its east, west and south. Across Pinckney Street to the north, the properties upon which single family homes are constructed are zoned Commercial Transitional (CT). The zoning district changes to Single, Two Family Residential (STR) immediately beyond the single family homes that are directly across the street from the site. A survey demonstrated the distance from 45 Pinckney Street to the nearest property zoned for residential use is 93.5 feet.

Forty-five Pinckney Street has been used as a stable in the past. In fact, the Applicant operated its horse carriage businesses from the site for some 8 years, from 1990 to 1998. It was thereafter operated as a stable until 2009.

Testimony revealed that the Applicant has lost its month-to-month lease at 16 Hayne Street, the current site of its horse carriage business. It must vacate the Hayne Street location by May 31, 2013. The Applicant has attempted to find other sites for a stable that are appropriately zoned

and which are within the "Market area" defined in the tourism ordinance as the area of the peninsula lying between and including Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east, and Meeting Street to the west. These efforts have proven unsuccessful.

The Applicant owns 45 Pinckney Street and intends to subject it to a horizontal property regime (herein "HPR"). The HPR will consist of 2 units. The first 11.5 feet of the building, measured from Pinckney Street, will become Unit B. This unit will contain 435 square feet, and will house the offices of the Applicant's horse carriage business and another business that sanitizes streets where carriage tours are conducted. Unit B will be restricted to prevent it from being used as a stable. Unit B will be subjected to an easement or common area to allow ingress and egress from Pinckney Street to the remainder of the HPR.

The rear 69.51 feet of the building will become Unit A. This unit will contain 1639 square feet and will be where stable operations occur. This unit will have 6 stalls, and this is the unit in which horses will be fed, groomed and stored.

Units A and B will be separated by 14 linear feet of General Common and Limited Common areas. The General Common area will contain 137 square feet and will contain restroom facilities. The Limited Common area will contain 360 square feet and will be limited for the use of Unit B. The Limited Common Area will be used as a waiting area for carriage business patrons. The only access from Unit A (where stable operations will occur) to Pinckney Street is across the Limited Common area and across Unit B, by way of easement.

The Applicant has designed a modern stable facility that includes stalls sized to meet the requirements of the tourism ordinance and a state-of-the-art ventilation system. To address the 300 pounds per day of waste that will be produced by its horses, the Applicant has contracted with a company to remove the waste daily, except on Sundays. The tourism commission has issued Certificates of Appropriateness for the carriages used by the Applicant in its carriage business.

Property owners to the west (owner of Andrew Pinckney Inn) and north (owner and/or personal representative of owner of single family homes) appeared at the hearing in opposition to the application. These owners, who had experienced the operation of prior stables at this location, voiced concern about the noise, rodents and odor attendant to a stable. There was a particular concern raised by the owner of the inn regarding the potential for odor wafting through its cinder block wall, the only wall separating it from the site. Issues were also raised regarding the legality of the proposed HPR. Most significantly, it was contended the stable was within 100 feet of a residentially zoned district and therefore could not, as a matter of law, meet the requirements for a special exception.

The Preservation Society of Charleston and the Historic Ansonborough Neighborhood Association opposed the application, and other interested persons submitted letters in opposition as well.

DISCUSSION

Forty-five Pinckney Street is zoned General Business. In this zoning district, stables are permitted, if granted a special exception by this Board. The criteria for the special exception are set out in Sec. 54 – 206 (p) of the Zoning Ordinance and require this Board to find:

1. The stable is not located within 100 feet of any residential zone district;
2. The City Tourism Commission has issued a Certificate of Appropriateness for the stable;
3. The stable complies with all city, county and state regulations for stables;
4. A site plan demonstrates that cleaning/loading and tacking area will not impede traffic flow in the public right-of-way;
5. A written explanation of how refuse will be handled in accordance with city, county, state and federal regulations has been reviewed by the Department of Public Service;
6. A plan showing how drainage is to be collected in accordance with city, county, state and federal regulations has been reviewed by the Commissioners of Public and the Department of Public Service; and
7. Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted.

The evidence demonstrated and the Board is satisfied that the proposed stable complies with county and state regulations, that the loading and tacking area will not impede the flow of traffic, that adequate plans for handling waste, refuse and drainage are, or will be, in place, and these plans have been reviewed by the applicable agencies and city departments as required by the ordinance. As to odor, the evidence demonstrated the use by the Applicant of a product new to the market that substantially absorbs odor from animal waste. The stable will be equipped with a ventilation system designed to circulate air and release it from the roof of the building at a location farthest from the inn adjoining the site. And with respect to the cinder block wall, the Applicant proffered that the potential for odor seeping through could be addressed by its constructing an interior wall at the site, and it would do so as a condition of receiving the special exception. As to the Certificates of Appropriateness, as defined by the tourism ordinance, these certificates are issued for horse drawn vehicles, not stables; however to the extent there is a disconnect between the zoning and tourism ordinances regarding the Certificates of Appropriateness, the Board does not find this issue dispositive of the question before it, as any approval of this Board would be conditioned on compliance with the requirements of the tourism commission.

The remaining criterion is the distance of the stable from a residential zone district. As an initial matter, the Board rejects the contention that residential zone district means something other than a residential zoning district designation. The fact that Pinckney Street and Maiden Lane are in a residential parking district is not germane to the question of a residential zoning district. The Board finds that the criterion of the ordinance requiring a stable to be beyond 100 feet of a residential zone district means a residentially zoned district under the zoning ordinance. As applied here, a residentially zoned district is in place at No. 4 Maiden Lane and No. 57 Hasell Street. A survey submitted with the application reveals, measured from the building at 45 Pinckney to lots lines of these properties, that No. 4 Maiden Lane is 95.1 feet from the building at 45 Pinckney Street and No. 57 Hasell Street is 93.5 feet from the building at 45 Pinckney.

The Applicant contends the special exception applies to a stable as a use. Citing a definition from the tourism ordinance that defines a stable as the barn where animals are kept, it contends that here, the animals will be kept in Unit A of the HPR, more than 100 feet from a residentially zoned property. The applicant contends that the barn or stable use within the building at 45 Pinckney is more than 100 feet from a residentially zoned district. The Board does not agree.

Forty-five Pinckney Street is occupied by one building. The HPR does not alter this circumstance. There is no dispute as to the fact that the building is within 100 feet of a residentially zoned district. While Unit A within the building is where the animals will be stored, to access that area, it is necessary to pass through Unit B, an area within 100 feet of a residentially zoned district. This Board cannot discern intent to separate the use from its access when there is but one access to the building, and the law requires an apartment in a HPR to have either direct access to a public street or a common area leading to a public street. The common area or easement to Pinckney Street from Unit A is appurtenant to, or a part of, the Unit, rendering it within the 100 foot limitation. Thus, 45 Pinckney Street does not qualify as the site of a stable because it is located within 100 feet of a residential zone district.

NOW, THEREFORE, in light of the foregoing, the application for a special exception to establish a stable at 45 Pinckney Street is denied.

Charleston, South Carolina
6/4, 2013

Acting Chairman

BZA TABLE OF CONTENTS

45 Pinckney Street

April 16, 2013



1. Ordinance Section 54-206, p: Special Exception Use
2. City Code 54-212: General Health Care and Management Requirements
3. Memorandum to BZA
4. Plot Plan (Exhibit "1" to Memorandum)
5. Plat (Exhibit "2" to Memorandum)
6. Affidavit of Robert R. Knoth
7. Affidavit of Richard Knoth
8. Statements of Support
9. Zoning Map
10. Revised Ventilation Plan

EXHIBIT B-1

Sec. 54-206. - Special exception uses.

Uses designated in the Table of Permitted Uses and listed below, may be permitted in certain districts where the Board of Zoning Appeals—Zoning after review, finds that requirements listed below for such uses are met.

a. *Additional dwelling units in the SR zoning districts*. Additional dwelling units shall be permitted as an exception within all single-family residential, SR zoning districts, in dwellings constructed prior to August 17, 1966, where the Board, after review, finds that such existing dwelling contains such an amount of space available and suitable for residential purposes that it is unreasonable to require its use as single family dwelling.

b. *Cemeteries*. Cemeteries shall be permitted within the Conservation and all residential zones only as an exception where the Board, after review, finds that no building or parking lot thereof will be closer than one hundred (100) feet to an adjoining lot, and that all facilities will be adequately screened and landscaped in a manner appropriate to the character of the district.

c. *Church*. A church shall be permitted only as an exception within the Conservation and all residential zones where the Board, after review, finds that it will not be closer than twenty-five (25) feet to an adjoining property line and that the required off-street parking spaces, separated from property lines by an appropriate buffer strip, will be provided.

d. *Dairy farms & dairy products manufacture* shall be permitted only as an exception within the Conservation Zone where the Board, after review, determines that such uses are in accordance with the City's comprehensive land use plan.

e. *Day care centers*. A day care center, which is an accessory use to a church, school, park or other institution, shall be permitted as an exception within the Conservation District, all residential districts, and the CT District, where the Board, after review, determines that an application for such a use satisfies the following requirements:

1. proof of the application for the facility's licensing by the Department of Social Services is provided; and
2. the proposed facility satisfies the definition of a day care center; and
3. all signage is in conformity with that allowed for home occupations; and
4. outdoor play is allowed only between the hours of 8 a.m. and 6 p.m.; and
5. if a play area is within fifty feet (50') of a residential structure, it is appropriately buffered; and
6. there exist at least two (2) parking spaces per employee; and
7. plans for ingress/egress, loading/unloading and the location of the parking and play areas are approved for safety by the appropriate city department(s); and
8. the facility is compatible with the surrounding neighborhood based upon consideration of the number of persons cared for, potential traffic and noise impacts, location of the play, parking, loading and circulation areas and relation to other noise or traffic generating institutions (particularly if another non-residential facility is facing or abutting the same block face or is within three hundred feet (300') of the proposed site); and
9.

the proposed outdoor lighting of the facility does not unduly impact neighboring properties.

f. *Reserved.*

g. *Drive-thru or automated teller facilities for depository institutions, banks, savings and loans,* credit unions or similar depository institutions shall be permitted within the GO district only as an exception where the Board, after review, finds that the proposed teller facility satisfies the following requirements:

1. adequate off-street parking and traffic circulation is provided.
2. the vehicular access will not create a traffic hazard.

h. *Reserved.*

i. *Reserved.*

j. *Reserved.*

k. *Gasoline service stations* may be permitted within the LB, GB, UC, BP, LI, or HI districts as an exception where the Board, after review, finds that:

1. Buildings or equipment will not be within one hundred (100) feet of any existing day care, school, church, hospital, or public library.
2. Buildings or equipment will not be within fifty (50) feet of any residential zone district or existing dwellings.
3. Buildings or functionary facilities other than signs relating to the principal use will not be closer than twenty (20) feet to street abutting lot lines.
4. Any portion of an entrance or exit driveway leading to a public street will not be closer than three (3) feet to a fire hydrant.
5. Entrance and/or exit driveways will not be in excess of forty (40) feet wide or closer than fifteen (15) feet to the intersection of streets.
6. Stations within LB will restrict hours of operation to between 7 a.m. and 11 p.m.

l. *Homes for the elderly* which care for no more than twenty (20) persons shall be permitted within the DR-1, DR-1F, DR-2, DR-2F, DR-3, CT, LB, GB or UC zones as an exception where the Board, after review, finds that the proposed facility will be compatible with the character of the neighborhood, its population density, traffic patterns and parking facilities and not adversely impact the immediate neighborhood. The Board may, after review, permit larger facilities when it finds that the public interest will be served thereby.

m. *Logging camps and forestry activities* shall be permitted as an exception within the Conservation Zone where the Board determines that such uses are in accordance with the City's comprehensive land use plan.

n. *Museums* shall be permitted within the SR-3, SR-4, SR-5, SR-6, STR, and all diverse residential, DR districts where the Board, after review, finds the following:

1. That such museum is organized, that is, is a duly constituted body with expressed responsibilities.
2. That such museum is permanent, that is, expected to continue in perpetuity.
3. That such museum is a non-profit institution, that is, has documentary evidence of its tax-exempt status under the regulations of the U.S. Internal Revenue Service.
4. That such museum is essentially educational or aesthetic, that is, manifests its expressed responsibilities by knowledgeable utilization of its objects and exhibits them for elucidation and enjoyment.

5. That such a museum maintains a professional staff, that is, has at least one paid employee who commands an appropriate body of special knowledge and the ability to reach museological decisions consonant with the experience of his or her peers, and who has access to and acquaintance with the literature of the field. The continuity of employment of at least one professional staff member, who must work sufficient hours to meet adequately the current demand of the institution for administration, record keeping and care of collections is essential.
6. That the tangible objects, animate and inanimate, forming the museum's collections must have intrinsic value to science, history, art or culture.
7. That such museum maintain regular and predictable hours which constitute substantially more than token opening, so that access is reasonably convenient to the public.
8. That such museum operate during normal business hours and does not inherently exhibit noise, light or traffic conditions clearly debilitating to neighboring residents.

o. *Sewage disposal facilities* shall be permitted as an exception within the Conservation Zone where the Board, after review, determines that such uses are in accordance with the City's comprehensive land use plan.

p. *Stables* shall be permitted within the GB and UC district as an exception where the Board, after review, finds that:
1. The stable is not located within 100 feet of any residential zone district.
2. The City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable. Art. 24-219
3. The stable complies with all city, county, and state regulations for stables.
4. A site plan is provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right-of-way.
5. A written explanation is submitted detailing how refuse will be handled in accordance with city, county, state, and federal regulations. This shall be reviewed by the Department of Public Service.
6. A plan is submitted showing how drainage on the property is to be collected in accordance with city, county, state, and federal regulations. This shall be reviewed by the Commissioners of Public Works and the Department of Public Service.
7. Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted.

q. *Electric substation or gas regulator station*. Such station shall be permitted within the Conservation District, all residential districts, the CT district, and the RO district only as an exception where the Board, after review, finds that such station is essential for service of the immediate area, will be enclosed within an appropriate woven wire or solid fence, will be suitably landscaped and no storage of vehicles or equipment will occur.

r. *Storage yards, junk yards, scrap yards or auto salvage yards*.
1. Outdoor storage yards, which are used for storage of materials and equipment, other than vehicles, boats or shipping containers, are permitted within the LI (Light Industrial) and HI (Heavy Industrial) districts as an exception where the Board, after review, finds that adequate provision and maintenance of visual

screening by fences, planting or other means, from public streets, roads, residences and adjacent residential zone districts will be provided.

2. Junk yards, scrap yards, or auto salvage yards are *prohibited within the LI district* but permitted within the HI district as an exception where the board, after review, finds that the same standards for visual screening listed in 54-206.r.1. are met.

s. *Reserved.*

t. *Golf courses and membership sports and recreation clubs*, private or for profit, or changes thereto, shall be permitted within the Conservation district as an exception where the Board, after review, finds that the location, lighting, hours of operation, type and size of the facility, or changes thereto, will not adversely affect any neighboring residentially zoned areas.

u. *Dwellings within the HI district* shall be permitted as an exception where the Board, after review, finds that there shall not be created any unsafe living conditions given the existing uses in the area.

v. *Mining* for the purpose of extracting materials from a property shall be permitted as an exception in all districts if the total size of the area to be mined does not exceed two (2) acres. For larger operations, Dirt Mining/Resource Extraction shall be permitted as an exception only in the Light Industrial (LI) and Heavy Industrial (HI) zone districts.

1. Mining operations not exceeding two (2) acres in total mining area and meeting all of the following conditions shall be permitted in any zone district as an exception where the Board, after review of documentation submitted by the applicant, finds that:

   a. The total mining area, work zone and construction access road is shown on a scaled site plan of the property, and is intended as preparation for residential use, recreational use or agricultural use.

   b. The mining use will not last more than one (1) year from the date of approval.

   c. The mining work zone, as shown on the scaled site plan, will be located at least fifty (50) feet from any property boundary and at least one hundred (100) feet from any dwelling.

   d. A mining operation has not occurred on the subject property within three (3) years prior to the date of the application.

   e. Variances and/or special exceptions from Article 3, Part 6: Tree Protection Requirements, if required, have been approved.

   f. Existing vegetation will be maintained and adequately protected as a natural buffer between adjacent dwellings, existing water bodies or wetlands and the mining work zone.

   g. The applicant agrees in writing to restrict the hours of operation for mining operations to between 8:00 a.m. and 7:00 p.m., Monday through Saturday.

   h. The applicant will not use any office facilities at the mining location except in the LI and HI zone districts.

   i. A stabilized access road for mining vehicles will be constructed and maintained to the specifications of the City Engineer and to a minimum depth of 50 feet from the public right-of-way.

2.

Mining operations exceeding two (2) acres in area shall be allowed in the Light Industrial (LI) and Heavy Industrial (HI) zone districts as an exception where the Board, after review, finds that:

a. The applicant agrees in writing to restrict the hours of operation for mining operations to between 7 a.m. and 7 p.m., Monday through Saturday.

b. Variances and/or special exceptions from Article 3, Part 6: Tree Protection Requirements, if required, have been approved.

c. The size, shape and location of the area to be mined are such that it will allow for the conversion of the mining area into an amenity for the eventual use of the property. Evidence for this finding shall require the submittal of a plat of the property which 1) complies with the preliminary plat requirements of Section 54-810; 2) indicates the limits of clearing and excavation for the mining operation; 3) indicates the intended post-mining use of the mining area and other areas of the tract in conjunction with the Zoning Ordinance; and 4) indicates the depth of the mined area and the final slopes of the sides.

d. Vehicle access from a public road for the mining operations is shown on a plat of the tract where the mining will occur, will be located in a manner that minimizes or removes any adverse impacts on adjoining parcels, and will not be through any residential areas. The applicant shall:

   i. Submit a copy of the approved SCDOT or City encroachment permit for the proposed access road;

   ii. Construct and maintain a paved roadway from the access point on a public right of way prior to commencing mining operations. The paving shall extend a minimum of fifty (50) feet into the property from the right-of-way. When the vehicle access to the mining area is less than two-hundred and fifty (250) feet from a residential area, the Board may increase the distance the road must be paved or may require a maintenance plan for an unpaved road to eliminate dust and noise issues.

e. The mining work zone will have adequate separation from adjoining properties and all wetland areas or areas below the critical line. The minimum separation from adjoining non-residential property, which is not part of the proposed development the amenity is intended to serve, shall be one-hundred (100) feet. The minimum separation from an existing water body, wetland, area below the critical line, or adjoining property with a residential zoning or residential use, shall be two hundred fifty (250) feet. The Board may increase the required distance between the mining work zone and an existing water body, wetland, area below the critical line, or adjoining property to mitigate potential adverse impacts due to an insufficient existing vegetative buffer, an environmentally sensitive area, or an existing residential use.

f. Where vegetation exists along a property boundary, natural water body or wetland, the operator shall maintain sufficient existing vegetation to provide a buffer between the mining operation and property boundary, natural water body or wetland.

w.

Membership sports and recreation clubs and civic, social and fraternal clubs shall be permitted within the SR-3, SR-4, SR-5, SR-6, STR, DR-6, DR-9, DR-12, DR-1F, DR-1, DR-2F, DR-2 and DR-3 districts where the Board, after review, finds the following:

1. Required off-street parking spaces, separated from property lines by an appropriate buffer strip, will be provided.
2. The location of the facility will not significantly increase pedestrian traffic or automobile traffic and parking on minor and local streets within existing residential neighborhoods.
3. That such organization is a non-profit organization and has documentary evidence of its tax-exempt status under the regulations of the U.S. Internal Revenue Service.

x. *Sidewalk cafés for licensed businesses not meeting the requirements of Section 54-213 subsection k. paragraph 2. and/or subsection k. paragraph 3.* shall be permitted within residential areas as an exception where the Board, after review, finds the following:

1. A completed application for a sidewalk café permit has been submitted for review by the Zoning Administrator;
2. The applicant meets the requirements of section 54-213 with the sole exception of subsection k. paragraph 2. and/or subsection k. paragraph 3.
3. The sidewalk café can be operated in the proposed location without compromising public safety or the use of sidewalks for pedestrian travel and access.
4. The sidewalk café hours of operation will be restricted and be compatible with the surrounding area.
5. The business applying for the sidewalk café permit is not licensed to permit on premises consumption of alcoholic beverages and will not permit the consumption of alcoholic beverages in the sidewalk café.
6. The applicant has submitted a petition signed by twenty-five (25) or more residents of the neighborhood in which the sidewalk café is to be located and, if the location is within a neighborhood with a neighborhood association recognized by the City of Charleston, the applicant must provide proof of having presented the proposal for said sidewalk café to that neighborhood association.

(Ord. No. 1996-227, §§ 3—6, 11-26-96 ; Ord. No. 1997-279, § 1, 7-15-97; Ord. No. 1997-280, § 2, 7-15-97; Ord. No. 1998-147, § 3, 8-18-98; Ord. No. 1998-203, § 5, 11-24-98; Ord. No. 1999-01, § 3, 1-12-99; Ord. No. 1999-54, § 4, 4-27-99; Ord. No. 1999-137, § 4, 9-28-99; Ord. No. 2001-31, § 1, 3-14-01; Ord. No. 2002-92, § 2, 8-13-02; Ord. No. 2003-44, § 4, 4-22-03; Ord. No. 2004-68, § 1, 7-20-04; Ord. No. 2006-489, § 2, 10-24-06; Ord. No. 2007-59, § 7, 3-6-07; Ord. No. 2008-146, § 5, 11-25-08; Ord. No. 2009-55, § 2, 4-14-09; Ord. No. 2009-207, § 2, 10-13-09; Ord. No. 2009-208, § 1, 10-13-09; 2011-121, § 1, 9-13-11)

EXHIBIT B-2

Charleston, South Carolina, Code of Ordinances >> - CITY CODE >> Chapter 29 - TOURISM >> ARTICLE V. - TRANSPORTATION BY ANIMAL-DRAWN VEHICLES FOR PURPOSES OF TOURING >> DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

Sec. 29-201. - Restricted.
Sec. 29-202. - Franchise agreement required; restrictions.
Sec. 29-203. - Route limitations.
Sec. 29-204. - Drivers.
Sec. 29-205. - Tour guide required.
Sec. 29-206. - Gatekeeper loading and medallion issuance procedure.
Sec. 29-207. - Design standards.
Sec. 29-208. - Zones of operation.
Sec. 29-209. - Diapering apparatus and sanitation communication required.
Sec. 29-210. - Number of medallions to be issued.
Sec. 29-211. - Fees.
Sec. 29-212. - General health care and management requirements.
Secs. 29-213—29-218. - Reserved.

Sec. 29-201. - Restricted.

No person shall operate or cause to be operate for hire any vehicle, of whatever nature, drawn by animals for the purpose of conducting tours within the old city district or the old and historic district, except animal-drawn vehicles as provided in this chapter.

(Ord. No. 1983-22, § 56, 5-10-83)
Editor's note—
Formerly numbered as section 29-202

Sec. 29-202. - Franchise agreement required; restrictions.

(a) *Findings of fact:*

(1) City council finds that certain of the operators of animal drawn vehicles in the old and historic district of the city have begun to utilize aggressive solicitation practices, adjacent to or upon the streets, sidewalks and public properties, urging upon citizens and visitors the use of their services; have abruptly approached citizens and visitors and thrust brochures in their hands, which are often unwanted and end up on the streets and sidewalks; have utilized solicitors, pamphleteers, persons holding signs, hawkers and pullers-in and have even placed fixed structures upon or adjacent to the streets, sidewalks and public properties to solicit business and/or distribute materials urging the use of their services.

(2) City council further finds that the success of such commercial practices requires that persons congregate and respond to such solicitation, thereby impeding pedestrian and vehicle travel.

(3)

City council further finds that such practices have an adverse impact on the ambiance of the city and its old and historic district; tend to create confrontations with citizens and visitors; adversely impact pedestrian and vehicle traffic flow; create litter; tend to create nuisances; adversely impact the health, safety and well being of the public; and otherwise have a negative impact on the tourism industry and economy of the city.

(4) City council further finds that it is appropriate that, as a condition of operating animal-drawn vehicles in the old and historic district, all persons must obtain a franchise, and must agree to desist from the aforesaid business practices, which agreement shall be a condition of the franchise.

(5) City council further finds that the operation of animal drawn vehicles on the public streets is a privilege and not a right and such operation is for the benefit of the public.

(6) City council further finds in the adoption of this section, that this is part of an ongoing effort to reasonably regulate the conduct of business upon the streets and sidewalks of the central business district and the market area for the benefit of the general public.

(b) *Franchise required:* No person shall operate or cause to be operated upon the streets or sidewalks of the old and historic district of the city any animal-drawn vehicle, without first entering into a franchise agreement with the city. Such franchise agreement shall be granted for a period of one (1) year and shall expire on the anniversary of the date of execution; provided, however, upon compliance with the provisions of the franchise agreement and Chapter 29, Articles V and VI, the agreement shall be automatically renewed. The franchise agreement shall contain the following provisions, which provisions are material and go to the essence of the franchise agreement:

(1) The franchisee shall maintain a current business license.

(2) The franchisee shall agree to operate its business strictly in accordance with the ordinances of the city, applicable thereto, as from time to time amended.

(3) The franchisee shall agree that it will not carry out the following business practices, or suffer them to be carried out on its behalf, upon the sidewalks, streets and public properties in the old and historic district, or upon private property adjacent to such streets, sidewalks and public properties, but directed at persons upon such streets, sidewalks and public properties:

a. The distribution of pamphlets or other printed materials to solicit or advertise for business.

b. The use of hawkers, pullers-in, pamphleteers, or persons holding signs to solicit or advertise the business or inviting the public to make inquiries to such persons.

c. The placement of fixed structures for the purpose of sales, solicitation, hawking, pullers-in, pamphleteering or the support of signage or advertising.

d. The parking or storage of animals or equipment on the public streets and sidewalks, except to load or unload passengers in approved loading zones. Nothing herein shall regulate the parking or storage of animals or equipment on private property.

(4) Nothing herein shall prohibit the solicitation of business immediately alongside an animal-drawn vehicle in an approved loading zone so long as such solicitation is not done in a raucous manner.

(5) The franchise shall be nonexclusive.

(6)

The franchisee shall agree that, upon the violation of the provisions of this section by the franchisee, its agents, employees, or persons acting on its behalf, the right to operate animal-drawn vehicles in the old and historic district shall be suspended as follows:

a. Upon two (2) violations within a six-month period, the franchise shall be suspended for a period not to exceed seven (7) days.

b. Upon three (3) violations within a one-year period, the franchise shall be suspended for a period not to exceed thirty (30) days.

c. Upon four (4) violations within a one-year period, the franchise shall be suspended for a period not to exceed one hundred eighty (180) days.

(c) *Administration and appeals.* This section shall be administered by the director of tourism. All appeals from an interpretation or determination by the director of tourism shall be made to the tourism commission, within fifteen (15) days of notice of such interpretation or determination. All appeals from an adverse decision by the tourism commission shall be made to the Court of Common Pleas within thirty (30) days of such decision.

(d) *Execution of agreement.* City council, by the adoption of this section, authorizes the mayor to enter into a franchise agreement with any and all persons who desire to operate animal-drawn vehicles in the old and historic district. Unless otherwise stated, each franchise agreement shall automatically renew on January 1 of every year so long as the franchisee is in good standing.

(Ord. No. 1995-110, § 1, 3-28-95; Ord. No. 1998-174, § 23, 9-22-98; Ord. No. 2001-133, § 1, 12-18-01; Ord. No. 2002-99, § 1, 8-13-02; Ord. No. 2006-200, § 1, 5-23-06)

Editor's note—

Ord. No. 1995-110, § 1, adopted March 28, 1995, enacted provisions designated as following former § 29-201. In order to accommodate the provisions of said ordinance, the editor renumbered former § 29-202 as § 29-201 and added the provisions of Ord. No. 1995-110 as § 29-202

Sec. 29-203. - Route limitations.

Animal-drawn vehicles may operate on all streets or public ways in the district except the following:

(a) The bricked portion of Church Street, from Water Street to South Battery, and all cobblestone and Belgium block streets;

(b) Any public way designated as an alley, land or court (excluding St. Michael's Alley which may be used through Friday from 4:00 to 6:00 p.m., excepting legal holidays and Horlbeck Alley which may be used Monday through Friday from 9:00 a.m. to 4:00 p.m. and during regular touring hours on weekends and on legal holidays);

(c) The following streets:

(1) Atlantic Street;

(2) Price's Alley;

(3) Rope Maker's Lane;

(4) Bedons Alley;

(5) Ladson Street;

(6) Big Lamboll Street;

(7) Water Street (from Church to Meeting Streets);

(8) Church Street (from Tradd to Water Street);

(9) Broad Street (West of State Street) from 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m., Monday through Friday, excepting legal holidays;

(10) Meeting Street (North of Broad Street) from 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m., Monday through Friday, excepting legal holidays;

(d) On such streets or at such times as are restricted for such use by the department of traffic and transportation with the approval of the city council committee on traffic and transportation and so designated in the office of the commission.

(e) There shall be an amended commercial route that can be used during eastern standard time between the hours of 4:30 p.m. to 6:00 p.m. The commercial route approved is as follows: Market Street to Concord Street to Vendue Range to Prioleau Street to Elliot Street to E. Bay Street to Exchange Street to Prioleau Street to Concord Street to Market Street.

(Ord. No. 1983-22, § 59, 5-10-83; Ord. No. 1986-88, § 1, 8-19-86; Ord. No. 1993-58, § 9, 4-27-93; Ord. No. 2013-10, § 1, 1-22-13)

Sec. 29-204. - Drivers.

All drivers of animal-drawn vehicles shall have a current automotive vehicle drivers license and demonstrate competence in handling animal-drawn vehicles. All drivers of animal-drawn vehicles shall be required to pass an animal-drawn vehicle competency examination which will satisfy the city that the driver is knowledgeable and capable of handling horses and animal-drawn vehicles in emergency situations.

(Ord. No. 1983-22, § 60, 5-10-83; Ord. No. 1993-58, § 7, 4-27-93)

Sec. 29-205. - Tour guide required.

All tours on animal-drawn vehicles must be conducted by a registered or temporary tour guide.

(Ord. No. 1983-22, § 61, 5-10-83)

Sec. 29-206. - Gatekeeper loading and medallion issuance procedure.

(a) The city shall establish a central location at the corner of North Market and Church Streets for the distribution of medallions to be issued in the conduct of tours in the zones of operation as established pursuant to section 29-208 of the Code of the City of Charleston. The central location point shall be designated as the "gate" which will consist of a structure to be occupied by a city employee authorized to issue medallions for touring as provided herein, said employee to be more commonly referred to as the "gatekeeper." The gate loading procedure shall require an animal-drawn vehicle to load and discharge passengers as herein provided and to pass through the gate to receive a medallion. This medallion shall indicate the zone in which the animal-drawn vehicle shall conduct its tour. The zone designation shall be obtained by random selection by the gatekeeper as hereinafter provided. The medallion shall be issued by the gatekeeper and affixed to the back of the animal-drawn vehicle. Upon completion of the tour, the medallion shall be returned to the gatekeeper by the driver or company representative of the animal-drawn vehicle having been issued the medallion. A medallion shall be returned to the gatekeeper no later than seventy-five (75) minutes after its issuance.

(b)

Animal-drawn vehicles shall load and discharge passengers at the city's one (1) central loading zone, located on Anson Street south of Pinckney Street and on North Market Street between Anson Street and Church Street, provided that an animal-drawn vehicle shall be able to load and discharge passengers on private property that is owned or operated by its company and provided that the said private loading zone is within the Market zone which is described as the area lying between and including Pinckney Street to the north; Cumberland Street to the south; East Bay Street to the east, and Meeting Street to the west.

(c) The gate shall operate between the hours of 9:00 a.m. through 5:30 p.m. during Eastern Standard Time and from 9:00 a.m. and 6:30 p.m. during daylight savings time. During Eastern Standard Time, medallions shall be issued until 4:30 p.m. and shall be returned by 5:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 5:00 p.m. During daylight savings time, medallions shall be issued until 5:30 p.m. and shall be returned by 6:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 6:00 p.m. Notwithstanding the foregoing, during the month of April 2011 only, the gate shall operate between the hours of 9:00 a.m. and 7:30 p.m. Furthermore, during the month of April 2011, medallions shall be issued until 6:30 p.m. and shall be returned by 7:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 7:00 p.m.

(d) Animal-drawn vehicles shall be permitted to remain in a loading zone no longer than fifteen (15) minutes prior to entering the gate to receive a medallion. If a medallion is not issued to a vehicle which has been in the loading zone for fifteen (15) minutes, the said vehicle shall move to the rear of the loading zone and wait in line to enter the gate and receive a medallion.

(e) A special tour, which is defined as a tour that has been scheduled in advance by the director of tourism, shall require a medallion before the said special tour can be conducted. A special tour must also utilize the city's loading zone or private property for loading and discharging passengers as provided herein.

(f) A commercial tour, shall be defined as a tour that is conducted in the commercial district only and after 4:30 p.m. There shall be no more than be five (5) commercial tours permitted to begin between 4:30 p.m. and 5:00 p.m. industry wide, and there shall be no more than five (5) commercial tours permitted to begin between 5:00 p.m. and 5:30 p.m. industry wide. The carriage company owners will determine among themselves how the five (5) commercial tours permitted to begin between 4:30 p.m. and 5:00 p.m. and the five (5) commercial tours permitted to begin between 5:00 p.m. and 5:30 p.m. will be divided up among the carriage companies. Commercial tours conducted after 5:30 p.m. shall not be restricted in the number of tours permitted and shall not require a medallion.

(Ord. No. 1983-22, § 62, 5-10-83; Ord. No. 1993-58, § 1, 4-27-93; Ord. No. 2002-73, § 1, 5-28-02; Ord. No. 2006-495, § 1, 11-14-06; Ord. No. 2010-85, § 2, 5-11-10)

Sec. 29-207. - Design standards.

Animal-drawn vehicles shall be authentically styled passenger carriages. Wagons which patently were designed for cargo instead of passengers will not be approved. Carriages must not exceed twelve (12) feet in length or six (6) feet in width. Carriages will be measured from end to end, excluding the steps and shafts; and, from axle tip to axle tip. No part of the carriage may be over six (6) feet in width; provided, however, any certificated carriage which was in use as of January 1, 1982, and no longer than thirteen (13) feet may continue in use.

(Ord. No. 1983-22, § 63, 5-10-83; Ord. No. 1998-174, § 24, 9-22-98)

Sec. 29-208. - Zones of operation.

(a) The peninsula city shall be divided into zones of operation as may be recommended from time to time by the commission and approved by city council. A map outlining such zones shall be maintained in the office of the director of tourism.

(b) Based upon traffic studies, industry input and observations and experience of the commission, the maximum number of animal drawn vehicles to be allowed to operate in a given zone may be restricted, all as may be recommended by the commission and approved by city council.

(c) The right to operate in Zones 1, 2 and 3 shall be made available to touring entities having animal drawn vehicles for which certificates of appropriateness have been issued as follows:

(1) Through the use of the gate and gatekeeper procedure as hereinabove defined, the gatekeeper shall utilize a bingo machine and twenty (20) pingpong balls, six (6) of which shall be designated for Zone 1, six (6) of which shall be designated for Zone 2, and eight (8) of which shall be designated for Zone 3, to randomly select a ball with a designated zone destination marked thereon, and that upon selection, the ball shall be removed from the bingo machine and replaced when the medallion is returned.

(2) When a medallion is issued, the gatekeeper shall record the company's name, the animal-drawn vehicle drivers' name, medallion number and the time that it is issued. No animal-drawn vehicle shall be issued more than one (1) medallion within forty-five (45) minutes from the time of issuance of the first medallion. When the medallion is returned, the check-in time shall be recorded by the gatekeeper. The gatekeeper shall verify that the maximum check-out time has not been exceeded.

(3) A medallion shall be returned to the gatekeeper no later than seventy-five (75) minutes from the time of its issuance.

(Ord. No. 1985-148, § 5, 12-17-85; Ord. No. 1986-49, § 2, 5-27-86; Ord. No. 1993-58, § 4, 4-27-93)

Sec. 29-209. - Diapering apparatus and sanitation communication required.

It shall be unlawful for any person, firm, corporation or other entity to utilize any animal for the purpose of pulling any vehicle on city streets unless such animal is equipped with diapering apparatus that prevents the droppings of such animal from being deposited or otherwise left on city streets. It shall be the responsibility of the person, firm, corporation or other entity utilizing any animal-drawn vehicle to see that the diapering apparatus is maintained in working order. Further, every animal-drawn vehicle shall be equipped with a two-way communication system and flags to identify areas in need of sanitation. It shall be the responsibility of the person, firm, corporation or other entity utilizing any animal-drawn vehicle to drop a sanitation flag marking areas where animals deposit or otherwise leave excreta on city streets and to utilize two-way communications to provide notice of areas in need of equine sanitation.

(Ord. No. 1987-82, § 1, 7-21-87; Ord. No. 1998-174, § 25, 9-22-98; Ord. No. 2007-223, § 1, 11-27-07)

Sec. 29-210. - Number of medallions to be issued.

(a) The city shall authorize a total of twenty (20) medallions to be distributed as follows:

Zone 1 6

Zone 2 6

Zone 3 8

(b) The medallions shall be labeled with a serial number as follows:

Zone 1 Serial Nos. 1—15
Zone 2 Serial Nos. 16—30
Zone 3 Serial Nos. 31—45
(Ord. No. 1993-58, § 3, 4-27-93)

Sec. 29-211. - Fees.

(a) Each animal-drawn vehicle company authorized to do business within the City of Charleston shall be assessed an annual fee of seventeen thousand five hundred dollars ($17,500.00) to operate a carriage business in the City of Charleston. This fee will allow a company to have one (1) animal-drawn vehicle in the central loading zone at any given time.

(b) Each animal-drawn vehicle company shall be assessed a fee of three dollars ($3.00) each time one of its animal-drawn vehicles receives a medallion at the gate. The company shall be billed on a monthly basis.

(c) A company which operates an animal-drawn vehicle business in the City of Charleston shall be assessed a monthly sanitation fee in a sum to be assessed by the director of tourism, which fee shall be paid before the company shall be allowed to participate in the gatekeeper system, said fee to be billed to the company on a monthly basis.

(Ord. No. 1993-58, § 5, 4-27-93)

Editor's note—

Ord. No. 1993-58, § 5, adopted April 27, 1993, enacted a new section 29-212. In order to better conform to the organization of the Code, the editor has redesignated the provisions of § 5 of Ord. No. 1993-58 as § 29-211

Sec. 29-212. - General health care and management requirements.

(a) *Findings of fact.* City council hereby makes the following findings of fact:

(1) The City of Charleston, carriage company operators, residents, and visitors to the City of cHarleston have sought to take a proactive approach to protect and ensure the health, safety and welfare of animals used in the tourism industry;

(2) A study was conducted to develop and recommend animal welfare policies to the tourism commission. In response to the study, the tourism commission formed the ad hoc committee on animal-drawn carriages which committee was comprised of representatives from the tourism commission, animal control, the carriage industry, the Society for the Prevention of Cruelty to Animals ("SPCA"), and an independent veterinarian;

(3) The ad hoc committee on animal-drawn carriages has now reviewed and updated the previously recommended policies after much deliberation and with input from the general public, Carriage Operators of North America ("CONA"), and the veterinarian community; and

(4) The codification of the ad hoc committee on animal-drawn carriages recommended regulations is in the best interest of protecting the health, safety, and welfare of the animals used in the tourism industry and protects the health, safety, and welfare of motorists and pedestrians using the public right-of-ways along with the residents and tourists of the City of Charleston.

(b) *Definitions.* Except where the context clearly indicates otherwise, the following terms and phrases as used in this section shall have the following meanings:

(1)

Animal shall mean any horse or mule used for touring purposes and operated under a franchise agreement as outlined in section 29-202

(2) *Contamination* shall mean the introduction of unwholesome or undesirable elements, including but not limited to, bedding, mold, bugs, and rodent droppings.

(3) *Director of tourism* shall mean the director of tourism or his or her designee.

(4) *Equine sanitation flag* shall mean the marker used to identify animal excreta and is generally recognized as a two and one-half-inch rubber ball cut in half with an eight-inch surveyor's flag attached.

(5) *Farrier* shall mean a specialist in horse care who addresses the hooves, feet and legs of the animal.

(7) *Inspection* shall mean to permit the director of tourism, the police department, or a city contracted veterinarian to enter upon the premises of any carriage company subject to this ordinance to make inspections and to examine and audit required records.

(8) *Old and Historic District* shall mean that portion of the city that is so designated from time to time on the official zoning map of the city.

(9) *Out of service* shall mean when the animal is unhitched from a carriage and out of its harness.

(10) *Police department* shall mean the chief of police or his or her designee.

(11) *Rest* shall mean the time when the animal is in service but not performing work as defined herein.

(12) *Stable* shall mean the barn where the animals are kept.

(13) *Stall* shall mean individual space within the barn where each animal is kept.

(14) *Tour* or *touring* shall mean the conducting of or the participation in sightseeing in the districts for hire or in exchange for a donation.

(15) *Touring stock* shall mean all animals used for touring pursuant to this section.

(16) *Vintage carriage* shall mean any carriage built before 1900.

(17) *Work* and *working* shall mean the act of pulling a carriage.

(18) Reserved.

(19) Reserved.

(20) *Free choice* shall mean that water shall be ready and in front of a horse for 15 minutes after a tour is conducted so that a horse is free to choose to drink or not to drink water.

(c) *Equipment.*

(1) Every carriage used for touring purposes and operated under a franchise agreement as outlined in section 29-202 shall be equipped with the following:

a. Head lights or lanterns and tail lights or lanterns which are visible for a distance of (500) feet when the carriage is operated from a half hour after sunset to a half hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred feet ahead;

b. A slow moving vehicle emblem attached to the rear of the carriage;

c. A diapering apparatus that prevents the droppings of the animal used to pull the carriage from being deposited on the ground or the right-of-way;

d. A fifth wheel or cut under turning mechanism on the front axle with the exception of vintage carriages;

e. Reflective ankle cuffs or another reflective device approved by the tourism committee shall be used on at least two (2) of the animal's legs if one (1) animal is pulling a carriage, or if two (2) animals are pulling a carriage reflective ankle cuffs or another reflective device approved by the tourism committee shall be used on at least one (1) of the outside legs of each animal when the carriage is operated from a half (½) hour after sunset to a half (½) hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred (500) feet ahead;

f. A two-way electronic communication system; and

g. A minimum of two (2) equine sanitation flags to mark animal excreta droppings.

(2) Carriages must be properly lubricated and the carriage wheels shall spin freely.

(3) Each carriage shall be maintained in a safe condition so as to not endanger any person or property.

(4) Each carriage shall be maintained in a clean and sanitary condition, free of liter and debris and at all times suitable for public transportation of passengers.

(5) No carriage shall be operated having more passengers than what is permitted by its certificate of appropriateness or having a combined weight of carriage, passengers, and drivers that is more than three (3) times the weight of the animal(s) pulling the vehicle.

(d) *Carriage stands, client pick-up locations, staging areas, and barns.*

(1) Carriages queuing in the medallion booth line shall move and circle the block during equine sanitation cleaning.

(2) Each carriage company shall ensure that their animals in the queue line at the medallion booth shall have a fresh water source every hour.

(3) Each carriage company shall post at their barns in a conspicuous place signage as required under applicable federal, state, and local laws, including but not limited to, the Equine Activity Liability Act (S.C. Code 47-9-730), along with providing brochures outlining the City's ordinances governing the general health and welfare of the animals used in the tourism industry of Charleston.

(e) *Care and shelter of animals.*

(1) No animal shall be used to draw a carriage unless the animal is in good health and the following standards are met:

a. The animal shall not have open sores, open wounds, diarrhea, nor shall the animal be lame or have any other ailments unless the city tourism office as well as the individual company's stable has a current written statement by a veterinarian on file that the animal is fit for such work not withstanding such condition. Further, the written statement by the veterinarian must have a required expiration date;

b. The hooves of all animals while engaged in work on pavement, brick, concrete or other like hard surfaces shall have rubber or elastomer shoes, boots or pads to prevent slipping and shall be evenly trimmed and shod. However, steel shoes can be used upon introduction to the touring stock during an initial two-week trial period. Also, if a farrier determines that the horse's hooves will not accommodate the use of rubber pads, metal shoes can be used on the rear legs of the animal;

c. The animal shall be properly and appropriately groomed;

d. The animal shall have adequate flesh and muscle tone as determined by the Body Condition Scale of the Henneke Chart and shall average between 4 and 7;

e. The animal is kept in good working condition;

f. At introduction into the touring stock then bi-annually thereafter, the animal shall have had a physical inspection completed by and a certificate of serviceability for carriage work signed by a licensed veterinarian, with the results thereof provided to the City of Charleston Tourism Director and made available for inspection on site;

g. All animals upon reasonable notice by the tourism director or police department shall be made available for an annual physical inspection to be conducted by the tourism director or police department's veterinarian with the results thereof being maintained by the office of tourism with a copy being provided to the carriage company operator;

h. At introduction into the touring stock then quarterly thereafter, the animal shall have been de-wormed; and

i. At introduction into the touring stock, the animal has been vaccinated under the direction of a veterinarian for appropriate diseases and risk factors of the area, as outlined on the certificate of serviceability.

(2) Free choice water shall be provided to each animal immediately after completing a tour for a minimum of fifteen (15) minutes.

(3) Animals shall be provided electrolyte supplements at each feeding.

(4) Animals shall have at least fifteen (15) minutes rest between back to back tours.

(5) In a twenty-four-hour period, animals shall not engage in Work more than eight (8) consecutive hours or ten hours with out a one and one-half (1½) hour break being disconnected from the carriage, in a twenty-four-hour period.

(6) Animals shall not engage in work more than six (6) days in a seven-day period.

(7) Animals shall not engage in work with equipment causing an impairment of vision, other than normal blinders.

(8) Animals shall not be driven at a speed faster than a slow trot.

(9) Animals shall not be subject to any cruel or harassing treatment or equipment.

(10) Animals shall not be sold or disposed of except in a humane manner in accordance with American Association of Equine Practitioners' guidelines.

(11) Animals shall be at least three and one-half (3½ years of age and shall not weigh less than nine hundred fifty (950) pounds in fit condition.

(f) *Harnesses.*

(1) Animals shall not engage in work with harnesses or bits that harm or are unsafe to the animal.

(2) Harnesses, bridles, bits and padding shall be properly fitted and kept in clean and good repair.

(3) Harnesses shall be kept free of makeshifts like wire, rope, and rusty chain.

(4) Trace chains shall not put pressure on the collar and shoulders of the animal when it starts pulling the carriage resulting in a jolting start versus a smooth start with a snug collar already in place.

(5) Breeching shall fit so that it will not rub or hinder the hind leg movement of the animal.

(g) *Weather conditions.*

(1) Carriage company operators and drivers shall use caution when Working animals in adverse weather conditions such as high heat and humidity, snow, ice, heavy rain, and other slippery or reduced visibility situations.

(2) When the ambient temperature reaches or exceeds eighty-five (85) degrees Fahrenheit at any point during the carriage company's hours of operation, the carriage company operators shall implement a mandatory system of taking the rectal temperature of each working animal immediately after completing a tour. In the event an animal's temperature reaches one hundred three (103) degrees Fahrenheit or above, the animal's temperature shall be taken every fifteen (15) minutes until the animal's temperature falls below one hundred three (103) degrees Fahrenheit before the animal is allowed to return to work.

(3) When the rectal temperature of an animal reaches between 103—103.9 degrees Fahrenheit, the carriage company operator shall require the animal to be removed from service and be cooled down to a temperature of 101.5 degrees Fahrenheit before returning them to engage in Work.

(4) In the event that an animal's rectal temperature reaches 104 degrees Fahrenheit or above the animal shall be taken out of service for the day and cooled down.

(5) In the event an animal can not be cooled down to a rectal temperature of 101.5 degrees Fahrenheit within two (2) hours of the first 103 degree Fahrenheit or above rectal temperature recording, a veterinarian shall be immediately contacted to inspect the animal.

(6) At any time when an animal's rectal temperature reaches 105.0 or above, or if any animal shows signs of distress such as panting motions, thumping of the chest (synchronous diaphramic flutter), tying up, or stiffening of legs or back, muscle trembling, or colic, a veterinarian shall be immediately contacted to inspect the animal.

(7) When either the ambient temperature reaches ninety-eight (98) degrees Fahrenheit or the Heat Index reaches one hundred twenty-five (125) degrees Fahrenheit, as determined by the director of tourism or the police department, the carriage company operators shall discontinue working their animals and pull them off the street until the temperature decreases below the above stated temperatures as authorized by the director of tourism or the police department.

(8) The official thermometer used for determining the temperature and the heat index shall be located at 113 Calhoun Street, in the City and County of Charleston, South Carolina. In the event this thermometer is out of service, as determined by the director of tourism or the police department, the back-up thermometer shall be the thermometer located at 180 Lockwood Drive, in the City and County of Charleston, South Carolina.

(h) *Feeding.*

(1) Animals shall receive an adequate amount of equine feed daily, which is free from contamination, sufficient in quantity, having nutritional value, and be provided frequently enough to meet normal daily requirements for the animal's condition, special needs, environmental factors and size of the animal so as to maintain a healthy flesh.

(2) Clean drinking water free from contamination shall be available to an out of service animal at all times.

(3) Out of service animals shall at all times have access to salt in a block or loose form.

(i) *Stables and stalls.*

(1) Stables shall be safe, well lighted, ventilated, and provide protection from the weather as described herein;

a. Stables and stalls shall be kept clean and in good repair and excreta shall be removed daily;

b. The floors of the stalls shall be graded and raked to keep their surface dry; each stall shall have rubber mats under the shavings or shavings with a minimum depth of four (4) inches;

c. Fans shall be used to increase ventilation when the ambient temperature reaches eighty (80) degrees Fahrenheit;

d. Sharp surfaces and any other hazards shall not be permitted in any stable or stall where they can come in contact with the animals;

e. Stables and stalls shall be kept free of leaks, including but not limited to, leaks form roofs or from plumbing;

f. Stalls sizes shall be no less than five (5) feet nine (9) inches × eleven (11) feet unless a carriage company undertakes any remodeling or refurbishing of any sorts to their stable that equals fifty (50) percent of the market value of the stable or moves their stable. In the event a carriage company does remodel or refurbish their stable as stated in the previous sentence then they must implement a minimum stall size of twelve (12) feet × twelve (12) feet for every stall;

g. The practice of tethering the animal in a stall is permitted so long as the animal can lie down without the risk of entanglement or injury;

h. Occupied stalls shall have a minimum of three (3) inches of bedding or have a specialized surface so as to keep animals clean, dry and free of concussion, abrasion or pressure points;

i. Interior and exterior areas of the stable shall be kept clean, properly drained and free of nuisances including, but not limited to, unreasonable and excessive odors and unreasonable accumulation of refuse and excreta;

j. There shall be no smoking at any time in stables; and

k. Unless otherwise directed by a veterinarian, animals shall be given a pasture turn-out time of a minimum of four (4) consecutive days to total fourteen (14) days within four (4) months;

(2) Stables shall be located within walking distance the medallion gate located at the corner of Church and North Market.

(3) All stables shall have a yearly inspection by the fire department. Fire extinguishers must be kept in obvious places in every stable as required by law and as recommended by the fire department.

(j) *Recordkeeping.*

(1) Feeding, shoeing, medication, and treatment logs, bi-annual inspection records, certificate of serviceability, quarterly de-worming records, rectal temperature logs, work schedules, disposal documentation, and such other records as requested by the tourism director and police department shall be maintained for a three year period by each carriage company operator for every animal used in the touring stock.

(2) These records shall be made available for inspection by the city and its designee.

(k) *Inspections.* In addition to the annual inspection provided for herein, animals, facilities and records shall be subject to random or unannounced inspections at the discretion of the tourism director, police department, and/or the city designated veterinarian. The inspector is

permitted to take notes, pictures and video if they deem appropriate. These inspections shall be brief in order to not interfere with the work flow of the business. The inspector should be allowed to enter the premises no longer than fifteen (15) minutes after arrival at the facility during business hours.

(Ord. No. 2007-90, § 1, 4-24-07; Ord. No. 2011-58, §§ 1—10, 8-16-11; Ord. No. 2011-59, § 1, 8-16-11; Ord. No. 2011-60, § 1, 8-16-11)

Secs. 29-213—29-218. - Reserved.

DIVISION 2. - CERTIFICATE OF APPROPRIATENESS

Sec. 29-219. - Required.
Sec. 29-220. - Application; inspection.
Sec. 29-221. - Transferability.
Sec. 29-222. - Suspension or revocation.
Sec. 29-223. - Expiration.
Secs. 29-224—29-234. - Reserved.

Sec. 29-219. - Required.

No animal drawn vehicle shall operate without a duly issued certificate of appropriateness and without having paid such fee therefor as city council may, from time to time, establish. The certificate of appropriateness must be permanently affixed to the vehicle in a location approved by the commission.

(Ord. No. 1983-22, § 58, 5-10-83; Ord. No. 1985-148, § 5, 12-17-85)

Sec. 29-220. - Application; inspection.

(a) An applicant for a certificate of appropriateness shall provide the tourism director with the following:
  (1) Adequate identification of the applicant and animal-drawn vehicle and proof of ownership;
  (2) Material setting forth the characteristics of the vehicle including its dimensions, weight, passenger capacity, maker, year built;
  (3) Color photographs not less than eight (8) inches by ten (10) inches of all four (4) sides of the vehicle or, in the discretion of the tourism director, sketches of a similar make and model and samples of colors proposed for use on the vehicle;
  (4) Adequate proof of liability insurance with PIP coverage in an amount determined by the tourism commission;
  (5) A fee as set forth by city council;
  (6) After approval but prior to the issuance, a current city business license.

(b) Upon receipt of the information set forth in subsection (a)(1)—(4) and (6), the tourism director shall submit the application to the tourism commission for the commission's determination as to whether the application should be approved. In acting upon and evaluating any application, the tourism commission shall consider the design standards as set forth in section 29-207 of this chapter as well as the proposed color of the vehicle.

(c) Nothing herein shall be construed so as to prohibit the tourism director or the commission from requiring visual inspection of the vehicle.

(Ord. No. 1983-22, § 64, 5-10-83; Ord. No. 1987-83, § 2, 7-21-87; Ord. No. 2007-202, § 1, 10-23-07)

Sec. 29-221. - Transferability.

A certificate of appropriateness required by this division shall be issued on a specific vehicle and for a specific owner and is not transferable. The certificate remains the property of the city and must be surrendered upon expiration or revocation.

(Ord. No. 1983-22, § 65, 5-10-83)

Sec. 29-222. - Suspension or revocation.

(a) Failure to abide by the provisions of this chapter or any of the ordinances of the city or laws of the state in any manner affecting or regulating the operation of the vehicle for which the certificate is issued, or the failure to maintain the required insurance shall be grounds for suspension for a reasonable time or the revocation of a certificate of appropriateness issued under this division.

(b) If, in the opinion of the tourism director, a certificate of appropriateness should be suspended or revoked, he shall give written notice to the holder thereof, by certified mail of the right to appear before the commission and show cause why the certificate should not be suspended or revoked.

(Ord. No. 1983-22, § 67, 5-10-83; Ord. No. 2007-202, § 2, 10-23-07)

Sec. 29-223. - Expiration.

All certificates of appropriateness shall be granted for a period of one year and shall expire on the anniversary of the date of issuance; provided, however, upon compliance with the provisions of section 29220(1), (4), (5), and (6) the certificate shall be renewed.

(Ord. No. 1983-22, § 66, 5-10-83; Ord. No. 2007-202, § 3, 10-23-07)

Secs. 29-224—29-234. - Reserved.

EXHIBIT B-3

BARR, UNGER AND MCINTOSH, L.L.C.
ATTORNEYS AT LAW
11 BROAD STREET
P. O. BOX 1037
CHARLESTON, SOUTH CAROLINA 29402-1037

CAPERS G. BARR, III
H. WAYNE UNGER, JR.
WILLIAM S. BARR
H. THOMAS MCINTOSH, JR.
ADAM E. BARR
CAPERS G. BARR, IV
W. SIAU BARR, JR.

TELEPHONE 843-577-5083
FAX 843-723-9039
www.barrungermcintosh.com

EDISTO ISLAND OFFICE
806 OYSTER PARK
EDISTO ISLAND, SC 29438
TELEPHONE 843-869-2389
FAX 843-869-0110

MEMORANDUM

To: City of Charleston Board of Zoning Appeals

From: Capers G. Barr, III and Adam E. Barr

Re: 45 Pinckney Street Use as a "Stable"; Condominium Unit

Date: April 16, 2013

Arkay, LLC seeks to resume the use of 45 Pinckney Street as a "Stable". It is creating a horizontal property regime, assigning two separate and distinct uses for the property that will clearly separate the "Stable" use from other uses. The area of the building extending 11.5 feet from the Pinckney Street facade will not permit stable use, and will be designated Unit "B". Its use will be for offices.

Attached as Exhibit "1" is a Plot Plan by surveyor Alexander Peabody, depicting the configuration of the horizontal property regime. Exhibit "2" is a plat of survey by Mr. Peabody showing the measured distance from the front of the building to the nearest residential zone district.

Unit "A", to be used as a stable, comprises the rearmost 44.01 feet of the building. The limited common area of Unit "A" and the General Common Area for both units, shown as the 14 foot wide area in shading on the Plot Plan, will be used for restrooms, customer waiting, loading and offloading, and will not be used for a stable.

By the configuration as described, the Stable use will be 119 feet distant from the nearest residential zone district, and thereby will comply with the setback requirement of the Special Exception Use as a Stable, as set forth in City Code Section 54-206(p).

The central position addressed in this memorandum is that the statutory 100 foot setback from a residential zone district must be measured from the Stable "use"; rather than measured from the outside of the building within which the "use" is contained. The configuration of 45 Pinckney Street as proposed in this memorandum, and the measurement of the 100 foot setback from the use within the building, will comport with the setback requirements of the City Code, according to the statutory syllogism discussed below.

1. First, the intent of Council in enacting the Special Use Exception for stables should be viewed from its broad context: The Special Exception Use as a "Stable" was intended to apply only to stables in the tourism carriage industry. This is evident because of the language of Subsections 54-206, p, subparagraphs 2 and 4, requiring a "Certificate of Appropriateness" from the City Tourism Commission, and also requiring that the cleaning/loading/tacking area shall not "impede traffic flow in the public right of way." These circumstances could only apply to activities unique to the tourism carriage industry and would not apply, for example, to a horse stable on John's Island.

2. Secondly, the zone of the City in which a "Stable" may be located is limited under the Tourism provisions of the Code. Chapter 29, Article V, Sections 29-201, *et. seq.*, provides for city franchises for carriage companies, and more specifically provides that "Stables shall be located within walking distance (from) the Medallion Gate located at the corner of Church and North Market." Although the phrase "walking distance" is not further defined in the Code, another section strongly suggests that "walking distance" means the area called the "Market Zone", bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and Meeting Street to the west. The Tourism provisions of Chapter 29 are incorporated into the Zoning provisions of Chapter 54 by Section 54-206. p. 3: "The stable complies with all city, county, and state regulations for stables."

This is because Code section 29-206(b) provides that carriages shall load and discharge passengers at the "Gate", or they may load and discharge on private property within the "Market Zone". The "Market Zone" is there defined as the area bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and by Meeting Street to the west. It appears, therefore that the intent of Council in providing for "walking distance" to the Gate, was to mean that the Stable be within the "Market Zone".

If the central point of carriage tours was intended to be the Gate, and if tourists are nevertheless permitted to mount and dismount away from the Gate, provided that the mount/dismount area must be in the "Market Zone", it stands to reason that "Market Zone" and "walking distance" were intended to be synonymous. This is also logical from a City monitoring standpoint, so that City enforcement personnel are enabled to monitor carriage operations within a "walking distance" range of the Gate.

3. Thirdly, therefore, if it is correct that "walking distance" is intended to be within the "Market Zone", a review of the properties within the Market Zone suggests very few properties were suitable for Stable use, either presently or at the time of enactment of the provisions of the Tourism Ordinance.

First of all, the central, east-west axis of the Market Zone is the City Market itself, as well as the adjacent restaurants and shops on the south side of North Market Street and on the north side of South Market Street. It is obvious that none of the

properties on the east-west axis of the Market Zone could be used as a "Stable", as a practical matter.

Neither could there be any reasonable expectation that a property on the western boundary, fronting on Meeting Street could be used as a stable; or, likewise, that properties on the eastern boundary fronting on East Bay Street, could be used, either.

On the southern boundary of the Market Zone there may be one potential property, although there is no suggestion that it would be available for use, much less as a Stable. That is the property currently used as a convenience store at the northeast corner of State and Cumberland Streets. Otherwise, the properties on the southern boundary of the Market Zone which front on Cumberland Street are either within 100 feet of a residential district, or are properties used as city parking garages or as established office buildings.

On the northern boundary of the Market Zone, viewed from west to east, the Bank of America building consumes most of the first block extending eastward from Meeting Street; and immediately to the east is the property at issue, 45 Pinckney Street. To the east of 45 Pinckney is the Andrew Pinckney Inn. Proceeding easterly across Church Street is the First Baptist Church School Gymnasium, and across Anson Street to the east is the stable of Palmetto Carriage Company, then a small Inn, a veterinary clinic, a surface parking lot, an office building and "Big John's" Café.

Between North Market and Pinckney Streets there are several open automobile parking lots that could theoretically be converted to stable use. Several are on the north side of Hayne Street, and another is east of Anson Street, between North Market and Pinckney Streets. However none of the surface lot properties are known to be available, and it is unlikely that automobile parking would become secondary to Stable use, as a practical matter.

Therefore, the properties theoretically or practically available for use as a Stable in the Market Zone are at 16 Hayne Street, the current location of Carolina Polo & Carriage Company, 45 Pinckney Street, the location at issue in this Memorandum, or one of the surface automobile parking lots as described.

The point to be made is that, in construing the intent of City Council in providing for "Stable" use as a Special Exception, the properties for which that intended use would be eligible were limited. Accordingly, the construction and use of the term "Stable" in the City Code must be framed within this practical context.

4. "Stables" are permitted in general business and urban commercial districts as a Special Exception Use. Code Sections 54-201(l); 54-206(p).

5. "Stable" is not defined in the city's Zoning Ordinance. It is noteworthy that the ordinance provides only for stables as a Special Exception "Use". Emphasis, here, is on the term "Use".

6. Although not defined in the Zoning Ordinance, "Stable" is defined in the Franchise Ordinance, which authorizes by franchise the operation of animal drawn vehicles for the purposes of tourism, as follows: "*Stable* shall mean the barn where the animals are kept." Section 29-212(b)(12). "*Stall*" is also defined: "Stall shall mean individual space within the barn where each animal is kept." Section 29-212(13).

7. The question of statutory construction therefore presented is this: Where the Special Exception Use provides in Section 54-206(p)(1) that "the stable (shall not be) located within 100 feet of any residential zone district", is the 100 feet to be measured from the outside of the building within which the stable is located, or may the 100 foot measurement be made from the area of the building within which the stable is located, if the building includes more than one use?

A review of Section 54-206(p), the zoning ordinance, suggests that "Stable" is used in that section to describe a "Use", and not a "Structure".

a. In the first place Section 54-206 itself deals with "Special Exception Uses."

b. Secondly, in 54-206(p)(2) a requirement of the special exception is that the Tourism Commission issue a Certificate of Appropriateness "for the stable". The requirement for issuing a Certificate of Appropriateness is found in the Tourism Chapter of the Code, Sections 29-219, *et. seq.* However, the Tourism Commission's Certificate of Appropriateness is not issued for a "Stable", at all. Instead, it is issued for an animal drawn vehicle. The Section requires that horse drawn carriages comply with certain proof of ownership, that they adhere to certain manufacturing specifications; that color photographs of carriages be maintained in the tourism office; that proof of liability insurance be filed; that a fee be paid; and that the carriage company obtain a current city business license. All of these things are the standards by which a "Certificate of Appropriateness" is issued by the Tourism Commission. Therefore, as used in Section 54-206(p)(2), the term "Stable" does not refer to a physical structure, at all. Rather, it refers to "Stable" as a form of use.

c. Likewise, Section 54-206(p)(4) contains the requirement that a site plan be provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right of way. This requirement has nothing to do with the existence of any building that could be called a "Stable", but rather relates to an operational or "use" function. Likewise, Sections 5 and 6 deal with "uses" as a stable, requiring proof of how refuse is to be handled and how drainage is to be collected.

d. However, subsection (7) of Section 54-206(p) uses an altogether different term. The Section provides that "Buildings" shall be designed, utilizing appropriate ventilation to prevent objectionable odors from being emitted." It is noteworthy that City Council used the term "Buildings" in subsection 7, rather than "Stables". The use of this different term supports the inference that "Stable" was not used

in the other subsections to describe a building or structure, at all. Rather "Stable" is used to describe a form of use; and use as a "Stable" may be part of a larger "Building", which can include other uses.

8. Arkay is creating a Horizontal Property Regime at 45 Pinckney Street, consisting of two "units" or "apartments". The northernmost unit, measured 11.5 feet in a southerly direction from the front of the building on Pinckney Street consists of office use. This unit, referred to as Unit "B", is restricted against use as a stable.

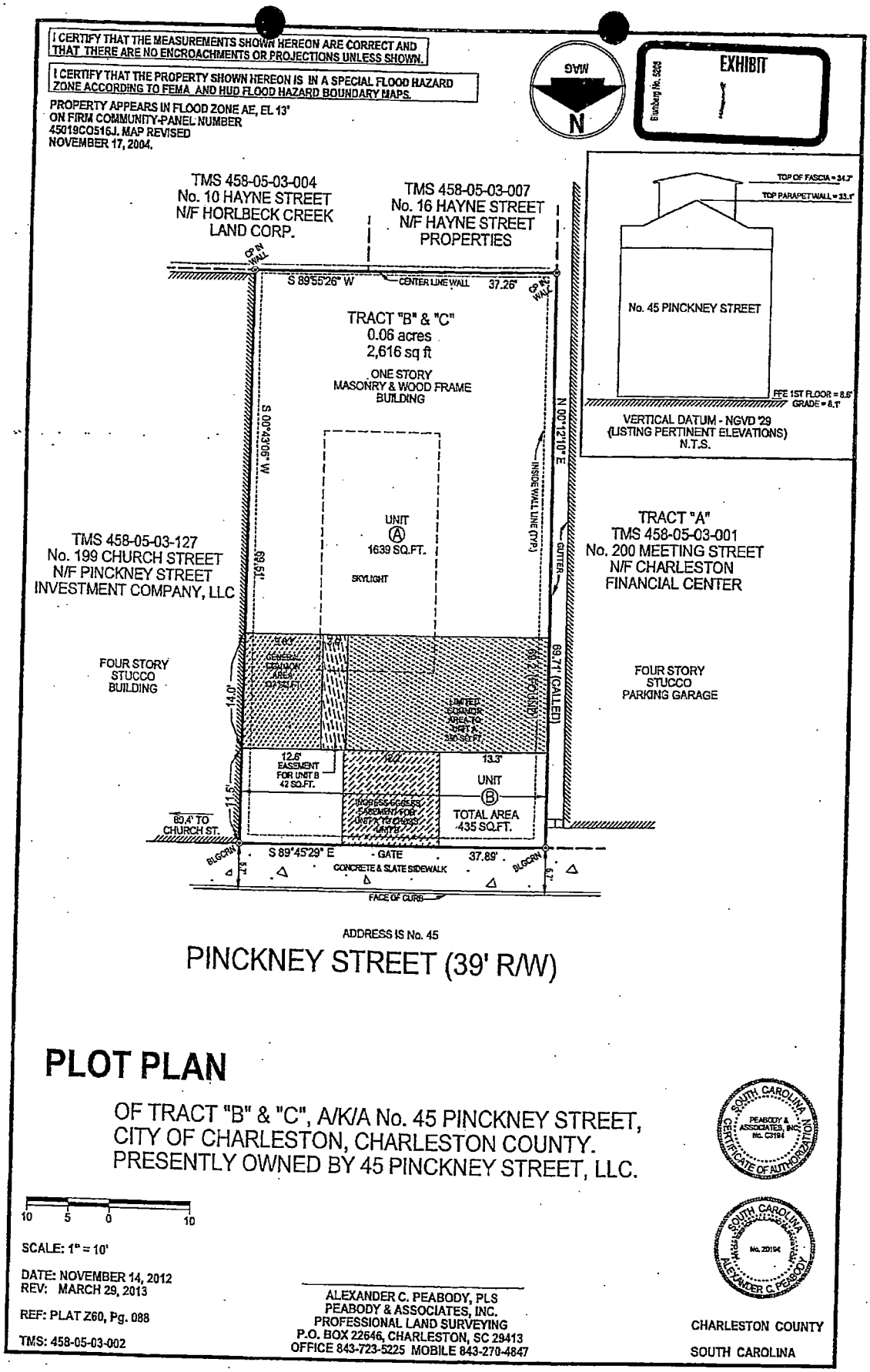
To the south of the Unit B offices is a 14 foot deep Limited Common Area for Unit A, and General Common Area for both units, but which is not a part of Unit A. It will be used for restrooms, customer waiting, customer loading and unloading, and tacking.

The remainder of the building, Unit "B", will be the area beginning 25.5 feet from the front of the building, to the rear wall of the building, a space 37.8 feet wide and 44.01 feet deep. Unit "B" will be used as a stable; that is to say, as a space "where the animals are kept", and for cleaning and tacking. It will include 6 stalls and 2 tack rooms.

The entryway though the existing arched doorway shall be an access easement for ingress and egress to Units "A" and "B".

9. To the extent that "Stable" describes the space where animals are "kept" [29-212(b)(12)], the intent of Council was to provide for a separation of the space within which animals sleep, eat and defecate of 100 feet from a residential district. By creating an area 25.1 feet deep that will not be used as a stable, that will be used only for human purposes, and that will be restricted against use as a Stable, the Applicant is assuring the City and neighbors that no animal will be "kept" within 100 feet of the residential district.

EXHIBIT B-4



PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.

10 5 0 10

SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: MARCH 29, 2013

REF: PLAT Z60, Pg. 088

TMS: 458-05-03-002

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

SOUTH CAROLINA NOTION PEABODY & ASSOCIATES, INC. No. C3194 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA REGISTERED No. 20194 ALEXANDER C. PEABODY

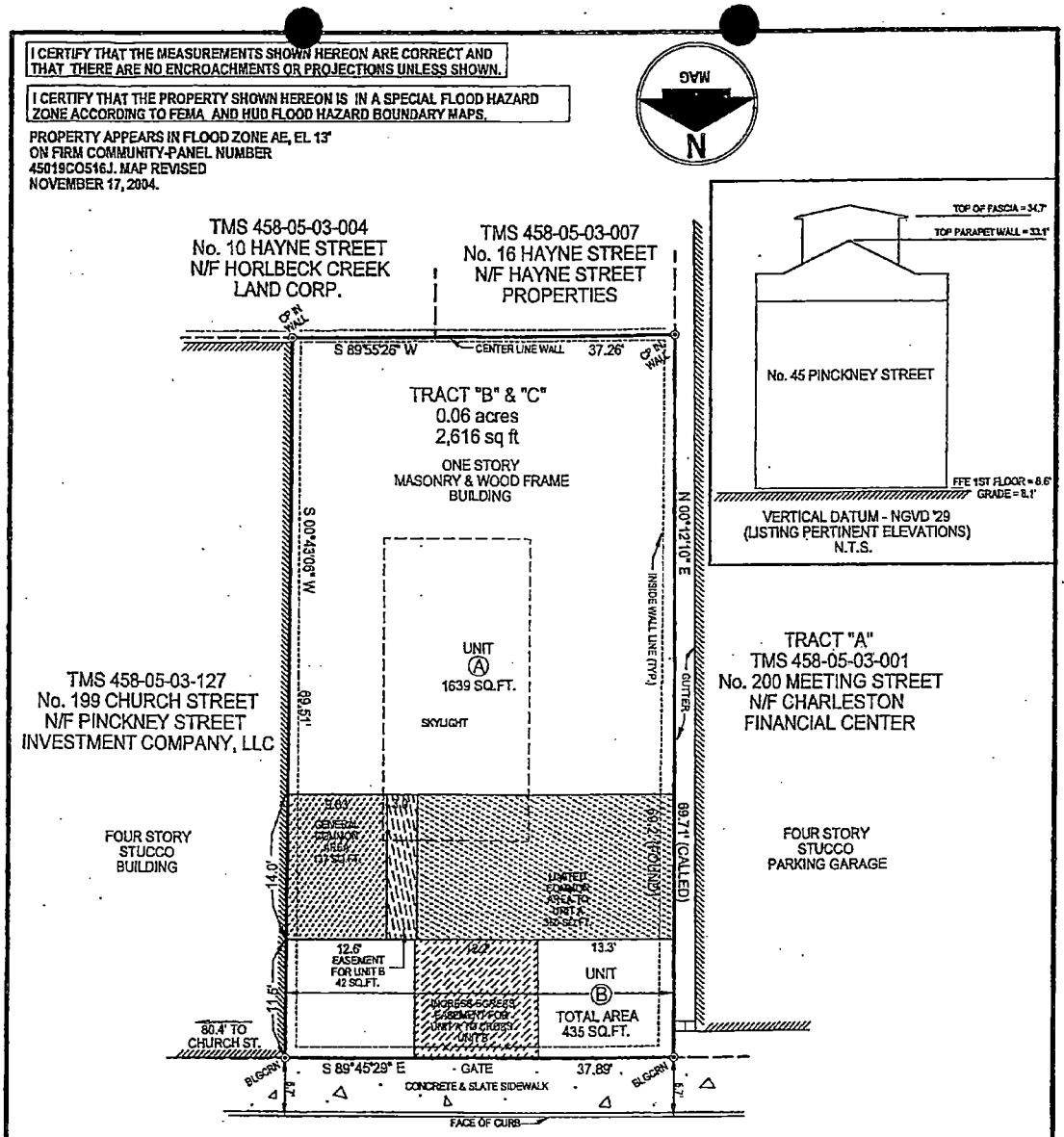
CHARLESTON COUNTY

SOUTH CAROLINA

I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.

I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.

PROPERTY APPEARS IN FLOOD ZONE AE, EL 13'
ON FIRM COMMUNITY-PANEL NUMBER
45019C0516J. MAP REVISED
NOVEMBER 17, 2004.



ADDRESS IS No. 45

PINCKNEY STREET (39' R/W)

PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.

SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION

10 5 0 10

SCALE: 1" = 10'

SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY

DATE: NOVEMBER 14, 2012
REV: MARCH 29, 2013

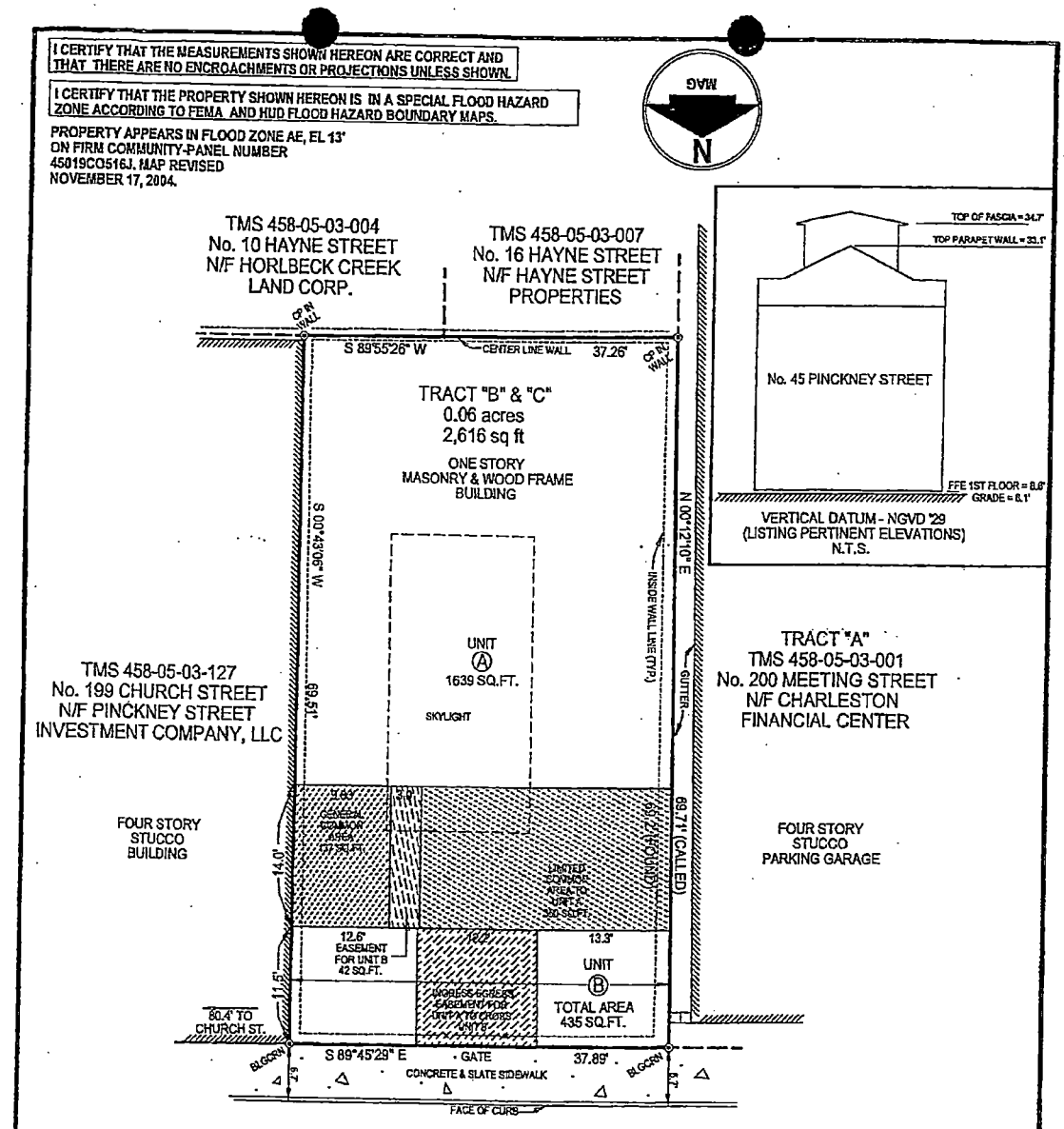
REF: PLAT Z60, Pg. 088

TMS: 458-05-03-002

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

CHARLESTON COUNTY

SOUTH CAROLINA



PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.

10 5 0 10

SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: MARCH 29, 2013

REF: PLAT Z60, Pg. 088

TMS: 458-05-03-002

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

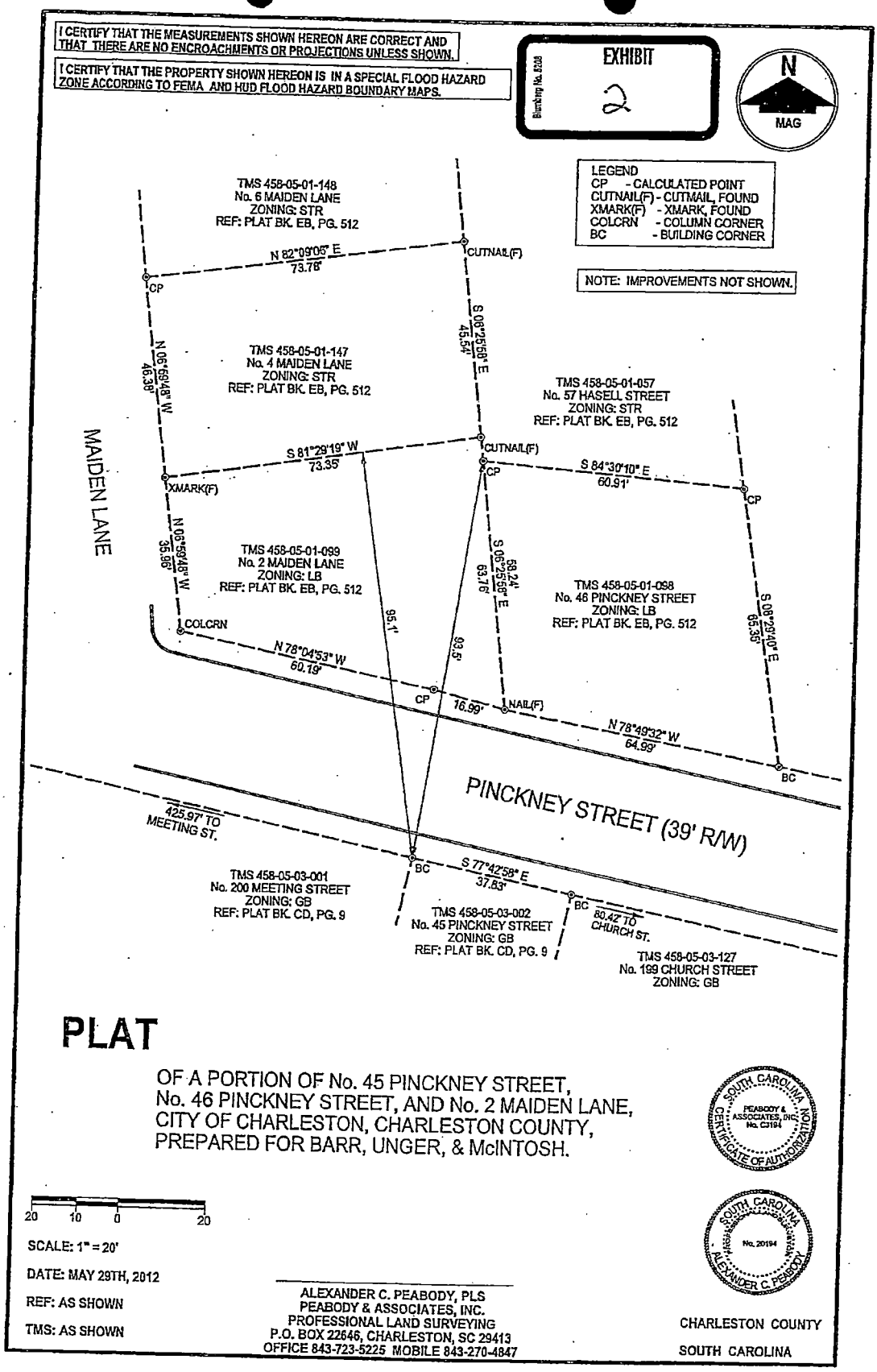
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION

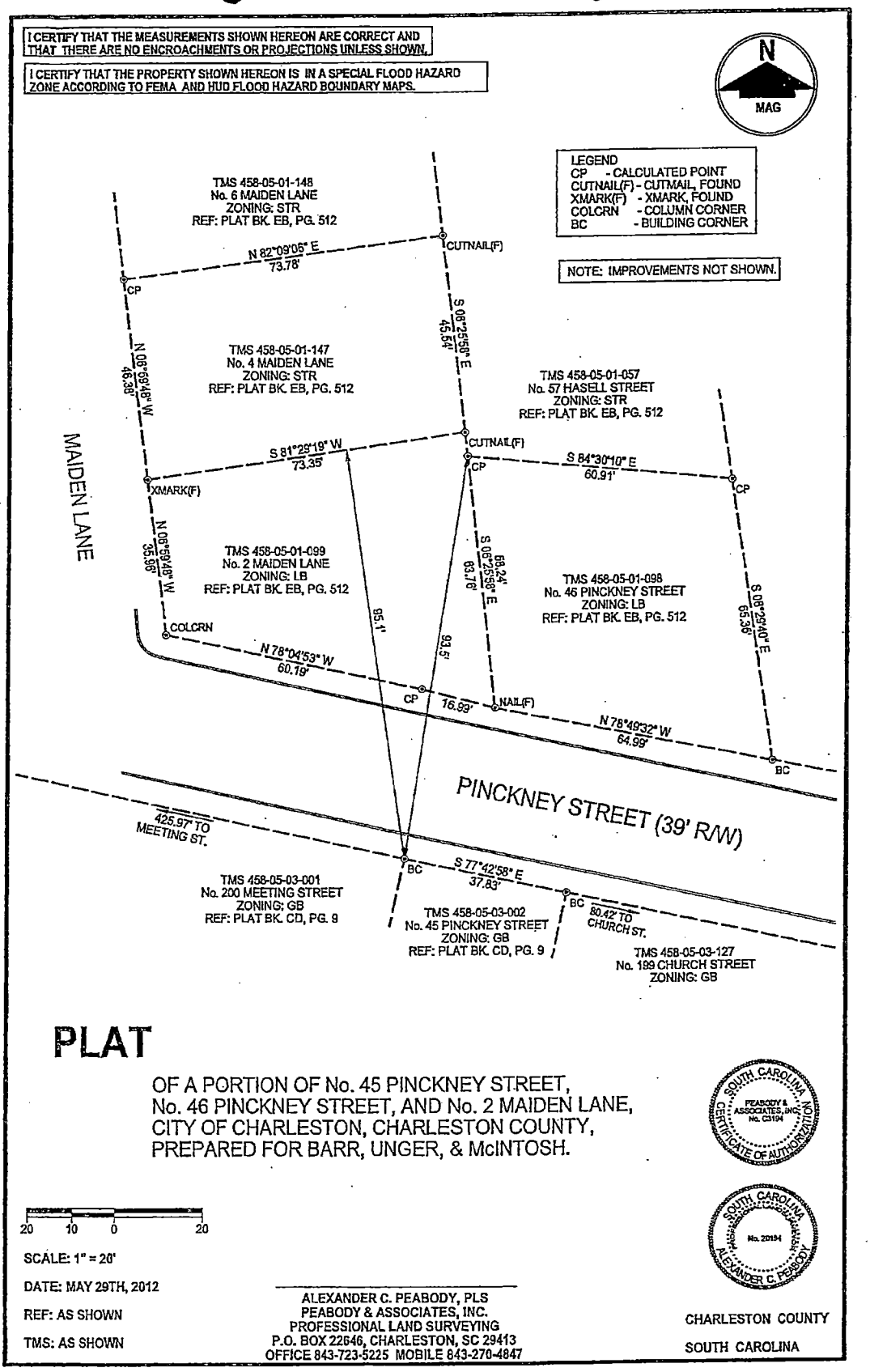
SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY

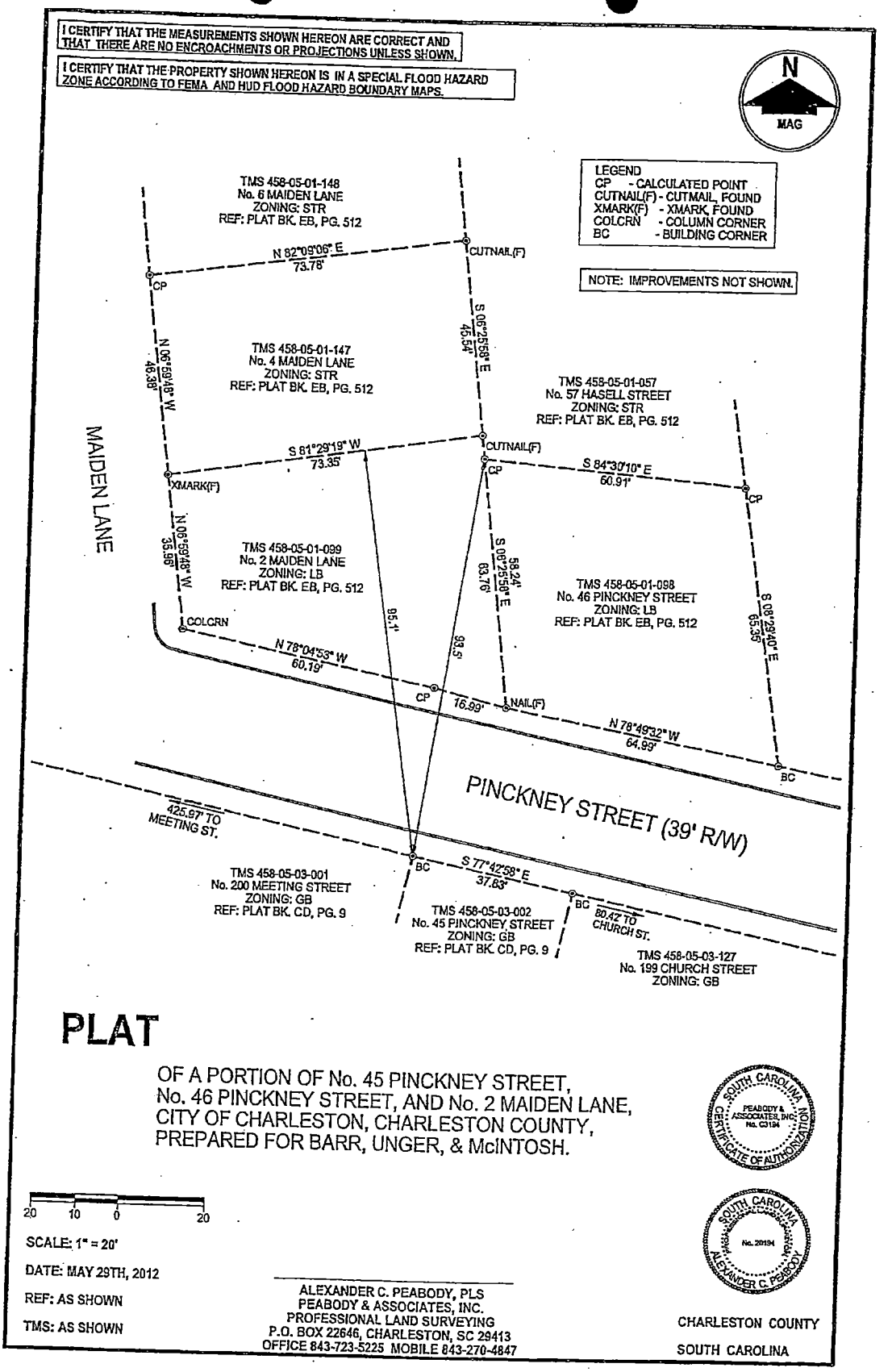
CHARLESTON COUNTY

SOUTH CAROLINA

EXHIBIT B-5


I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
EXHIBIT
2
Blumberg No. 6208
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTMAIL, FOUND
XMARK(F) - XMARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-148
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
N 82°09'05" E
73.78'
CUTNAIL(F)
CP
N 06°59'48" W
46.38'
S 06°25'58" E
45.54'
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
S 81°29'19" W
73.35'
CUTNAIL(F)
CP
S 84°30'10" E
60.91'
CP
XMARK(F)
N 06°59'48" W
35.96'
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 06°25'58" E
63.76'
59.24'
TMS 458-05-01-058
No. 46 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 08°29'40" E
66.36'
COLCRN
95.1'
N 78°04'53" W
60.19'
69.5'
CP
16.99'
NAIL(F)
N 78°49'32" W
64.99'
BC
PINCKNEY STREET (39' R/W)
425.97' TO MEETING ST.
BC
S 77°42'58" E
37.83'
BC
80.42' TO CHURCH ST.
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET,
No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE,
CITY OF CHARLESTON, CHARLESTON COUNTY,
PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA


I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTNAIL, FOUND
XMARK(F) - XMARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-148
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
N 82°09'05" E
73.78'
CUTNAIL(F)
CP
N 06°59'48" W
46.36'
S 06°25'58" E
45.54'
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
S 81°29'19" W
73.35'
CUTNAIL(F)
CP
S 84°30'10" E
60.91'
CP
XMARK(F)
N 06°59'48" W
35.56'
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 06°25'58" E
63.76'
68.24'
TMS 458-05-01-098
No. 46 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 06°29'40" E
65.36'
95.1'
93.5'
COLCRN
N 78°04'53" W
60.79'
CP
16.99'
NAIL(F)
N 78°49'32" W
64.99'
BC
PINCKNEY STREET (39' R/W)
425.97' TO MEETING ST.
BC
S 77°42'58" E
37.83'
BC
80.42' TO CHURCH ST.
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET,
No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE,
CITY OF CHARLESTON, CHARLESTON COUNTY,
PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA


I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTMAIL, FOUND
XMARK(F) - XMARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-148
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
N 82°09'06" E
73.78'
CUTNAIL(F)
CP
N 06°59'48" W
46.38'
S 06°25'58" E
45.54'
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
S 81°29'19" W
73.35'
CUTNAIL(F)
CP
S 84°30'10" E
60.91'
CP
XMARK(F)
N 06°59'48" W
35.96'
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 06°25'58" E
83.76'
58.24'
TMS 458-05-01-098
No. 46 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 08°29'40" E
65.35'
COLCRN
95.1'
93.5'
N 78°04'53" W
60.19'
CP
16.99'
NAIL(F)
N 78°49'32" W
64.99'
BC
PINCKNEY STREET (39' R/W)
425.97' TO
MEETING ST.
BC
S 77°42'58" E
37.83'
BC
89.42' TO
CHURCH ST.
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET,
No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE,
CITY OF CHARLESTON, CHARLESTON COUNTY,
PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA

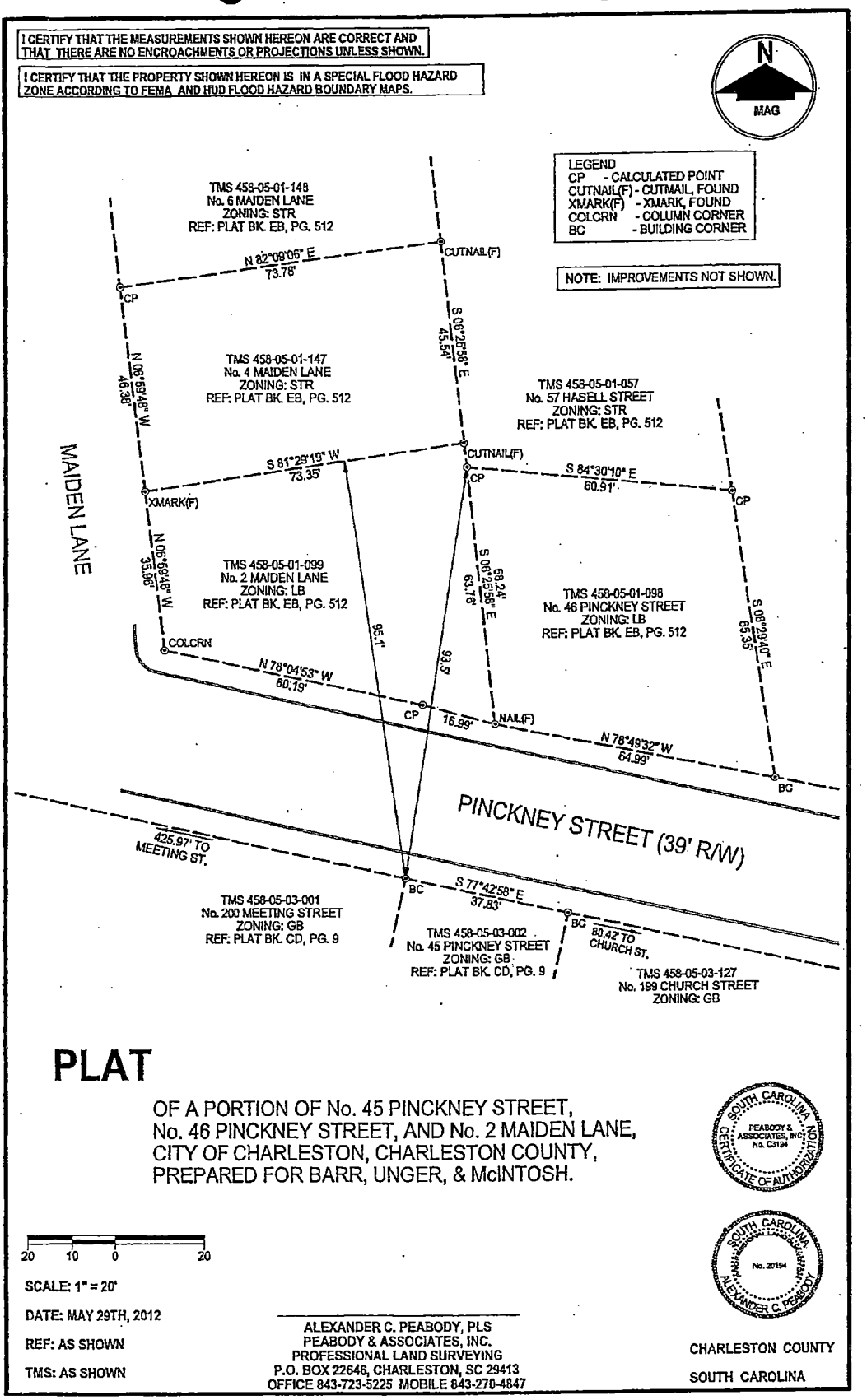

I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTMAIL, FOUND
XMARK(F) - XMARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-148
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-098
No. 46 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
PINCKNEY STREET (39' R/W)
N 82°09'05" E 73.78'
S 06°28'58" E 45.54'
N 06°59'48" W 46.36'
S 81°29'19" W 73.35'
S 84°30'10" E 60.91'
N 06°59'48" W 35.96'
S 06°28'58" E 63.76'
68.24'
95.1'
93.5'
S 08°29'40" E 65.35'
N 78°04'53" W 60.19'
16.99'
N 78°49'32" W 64.99'
425.97' TO MEETING ST.
S 77°42'58" E 37.83'
60.42' TO CHURCH ST.
CUTNAIL(F)
CP
XMARK(F)
COLCRN
NAIL(F)
BC
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET,
No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE,
CITY OF CHARLESTON, CHARLESTON COUNTY,
PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
SOUTH CAROLINA
No. 20154
ALEXANDER C. PEABODY
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA

EXHIBIT B-6

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

Personally appears before me Robert R. Knoth, who being duly sworn states as follows:

1. Affiant is 68 years of age and is married to Elender "Sally" Campbell Knoth. Affiant and Sally have three children, Bobby, Jr., Richard, and a daughter, Rhett.

2. Affiant and his family own and operate Carolina Polo & Carriage Company, a horse carriage tour business presently located at 16 Hayne Street in the City of Charleston. Affiant seeks to relocate Carolina Polo to 45 Pinckney Street. The operation of Carolina Polo provides to affiant and his wife their only source of income.

3. Affiant's son Richard also works with him in the company. Richard is married and has three children. Richard was recently awarded the contract by the City of Charleston to provide equine sanitation cleanup services on all horse carriage routes in the city, effective January, 2013. Richard does business in that capacity as Green Horse Equine Sanitation, LLC. The only source of income for Richard and his family is Carolina Polo and Green Horse Equine Sanitation.

4. In addition to affiant and Richard, the company employs approximately 16-20 employees, depending on the time of year, who work as tour guides, stable hands, and clerical personnel.

5. Affiant has been in the carriage tour business for 23 years. He formed Carolina Carriage Company in 1990, which began its operation at 45 Pinckney Street, the location at issue in this matter.

6. At the time of forming Carolina Carriage Company, affiant had other business interests. However, in 1995/1996 he was forced into bankruptcy and lost all of his holdings. Following bankruptcy, he reformed Carolina Carriage Company into Carolina Polo & Carriage Company, and ultimately resumed operations at 45 Pinckney Street.

7. Carolina Polo operated 45 Pinckney Street until 1996, when a competitor, Confederate Carriage Company, obtained the lease for that location, forcing Carolina Polo to move. Notably Affiant's last use of 45 Pinckney Street was 17 years ago.

8. Carolina Polo relocated to 16 Hayne Street at that time, in 1996.

9. 45 Pinckney continued to be used as a carriage stable by Confederate Carriage, and then by Old Towne Carriage Company, until 2009.

10. Affiant's current location at 16 Hayne Street, which is leased, has recently been sold. The new owner requires Carolina Polo to vacate 16 Hayne Street by May 31, 2013.

11. When the opportunity arose for affiant to purchase 45 Pinckney Street in the summer of 2012, he applied to this Board for a Special Exception. However, the application was withdrawn, primarily because of the position of the Malony family who reside nearby.

12. The City Tourism Ordinance requires in Section 29-212(i)(2) that tour carriage stables be located within walking distance of the "Gate", from which Tour Medallions are issued by the City. The Gate is located at the northeast corner of Church and North Market Streets.

13. After withdrawing his application last fall, affiant and others assisting him sought alternative properties to use as a stable within the "walking distance" parameters required by the tourism ordinance. However, there is no other site available within a GB or UC district that is within walking distance of the Gate.

14. Affiant will be forced to lose his business if his stable cannot be relocated to 45 Pinckney Street.

15. There are currently five horse carriage tour companies in operation in the city: Carolina Polo, now at 16 Hayne seeking relocation to 45 Pinckney; Palmetto at 8 Guignard Street; Old South at 14 Anson Street; Old Towne at 20 Anson Street; and Classic at 10 Guignard Street.

16. In 2007, City Council substantially amended the horse carriage tour ordinance to add Section 29-212, which provides for the healthcare and management of horses.

17. In 2007, the existing carriage companies were all non-conforming uses, so that no company has yet been required to meet the current code standards. Carolina Polo will be the first company to provide a "state-of-the-art" stable at 45 Pinckney. Perhaps most significantly, the stalls at 45 Pinckney will be constructed to a 12x12 standard, to which no other company currently conforms.

18. Architect Sandy Logan has designed a ventilation system for 45 Pinkney Street that is also state-of-the-art. Odors within the building, and air discharged from the building, will be treated at two stages. First, at the collection stage, affluent is treated with "Odalock", a product currently used by the company, and also used by Richard Knoth with Green Horse Equine Sanitation. The producer of Odalock, Darren Akherst will present an explanation of its product to the Board. Secondly, before air is evacuated from the building, it would pass through a charcoal filtration system to ensure that the air entering the atmosphere will be odor controlled.

19. Architect Sandy Logan has also depicted a site plan showing the location of stalls within the stable, showing the ventilation system, and showing the drainage system. As shown on Mr. Logan's drawings, that the corridor area between the stalls of the stable, as well as the

"public area", where customers will be waiting, will be used for the purposes of cleaning, and tacking of horses and carriages, and for on-loading and off-loading customers, thus avoiding that activity in any public right of way.

20. I pledge to be a good neighbor to the nearby residents of Ansonborough and to the staff, guests and general operations of the Andrew Pinckney Inn, my neighbor to the east; and to Bank of America, my neighbor to the west.

Robert R. Knoth

Subscribed and sworn to before me
this 16th day of April, 2013

NOTARY PUBLIC for South Carolina
My Commission Expires: 02/11/2021

EXHIBIT B-7

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

Personally appears before me Richard Knoth, who being duly sworn states as follows:

1. Affiant is 39 years of age and is married to Christina Knoth. Affiant and Christina have three children.

2. Affiant is currently employed with Carolina Polo & Carriage Company, which has been and is his principal source of income.

3. In January, 2013 he began the operation of Green Horse Equine Sanitation, LLC, which was awarded the contract with the City of Charleston for equine sanitation cleanup. That company is not yet producing income.

4. Affiant has worked with Carolina Polo for many years and his family relies on that source of income for its principal means of support.

5. In approximately the Spring of 2012, affiant was introduced to Darren Akhurst, and his product known as "Odalock", which is designed for the control of livestock effluent odor. Carolina Polo has been using the product for many months.

6. Odalock is substantially superior to the prior means of controlling stable odors. Previously, chlorine bleach was used which, when combined with horse urine produced ammonia, which was potentially toxic and created an unpleasant odor itself.

7. Odalock provides no such reaction with animal effluent. Affiant and Mr. Akhurst have presented Odalock as a product to several organizations, including the Tourism Commission and The French Quarter Neighborhood Association for their information. The product is environmentally friendly and biodegradable.

8. Affiant also uses the Odalock Product in the operation of Green Horse Equine Sanitation, to use as spray on the streets of Charleston for horse urine and feces cleanup and odor control.

9. In the fall of 2012, Affiant undertook an investigation of potentially available properties for use as a stable within "walking distance" of the horse carriage gate at the northeast corner of North Market and Church Streets. There are no available properties, except for 45 Pinckney Street, which is the property currently pending a Special Exception status by the City of Charleston Board of Zoning Appeals.

Richard Knoth

Subscribed and sworn to before me
this 16th day of April, 2013

NOTARY PUBLIC for South Carolina
My Commission Expires: 02/11/2021

EXHIBIT B-8

LANIER PARKING SOLUTIONS
200 Meeting Street "Bank of America Place Garage" Charleston, SC 29401

June 21, 2012

Dear Sir or Madam:

I am writing this letter in regards to the proposal for Carolina Polo and Carriage Company relocating to Pinckney Street. I have been the Facility Manager for LPS holdings at 200 Meeting Street since February of 2011 and at no time have we had any traffic problem coming from Carolina Polo or Carriage. There have been multiple times when I have been in at odd hours between midnight and six am and have never once heard any noise coming from the barn in regards to the horses also we have never received any complaints from tenants or visitors in regards to animal noise or smell. If you have any questions that you would like to ask me please feel free to contact me.

Sincerely,

Christopher Porter
Lanier Parking Solutions
cporter@lanierparking.com
843-805-7774

Marcella Giannasio
19 Anson Street
Charleston, SC 29401

July,10 2012

To Whom It May Concern:

I am the owner of the house at 19 Anson Street and would like to formally express that I have no objection to having a horse stable reside at 45 Pinckney Street.

Thank you,

Marcella Giannasio

Marcella Giannasio

July 12, 2012

Suzanna Bryant

13 Anson Street

Charleston, South Carolina

29401

To Whom It May Concern,

I am the resident at 13 Anson Street and I do not have any objection with 45 Pinckney Street being a horse barn.

Sincerely,

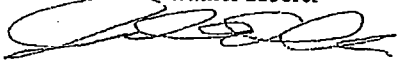
Suzanna Bryant

330-284-2723

To Whom It May Concern:

As the owners of 15 Anson Street we are in full support of Carolina Polo Carriage Company relocating from 16 Hayne Street to 45 Pinckney Street. We feel that they will not only be a welcomed addition to our neighborhood but also an asset. If you have any further questions please feel free to contact me.

Sincerely,
Joshua & Heather Keeler



15 Anson St.
Josh@twoboroughslarder.com
Heather@twoboroughslarder.com
\215.514.9752

July 10, 2012

To Whom It May Concern:

As residents of 28 Anson Street, my husband and I support the Carolina Polo Company moving to 45 Pinckney Street. As property owners, we support any opportunity for local businesses to grow and their improvement to surrounding properties is welcomed.

Sincerely,

Angela and Lucas Drake

28 Anson Street
Charleston, SC 29401

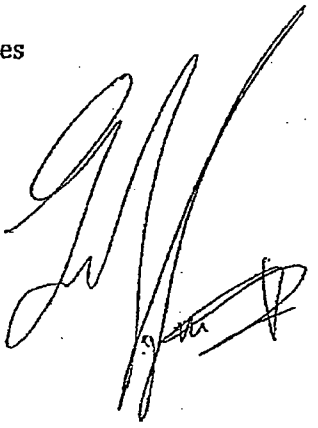
To whom it may concern,

I hope your week is going well. I live at 43 ½ Hassel Street and I wanted to write a letter to state that I don't have any issues with The Carolina Polo and Carriage Company (currently located at 16 Hayne Street) moving to the location on Pinckney Street. I think this is a wonderful idea and it has my full support.

Thank you for your time.

Sincerely

George Hayes



Lawrence B. Place, Pharm.D., M.D.
90 Lake Dornoch Drive
Pinehurst, NC 28374

June 23, 2012

To Whom it May Concern:

As a part time resident, and owner of the residence at 17 Anson Street, I would like to endorse the purchase and conversion to a stable of the property at 45 Pinckney Street by Carolina Polo and Carriage..

Please feel free to contact me at the above address should questions arise.

Lawrence B. Place

July 10, 2012

To Whom it May Concern:

We are not opposed to Laura 45 Pinckney Street used for Catering Horses.

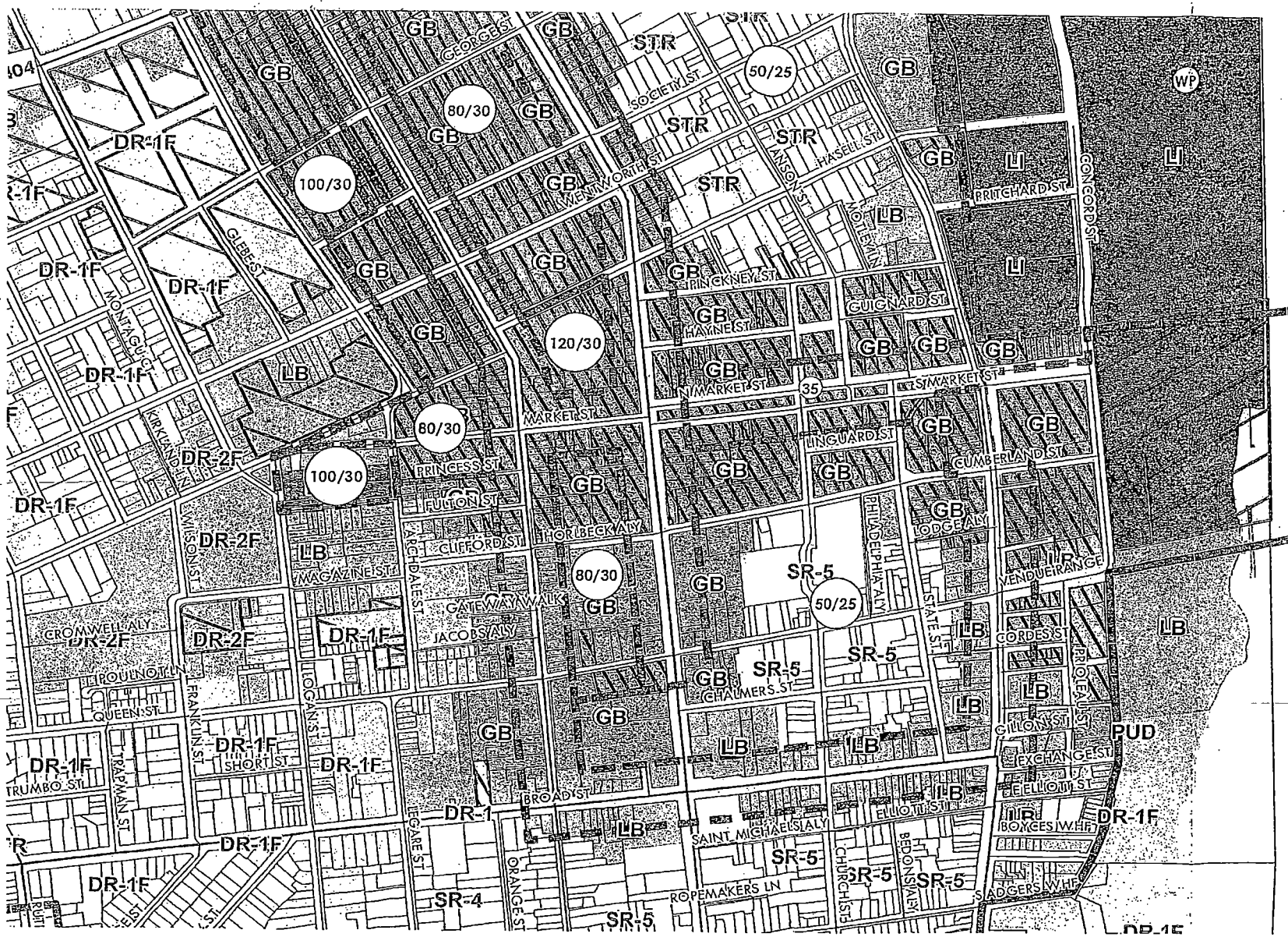
Our home is 3 Motley Lane.

Bill & Jean DeLuz

TO WHOM IT MAY CONCERN:
I AM A RESIDENT AT 11 ANSON ST, CHARLESTON, SC. I AM IN FULL SUPPORT FOR CAROLINA POLO AND CARRIAGE CO, USING 45 PICKNEY ST. AS A BARN TO STABLE THEIR CARRIAGE HORSES.
THANK YOU FOR YOUR TIME

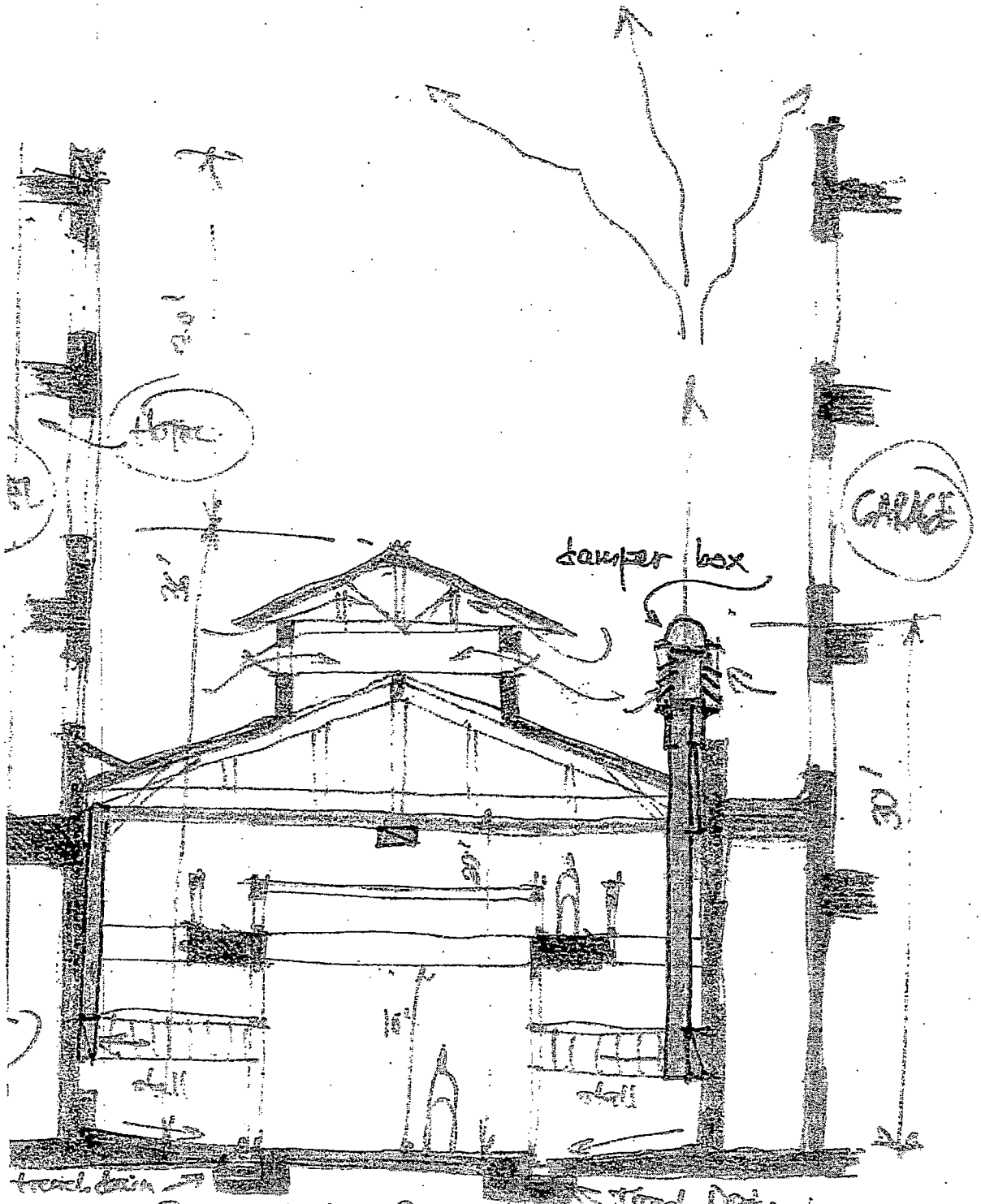
MATT RUTKOWSKI

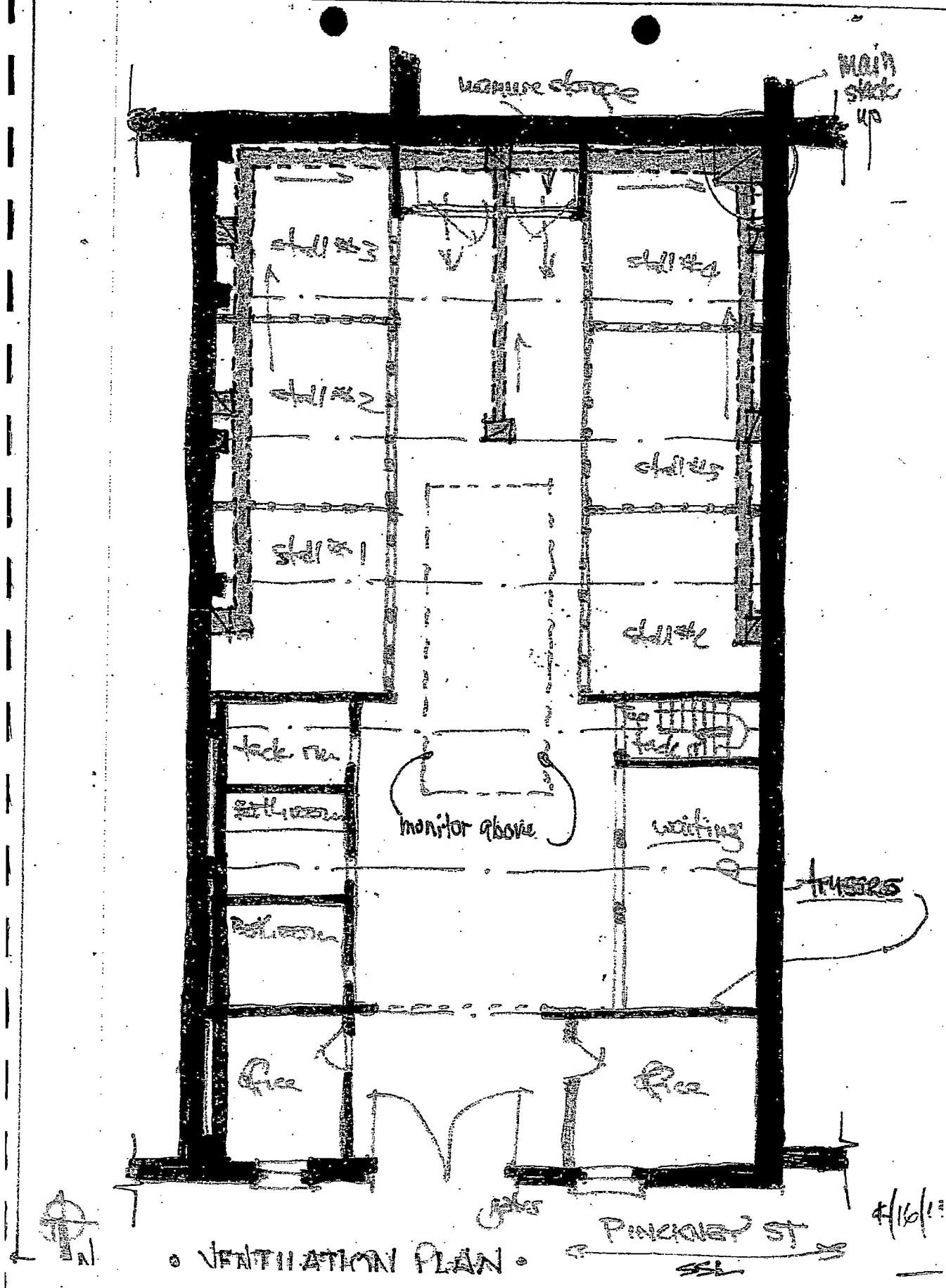
EXHIBIT B-9


GB
STR
LB
LI
WP
PUD
SR-5
SR-4
DR-1F
DR-2F
DR-1
80/30
100/30
120/30
50/25
35
GEORGE ST
SOCIETY ST
HASELL ST
ANSON ST
PRITCHARD ST
CONCORD ST
MOTLEY LN
GUICNARD ST
HAYNE ST
N MARKET ST
S MARKET ST
LINGUARD ST
CUMBERLAND ST
MONTAGUE ST
GLEBE ST
KIRKLAND ST
LAKE FRONT
MARKET ST
PRINCESS ST
FULTON ST
CLIFFORD ST
MAGAZINE ST
THORBECK ALY
LODGE ALY
PHILADELPHIA ALY
VENDUE RANGE
CORDES ST
ARTHOLE ST
GILLON ST
EXCHANGE ST
E ELLIOTT ST
ELLIOTT ST
BOYCES WHF
SADGERS WHF
BEDON'S ALY
CHURCH ST
SAINT MICHAELS ALY
ROPEMAKERS LN
ORANGE ST
LEGARE ST
BROAD ST
CHALMERS ST
GATEWAY WALK
JACOBS ALY
ARCHDALE ST
LOGAN ST
FRANKLIN ST
TRAPMAN ST
SHORT ST
QUEEN ST
ROUQUNOT LN
CROMWELL ALY
WILSON ST
TRUMBO ST

Appendix 95

EXHIBIT B-10


damper box
GARAGE
track drain
track drain
CONCEPTUAL SECTION
SHOWING
VENTILATION SYSTEM
4/16/13



• VENTILATION PLAN •

BARR, UNGER AND MCINTOSH, L.L.C.
ATTORNEYS AT LAW
11 BROAD STREET
P. O. BOX 1037
CHARLESTON, SOUTH CAROLINA 29402-1037

CAPERS G. BARR, III
H. WAYNE UNGER, JR.
WILLIAM S. BARR
H. THOMAS MCINTOSH, JR.
ADAM E. BARR
CAPERS G. BARR, IV
W. SIAU BARR, JR.

TELEPHONE 843-577-5083
FAX 843-723-9039
www.barrungermcintosh.com

EDISTO ISLAND OFFICE
806 OYSTER PARK
EDISTO ISLAND, SC 29438
TELEPHONE 843-869-2889
FAX 843-869-0110

MEMORANDUM

EXHIBIT
Blumberg No. 5238
C

To: Lee Batchelder and Frances Cantwell

From: CGB III and AEB

Re: 45 Pinckney Street Use as a "Stable"; Condominium Unit

Date: September 4, 2012

45 Pinckney Street, LLC seeks to resume the use of 45 Pinckney Street as a "Stable". It is creating a horizontal property regime, assigning two separate and distinct uses for the property that will clearly separate the "Stable" use from other uses. The area of the building extending 25 feet from the Pinckney Street facade will not permit stable use, and will be designated Unit "A". Its use will be for offices, restrooms, and a meeting area.

Unit "B" will be located immediately to the south of Unit "A", extending for a distance of 44.71 feet to the back wall of the building. Unit "B" will be used as a Stable.

By the configuration as described, the Stable use will be 118.5 feet distant from the nearest residential zone district, and thereby will comply with the setback requirement of the Special Exception Use as a Stable, as set forth in City Code Section 54-206(p).

The central question addressed here is whether the statutory 100 foot setback from a residential district may be measured from the Stable "use"; or whether it must be measured from the outside of the building within which the "use" is contained. The configuration of 45 Pinckney Street as proposed in this memorandum, and the measurement of the 100 foot setback from the use within the building, will comport with the setback requirements of the City Code, according to the statutory syllogism discussed below.

1. First, the intent of Council in enacting the Special Use Exception for stables should be viewed from its broad context: The Special Exception Use as a "Stable" was intended to apply only to stables in the tourism carriage industry. This is evident because of the language of Subsections 54-206, p, subparagraphs 2 and 4, requiring a "Certificate of Appropriateness" from the City Tourism Commission, and also requiring

that the cleaning/loading/tacking area shall not "impede traffic flow in the public right of way." These circumstances could only apply to activities unique to the tourism carriage industry and would not apply, for example, to a horse stable on John's Island.

2. Secondly, the zone of the City in which a "Stable" may be located is limited under the Tourism provisions of the Code. Chapter 29, Article V, Sections 29-201, *et. seq.*, provides for city franchises for carriage companies, and more specifically provides that "Stables shall be located within walking distance (from) the Medallion Gate located at the corner of Church and North Market." Although the phrase "walking distance" is not further defined in the Code, another section strongly suggests that "walking distance" means the area called the "Market Zone", bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and Meeting Street to the west.

This is because Code section 29-206(b) provides that carriages shall load and discharge passengers at the "Gate", or they may load and discharge on private property within the "Market Zone". The "Market Zone" is there defined as the area bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and by Meeting Street to the west. It appears, therefore that the intent of Council in providing for "walking distance" to the Gate, was to mean that the Stable be within the "Market Zone".

If the central point of carriage tours was intended to be the Gate, and if tourists are nevertheless permitted to mount and dismount away from the Gate, provided that the mount/dismount area must be in the "Market Zone", it stands to reason that "Market Zone" and "walking distance" were intended to be synonymous. This is also logical from a City monitoring standpoint, so that City enforcement personnel are enabled to monitor carriage operations within a "walking distance" range of the Gate.

3. Thirdly, therefore, if it is correct that "walking distance" is intended to be within the "Market Zone", a review of the properties within the Market Zone suggests very few properties were suitable for Stable use, either presently or at the time of enactment of the provisions of the Tourism Ordinance.

First of all, the central, east-west axis of the Market Zone is the City Market itself, as well as the adjacent restaurants and shops on the south side of North Market Street and on the north side of South Market Street. It is obvious that none of the properties on the east-west axis of the Market Zone could be used as a "Stable", as a practical matter.

Neither could there be any reasonable expectation that a property on the western boundary, fronting on Meeting Street could be used as a stable; or, likewise, that properties on the eastern boundary fronting on East Bay Street, could be used, either.

On the southern boundary of the Market Zone there may be one potential property, although there is no suggestion that it would be available for use, much less as a

Stable. That is the property currently used as a convenience store at the northeast corner of State and Cumberland Streets. Otherwise, the properties on the southern boundary of the Market Zone which front on Cumberland Street are either within 100 feet of a residential district, or are properties used as city parking garages or as established office buildings.

On the northern boundary of the Market Zone, viewed from west to east, the Bank of America building consumes most of the first block extending eastward from Meeting Street; and immediately to the east is the property at issue, 45 Pinckney Street. To the east of 45 Pinckney is the Andrew Pinckney Inn. Proceeding easterly across Church Street is the First Baptist Church School Gymnasium, and across Anson Street to the east is the stable of Palmetto Carriage Company, then a small Inn, a veterinary clinic, a surface parking lot, an office building and "Big John's" Café.

Between North Market and Pinckney Streets there are several open automobile parking lots that could theoretically be converted to stable use. Several are on the north side of Hayne Street, and another is east of Anson Street, between North Market and Pinckney Streets. However none of the surface lot properties are known to be available, and it is unlikely that automobile parking would become secondary to Stable use, as a practical matter.

Therefore, the properties theoretically or practically available for use as a Stable in the Market Zone are at 16 Hayne Street, the current location of Carolina Polo & Carriage Company, 45 Pinckney Street, the location at issue in this Memorandum, or one of the surface automobile parking lots as described.

The point to be made is that, in construing the intent of City Council in providing for "Stable" use as a Special Exception, the properties for which that intended use would be eligible were limited. Accordingly, the construction and use of the term "Stable" in the City Code must be framed within this practical context.

4. "Stables" are permitted in general business and urban commercial districts as a Special Exception Use. Code Sections 54-201(l); 54-206(p).

5. "Stable" is not defined in the city's Zoning Ordinance. It is noteworthy that the ordinance provides only for stables as a Special Exception "Use". Emphasis, here, is on the term "Use".

6. Although not defined in the Zoning Ordinance, "Stable" is defined in the Franchise Ordinance, which authorizes by franchise the operation of animal drawn vehicles for the purposes of tourism, as follows: "*Stable* shall mean the barn where the animals are kept." Section 29-212(b)(12). "*Stall*" is also defined: "Stall shall mean individual space within the barn where each animal is kept." Section 29-212(13).

7. The question of statutory construction therefore presented is this: Where the Special Exception Use provides in Section 54-206(p)(1) that "the stable (shall not be)

located within 100 feet of any residential zone district", is the 100 feet to be measured from the outside of the building within which the stable is located, or may the 100 foot measurement be made from the area of the building within which the stable is located, if the building includes more than one use?

A review of Section 54-206(p), the zoning ordinance, suggests that "Stable" is used in that section to describe a "Use", and not a "Structure".

a. In the first place Section 54-206 itself deals with "Special Exception Uses."

b. Secondly, in 54-206(p)(2) a requirement of the special exception is that the Tourism Commission issue a Certificate of Appropriateness "for the stable". The requirement for issuing a Certificate of Appropriateness is found in the Tourism Chapter of the Code, Sections 29-219, *et. seq.* However, the Tourism Commission's Certificate of Appropriateness is not issued for a "Stable", at all. Instead, it is issued for an animal drawn vehicle. The Section requires that horse drawn carriages comply with certain proof of ownership, that they adhere to certain manufacturing specifications; that color photographs of carriages be maintained in the tourism office; that proof of liability insurance be filed; that a fee be paid; and that the carriage company obtain a current city business license. All of these things are the standards by which a "Certificate of Appropriateness" is issued by the Tourism Commission. Therefore, as used in Section 54-206(p)(2), the term "Stable" does not refer to a physical structure, at all. Rather, it refers to "Stable" as a form of use.

c. Likewise, Section 54-206(p)(4) contains the requirement that a site plan be provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right of way. This requirement has nothing to do with the existence of any building that could be called a "Stable", but rather relates to an operational or "use" function. Likewise, Sections 5 and 6 deal with "uses" as a stable, requiring proof of how refuse is to be handled and how drainage is to be collected.

d. However, subsection (7) of Section 54-206(p) uses an altogether different term. The Section provides that "Buildings" shall be designed, utilizing appropriate ventilation to prevent objectionable odors from being emitted." It is noteworthy that City Council used the term "Buildings" in subsection 7, rather than "Stables". The use of this different term supports the inference that "Stable" was not used in the other subsections to describe a building or structure, at all. Rather "Stable" is used to describe a form of use; and use as a "Stable" may be part of a larger "Building", which can include other uses.

8. Applicant seeks to create a Horizontal Property Regime at 45 Pinckney Street, consisting of two "units" or "apartments". The northernmost unit, measured 25 feet in a southerly direction from the front of the building on Pinckney Street shall consist of office use, an assembly area, and restrooms. This unit, referred to as Unit "A", shall be restricted against use as a stable.

The remainder of the building, Unit "B", will be the area beginning 25 feet from the front of the building, to the rear wall of the building, a space 37.8 feet wide and 44.7 feet deep, Unit "B" will be used as a stable; that is to say, as a space "where the animals are kept."

The entryway though the existing arched doorway shall be a "common area" for ingress and egress to Units "A" and "B".

9. To the extent that "Stable" describes the space where animals are "kept" [29-212(b)(12)], the intent of Council was to provide for a separation of the space within which animals sleep, eat and defecate of 100 feet from a residential district. By creating a 25 foot deep Unit "A" on the front of 45 Pinckney Street, that will be used only for human purposes, and that will be restricted against use as a Stable, the Applicant is assuring the City and neighbors that no animal will be "kept" within 100 feet of the residential district.

EXHIBIT
D

Application for Variance, Special Exception, Reconsideration, or Extension to the Board of Zoning Appeals – Zoning (BZA-Z)

City of Charleston

Instructions – Submit this application, along with the required information and fee, to the Zoning Division office at 75 Calhoun Street. **Applications are due by 12 Noon on the deadline date and must be complete to be accepted and placed on an agenda.** A sign will be posted on the property, and a public hearing will be conducted by the Board of Zoning Appeals – Zoning. **Permits authorized by the Board cannot be issued during a five (5) business day appeal period following the decision of the Board, except for use variances, the appeal period shall be fifteen (15) calendar days.** An appeal to the Board during this appeal period stays all further action on the application.

THE APPLICANT HEREBY REQUESTS:

- ☑ A Variance and/or Special Exception as indicated on page 2 of this application.
- ☐ Reconsideration of a decision of the Board or action of a zoning official (attach Appeal form).
- ☐ Extension of an unexpired Variance and/or Special Exception approval.

MEETING DATE REQUESTED: 4/16/2013

Property Address 45 Pinckney St. TMS # 458-05-03-002

Property Owner ARKAY, LLC Daytime Phone 577-5083

Applicant Robert R. Knoth, by attorney Capers G. Barr, III Daytime Phone 577-5083

Applicant's Mailing Address 16 Hayne Street, Charleston 29401

E-mail Address carolinapolo@aol.com

Relationship of applicant to owner (same, representative, prospective buyer, other) same

Zoning of property

Information required with application: (check information submitted)

- ☑ Scaled plans or plats, including elevations, showing the variance(s) or special exception(s) being requested (3 sets)
- ☐ For new construction or additions within a flood zone, show HVAC units and platform on scaled plans
- ☑ Scaled floor plans with rooms labeled and the total floor area for each dwelling unit noted are required for all density variances and building additions, unless exempted by the Zoning staff (3 sets)
- ☑ Plans or documents necessary to show compliance with special exception requirements (3 sets)
- ☑ Check, credit card or cash (make checks payable to the City of Charleston)
- ☑ Pursuant to Section 6-29-1145 of the South Carolina Code of Laws, is this Property, which is the subject of this Application, restricted by any recorded covenant, restriction, easement or other document that is contrary to, conflicts with or prohibits the proposed land use encompassed in this permit application? YES ____ NO X

Optional but very helpful information:

- ☐ Photographs
- ☐ Letters or petitions from neighbors or organizations directly affected by your request

I certify that the information on this application and any attachments is correct, that the proposed improvement(s) comply with private neighborhood covenants, if there are any, and that I am the owner of the subject property or the authorized representative of the owner. I authorize the subject property to be posted with a notice of the Board hearing and inspected.

Applicant Capers Barr Date 3-18-2013

For office use only
Date application received 3/18/13 Time application received 12 Noon
Staffperson Fee $ 150.00 Receipt # 179951

For **Variance** requests, applicants should list the specific variance(s) being requested and, if possible, explain how the variance test that follows is met (add as an attachment if necessary):

Variance Test: The Board of Zoning Appeals-Zoning is authorized to approve a 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 the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. 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
4. The authorization of the 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.

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. (SC Code of Laws Section 6-29-800)

For **Special Exception** requests, applicants should list the specific approval(s) being requested and include documentation to demonstrate compliance with the relevant special exception requirements of the Zoning Ordinance, such as Sec. 54-110, Sec. 54-206, or sections in Article 5 (add as an attachment if necessary):

(See Attached)

All approvals of the Board shall remain valid for two (2) years from the approval date, unless extended in accordance with the provisions of Article 9, Part 5 of the zoning ordinance. Applicants may not apply for the same request that has been denied by the Board until a period of six (6) months has lapsed.

Department of Planning, Preservation & Sustainability 75 Calhoun Street, Third Floor Charleston, South Carolina 29401
(843) 724-3781 FAX (843) 724-3772 www.charleston-sc.gov

4/11

SPECIAL EXCEPTION APPLICATION

45 PINCKNEY STREET; USE AS A STABLE (City Code Section 54-206p.)

By this application, ARKAY, LLC, owner of 45 Pinckney Street (the "Property") seeks to use a portion of the Property as a stable for the operation of a horse drawn carriage touring business known as Carolina Polo and Carriage Company, Inc.

The Property has been subjected to a Horizontal Property Regime, more commonly known as a condominium, whereby the front or northern portion of the building will house two offices: one the business office of GREEN HORSE EQUINE SANITATION which currently holds the contract with the City of Charleston for the street sanitation of animal-drawn carriages; the other office will contain the business office of Carolina Polo and Carriage Company. The offices will comprise, together, one of the units or "apartments" of the Horizontal Property Regime and are restricted against any use as a stable. The space is shown as "UNIT 'B'" on the attached Plot Plan by Alexander Peabody.

The second apartment of the Horizontal Property Regime is located within the building, twenty five (25') feet to the south of the building façade on Pinckney Street, and will be used as the stable. The space is shown as "UNIT 'A'" on the attached Plot Plan.

Special Exception criteria, pursuant to Code Section 54-206p, are met as follows:

1. Location: The stable is located greater than one hundred feet from the nearest residential zone district. Attached as Exhibit "A" are the following:
    a. Plot Plan by Alexander Peabody;
    b. Architectural drawing by Logan Architecture of the building floor plan of the Property, depicting the location, size and dimensions of the stalls;
    c. Architectural drawing depicting the ventilation and drainage systems;
    d. Survey showing measured distance from front of building to nearest residential district. The stable use of UNIT "A", within the building, located twenty five and a half (25.5) feet south of the Pinckney St. façade, is greater than one hundred feet from the nearest residential zone district.
    e. Color photos of building interior.
2. Certificate of Appropriateness: Because Carolina Polo and Carriage Company is an existing franchisee, the City of Charleston has previously issued a Certificate of Appropriateness for the stable. Please note the additional comments in the narrative below.

3. Code compliance: The stable complies with all city, county and state regulations for stables. Please note additional comments below.
4. Site plan: A site plan is attached, depicting the area for cleaning/loading/tacking within the building.
5. Refuse: Attached is Applicant's contract with Carolina Waste Disposal for refuse disposal. Carolina Waste picks up refuse daily, except Sundays.
6. Drainage: See the attached plan from Logan Architecture. Drainage will utilize existing lines that have served previous carriage stable operations in the Property in the past.
7. Ventilation: See Logan Architecture plans attached. Exhaust headers will be located centrally above each stall, with a manifold duct leading to a central exhaust tube that vents through the existing skylight of the building to the outside.

Animal drawn touring vehicles are highly regulated by the City pursuant to Chapter 29 of the City Code. There are presently only five franchises issued, of which Carolina Polo and Carriage Company is one. Among other things the Code requires carriage stables to be within "walking distance" of the medallion gate located at the corner of Church and North Market Streets.

Carolina Polo is currently located at 16 Hayne Street on a month to month tenancy, and the current owner of the property is requiring that the property be vacated by Carolina Polo by May 31, 2013. Accordingly, the ability of Carolina Polo to relocate to 45 Pinckney is necessary for its survival as a carriage tour business.

Robert Knoth, the individual applicant, has been in the carriage business since 1990. His current entity, Carolina Polo and Carriage Company, Inc., has been a franchised carriage tour operator since 1996. The City of Charleston Tourism Commission has issued Certificates of Appropriateness for its vehicles employed in the business, which are numbered as follows: 100, 101, 102, 103, 104, 105, 219, 251 and 290. Carolina Polo and Carriage, Inc. is in compliance with all city, county, and state regulations for stables. The City recently upgraded its requirements for stables and stalls that did not require existing companies to come into compliance, recognizing them as non-conforming. Accordingly the stable at 45 Pinckney Street will become the first "state of the art" stable in the City. The interior of 45 Pinckney Street, being much larger than the applicant's current location at 16 Hayne Street, will allow for all loading, unloading, tacking and cleaning to occur comfortably within the interior of the building.

Mr. Knoth operated his carriage business, then Carolina Carriage Company from this same Property location at 45 Pinckney St. from 1990 to 1996, then reformed as Carolina Polo and Carriage Company and continued to operate from 45 Pinckney until 1998, when it moved to its current location at 16 Hayne. Thereafter another carriage company operated from 45 Pinckney from 1998 until approximately 2009. See for example, Exhibit "B", a plat from 2009 showing the Property's use as a carriage

company. Among the Property's uses before 1990 was that of an automobile service garage, known as "Gatch's".

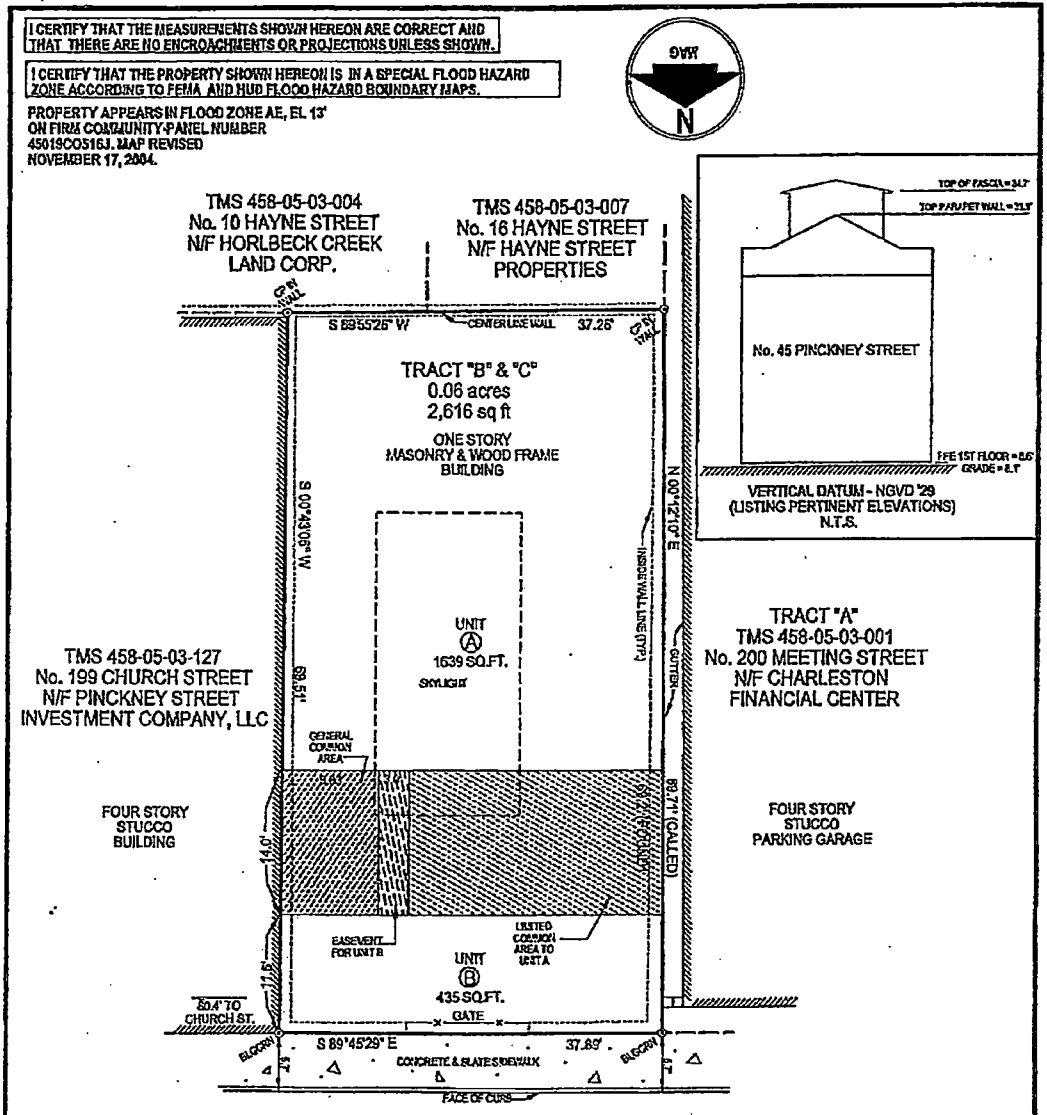
Because the Special Exception Use criteria have been met, and particularly in light of the history of use of the Property as a stable we respectfully suggest the Board of Zoning Appeals must issue its Certificate of approval.

Ex A

I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.

I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.

PROPERTY APPEARS IN FLOOD ZONE AE, EL 13'
ON FIRM COMMUNITY-PANEL NUMBER
45019C0516J. MAP REVISED
NOVEMBER 17, 2004.



ADDRESS IS No. 45

PINCKNEY STREET (39' R/W)

PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.

10 5 0 10

SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: DECEMBER 11, 2012

REF: PLAT Z60, Pg. 088

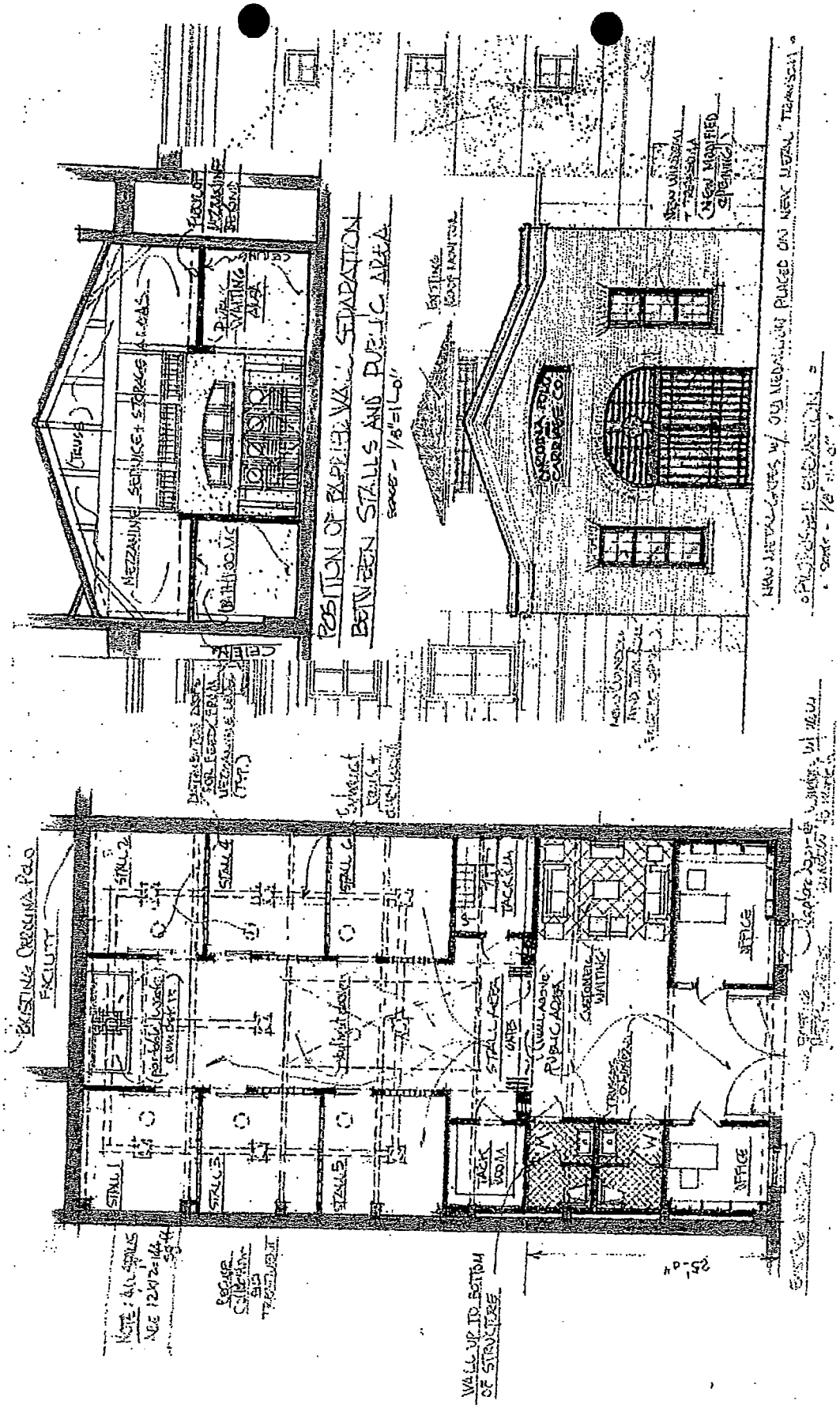
TMS: 458-05-03-002

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22648, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

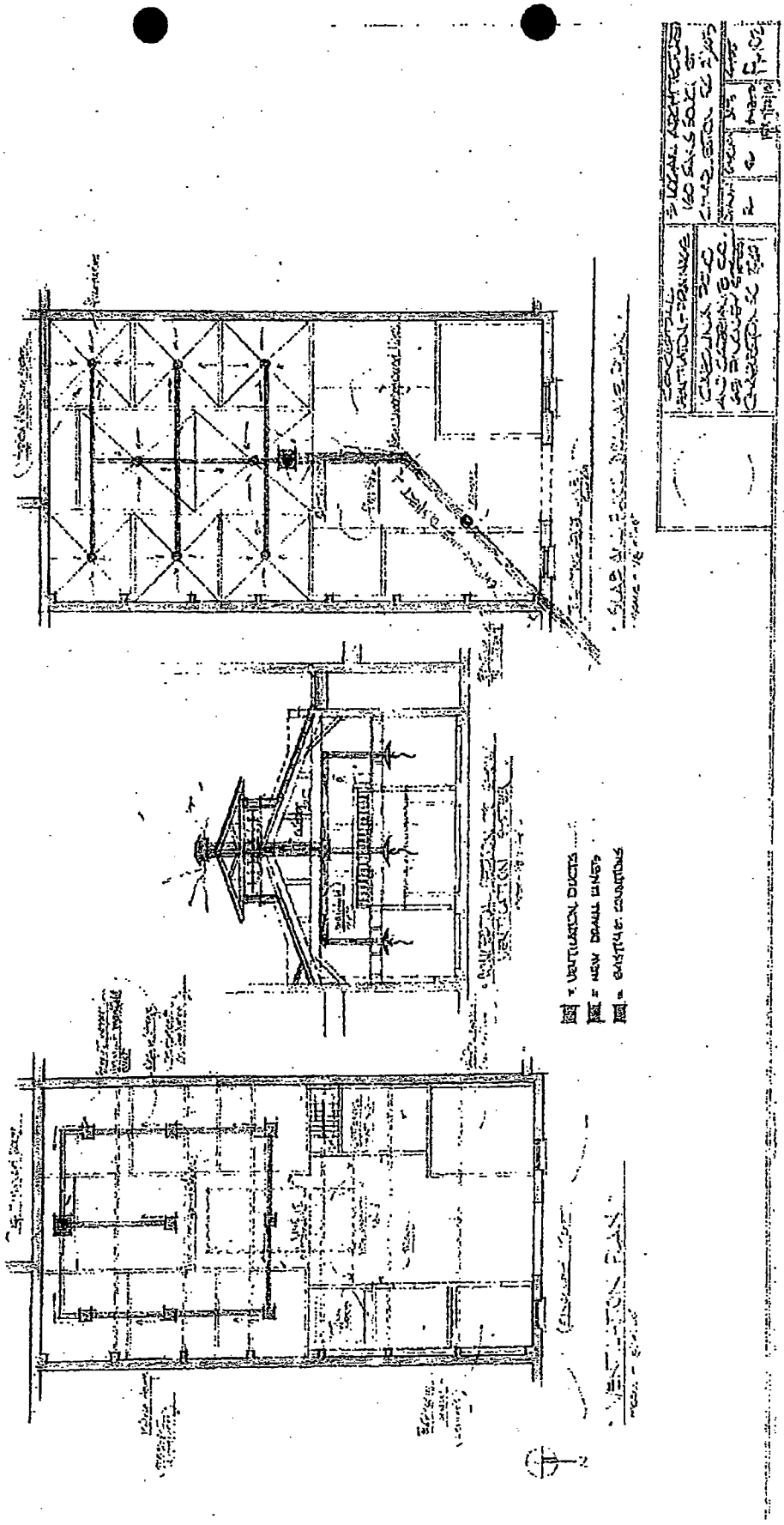
CHARLESTON COUNTY

SOUTH CAROLINA

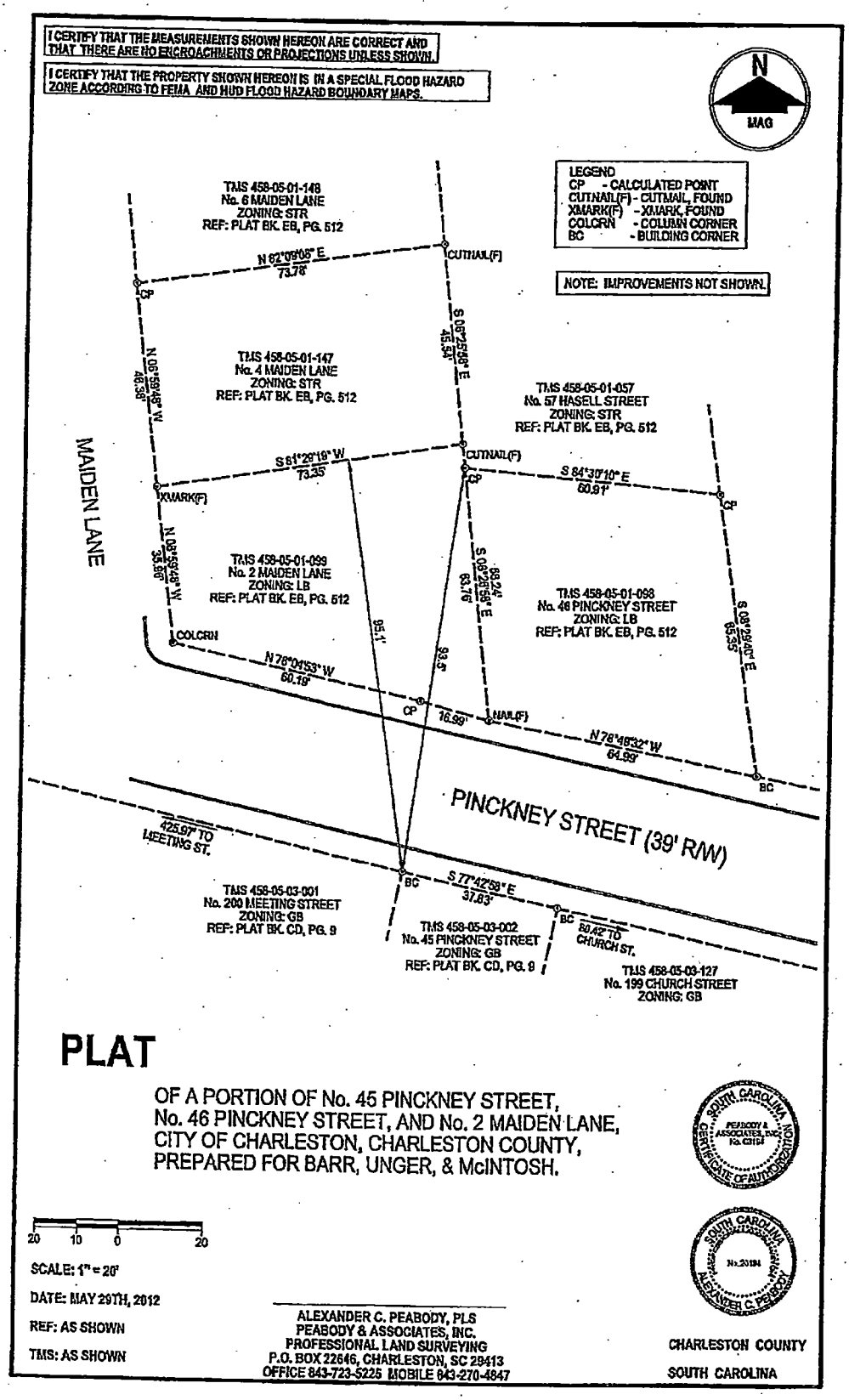
Ex A

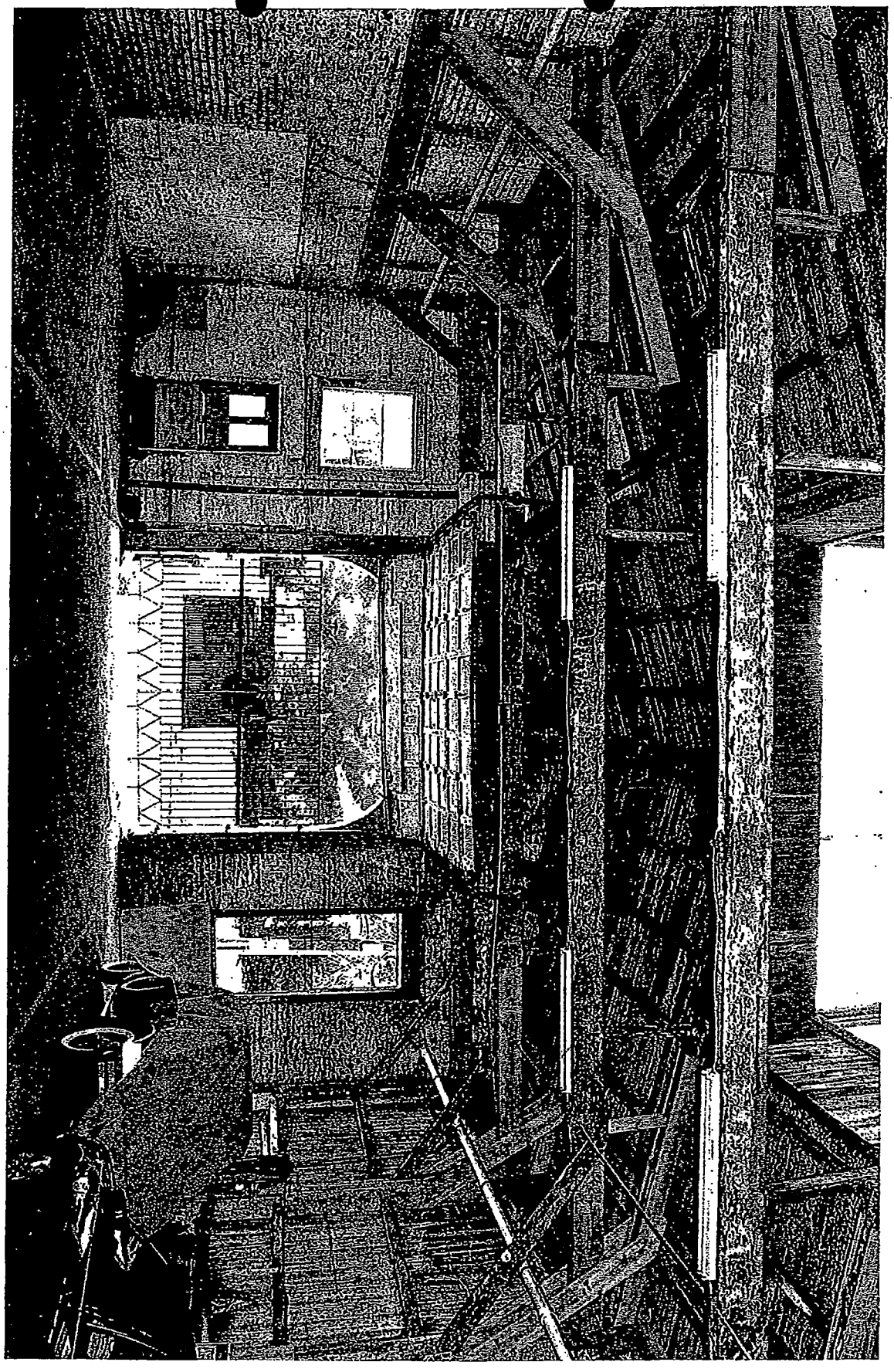

POSITION OF PUBLIC WALL SEPARATION
BETWEEN STALLS AND PUBLIC AREA
SCALE - 1/8"=1'-0"
MEZZANINE
SERVICE + STORAGE
PUBLIC WAITING AREA
BATHROOMS
EXISTING ORIGINAL FOLD
EXISTING
STALL 1
STALL 2
STALL 3
STALL 4
STALL 5
STALL 6
TACK ROOM
OFFICE
PUBLIC ADDITION
WALK UP TO BOTTOM OF STRUCTURE

EX.Ac

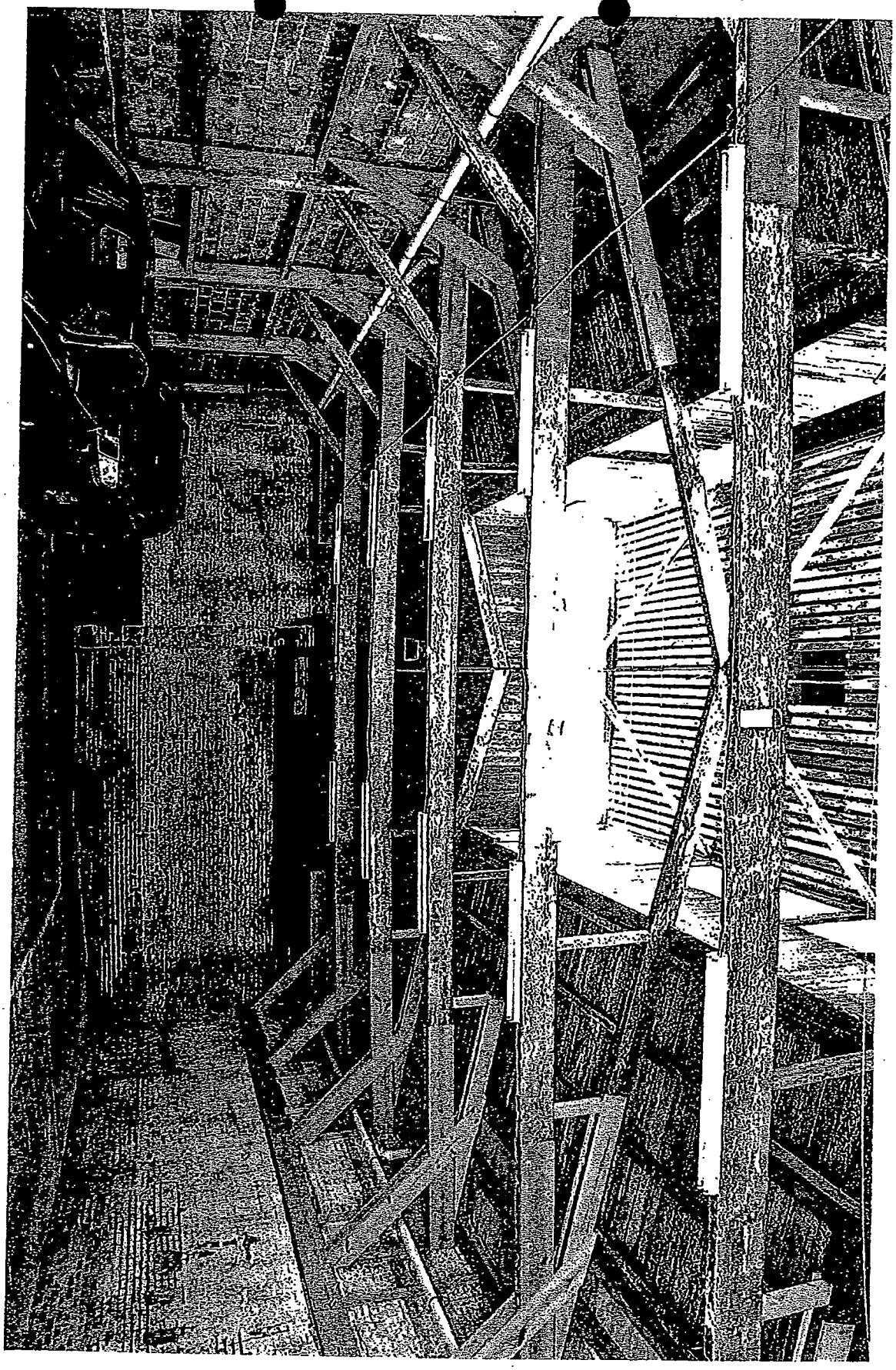


Ex A d

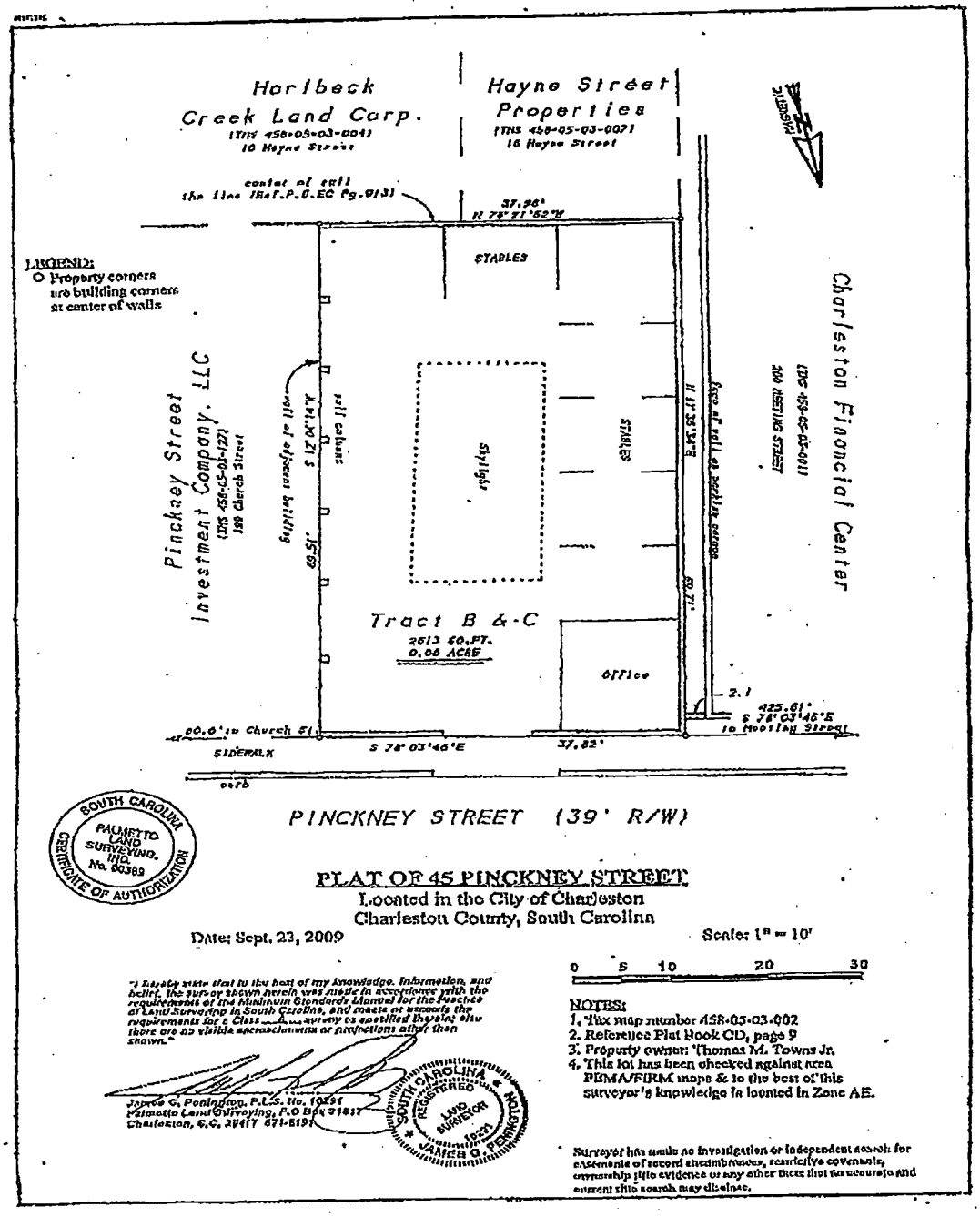

I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTNAIL, FOUND
XMARK(F) - XMARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-148
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
N 82°09'08" E
73.78'
CUTNAIL(F)
CP
S 08°25'56" E
45.54'
N 08°59'48" W
46.58'
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
S 81°29'19" W
73.35'
CUTNAIL(F)
CP
S 84°30'10" E
60.91'
CP
XMARK(F)
N 08°59'48" W
35.61'
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
68.24'
S 08°28'38" E
63.76'
TMS 458-05-01-058
No. 46 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 08°29'40" E
85.35'
COLCRN
95.1'
53.5'
N 76°04'53" W
60.19'
CP
16.99'
NAIL(F)
N 76°48'32" W
64.99'
BC
PINCKNEY STREET (39' R/W)
425.97' TO MEETING ST.
BC
S 77°42'58" E
37.83'
BC
80.42' TO CHURCH ST.
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET, No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE, CITY OF CHARLESTON, CHARLESTON COUNTY, PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C01154
CERTIFICATE OF AUTHORIZATION
SOUTH CAROLINA
No. 23124
ALEXANDER C. PEABODY
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA



Ex
Ae



Ex B


Horlbeck Creek Land Corp.
TMS 458-05-03-004
10 Hayne Street
Hayne Street Properties
TMS 458-05-03-007
16 Hayne Street
center of wall
the line (Ref. P.B.EC Pg. 913)
37.96'
N 78° 21' 52" W
LEGEND:
O Property corners are building corners at center of walls
STABLES
Pinckney Street Investment Company, LLC
TMS 458-05-03-122
100 Church Street
wall colinear
N 14° 04' 12" W
69.51'
wall colinear building
Tract B & C
2613 SQ.FT.
0.06 ACRE
STABLES
Office
face of wall on parker corner
N 11° 35' 54" E
69.71'
Charleston Financial Center
TMS 458-05-03-011
100 MEETING STREET
2.1
425.61'
S 78° 03' 46" E
to Meeting Street
60.0' to Church St.
SIDEPALK
S 78° 03' 46" E
37.82'
curb
PINCKNEY STREET (39' R/W)
SOUTH CAROLINA PALMETTO LAND SURVEYING, INC. No. 00389 CERTIFICATE OF AUTHORIZATION
PLAT OF 45 PINCKNEY STREET
Located in the City of Charleston
Charleston County, South Carolina
Date: Sept. 23, 2009
Scale: 1" = 10'
0 5 10 20 30
"I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standard Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class ___ survey as specified therein; also there are no visible encroachments or projections other than shown."
James G. Pennington, P.L.S. No. 19291
Palmetto Land Surveying, P.O Box 21617
Charleston, S.C. 29417 571-5191
SOUTH CAROLINA REGISTERED LAND SURVEYOR 19291 JAMES G. PENNINGTON
NOTES:
1. Tax map number 458-05-03-002
2. Reference Plat Book CD, page 9
3. Property owner: Thomas M. Towns Jr.
4. This lot has been checked against FEMA/FIRM maps & to the best of this surveyor's knowledge is located in Zone AE.
Surveyor has made no investigation or independent search for easements of record encumbrances, restrictive covenants, ownership title evidence or any other facts that an accurate and current title search may disclose.

Carolina Waste Services, LLC

P.O. Box 22767. Charleston, SC 29413. 843-576-1100

Waste Service Agreement

This Agreement is made and entered into by and between Carolina Waste Services, LLC, a South Carolina limited liability company ("Contractor") and Carolina Yacht Carriage ☐Inc. ☐LLC ☐Partnership/Proprietorship.

Service Location: 16 Wagner Street Service Commencement Date: Aug 1 2007

☐New Site ☐New Svc. ☐Change of Address ☐Inc. Svc. ☐Dec. Svc. Previous size & rate _____ Existing Customer# _____

Customer Billing Address: ☐Change of Ownership/Name

PO Box 639

City: Charleston State: SC Zip: 29402

Fed. ID / SS # : _____ PO #: _____

Billing Contact: Robert Ford

Phone #: 722-1807 Fax #: 722-7112

DL # _____

Site Address:

16 Wagner Street

City: Chas State: SC Zip: 29401

County: Charl C.C. $ Up Front _____

Contact & Phone #: _____

CC#: _____ Ex Date: _____

Name on Card: _____

T P C

Front End Container Service

Quantity	Size & Type	Frequency of Service	Monthly Charge	Cost per Extra Collection	Delivery Fee	Disposal Fee	Type of Waste	Max. Weight Allotment
One	2yd	6x/wk	270	36.00	WC	Heavy	MSW	2,000 lbs
						Exc		per yard

T P C

Roll Off Service

average $166.00 per haul

Quantity	Size & Type	Frequency of Service	Monthly Charge	Cost per Haul	Delivery Fee	Disposal Fee	Type of Waste	Max. Weight Allotment

T P C

Recycling Service

Quantity	Size & Type	Frequency of Service	Monthly Charge	Cost per Extra Collection	Delivery Fee	Disposal Fee	Type of Product

Special Instructions: [illegible]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 1 day of Aug, 2007

THIS AGREEMENT IS SUBJECT TO ALL TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE

CONTRACTOR

By: [signature] Signature

Print Name: Dennis Byrd

Title: [illegible]

CUSTOMER

By: [signature] Signature

Print Name: [illegible]

Title: [illegible]

STATE OF SOUTH CAROLINA) COUNTY OF CHARLESTON))) 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.))	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT Civil Action No. 2013-CP-10- 3864 RETURN (CITY OF CHARLESTON and CITY OF CHARLESTON BOARD OF ZONING APPEALS)

FILED
2013 AUG 27 PM 12:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Respondents City of Charleston and City of Charleston Board of Zoning Appeals (herein "City Respondents"), in Return to the Petition and Appeal, allege and say:

FOR A FIRST DEFENSE

1. All matters and allegations of the Petition and Appeal not herein specifically admitted, modified or explained are denied and strict proof thereof is demanded.

2. The allegations of Paragraph 1 of the Petition and Appeal are admitted, upon information and belief.

3. Paragraphs 2, 3, 4 and 5 of the Petition and Appeal are admitted, except as to whether the City of Charleston is a necessary party to this appeal. As to this allegation, the same sets

forth a legal supposition to which no response is required, or if one is, strict proof thereof is demanded.

4. Paragraph 6 of the Petition and Appeal sets forth no allegations against the City Respondents, but in response thereto, City Respondents say the documents referenced therein speak for themselves.

5. Paragraph 7 of the Petition and Appeal is admitted.

6. Answering Paragraph 8 of the Petition and Appeal, City Respondents admit so much thereof that alleges a stable in an area of the City zoned General Business cannot be located within 100 feet of any residential zone district. Strict proof is demanded of all other allegations of said Paragraph.

7. Paragraphs 9 and 10 of the Petition and Appeal are admitted.

8. Answering Paragraph 11 of the Petition and Appeal, it is admitted that a survey produced by Petitioners revealed the façade of the building at 45 Pinckney Street was 93.5 feet from a residential zone district, measured from the point shown thereon. To the extent the allegations of Paragraph 11 are inconsistent with this assertion, strict proof thereof is demanded.

9. Answering Paragraph 12 of the Petition and Appeal, it is admitted that a memorandum was prepared on behalf of Petitioners and given to the zoning administrator and assistant city attorney. As to that memorandum, the City Respondents aver that it was received as information, its contents and conclusions constitute Petitioners' characterization of the

ordinance at issue and speak for themselves, and in no way was the memorandum binding on the City Respondents.

10. Answering Paragraph 13 of the Petition and Appeal, referenced is craved to the proceedings before the Board of Zoning Appeals as to the presentation and argument made there.

11. City Respondents lack sufficient information to form an opinion or belief as to the allegations of Paragraph 14 of the Petition and Appeal, and therefore demand strict proof thereof.

12. Answering Paragraph 15 of the Petition and Appeal, City Respondents crave reference to Exhibit C for its content and concept. In further answer to said Paragraph, the same sets forth Petitioners' characterization of, and legal conclusion for, an issue before the Board of Zoning Appeals, which was rejected by the Board of Zoning Appeals. Strict proof is demanded of all factual allegations of said Paragraph. The legal conclusions set out in said Paragraph are denied.

13. Strict proof is demanded of the allegations of Paragraph 16 of the Petition and Appeal.

14. City Respondents lack sufficient information to form an opinion or belief as to the allegations of Paragraph 17 of the Petition and Appeal, and therefore demand strict proof thereof.

15. Answering Paragraph 18 of the Petition and Appeal, so much thereof that alleges Petitioner applied to the Board of Zoning Appeals for a special exception to use 45

Pinckney Street as a stable is admitted. Strict proof is demanded of all other allegations inconsistent with or that elaborate on this admission.

16. Answering Paragraph 19 of the Petition and Appeal, reference is craved to the proceedings of the Board of Zoning Appeals as to what the zoning administrator reported, recommended or opined. All allegations of Paragraph 19 inconsistent with the proceedings are denied, and reference is craved to the Order of the Board of Zoning Appeals for its reasoning and conclusion.

17. Answering Paragraph 20 of the Petition and Appeal, it is admitted that the Board of Zoning Appeals denied the application for a special exception. Reference is craved to the Order of the Board of Zoning Appeals for its reasoning and conclusions. Strict proof is demanded of all other allegations of said Paragraph.

18. Paragraph 21 of the Petition and Appeal is denied.

FOR A SECOND DEFENSE

19. All matters and allegations of the First Defense are incorporated as it specifically repeated.

20. To the extent it is contended that either the propriety of the Zoning Administrator's construction of applicable ordinances or that his construction was in any way binding on the Board of Zoning Appeals, the same are denied, as the matter before the Board was whether the applicant met the criteria for securing a special exception to establish a stable at 45 Pinckney Street.

WHEREFORE, having set forth their Return, City Respondents pray for an Order dismissing this Appeal, for entry of judgment on their behalf and such other and further relief as the Court may deem appropriate.

Charleston, South Carolina
August 26, 2013

Frances I Cantwell

Charlton deSaussure, Jr.
Corporation Counsel

Frances I. Cantwell
Assistant Corporation Counsel
50 Broad Street
Charleston, South Carolina 29401
Tel. 843-724-2730
Fax. 843-724-3706

Attorneys for Respondents
City of Charleston and
City of Charleston Board of Zoning Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
ARKAY, LLC AND ROBERT R. KNOTH, ITS MEMBER,	)	CASE NO. 2013-CP-10-3864
PETITIONERS,	)	
vs.	)	**RESPONDENT, ANDREW PINCKNEY INN'S, ANSWER TO PETITION AND APPEAL (SPECIAL EXCEPTION ORDER)**
CITY OF CHARLESTON, CITY OF CHARLESTON BOARD OF ZONING APPEALS, ANDREW PINCKNEY INN AND MICHAEL A. MOLONY,	)	
RESPONDENTS.	)	

Respondent, Andrew Pinckney Inn, responding to the Petition and Appeal from the Board of Zoning Appeals Special Exception Order filed by Petitioners herein, answers the Petition and Appeal by denying each and every allegation of that pleading not hereinafter specifically admitted, modified or explained. Respondent further alleges and states as follows:

1. The allegations contained in Paragraph One of the Petition and Appeal are admitted, upon information and belief.

2. The allegations contained in Paragraph Two of the Petition and Appeal are admitted.

3. The allegations contained in Paragraph Three of the Petition and Appeal are admitted.

4. Respondent admits so much of the allegations contained in Paragraph Four of the Petition and Appeal as allege that Respondent owns property near 45 Pinckney Street and has an interest in the City of Charleston's enforcement of ordinances affecting the use of the property at 45 Pinckney Street. On information and belief, Respondent Michael A. Molony also owns

property near 45 Pinckney Street and has an interest in the City of Charleston's enforcement of ordinances affecting the use of property at 45 Pinckney Street.

5. The allegations contained in Paragraph Five of the Petition and Appeal are admitted, upon information and belief.

6. The allegations contained in Paragraph Six of the Petition and Appeal, including all sub-parts, requires neither an admission nor a denial by Respondent.

7. Respondent responds to the allegations contained in Paragraph Seven of the Petition and Appeal by stating that the provisions of the Zoning Ordinance for the City of Charleston speak for themselves.

8. Respondent responds to the allegations contained in Paragraph Eight of the Petition and Appeal by stating that the provisions of the Zoning Ordinance for the City of Charleston speak for themselves.

9. Respondent does not have sufficient information upon which to admit or deny the allegations contained in Paragraph Nine of the Petition and Appeal.

10. The allegations contained in Paragraph Ten of the Petition and Appeal are admitted, upon information and belief.

11. The allegations contained in Paragraph Eleven of the Petition and Appeal are admitted, upon information and belief.

12. Respondent responds to so much of the allegations contained in Paragraph Twelve of the Petition and Appeal as refer to a memorandum submitted to the Zoning Official for the City of Charleston and to the attorney for the City of Charleston by stating that the contents of the memorandum speak for themselves. Respondent denies so much of the allegations contained in Paragraph Twelve as allege that the applicable provisions of the City of

Charleston's Zoning Ordinance requires measurement conditioned upon the use of the property at 45 Pinckney Street.

13. Respondent responds to the allegations contained in Paragraph Thirteen of the Petition and Appeal by stating that the contents of the memorandum submitted on behalf of Petitioners speak for themselves.

14. Respondent does not have sufficient information upon which to admit or deny the allegations contained in Paragraph Fourteen of the Petition and Appeal.

15. The allegations contained in Paragraph Fifteen of the Petition and Appeal, including all sub-parts, requires neither an admission nor denial by Respondent. Respondent further responds that said allegations are irrelevant in that such facts as were considered and found by the Board of Zoning Appeals will be and are contained in the transcript of record of the proceedings before the Board of Zoning Appeals.

16. Respondent does not have sufficient information to admit or deny the allegations contained in Paragraph Sixteen of the Petition and Appeal.

17. Respondent does not have sufficient information upon which to admit or deny the allegations contained in Paragraph Seventeen of the Petition and Appeal.

18. The allegations contained in Paragraph Eighteen of the Petition and Appeal are admitted, upon information and belief.

19. Respondent admits only so much of the allegations contained in Paragraph Nineteen as allege that Zoning Official Batchelder recommended approval of Petitioners' application for a special exception.

20. The allegations contained in Paragraph Twenty of the Petition and Appeal are admitted.

21. The allegations contained in Paragraph Twenty-One of the Petition and Appeal, including all sub-parts, are denied.

FURTHER ANSWERING THE PETITION AND APPEAL
AND AS A FURTHER DEFENSE THERETO:

22. Pursuant to the provisions of § 6-29-840, 1976 South Carolina Code of Laws, Ann., the findings of fact made and adopted by the City of Charleston Board of Zoning Appeals, and as set forth in the transcript of the proceedings before the Board, are binding. As a result, the allegations set forth in Paragraphs Six through Twenty of the Petition and Appeal are irrelevant to the disposition of the Petitioners' appeal.

FURTHER ANSWERING THE PETITION AND APPEAL
AND AS A FURTHER DEFENSE THERETO:

23. Pursuant to the provisions of § 6-29-840, 1976 South Carolina Code of Laws, Ann., the decision made by the Board is subject to reversal only if the decision is incorrect, as a matter of law.

FURTHER ANSWERING THE PETITION AND APPEAL
AND AS A FURTHER DEFENSE THERETO:

24. The Petitioners' challenge of the decision made by the Board is based, solely, upon the Petitioners' belief in the correctness of their interpretation that the City ordinances intended to define a "stable" as a "use," rather than a structure. However, in the proceedings before the Board, and as is reflected in the transcript, the Petitioners presented no evidence; such as legislative history, affidavit of a council person, or common law, that would support the interpretation they advanced. Instead, and as is set forth, most clearly, in Paragraph 21(a)(2) of their Petition and Appeal, the Petitioners rely upon their strained extrapolations of other City ordinances. The futility of the Petitioners' position is demonstrated by their argument that their arguments should be accepted because of the "unavailability of property in the Market District."

The Petitioners' reference to the unavailability of property lends no weight whatsoever to their legal argument. In effect, the argument constitutes a request that the Petitioners be rescued from the consequences of a poor business decision.

FURTHER ANSWERING THE PETITION AND APPEAL
AND AS A FURTHER DEFENSE THERETO:

25. In its Order denying the Petitioners' request for a special exception, the Board made clear that it saw no merit in the Petitioners' argument that, in applying the measurement criteria, a stable should be defined as a use rather than a structure. The Board reasoned as follows:

> "Forty-five Pinckney Street is occupied by one building. The HPR does not alter this circumstance. There is no dispute as to the fact that the building is within 100 feet of a residentially zoned district. While Unit A within the building is where the animals will be stored, to access that area, it is necessary to pass through Unit B, an area within 100 feet of a residentially zoned district. This Board cannot discern intent to separate the use from its access when there is but one access to the building, and the law requires an apartment in a HPR to have either direct access to a public street or a common area leading to a public street. The common area or easement to Pinckney Street from Unit A is appurtenant to, or a part of, the Unit, rendering it within the 100 foot limitation. Thus, 45 Pinckney Street does not qualify as the site of a stable because it is located within 100 feet of a residential zone district." (emphasis added).

FURTHER ANSWERING THE PETITION AND APPEAL
AND AS A FURTHER DEFENSE THERETO:

26. Clearly, the Board reasoned that the horizontal property regime contemplated by the Petitioners was a "legal fiction" that, ultimately, was ineffective in the Petitioners' effort to escape the application of the 100 foot requirement of the ordinance.

FURTHER ANSWERING THE PETITION AND APPEAL
AND AS A FURTHER DEFENSE THERETO:

27. It is generally held that the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled

absent compelling consideration. *Brown v. South Carolina Department of Health and Environmental Control*, 348 S.C. 507, 560 S.E.2d 410 (2002). In the matter at hand, the Petition and Appeal filed on behalf of the Petitioners present no compelling reason that the construction of the City of Charleston ordinances adopted by the Board of Zoning Appeals with respect to the Petitioners' request for a special exception should, as a matter of law, be overruled.

WHEREFORE, having fully answered the Petition and Appeal herein, Respondent respectfully prays for an Order of this Court granting judgment to Respondent, affirming and upholding the Order of the Board of Zoning Appeals, dismissing the Petition and Appeal herein with prejudice, assessing all costs and fees, including attorney's fees, against the Petitioners and granting such other and further relief as the Court may deem just and proper.

YOUNG CLEMENT RIVERS, LLP

By: Wilbur E. Johnson

Wilbur E. Johnson, Esquire, SC Bar No. 3062
P.O. Box 993, Charleston, SC 29402-0993
25 Calhoun Street, Suite 400, Charleston, SC 29401
Telephone: (843) 724-6659
Fax: (843) 579-1332
E-mail: wjohnson@ycrlaw.com
Attorneys for Respondent Andrew Pinckney Inn

Charleston, South Carolina
Dated: August 7, 2013

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 7th day of August, 2013.

Karen L. Russell

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ARKAY, LLC AND ROBERT R. KNOTH, IT'S MEMBER, Petitioners, v. CITY OF CHARLESTON, CITY OF CHARLESTON BOARD OF ZONING APPEALS, ANDREW PINCKNEY INN, AND MICHAEL A. MOLONEY Respondents.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No. 2013-CP-10-3864 **RETURN TO PETITION OF MICHAEL A. MOLONY (SPECIAL EXCEPTION ORDER)**

FILED
2013 AUG 19 AM 9:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

BACKGROUND

1. The Respondent Michael A. Molony appears herein individually, and as the Personal Representative of the Estate of Robert E. Molony, and as Trustee of the Sadie B. Molony Revocable Trust.

2. Michael A. Molony, Individually, is the owner of real property located at 46 Pinckney St. in the City of Charleston that will be diminished in value if the relief sought by the Petitioners herein is granted

3. Michael A. Molony, as Personal Representative of the Estate of Robert E. Molony, is responsible for real property located at 4 Maiden Lane in the City of Charleston that is owned by the Estate and will be diminished in value if the relief sought by the Petitioners herein is granted.

4. Michael A. Molony, as Trustee of the Revocable Trust of Sadie B. Molony, is responsible for the real property at 57 Hasell Street in the City of Charleston that is owned by the Trust and will be diminished in value if the relief sought by the Petitioners is granted.

5. Michael A. Molony, in his various capacities, is an interested and necessary party to this appeal, and he has standing to participate herein.

6. The real property for which this Respondent is responsible as described hereinabove will be unlawfully diminished in value if this appeal is granted by reversing the proper conclusions and rulings of the Board of Zoning Appeals ("BZA") of the City of Charleston because such result would allow Petitioners to bring horses to the property they own at 45 Pinckney Street for the purpose of stabling them there, and such use of the premise is a violation of law. Such use would require all things necessary to maintain the animals including feeding them, cleaning them, attending to their sanitary requirements, and doing everything necessary to provide for their daily needs. This Respondent contends that such activity, the maintenance of the horse barn at 45 Pinckney St., is an unsuitable activity in this urban neighborhood. Petitioners request for a special exception to use said premises as a horse barn was carefully considered by the BZA which concluded that Petitioners were not entitled to use the premises as a horse barn because it was an unsuitable activity for the building and neighborhood, and the BZA further correctly concluded that such use was in violation of the Ordinances of the City of Charleston (§ 54-206) that required the housing and stabling of horses to become such otherwise prohibited activity within 100 feet of a residential zoned district.

7. The BZA carefully considered and applied the ordinances of the City of Charleston, and State law in such cases made and provided to find and order that the stabling and

maintenance of horses in a building at 45 Pinckney St. was prohibited by all applicable law. Such conclusions by the BZA were reasonable, and not capricious or arbitrary, and met all the standards provided by all legal authority; and such findings and orders should be upheld by this court.

RESPONSES TO PETITIONERS' ALLEGATIONS IN THER APPEAL FROM THE BZA'S SPECIAL EXCEPTION ORDER

8. This Respondent denies each and every allegation of the Petition not hereinafter specifically admitted.

9. This Respondent admits, on information and belief, Paragraph 1 of the Petition.

10. This Respondent admits Paragraphs 2, 3, and 4, of the Petition.

11. This respondent admits, on information and belief, Paragraph 5 of the Petition.

12. Paragraph 6 is a list of Exhibits to the Petition that requires no response.

13. Paragraphs 7 and 8 of the Petition are statements of law to which this Respondent is not required to respond.

14. Paragraphs 9 and 10 are admitted on information and belief.

15. This Respondent has no information to admit or deny Paragraph 11 of the Petition, but it is undisputed that the building proposed for the stabling of horses at 45 Pinckney St. is less than 100 feet from a residential zoned district.

16. This Respondent alleges that Paragraph 12 through 19 of the Petition contains descriptions of evidentiary assertions and conclusions of law that they contend are related to this matter, which this Respondent neither admits nor denies.

17. This Respondent believes the statements made in Paragraph 20 are true.

18. This Respondent denies the allegations and stated grounds for the relief sought herein that are contained in Paragraph 21 because Petitioners are not entitled to the relief they seek; and the actions of the BZA are fully supported by the law and facts in this matter.

ADDITIONAL REASONS FOR DENYING THIS APPEAL

19. The BZA of the City of Charleston carefully considered the facts and the law related to Petitioner's application and property applied them to the matter. The BZA did not at anytime in its consideration the issues act arbitrarily or capriciously, nor did it abuse its discretion in anything that it did.

20. Petitioners reliance on the provisions of the South Carolina Horizontal Property Act is unfounded and misplaced because, among other reasons, the outside walls of any horizontal property regime are common elements owned by all users of the regime; and such principles applied to this matter do not and cannot reduce the required distance from the proposed horse stable to the nearby residential zone.

21. Petitioners' planned use of the building at 45 Pinckney St. encompasses the entire structure at that address because, among other reasons, the horses that will be stabled at the location must necessarily enter it and exit it from the public street at the point of the zero lot line and, the Structure cannot lawfully be used as a stable because it is indisputably located within 100 feet of a residentially zoned district within which a stable for horses is not allowed by law.

Wherefore, the Respondent, Michael A. Molony, prays that the appeal by Petitioners from the Order of the BZA be denied.

Respectfully submitted,

HELLMAN YATES & TISDALE

Thomas S. Tisdale

August 19, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Case No.: 2013-CP-10-3864
	)	
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,	)	MEMORANDUM OF PETITIONER ON APPEAL (SPECIAL EXCEPTION ORDER)
	)	
Respondents.	)	

FILED
2014 APR -7 PM 3:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Statement of Facts.

Petitioner Robert Knoth has owned and operated Carolina Polo and Carriage Company ("Carolina Polo"), a horse carriage tour business in the City of Charleston, since 1990. Carolina Polo is the sole source of income for Mr. Knoth and his wife; and it is the primary source of income for their two sons.

This appeal presents a case of statutory interpretation. Horse stables are permitted uses in the City's general business district as a "Special Exception Use". The question in this case is whether a statutorily required 100 foot distance from Carolina Polo's horse stable to a residential district should be measured from the front of Mr. Knoth's multiple use building at 45 Pinckney Street, or whether it should be measured from the area within the building that will be "used" as a stable. The City Zoning Administrator concluded the distance should be measured from the inside "use" as a stable. The Board of Zoning Appeals overruled the Zoning Administrator, holding that the distance must be measured from the

front of the building, thus denying to Mr. Knoth and his family the right to operate a stable at 45 Pinckney Street in the City of Charleston.

The building at 45 Pinckney Street is constructed on the "zero lot line", flush with the sidewalk, in the City Market area, a GB (general business) zoning district. The City Zoning Ordinance, in section 54-206p, permits a stable in a GB district as a Special Exception Use where, among other things, "the stable is not located within 100 feet of any residential zone district." The building at 45 Pinckney is used for multiple purposes, and will be subjected to a Horizontal Property Regime ("HPR"). A Plot Plan is attached as Ex. "A" (also Tab 5 of the Record on Appeal). The front 25.5 feet on Pinckney Street consists of a Unit "B" for office use only, and a common area for restrooms and a customer waiting area. Under the HPR Unit "B" and the common will be restricted against use as a stable. The stable, Unit "A", will be located beyond the customer area, 25.5 feet from the front of the building. Access to the offices of Unit "B", to the restrooms and customer waiting area and to the stable use of Unit "A" is obtained across a common, non-exclusive easement across Unit "B" as shown on the Plot Plan.

The front of the building at 45 Pinckney Street is located at variable distances from the nearest residential zone district. The closest, surveyed distance from the building front to the nearest residential distance is 93.5 feet. The farthest distance, although not measured on the survey, appears to be greater than 100 feet. See the survey at Exhibit "B", attached. (This is also found in the Record at Tab 4, page 10).

The City of Charleston Zoning Administrator concluded that, for the purposes of interpreting the zoning code, the 100 foot distance to the residential district should be measured from the area of 45 Pinckney Street that is <u>used</u> as a stable. (See the Zoning

Administrator's statement of opinion in the transcript at Tab 2, page 6, line 25 to page 7, line 14; and page 11, line14 to page 12, line 24.) By that measurement, the stable use is 119 feet distant from the residential district. The Board of Zoning Appeals overruled the Zoning Administrator's decision, concluding that the 100 foot distance required by section 54-206p should be measured from the front of the building, even though the first 25.5 feet of the building is to be used for human occupancy as offices, rest rooms and customer waiting, and may not be used to "keep" horses. Although there is a common entrance through which persons and horses must pass in order to enter the building, the access easement is not part of Unit "A", the stable itself. (See Ex. "A".)

Nevertheless, the BZA's decision turned upon the existence of the easement. It ruled: "The Board cannot discern intent to separate the use from its access when there is but one access to the building and the law requires an apartment in a HPR to have direct access to a public street or a common area leading to a public street. The common area or easement to Pinckney Street from Unit A is appurtenant to, or a part of, the Unit, rendering it within the 100 foot limitation. Thus, 45 Pinckney Street does not qualify as the site of a stable because it is located within 100 feet of a residential zone district." (Record, BZA Order, Tab 1, p. 4.)

Mr. Knoth asks this Court to hold that the City of Charleston's Zoning Administrator was correct in his interpretation of the city ordinance, and to further hold that the Board of Zoning Appeals Order should be reversed.

Of factual note, Mr. Knoth had formerly operated Carolina Polo from the same property at 45 Pinckney Street, years before. However, the company lost its lease there, and moved to another leased location at 16 Hayne Street in 1996. In May 2013, the building at

16 Hayne Street was sold, and Mr. Knoth's lease was terminated. He subsequently purchased 45 Pinckney Street and applied for the Special Exception Use permit now before the Court. (Believing, based upon the verbal advice of the Zoning Administrator, that the 100 foot measurement here at issue could be taken from the inside stable "use".)

The Zoning Ordinance.

The City of Charleston Zoning Ordinance provides in Section 54-206(p) that stables are permitted in a general business district if certain criteria are met. (The full text appears in the Record at Tab13.) The issue in this case relates to only one of seven criteria set forth in the ordinance.

Section 54-206 provides in part, as follows:

"**Sec. 54-206. Special exception uses.** (Emphasis added)

"Uses designated in the Table of Permitted Uses and listed below, may be permitted in certain districts where the Board of Zoning Appeals-Zoning after review finds that requirements listed below for such uses are met. (emphasis added).

> (p) *Stables* shall be permitted within the GB and UC District as an exception where the Board, after review, finds that:
>
> > (1) The stable is not located within 100 feet of any residential zone district."
>
> (2-7 not printed here)

The applicable law

Scope of Review:

Issues involving the construction of an ordinance are reviewed under a broader standard of review than is applied to reviewing issues of fact. *Mikell vs. County of Charleston, 386 S.C. 153, 687 S.E.2d 326 (S.Ct. 2009).* Although great deference is

accorded the decisions of those charged with interpreting and applying local zoning ordinances, "A broader and more independent review is permitted when the issue concerns the construction of an ordinance. The determination of legislative intent is a matter of law." *Mikell, supra, citing Charleston County Parks and Recreation Commission vs. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995).*

The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. *Charleston County PRC vs. Somers, supra; City of Columbia vs. Niagara Insurance Co., 249 S.C. 388, 154 S.E.2d 674 (1967).*

Discussion.

To begin with, the legislative purpose of the special exception criteria of City Code Section 54-206(p) seems clear. The Section provides safeguards, 1) to ensure that other state and county regulations for stables are met [54-206(p)(3)]; 2) that the cleaning/loading/tacking of horse carriages will not impede street traffic [54-206(p)(4)]; 3) that refuse and drainage needs will be met [54-206(p)(5 and 6)]; 4) and that odors will be adequately ameliorated [54-206(p)(7)]; 5) and, moreover, that these activities as a stable "use" will be at a distance no less than 100 feet from a residential district [54-206(p)(1)].

Accordingly, the purpose of the special exception criteria is to contain those aspects of a stable use, as enumerated in the conditions of Section 54-206(p), at least 100 feet away from the residential district.

The section says nothing about the "building" in which the stable is contained, except in subsection 7, to say that "(b)uildings" must be "designed utilizing appropriate ventilation...(etc.)" It is clear that City Council considered the "stable", as a use, to be

something different from the "building" in which it is contained. As later discussed in this memorandum, this is because, within the limited area in which a stable can be located, it is more likely that stables will be located in buildings that include multiple uses in addition to a stable.

Although the zoning ordinance does not define "stable", another provision of the city code does contain a definition. Sections 29-201, *et. seq.* of the City Code provides for the franchising of animal drawn vehicles for the purpose of touring. (See Petitioner's Exhibit 2 at Record on Appeal, tab 9, sub-tab 2). Under the definitions section dealing with "general health care and management requirements", a "stable" is defined as "the barn where the animals are kept". [Section 29-212(b)(12)]. The operative phrase of the definition is "where the animals are kept". "Kept" is the past participle of the word "keep". "Keep" in this context means "to preserve or maintain". (Merriam-Webster, New Collegiate Dictionary; Merriam-Webster Online Dictionary.)

Thus, a stable is a place where animals are "preserved or maintained". This construction is also consistent with another definition in the tourism ordinance. "Stall" is defined as the individual space within the barn (i.e. the stable) where each animal is kept.

The context of the enactment of the stable ordinance is also relevant to its construction, as follows:

1. First, the intent of Council in enacting the Special Exception Use for stables should be viewed from its broad context: The Special Exception Use as a "Stable" was intended to apply only to stables in the tourism carriage industry. This is evident because of the language of Subsections 54-206, p, subparagraphs 2 and 4, requiring a "Certificate of Appropriateness" from the City Tourism Commission, and also requiring

that the cleaning/loading/tacking area shall not "impede traffic flow in the public right of way." These circumstances could only apply to activities unique to the tourism carriage industry and would not apply, for example, to a horse stable on John's Island.

2. Secondly, the zone of the City in which a "Stable" may be located is limited under the Tourism provisions of the Code. Chapter 29, Article V, Sections 29-201, *et. seq.*, provides for city franchises for carriage companies, and more specifically provides that "Stables shall be located within walking distance (from) the Medallion Gate located at the corner of Church and North Market." Although the phrase "walking distance" is not further defined in the Code, another section strongly suggests that "walking distance" means the area called the "Market Zone", bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and Meeting Street to the west.

This is because Code section 29-206(b) provides that carriages shall load and discharge passengers at the "Gate", or they may load and discharge on private property within the "Market Zone". The "Market Zone" is there defined as the area bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and by Meeting Street to the west. It appears, therefore that the intent of Council in providing for "walking distance" to the Gate, was to mean that the Stable be within the "Market Zone".

If the central point of carriage tours was intended to be the Gate, and if tourists are nevertheless permitted to mount and dismount away from the Gate, provided that the mount/dismount area must be in the "Market Zone", it stands to reason that "Market Zone" and "walking distance" were intended to be synonymous. This is also

logical from a City monitoring standpoint, so that City enforcement personnel are enabled to monitor carriage operations within a "walking distance" range of the Gate.

3. Thirdly, therefore, because "walking distance" is intended to be within the "Market Zone", a review of the properties within the Market Zone suggests very few properties were suitable for Stable use, either presently or at the time of enactment of the provisions of the Tourism Ordinance. Attached as Exhibit "C" is a City zoning map that is helpful to follow the following discussion. (Also in the Record at Tab 7.)

First of all, the central, east-west axis of the Market Zone is the City Market itself, as well as the adjacent restaurants and shops on the north side of North Market Street and on the south side of South Market Street. It is obvious that none of the properties on the east-west axis of the Market Zone could be used as a "Stable", as a practical matter.

Neither could there be any reasonable expectation that a property on the western boundary, fronting on Meeting Street could be used as a stable. On the eastern boundary there are no properties on the west side of East Bay Street. On the east side of East Bay there are large warehouses belonging to the State Ports Authority that, although potential as sites, are not available.

On the southern boundary of the Market Zone there may be one potential property, although there is no suggestion that it would be available for use, much less as a Stable. That is the property currently used as a convenience store at the northeast corner of State and Cumberland Streets. Otherwise, the properties on the southern boundary of the Market Zone which front on Cumberland Street are either within 100 feet of a

residential district, or are properties used as city parking garages or as established office buildings.

On the northern boundary of the Market Zone, viewed from west to east, the Bank of America building consumes most of the first block extending along Pinckney Street eastward from Meeting Street; and immediately to the east is the property at issue, 45 Pinckney Street. To the east of 45 Pinckney is the Andrew Pinckney Inn. Proceeding easterly across Church Street is the site of the former First Baptist Church School Gymnasium, and across Anson Street to the east is the stable of Palmetto Carriage Company, then a small Inn, a veterinary clinic, a surface parking lot, an office building and "Big John's" Café.

Between North Market and Pinckney Streets there are several open automobile parking lots that could theoretically be converted to stable use. Several are on the north side of Hayne Street, and another is east of Anson Street, between North Market and Pinckney Streets. However none of the surface lot properties are known to be available, and it is unlikely that automobile parking would become secondary to Stable use, as a practical matter.

Therefore, the properties theoretically or practically available for use as a Stable in the Market Zone are the current location of Carolina Polo & Carriage Company, 45 Pinckney Street, which is the location at issue in this appeal, or one of the surface automobile parking lots as described.

The point to be made is that, in construing the intent of City Council in providing for "Stable" use as a Special Exception, the properties for which that intended

use would be eligible were limited. Accordingly, the construction and use of the term "Stable" in the City Code must be framed within this practical context.

4. A fourth point of contextual consideration is the language of Section 54-206, itself. As emphasized in the excerpt restated on page 4 of this memorandum, what is regulated by the section is the use of property. As previously discussed, it is the use as a stable that must be 100 feet from the residential district, and not the structure within which the use is contained. Suppose the same configuration existed with respect to one of the huge State Ports Authority warehouses? No one could seriously argue that a measurement should be taken from a warehouse building where the stable was one of several uses. Here, there is no difference. The front Unit "B" of 45 Pinckney Street and the common area behind it will be occupied by humans, and not by horses. Likewise, the easement through to the stables is not the area where horses are "kept". They will simply pass through.

The BZA Order incorrectly considered the easement as a part of the stable. The lynchpin of the BZA Order denying the special exception use is that, because horses must access the place where they are "kept" across a common, non-exclusive easement, the BZA could not separate the use from its access, "when there is but one access to the building, and the law requires an apartment in a HPR to have either direct access to a public street or a common area leading to a public street". Therefore, the BZA concludes, the "access" is a part of the "stable", itself.

In the first place, as shown on the Plot Plan (Exhibit "A") the access is clearly denominated an "easement". It is a fundamental principle of real property law that an easement is only "the right of one person to use the land of another for a specific

purpose". *Smith vs. CPW of Charleston, 312 S.C.460, 441 S.E.2d 331 (Ct.App. 1994).* Although the easement in this case may be "appurtenant" to Unit "A", it is manifestly not a "place where animals are kept"; it provides a non-exclusive means of access, only.

The easement provided by the HPR in this case is no different from a covered alley way. If the building front of 45 Pinkney Street were set back 25 feet so that horses entered the stable where they are kept through an open alley, surely there could be no argument that the alley was a "stable". Here there is no difference, but the horses will enter the same stable through the existing covered area and across the easement provided by the terms of the HPR. Moreover, it is self-evident that the easement is not exclusive to the stable's use. It is also necessary for access to the adjacent offices of Unit "B", as well as to the common area comprising restrooms and customer waiting area.

The BZA's interpretation of the ordinance in this case defies the purpose of the ordinance: to place the area where animals are "kept" at least 100 feet away from a residential district. Moreover, the very activity counted by the BZA as offensive to the ordinance, here, is not at all different from the very purpose of horse drawn tour carriages to begin with. Horse drawn tour carriages exist for the very purpose of passing by and through the residential districts of the city. They do that daily. As it relates to horses accessing stables through the easement in this case, the activity is the same. Horses are no more "kept" on the access easement than they are on the public streets.

(Nothing Follows On This Page)

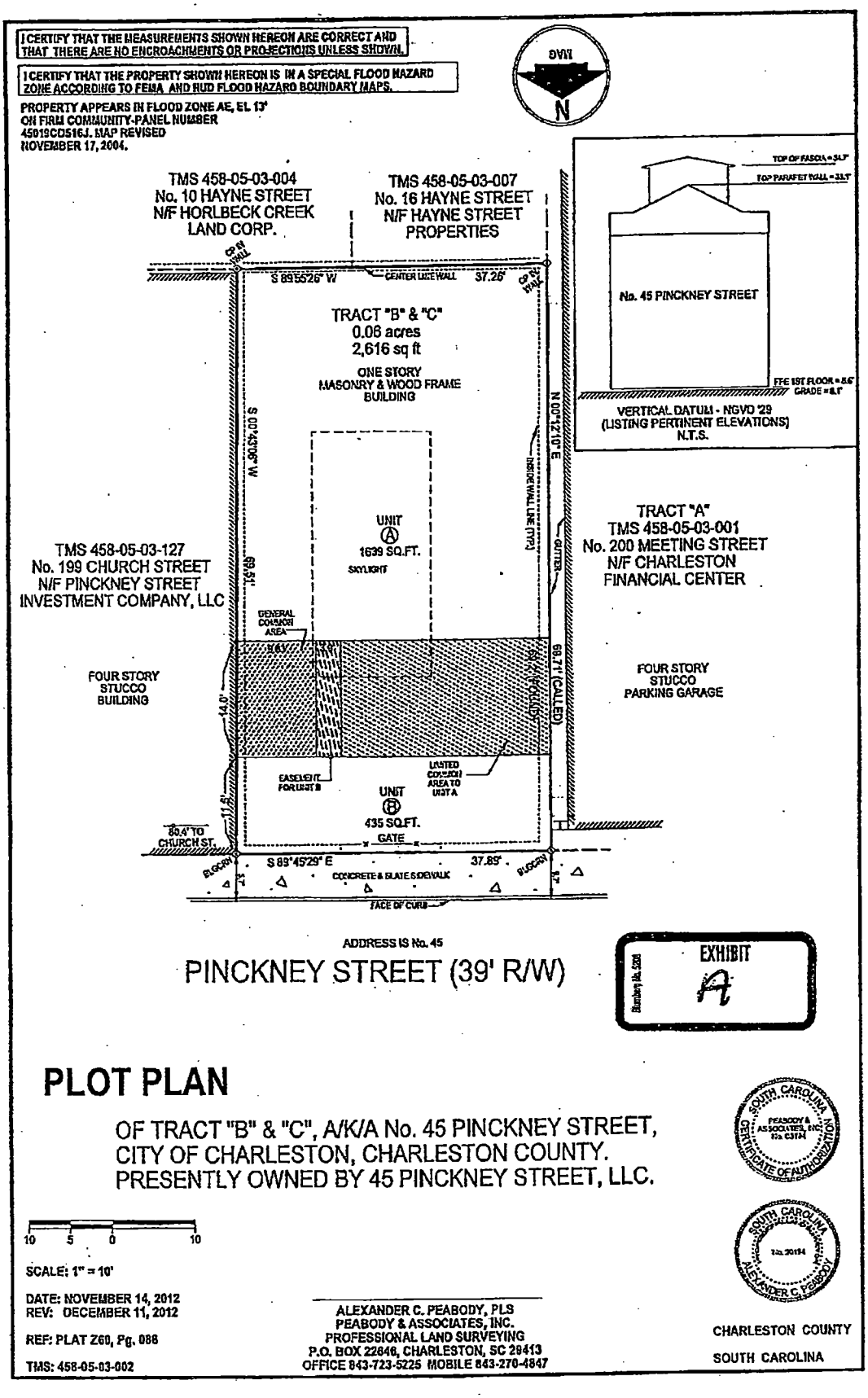
Because the Board of Zoning Appeals improperly construed Section 54-206(p)(1); and because the "stable" in this case "where the horses are kept" is clearly greater than 100 feet from the nearest residential zone district, the decision of the Board of Zoning Appeals must be reversed.

Respectfully Submitted,

BARR UNGER & McINTOSH

Capers G. Barr, III
S. C. Bar ID: 542
11 Broad Street
Charleston, SC 29401
Telephone: (843) 577-5083
Facsimile: (843) 723-9039
ATTORNEY FOR PETITIONERS

Charleston, South Carolina
April 7, 2014



PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.

10 5 0 10

SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: DECEMBER 11, 2012

REF: PLAT Z60, Pg. 088

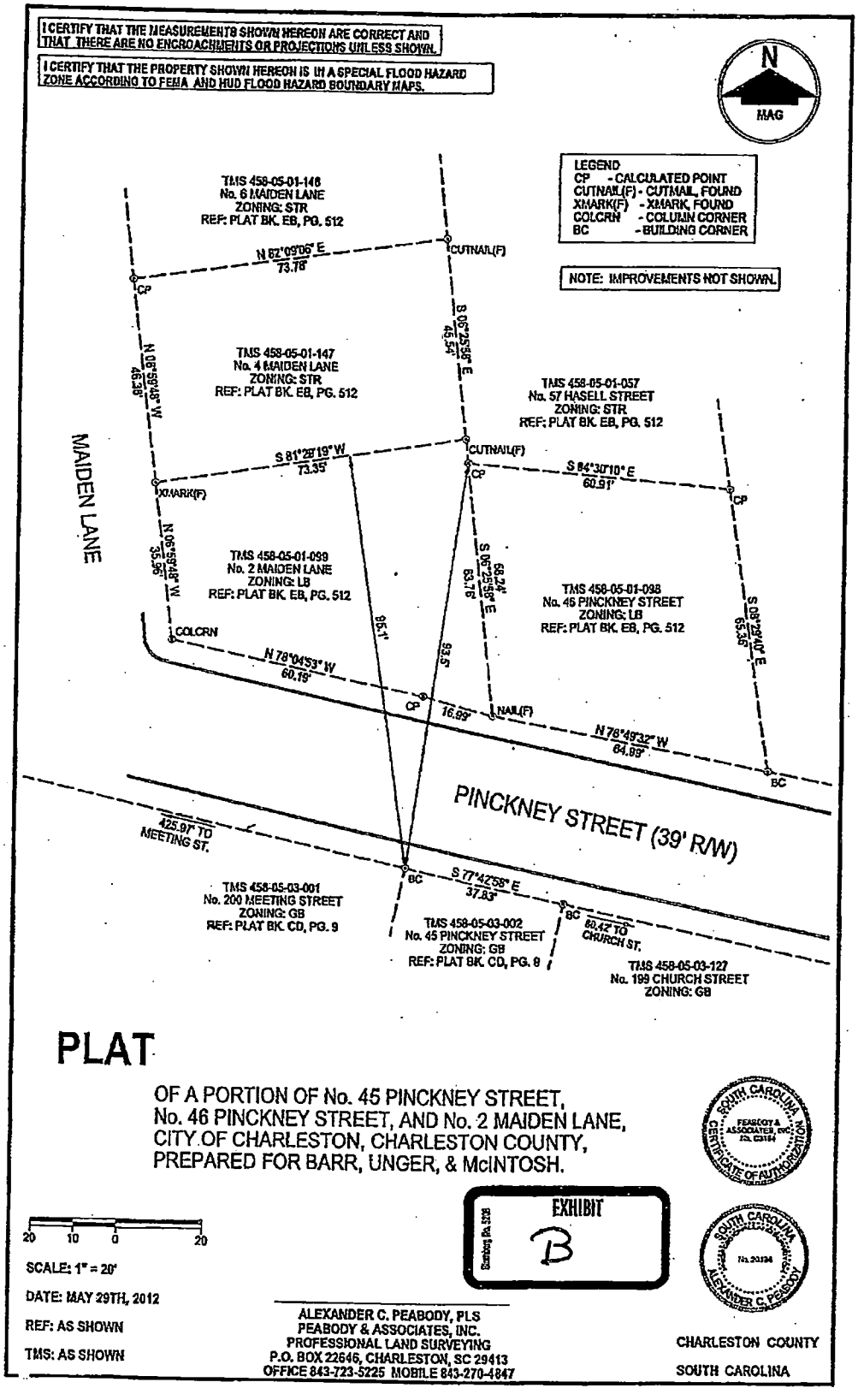
TMS: 458-05-03-002

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

SOUTH CAROLINA
PEABODY & ASSOCIATES, INC
No. C3714
CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA
No. 20114
ALEXANDER C. PEABODY

CHARLESTON COUNTY
SOUTH CAROLINA


I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTNAIL, FOUND
XMARK(F) - XMARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-146
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-098
No. 46 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
PINCKNEY STREET (39' R/W)
N 62°09'06" E 73.78'
S 05°25'58" E 45.54'
N 05°59'48" W 45.36'
S 81°28'19" W 73.35'
S 84°30'10" E 60.91'
N 05°59'48" W 35.96'
S 05°25'58" E 63.78'
58.74'
85.1'
93.5'
S 89°29'40" E 65.36'
N 78°04'53" W 60.79'
16.99'
N 78°49'32" W 64.99'
425.97' TO MEETING ST.
S 77°42'58" E 37.83'
80.42' TO CHURCH ST.
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
CUTNAIL(F)
XMARK(F)
COLCRN
NAIL(F)
CP
BC
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET,
No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE,
CITY OF CHARLESTON, CHARLESTON COUNTY,
PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
CERTIFICATE OF AUTHORIZATION
EXHIBIT
B
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
SOUTH CAROLINA
No. 20134
ALEXANDER C. PEABODY
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	Case No.: 2013-CP-10-3864
)	
ARKAY, LLC and)	
ROBERT R. KNOTH, its member,)	
Petitioners,)	
)	
v.)	
)	
CITY OF CHARLESTON,)	CERTIFICATE OF SERVICE
CITY OF CHARLESTON BOARD)	(SPECIAL EXCEPTION ORDER)
OF ZONING APPEALS, ANDREW)	
PINCKNEY INN, and MICHAEL A.)	
MOLONY,)	
)	
Respondents.)	

FILED
2014 APR -7 PM 3:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Memorandum of Petitioner on Appeal from the Board of Zoning Appeals (Special Exception Order) by E-Mail and U. S. Mail this 7th day of March, 2014 to:

Ms. Frances Isaac Cantwell, Esq.
City of Charleston
50 Broad Street
Charleston, SC 29401

Mr. Wilbur E. Johnson, Esq.
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29401

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

Megan E. Gardner
Paralegal to Capers G. Barr, III

Charleston, South Carolina
April 7, 2014

GB
STR
LB
WP
LI
PUD
DR-1F
DR-2F
SR-4
SR-5
SR-6
100/30
80/30
120/30
60/25
50/25
EXHIBIT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	Case No.: 2013-CP-10-3904
)	
ARKAY, LLC and)	
ROBERT R. KNOTH, its member,)	
Petitioners,)	
)	
v.)	
)	
CITY OF CHARLESTON,)	MEMORANDUM OF PETITIONER
CITY OF CHARLESTON BOARD)	ON APPEAL
OF ZONING APPEALS, ANDREW)	(VARIANCE ORDER)
PINCKNEY INN, and MICHAEL A.)	
MOLONY,)	
)	
Respondents.)	

This is a companion case to a Special Exception appeal before the court. The Charleston County Board of Zoning Appeals ("BZA") denied Petitioners' Special Exception Use application at hearing on April 16, 2013 on the ground that the property did not comply with a statutory requirement that a stable be no less than 100 feet from the nearest residential zone district. As discussed in the Special Exception appeal, the surveyed closest point of the building at 45 Pinckney Street to the nearest residential district is 93.5 feet. (See Exhibit "A"; also tab 7 of the Record).

After denial of the Special Exception Use, Petitioners applied for a Variance. Petitioner argued to the BZA that because the variance sought in this case is *de minimis*, the ordinary hardship standards required to approve a variance should be relaxed, because the impact on the public of a *de minimis* variance is minimal.

The BZA denied the variance application. This appeal follows. The question before the Court is whether the BZA committed error, as a matter of law, by not adopting a *de minimis* standard.

The Applicable Law.

It is stated in 83 Am.Jur.2d, Zoning and Planning Section 769:

"A developer that seeks a *de minimis* change from a zoning ordinance does not have to meet a heavy burden for obtaining a variance, *Bailey v. Zoning Bd. of Adjustment of City of Philadelphia, 569 Pa. 147, 801 A.2d 492 (2002)* and the requirement of showing unnecessary hardship has been modified where the requested variance is very small. *King v. Zoning Hearing Bd. of Borough of Nazareth, 76 Pa. Commw. 318, 463 A.2d 505 (1983).* Thus, a *de minimis* variance may be granted, even where the strict requirements for a variance have not been met, where the variation requested is minor, and rigid compliance is not necessary to protect the public policy concerns of the ordinance. *Lench v. Zoning Bd. of Adjustment of City of Pittsburg, 13 A.3d 576 (Pa. Commw. Ct.2011).* However, there is no general right to a *de minimis* zoning variance. *200 W. Montgomery Ave. Ardmore, LLC v. Zoning Hearing Bd. of Lower Merion Tp., 985 A.2d 996 (Pa. Commw. Ct. 2009).* Unlike a traditional variance, a *de minimis* variance does not require proof that the requested variance will not adversely affect the public health, safety, and welfare. *Appeal of Ressler Mill Foundation, 132 Pa. Commw. 569, 573 A.2d 675 (1990).* Indeed, the burden on an applicant is at its lightest where the request involves a *de minimis* variance with respect to a dimensional requirement, such as height. *Lench v. Zoning Bd. of Adjustment of City of Pittsburgh, 13 A.3d 576 (Pa. Commw. Ct. 2011).*

Discussion.

Petitioners concede that no existing South Carolina legal authority recognizes a *de mininis* standard in a variance application. However, neither does Any authority reject it. The question is one of first impression.

In this appeal, Petitioners argue that this Court should formally recognize such a legal standard; and Petitioners ask that the variance application be remanded to the Board of Zoning Appeals with instructions to consider all of the evidence in light of a *de minimis* standard, as a matter of law: that is to say, that the burden for obtaining and proving a variance may be lessened in the circumstances of a *de minimis*, dimensional variance request.

Here, it must be conceded by all parties that the variance requested is at most six and a half percent. That is, because the structure at 45 Pinckney Street is 93.5 feet away from the nearest residential zoned district, shy by six and one-half feet, the variance requested is only six and a half percent.

Moreover, and this seems to be conceded by the City in its memorandum, the variance is not even six and one-half percent across the entire building front. A review of the "Kentucky Windage" exhibit introduced at BZA hearing, attached as Exhibit "B" demonstrates that for approximately one-half of the frontage of 45 Pinkney Street, a one hundred foot separation from the residential district is obtained.

Conclusion.

Although conceding that a variance is an extraordinary remedy, it is nevertheless true that variances are available remedies, within the authority of boards of zoning appeals; and that they are regularly granted. As reflected in the hearing in this case,

variances were granted in cases other than Petitioners' on the same agenda, amounting to a 66.6% variance from setback in one case and 22% in another, the second case also involving a special exception use.

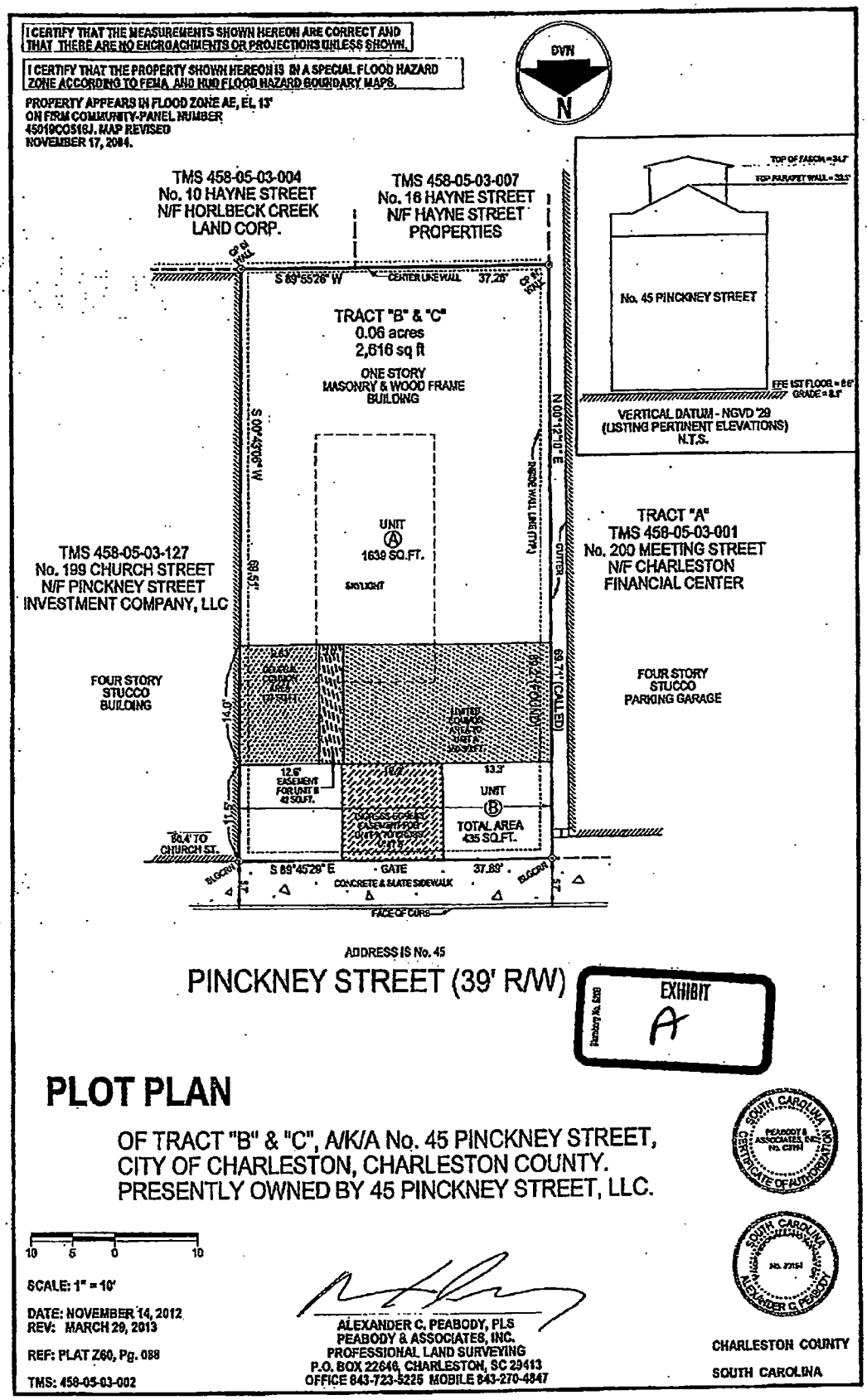
The elements of a variance should be re-evaluated by the Board of Zoning Appeals upon remand, under a relaxed *de minimis* standard, as a matter of law.

Respectfully Submitted,

BARR UNGER & McINTOSH

Capers G. Barr, III
S. C. Bar ID: 542
11 Broad Street
Charleston, SC 29401
Telephone: (843) 577-5083
Facsimile: (843) 723-9039
ATTORNEY FOR PETITIONERS

Charleston, South Carolina
April 11, 2014


I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
PROPERTY APPEARS IN FLOOD ZONE AE, EL 13'
ON FIRM COMMUNITY-PANEL NUMBER
45019C0516J. MAP REVISED
NOVEMBER 17, 2004.
N
TMS 458-05-03-004
No. 10 HAYNE STREET
N/F HORLBECK CREEK
LAND CORP.
TMS 458-05-03-007
No. 16 HAYNE STREET
N/F HAYNE STREET
PROPERTIES
S 89°55'26" W
CENTER LINE WALL
37.26'
TRACT "B" & "C"
0.06 acres
2,616 sq ft
ONE STORY
MASONRY & WOOD FRAME
BUILDING
UNIT
A
1639 SQ.FT.
SKYLIGHT
TMS 458-05-03-127
No. 199 CHURCH STREET
N/F PINCKNEY STREET
INVESTMENT COMPANY, LLC
FOUR STORY
STUCCO
BUILDING
TRACT "A"
TMS 458-05-03-001
No. 200 MEETING STREET
N/F CHARLESTON
FINANCIAL CENTER
FOUR STORY
STUCCO
PARKING GARAGE
12.6'
EASEMENT
FOR UNIT B
42 SQ.FT.
UNIT
B
TOTAL AREA
435 SQ.FT.
80.4' TO
CHURCH ST.
S 89°45'29" E
GATE
37.89'
CONCRETE & SLATE SIDEWALK
FACE OF CURB
No. 45 PINCKNEY STREET
VERTICAL DATUM - NGVD '29
(LISTING PERTINENT ELEVATIONS)
N.T.S.
ADDRESS IS No. 45
PINCKNEY STREET (39' R/W)
EXHIBIT
A
PLOT PLAN
OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.
10 5 0 10
SCALE: 1" = 10'
DATE: NOVEMBER 14, 2012
REV: MARCH 29, 2013
REF: PLAT Z60, Pg. 088
TMS: 458-05-03-002
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA

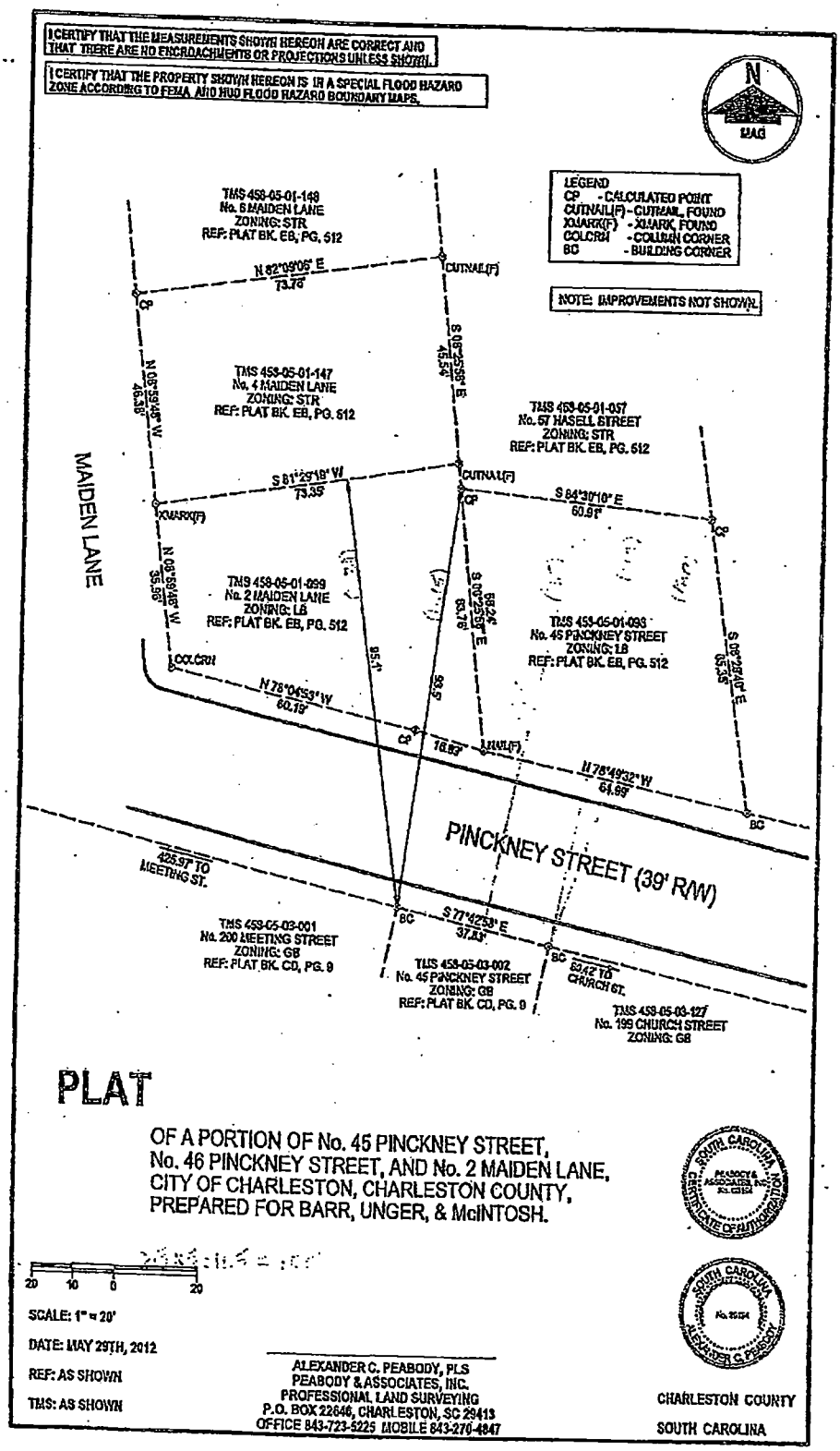

I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTNAIL, FOUND
XMARK(F) - X-MARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-148
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
N 82°09'05" E
73.76'
CUTNAIL(F)
CP
N 08°59'48" W
45.36'
S 08°25'58" E
45.54'
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
S 81°29'18" W
73.35'
CUTNAIL(F)
CP
S 84°30'10" E
60.91'
XMARK(F)
N 08°59'48" W
35.56'
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 08°25'58" E
58.24'
60.78'
TMS 458-05-01-093
No. 45 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 08°25'40" E
65.36'
COLCRN
N 78°04'53" W
60.75'
95.1'
99.5'
CP
18.83'
1.1'M(F)
N 78°49'32" W
64.69'
BC
PINCKNEY STREET (39' R/W)
425.9' TO MEETING ST.
BC
S 77°42'53" E
37.83'
BC
59.42' TO CHURCH ST.
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET, No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE, CITY OF CHARLESTON, CHARLESTON COUNTY, PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
CERTIFICATE OF AUTHORIZATION
SOUTH CAROLINA
No. 15124
ALEXANDER C. PEABODY
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA

EXHIBIT
B

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2013-CP-10-3864

ARKAY, LLC, ET AL,

PLAINTIFF,

VS.

CITY OF CHARLESTON, ET AL,

DEFENDANT.

MOTIONS HEARING

held before the Honorable J.C. Nicholson, Jr.

Mia Perron, Circuit Court Reporter, 9th Judicial Circuit

in the Charleston County Courthouse

Charleston, South Carolina

on Friday, April 11, 2014, Commencing at 10:58 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

APPEARANCES OF COUNSEL

FOR THE PLAINTIFFS:

Capers G. Barr, III, Esquire
Barr Unger & McIntosh
Post Office Box 1037
Charleston, South Carolina 29402

FOR THE DEFENDANT THE CITY OF CHARLESTON:

Frances I. Cantwell, Esquire
Attorney at Law
50 Broad Street
Charleston, South Carolina 29401

FOR THE MALONEY FAMILY:

Thomas S. Tisdale, Jr., Esquire
Hellman Yates & Tisdale
105 Broad Street, Third Floor
Charleston, South Carolina 29401

FOR THE PINCKNEY INN:

Wilbur E. Johnson, Esquire
Young Clement Rivers
Post Office Box 993
Charleston, South Carolina 29402-0993

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	3
CERTIFICATE OF COURT REPORTER	61

- - - - -

EXHIBITS

[None]

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-826-6313

PROCEEDINGS

THE COURT: There's a motion for appeal from the board of zoning from Arkay, LLC, versus The City of Charleston.

Is that correct?

MR. BARR: Yes, sir.

THE COURT: Now, I understand there's one question about the ordinance and the use, and then the second question is about variance?

MR. BARR: That's correct, Your Honor.

THE COURT: All right. Let me just ask you a question.

If the Court determines that the use statute is different from the zoning board's determination, that would make the second portion moot; is that correct?

MR. BARR: That is correct. That would, Your Honor.

THE COURT: So I guess we've got to argue that motion or that appeal first; is that correct?

MS. CANTWELL: That's correct.

MR. BARR: That would be our preference, Judge.

THE COURT: Okay. Be glad to hear you.

MR. BARR: Thank you very much, Your Honor. May it please the Court.

THE COURT: Now, I've looked at where this is on

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

the map and --

MR. BARR: Well, good. I'm sure the map I gave you -- I've got a clearer one here today.

THE COURT: If you have, I appreciate it. We were looking at it on Google.

MR. BARR: Yes, sir.

THE COURT: What is it? Earth Google, or whatever they call it.

MR. BARR: That thing is not very clear. I'm sorry.

Do you want it now, Judge?

THE COURT: If you have one, I would appreciate it.

MR. BARR: Let me just give you -- here are two copies. I can hand them up to counsel. I've got a stack of things. The top one is that same tax map. And I can walk you through it.

[Whereupon, Mr. Barr proffers documents to the Court]

THE COURT: It's 93.7 feet from -- within the 100; is that correct?

MR. BARR: I think it's 93.5.

THE COURT: 93.5? And the proposal was to have the actual animals farther back inside the 100?

MR. BARR: That's correct.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

MS. CANTWELL: That's correct.

THE COURT: Let's see. He took the position that the ordnance doesn't cover that, it's the whole property --

MS. CANTWELL: Right.

THE COURT: -- as far as the use of the property as a whole?

MR. BARR: That's correct.

MS. CANTWELL: Correct.

THE COURT: Okay.

MR. BARR: And so if we can start at your first question, Judge: under tab 1, I took that same map and ran it in black and white, because those colors get you confused. And you'll see highlighted in orange on that is the city market district. You see the number 35 in the middle of it?

THE COURT: Yes, sir.

MR. BARR: That's the location of what is called the gate or where the tour carriages check in at the corner of North Market --

THE COURT: That's the parking lot right -- that's the parking lot right behind 35?

MR. BARR: Correct. Exactly. It's the parking lot. And the back, that was the old First Baptist gym that's recently been torn down.

FORM C-100 · LASER REPORTERS PAPER & MFG. CO. 800-626-9313

THE COURT: And over here on the corner, Hainey Street and this other street, is what, Hank's Restaurant?

MR. BARR: Hank's is at the corner --

THE COURT: It's on the corner --

MR. BARR: -- of Hainey and Church.

THE COURT: So this is sort of -- almost sort of behind it?

MR. BARR: This is behind Hank's.

And, in fact, it's not easy to see but you'll see a red circle there on Pinckney Street.

THE COURT: Right.

MR. BARR: That building is the building that is in issue, 45 Pinckney Street.

And then the next tab under number 2 -- I apologize. Everybody has multiple copies of it -- is a closer-up view. And that's going to show you 45 Pinckney Street.

And the dark lines across -- on the other side of Pinckney Street there denominate the residential district. In other words, the residential district is behind those dark lines, just to orient you.

THE COURT: Well, where do they measure the 93.45 feet from?

MR. BARR: Well, let's go to tab 4. And that

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

ought to be a plat.

THE COURT: How many copies of this --

MR. BARR: Yeah. Go to -- I'm sorry that there are so many.

THE COURT: I mean, you must have a dozen in there.

MR. BARR: My assistant misunderstood my instructions.

But under tab 4 --

THE COURT: So you've got copies -- Jesus.

MR. BARR: If you'll just go down to tab --

THE COURT: You're not helping the pine trees, are you? Okay.

MR. BARR: Yeah --

THE COURT: This is -- now, this is a picture of the back --

MR. BARR: That's a picture of the front of the building.

THE COURT: Okay.

MR. BARR: That's what Pinckney -- that's what 45 looks like.

THE COURT: All right. So now we're looking at 4? Tab 4?

MR. BARR: Yeah.

If you'll unfold -- and you had asked the

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-628-8313

question where did they measure from.

THE COURT: Right.

MR. BARR: All right. And the surveyor measured from that northwest corner where the arrows extend from and to. So you see 45 Pinckney Street on the south side of the street. So he measured from the closest point from the building to the closest point of the residential district.

THE COURT: okay.

MR. BARR: And you can see there the answer to your question, the 93.5.

Now, the red lines represents some of my doodling. Because I failed to ask the surveyor this -- because it's apparent. You can see that the lines of the residential district are uneven and they are not parallel on the front of 45 Pinckney. So I took a centimeter ruler down at the bottom and concluded that code, the 2. -- I'm sorry -- a millimeter ruler and 2.3 millimeters, which is just a finer unit of measure, equals 20 feet. So 11-and-a-half millimeters is 100 feet. And then I measured that. And, again, I realize this is Kentucky windage. But I measured that on the -- from the front of the building. And you can see that about in the middle of Pinckney Street, of 45 Pinckney Street, measured over

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

Nearest

to that newest residential district, it is 100 feet. And then as you go to the west, it's closer than the 100 feet.

So the point is that this building is not 100 feet within that line throughout. It's 100 feet -- it's within 100 feet from about the middle to going to the west to the corner.

THE COURT: Well, I mean, let me ask you this. On the 93.5, which is written on the survey, how many feet is from that corner? That's the corner of the property line; right?

MR. BARR: That's the corner of the -- well, you see those -- that property line across the street? Those are commercial lots.

THE COURT: Right.

MR. BARR: And so, yes. That's the -- I asked him to show us the closest point of this building to the residential district, and that was his answer: from that point BC at 45 Pinckney, over to point CP at 46 Pinckney, is the closest spot. And that's 93.5. And from then out, it gets larger.

THE COURT: I guess my question is where you've talking about BC, which is on the south side of Pinckney Street --

MR. BARR: Correct.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

THE COURT: -- is that the corner-lot position or is that the corner of the building?

MR. BARR: That's the corner of the building. The building is flush to the street, to the --

THE COURT: Street. Okay.

MR. BARR: -- to the sidewalk.

THE COURT: Okay. All right.

MR. BARR: So the property line and the building are the same.

THE COURT: So you're saying the measurement was in error?

MR. BARR: Beg your pardon?

THE COURT: You're saying the measurement was in error?

MR. BARR: No. No.

All I'm saying is -- all I'm saying is it is correct that that northwest corner of 45 Pinckney Street is 93.5 feet from the residential district.

THE COURT: Okay. I got you. I got you.

MR. BARR: But as you go toward the west on that Pinckney Street --

THE COURT: It's over -- it's 100 feet.

MR. BARR: -- it falls away at greater than 100. And that's my whole point. So it's not --

THE COURT: I'm with you. Okay.

FORM C-100 · LASER REPORTERS PAPER & MFG. CO. 800-626-6313

MR. BARR: -- -- it's not throughout.

But the point is is that this is such a de minimus diminious distance away. That's the point I'm trying to emphasize here, on top of the other -- on top of the other positions that we argued.

THE COURT: So if you measure it from the middle of the lot, it would be 100 feet?

MR. BARR: Right. And --

THE COURT: Or if you measure it from the east side of the lot, it would be well over 100 feet?

MR. BARR: And from the west it's not.

And as you'll see, Your Honor, when I get into the discussion here, that becomes really significant because if you take a look at the next tab, tab 5 -- that ought to be -- that ought to be called a plat. plan. It's a fold-out plat. Plan.

THE COURT: Okay.

MR. BARR: All right. And if I may digress.

When we got that survey done, I went back and read the zoning code very carefully, read the code relating to stables, and I came to the conclusion that what that code, 54-206(P) is describing, is not a physical structure. It is describing a use. And if --

THE COURT: What's the code number? Does

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

anybody have -- have y'all provided us with a copy of that --

MR. BARR: That's in front of you, Judge. It's in the record, but I've also got a version of it in front of you under tab 6.

THE COURT: Okay. Tab 6. Okay. Go ahead with tab 5, I guess. Yeah. Go ahead with tab 5 and the plat.

MR. BARR: So the code section is under tab 6, 54-206. So we concluded that really what the City is saying in the zoning code -- because if you listen -- if you read the language -- look at that tab 5 -- 6 for just a minute, 54-206. It says usage designated, in a table of permitted uses, and listed below.

THE COURT: Where are you reading from in the section?

MR. BARR: Right at the top. 54-206.

THE COURT: The uses designated. Okay.

MR. BARR: Uses.

And this is not a table use, so it's uses designated and listed below may be permitted where the VZA finds a requirement to submit.

So the whole purpose of this, of the special-use exception section of the zoning code, is to describe permitted uses provided the conditions are met.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

Then you go over to the third page of that tab 6, Judge -- I'm sorry. Maybe -- yes, the third page. And you see under section P?

THE COURT: Yes, sir.

MR. BARR: It says: stables shall be permitted.

THE COURT: Okay.

MR. BARR: All right. And then it gives seven criteria. You see the seven criteria?

THE COURT: Right.

MR. BARR: The first is the one that's at issue here: the stable is not located within 100 feet of any residential zoned district.

That's what we're here to talk about. The City has concluded that Mr. Knoth --

By the way, my clients are with me, Your Honor, Robert and Richard Knoth. I should have introduced them to you.

But the City has concluded that they comply with all the other conditions, 2, 3, 4, 5, 6 and 7. The question is --

THE COURT: Is that correct?

MS. CANTWELL: That's what --

THE COURT: The only one at issue is number 1?

MS. CANTWELL: Yes, sir.

THE COURT: Okay.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-8313

MR. BARR: So the only issue is number 1.

So going back to what happened after we got the survey and we studied the zoning code, we concluded that that zoning code describes and defines uses, not physical structures. So the idea is to separate the whole purpose of that 100 feet, is to separate that use by 100 feet from the residential district.

So we concluded, well, if we subjected this property to the rigid constraints of a horizontal property regime, and restricted that front part of the building against use as a stable, that would provide the greatest assurance to the City and to the community that the stable use would not be within 100 feet of that residential district. And that was the argument we made to the VZA.

Your Honor, if you're looking at that plat plan, the VZA said they didn't -- they didn't say all well and good, but in their order they said, well, we can't separate that easement.

If you look at the front of the building on the plat plan, and the VZA --

THE COURT: Let me see where -- okay. Egress -- ingress and egress --

MR. BARR: Ingress, egress easement for unit A across unit B. Unit A is the stable.

FORM C-100 • LASER REPORTERS PAPER & MFG. CO. 800-626-8319

So the way that this condominium is set up, Judge, is the front part of that building, the first 11-and-a-half feet, will be an office for Mr. Knoth and an office for his son, Richard, who has an ancillary business. That shaded area in the middle is a common area. To the left are restrooms, not for horses but for humans. And on the right of that shaded area is a waiting area for customers.

And then behind that shaded area is where the actual stable would be. In other words, the place where the horses are kept would be back there. Now, the distance from that stable use to the nearest residential district is 119 feet.

So the VZA said, however, in their order -- and that's in the big record. I didn't make a copy of that. The VZA said, but we can't separate the access over that easement from the use in the back and therefore we're going to conclude that the stable begins at the easement in the front.

Well, if you go back to that Kentucky windage drawing that I shared with the red lines on it -- I can't say this with certainty, but that -- from where that easement exists, it may well be outside of 100 feet. Get back to the fine line that the City is drawing. But --

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

THE COURT: I assume the easement is to have access to the stable; is that --

MR. BARR: Correct. To the stable and to the restrooms and the customer waiting area and to the office --

THE COURT: I guess the horses have to come in on Pinckney Street through their --

MR. BARR: The horses will come in on Pinckney Street.

THE COURT: -- and then straight down or off to the left a little bit; is that correct?

MR. BARR: They'll walk straight to the back of the building. And then in the back of the building --

[Whereupon, Mr. Barr and clients confer]

MR. BARR: -- there are six stalls.

And I might say, Judge -- this is sort of an aside. There's been a recently enacted ordinance for the care and keeping of animals. And this will be the first state-of-the art stable in the City of Charleston, provided we can build it. Up until now -- and even in these other -- in the other stables in the city, horses are kept in stalls that are anywhere from six feet by ten to smaller and larger. These stalls will all be twelve by twelve and with ample ventilation and provisions as required under the

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

ordinance.

So the point I make -- and sort of following Your Honor's questions. The point I make is what the City VZA said was, well, we're going to count this easement as a part of the stable and, therefore, we're going to say you don't meet the 100-foot separation.

But my -- and so my first observation to the Court about that I just made, and that is, well, that easement may well be 100 feet away from that district by virtue of that Kentucky windage sketch I showed you.

But, but, the City overlooks the basic point. And the basic point is this. In the city tourism ordinances -- and it's a requirement of zoning. It's a requirement of this subsection B, under subsection P-2, it's a requirement that -- I'm sorry. P-3 -- that the stable reqires -- with all city, county and state regulations for stables. Well, there are no county or state ones, but there is a city one and it's in that tourism ordinance.

Now, in the city tourism ordinance, Judge Nicholson, whereas stable is not defined in the zoning ordinance, it is defined in the tourism ordinance. And the definition of stable in the tourism ordinance -- and there's a copy of that in the record and

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

there's a copy of that also I think under tab 6 in front of you -- or tab 7, actually.

Now, the definition in the tourism ordinance is that a stable is the barn where animals are kept. And the word kept means to preserve or maintain.

THE COURT: Well, was that ordinance in existence when the zoning board made this decision? You said it was a new ordinance.

MR. BARR: Beg your pardon, Your Honor?

THE COURT: Was that ordinance that you just referred to in existence --

MR. BARR: Yes.

THE COURT: -- at the time the zoning board made the decision?

MR. BARR: Yes. I made this same argument to them.

THE COURT: Okay. All right.

MR. BARR: I made this same argument.

So the tourism ordinance -- now, the City tries to argue in their memo that that shouldn't apply to zoning. But it has to because, first of all, this zoning ordinance only applies to stables for horse carriages in the tour business. If you look at those conditions, under P, if that's in front of you right now, 54-206(b) -- look at number 2: the City of

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

Charleston Tourism Commission has issued a certificate of appropriateness for the stable.

Well, that only applies to tour carriages, Judge. It doesn't apply to a stable on Johns Island. It wouldn't apply to a stable that's not used in the tour carriage business.

And so I think it's pretty clear that this ordinance was written specifically for tour carriages. And because this ordinance requires compliance with the other city codes, it encompasses the city code defining tourism which defines stables as the place where horses are kept.

And the operative word there is kept. Where are these horses kept? The horses are not kept -- if you look back at the plat plan, they're not kept in the easement. The horses are kept, that is to say they are preserved or maintained, in the back of the building in those six stalls, 119 feet away from the residential district.

Now, Judge, this is really a question of the law. I know you're probably familiar with the general statements of the courts that the courts will defer to interpretations of ordinances applied by the local officials. But that's not -- this is not a question of interpretation. We're asked to construe 54-

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-628-8313

206(P)(1) -- throughout 206(P) in its entirety, but more specifically (P)(1).

In other words, what does the word stable mean in the special exception use statute? And it means, I suggest, a use not a physical structure. So the use as a stable, under (P)(1) must be at least 100 feet away.

Now, I think there's some revealing language in 54-206, Judge, that helps that interpretation. If you look at 54-206(P)(7) -- and I know you're making notes. But if you look --

(P)(7). Are you there?

THE COURT: Yes, sir.

MR. BARR: All right. Up until there, the statute does not mention a physical structure at all. But there it says buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted.

So why did council there use the word building and not the word stable? Is the City is now arguing stable means a building? And it's because what the City contemplated --

THE COURT: Hold on. Hold on just a second.

MR. BARR: All right.

[Off the record momentarily]

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

THE COURT: Go ahead.

Do either one of you have a copy -- she's going to try to find in this file the order that was issued. Does anybody have a copy of it --

MR. BARR: Yes, sir.

THE COURT: -- that they could pass up quicker?

MR. BARR: Do you have the record? The thick record.

MS. CANTWELL: Tab 1.

THE COURT: Yeah, we've got the thick record --

MR. BARR: It's tab -- which one?

MS. CANTWELL: Tab 1.

MR. BARR: Tab 1.

THE COURT: All right. That's fine. She'll find it, if it's tab 1.

Go ahead.

MR. BARR: So the essence of the argument here, Judge, I mean, I -- I pointed out that, physically, the 100 feet from the building is diminious and it's not constant. We pointed out that where these animals are going to be kept is clearly going to be 119 feet, clearly more than 100 feet from that residential district.

But the essence of our argument is that stable, as used here, describes a use and not a physical

structure. And under subsection 7 where it says buildings are designed, the reason that the City Council used the words buildings there is they intended to describe the physical structure and not the use. So wherever this stable is going to be, we want to make sure that that building in which it's contained has ample ventilation.

Now, Judge, I think it's also important, as we consider that argument, to also consider the context in which the zoning code was adopted. The city tourism ordinance, which is under tab 7, has numerous provisions relating to the care and keeping of horses -- I mean, of animals. In the tourism ordinance under tab 7, section 29-206(a) --

THE COURT: 29-206(a)?

MR. BARR: A. Correct.

THE COURT: All right.

MR. BARR: -- defines and fixes the location of the gate at the corner of North Market and Church.

THE COURT: Hold on just a second. Let me catch up with you. 206(a). All right.

MR. BARR: 29 --

THE COURT: Go ahead. I'm -- gate -- issuance procedure. Is that where you're talking about?

MR. BARR: Right.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

It defines and fixes that location. And if you go back up to that zoning map that I gave you at the outset --

That's where that number 35 is in the middle. I think your clerk is showing it to you right now.

THE COURT: Okay. All right.

MR. BARR: So 29-206(a) fixes that location. That's the gate. That's where there's a medallion process where tour carriages have to pick up a medallion which assigns them to a district of the city in which they can take their horses so that all tourists don't go into the same district at one time.

29 --

THE COURT: Just out of curiosity, your people operate these buggies or the carriages?

MR. BARR: Yes, sir.

THE COURT: Just out of curiosity -- this doesn't have anything to do with the lawsuit, but I'm just sort of curious. Why don't they publish on the -- which buggy is going where --

MR. BARR: They don't know --

THE COURT: -- I mean, just at random?

MR. BARR: And the answer to that is because they don't know until they get to that gate and get their medallion.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-8313

THE COURT: Oh. Okay. All right.

MR. BARR: So they can't --

THE COURT: The City controls where they go --

MR. BARR: Correct.

THE COURT: -- for traffic purposes?

MR. BARR: Correct.

It's done on a lottery basis so that not -- so that everybody -- every company. There are five companies.

THE COURT: Okay.

MR. BARR: So that every company gets to get into the heart of the historic district at least once a day. But if they don't get the right tag, they're going to go over where I live on the west side.

THE COURT: So the paying customer can't pick and choose where he wants to go?

MR. BARR: I think that's correct.

THE COURT: The City does the --

MR. BARR: That's right. They take the luck of the --

THE COURT: So I could go take five carriage rides and maybe still not get to go where I want to go?

UNIDENTIFIED: You might go in the same zone every time.

FORM C-100 • LASER REPORTERS PAPER & MFG. CO. 800-626-6313

THE COURT: All right. That answered my question. And that doesn't have anything to do with this.

MR. BARR: Well, no, it's a good question.

[Off the record momentarily]

MR. BARR: And then, Judge, back on the tourism ordinance: 29-212 --

THE COURT: 29-121?

MR. BARR: Correct. That's in the tourism ordinance.

THE COURT: Okay.

MR. BARR: Under subsection I. And that's about on page 7, I think, of what you have. Maybe 212 -- no. That's going to be deeper than that.

THE COURT: All right. 212, general healthcare and maintenance requirements?

MR. BARR: Right.

But 212(I) is back over on page -- it ought to be about page 11. If you look at the top right.

THE COURT: Page 11? Okay.

MR. BARR: And it says --

THE COURT: Stable and stalls?

MR. BARR: Right.

And then, more specifically, 212(I) --

THE COURT: 1 what?

FORM C-100 · LASER REPORTERS PAPER & MFG. CO. 800-626-6313

MR. BARR: 2.

THE COURT: 2.

MR. BARR: Go down to page -- on page 12 -- page 12, go down to the subparagraph 2.

THE COURT: Okay.

MR. BARR: It says: stables shall be located within walking distance -- they dropped out of -- of the medallion gate located and the corner of Church and North market.

Now, the ordinance does not define walking distance, so we don't know, although we have some opinions -- but we don't know whether they're talking about horse-walking distance or person-walking distance or what.

But the point is that the ordinance requires -- if you go back to the zoning code, which requires compliance with the code, says these stables have to be within walking distance of that gate. Now, I think that the walking distance that was intended by council is in that orange block that I gave you on the map.

Now, if you take a look at that orange block, if you go start at the top left at the northwest corner and just take a tour of that historic -- of that market district, that's the Bank of America at the top left. You come over to the right and you see the red

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-628-8313

circle? That's our property. The next building on the corner is an inn. Across the street is where the Baptist -- First Baptist gymnasium recently was torn down. Keep going west. Of course, that way there is a horse-carriage stable there. And then you keep going west and there's an inn, a veterinary office. And then on the corner of East Bay is Big John's. So that's what the north border looks like.

If you go down to the south border, on the bottom left, the southwest corner, there's an office building there, behind which is a big parking garage in that block between Meeting and Church. And then keep going to the east on the south border. All of that is taken up by small properties. If you keep going west, there's a convenience store there on the corner of Cumberland and State, and then there are restaurants. And you certainly can't put a stable on East Bay. You certainly can't put a stable on Meeting Street.

Now, Judge, the reason I'm mentioning this is because this was what was in front of council when they said, okay, this is what a stable is, it's a barn where horses are kept, this is where it has to be, and then in the zoning context, these are the conditions within which it must comply.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

So what I'm suggesting is that when City Council enacted this ordinance, they contemplated, in all likelihood, the stable where the horses are kept would not -- would be a part of a larger building. For example, if you look back at my orange diagram -- back at my orange diagram. Look at the northeast corner up at the top right where Big John's is. Judge, right across the street from that --

THE COURT: Have they reopened Big John's yet?

MR. BARR: I don't know.

[Off the record momentarily]

MR. BARR: To the east across East Bay Street, where it says L-I, that's one of those huge Ports Authority warehouses.

Now, let's assume that we could have put a -- that we could put a stable in the corner of that warehouse. And our stable use, as you see, is 35 feet wide by 20 feet deep, or whatever it is. It's very small. Would that mean that that entire warehouse building would be a stable? Well, by the City's rationale, it would be.

If we had to -- if we had to march our carriage all the way through that warehouse to get to our stable over on the far east side of that warehouse, that would mean by the courts' construction of this

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

ordinance, the VZA's construction, that that whole building would be a stable. Well, that just is nonsensical.

And if you go back again to the zoning ordinance itself, under 54-206(P), where they use the term building in a discreet way, separately from the word stables, they said that building better be ventilated, if you have a stable in that building, it better be ventilated. And our building is well-ventilated.

THE COURT: Okay.

MR. BARR: So I somewhat danced over my -- the entirety of my presentation, but I wanted to follow Your Honor's lead in terms of the questions that you had coming in. And I hope at least I've addressed my clients' position about this.

THE COURT: Can you -- are you familiar with the order that the zoning board handed down?

MR. BARR: I am, Your Honor.

THE COURT: Can you point me to where they talk about the easement in that order?

MR. BARR: I can, Your Honor. In the last paragraph --

THE COURT: The last paragraph?

MR. BARR: -- on the last page.

THE COURT: Okay. Thank you, sir.

MR. BARR: It says while -- well, in the third sentence: while Unit A within the building is where the animals will be stored -- I notice they didn't like to use the word kept -- to access that area, it is necessary to pass through Unit B, an area within 100 feet. This board cannot discern intent to separate the use from its access when there is but one access to the building, and the law requires an apartment and an HPR to have either direct access to a public street or a common area. The common area or easement to Pinckney Street from Unit A is apertnent to or part of the unit, rendering it within the 100-foot limitation. Thus, 45 Pinckney Street does not qualify.

And so going back to what we say and contend and believe firmly was the intent of Council, it is to make sure that the elements described in the zoning code -- and that is to say, the -- under 54-206(P) is to make sure that all those activities, the cleaning, loading and tacking, the handling of refuse, the drainage, and the odors, and the place where the animals are kept -- that is where they are maintained -- is at least 100 feet away. It was not intended to regulate simply a place where they pass through.

As Your Honor knows, having taken a couple of

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

those rides and not gotten to where you wanted to get, that's what carriages do on the street.

THE COURT: It wasn't me, it was my aunt. Okay? I didn't care.

MR. BARR: But my point is that's what the horse -- that's what the horse carriages do every day. They pass by these residences every day. They pass by these residences, right across the street from where we are, every day. The zoning code is not intended, the stable provision is not intended, to regulate areas that they pass through but it's intended to regulate areas where they are kept. And that's the definition of stable in the tourism ordinance. And that's why we contend that the board of zoning appeals erred.

Now, Judge, I respect the City of Charleston Board of Zoning Appeals immensely. They are persons of integrity. But they're part-time volunteers on a board that's thankless, quite frankly, because they get into some real battles.

But what happened here was the city zoning administrator, Mr. Batchelder, who is a true professional, studied this issue carefully and very thoughtfully. And this is what Mr. Batchelder told -- let me find that, if I may.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-628-6313

[Whereupon, Mr. Barr reviews documents]

MR. BARR: The transcript of the hearing, Judge, is under tab 2 in the record. And I think I can get right to it.

[Off the record momentarily]

MR. BARR: Mr. Batchelder said -- this is under tab 2, which is the transcript, on page 6. And he's addressing all of these criteria. On page 6 of tab 2, beginning at line 20, Mr. Batchelder said: now, the wording of the ordinance in this particular instance refers to a use, a special exception use. On the table of permitted uses, a stable use is listed as a special exception use within the general business zoning district. And under this provision in the special exception section, 54-206 of the zoning ordinance, the wording refers to the stable, which I interpret to mean the use. And that means the use -- a stable use cannot be located within 100 feet of any residential zone district.

THE COURT: Aren't they saying the ingress and egress of the horses is part of this table?

MR. BARR: That's what the board of zoning --

THE COURT: I mean, that's what they're basically saying.

MR. BARR: -- appeals ultimately concluded.

FORM C-100 · LASER REPORTERS PAPER & MFG. CO. 800-626-6313

THE COURT: Right.

MR. BARR: But my point is that Mr. Batchelder concluded differently. And, again, I don't denigrate that board of zoning appeals. But Mr. Batchelder had stated -- and what he later says is that there are other parts of the zoning code that are interpreted according to measurements to use rather than to a physical place.

And so he carefully stated that he recommended approval --

THE COURT: Well, let me ask you this. Ms. Cantwell, you can chime in on this. As you said, your Kentucky windage --

MR. BARR: Yes, sir.

THE COURT: And looking at your plat that shows the private working areas and the egress area, I assume that this -- I guess the north -- I guess the northwest edge of that easement -- not the corner position, but the northwest edge of that easement to CP on the corner of number 7, Hasell Street, would be 100 feet. Or is that less than 100 feet or more than 100 feet?

MR. BARR: Well, if you're looking --

THE COURT: I mean, does anybody know?

MR. BARR: We don't know.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-8313

THE COURT: I mean, is it -- I'm not trying to split hairs. But it is appropriate, if the City's position is the easement is part of the stable, to see if that point where the easement comes out of the building is within the 100 feet.

MS. CANTWELL: Your Honor, our position is that the stable is the building. There's one building.

THE COURT: So your position: regardless of where the easement is, it's immaterial? it's the corner of the building?

MS. CANTWELL: That's correct.

THE COURT: Okay. All right. Go ahead.

MR. BARR: Judge, that's not what the order says but --

THE COURT: I know. I understand that. That's why I asked the question. The order doesn't say that.

MR. BARR: That is correct. That's correct. That's correct.

So Mr. Batchelder was later asked by the chairman --

THE COURT: What line are we talking about?

MR. BARR: Well, I can find out. Let me get to that.

[Whereupon, Mr. Barr reviews documents]

MR. BARR: On page 11 now. Tab 2, number 11.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

And, again, the VZA has come into this hearing, Judge, without any opportunity to study this. They hear a case and then they move on to the next one.

And on line 14 the chairman says: Mr. Batchelder, how do you get over number 1. That's the 100 feet. And Mr. Batchelder said, well, again, if you look at the context of the requirement in this section 54-206, it states that the stable is not located within 100 feet from any residential zone district.

And when I read this, I read that to mean the use, the stable use, is not located within 100 feet of any residential zone districts. There are other types of land uses that are identified in the same section of zoning ordinance where the wording is such that it specifies that we measure from the building or from the lot line. In this case there's no mention of a building or property line -- that is where you would take the measurement from. So I think it's appropriate to measure it from the use. And if that use is not at the front of the building, then you don't have to measure from the front of the building.

He says, Mr. Batchelder, could be that. For instance, if the First Baptist gymnasium -- and that was then, quote, torn down -- located a half a block

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

away was renovated and turned into multiple commercial tenant spaces, where it could be because that is a commercially-zoned property, and you placed your stable in one of those spaces but then had offices and restaurants and shops and other tenant spaces that you would measure from the space that it was actually occupied by the stable use and not from the building. So I think it's appropriate to do that in this case. And you'll hear, from the applicants, more information about that as well.

Now, this -- I point this out, Your Honor, mainly to show that there was not a clear consensus at the board of zoning appeals about that issue.

THE COURT: What was the vote?

MR. BARR: The vote was -- there were six members. Two recused themselves. That left four and the vote was three to one against us.

THE COURT: Okay.

MR. BARR: And so I'm not disputing but that the vote was against us --

THE COURT: I understand.

MR. BARR: -- or we wouldn't be here.

THE COURT: I understand.

I mean, you're just saying that Mr. Batchelder --

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

MR. BARR: Mr. Batchelder, Your Honor.

THE COURT: Batchelder --

I don't think he makes a recommendation. He just presents what he found.

MR. BARR: Actually, at the beginning he recommended approval. At the beginning of this, he --

THE COURT: I think there are several cases where the zoning board has gone against his recommendation.

MR. BARR: It happens all the time.

THE COURT: It happens all the time. I mean --

MR. BARR: No. I don't -- I don't dispute that. I don't dispute that.

I simply point out, Judge, that this is a very unclear question and it's a question of law.

THE COURT: Right.

MR. BARR: It's a question of law. It's the construction of the statute. And the question is, and we state the proposition is, that as used in the zoning ordinance, stable defines a use and therefore the measurement is to the use and not the structure in which that use is contained. That's our case.

THE COURT: Okay.

MR. BARR: Thank you, Judge.

MS. CANTWELL: Thank you, Your Honor.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

THE COURT: Yes, ma'am.

MS. CANTWELL: Just for the court reporter, I'm Frances Cantwell and I represent the board of zoning appeals.

Tom Tisdale is with me, Your Honor, and he represents Michael Maloney and the Maloney family.

MR. TISDALE: In three capacities.

MS. CANTWELL: And Wilbur Johnson represents the Andrew Pinckney Inn.

Your Honor, I want to go right to the board's --

THE COURT: Tell me what the Maloneys and the Pinckney Inn have to do with it, if you would, very briefly. Just sort of why y'all are involved in the lawsuit, I guess that's --

MR. TISDALE: Tom Tisdale, Your Honor, and I represent Michael Maloney in three capacities here. One is as the owner of the house across the street, 46 Pinckney Street --

THE COURT: That's the house we've been talking about the measurements from?

MR. TISDALE: No, sir. That's another one of the properties.

MR. BARR: It's shown on the plat.

MR. TISDALE: Yeah. It's shown on the plat.

I represent him in his capacity as a trustee of

FORM C-100 - LASER. REPORTERS PAPER & MFG. CO. 800-626-6313

his mother's irrevokable -- a revokable trust at a house -- and it involves a house at 5 Megan Lane. 4 Megan Lane. I'm sorry.

THE COURT: All right. That's the 93.1 --

MS. CANTWELL: That's correct.

MR. TISDALE: That's within the 100 feet.

THE COURT: Yeah. That's the one within 100 feet. Okay.

MR. TISDALE: Yes, sir. That's right.

And the third one, Mike Maloney as personal representative of his father's estate, Robert E. Maloney, to some property in the neighborhood at 57 Hazel Street.

THE COURT: Okay. According to these, that's not within the --

MR. TISDALE: That's not within the 100 feet --

THE COURT: Not within the 100 feet.

MR. TISDALE: -- but the Megan Lane property is.

THE COURT: All right. Thank you, Mr. Tisdale. Yes, sir?

MR. JOHNSON: Good morning. Wilbur Johnson, Your Honor. I represent the Andrew Pinckney Inn.

We made an objection on behalf of the Inn, which is adjacent to the proposed building to be used as a stable. And we were allowed to present our objections

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

before the board of zoning appeals, and we made a presentation at the board. We filed documents which were submitted and included in the record. And we were named as parties to this appeal. I don't think that the law requires that. But, in fact, we were and that's why we're here today, Your Honor, is because we were named as parties.

THE COURT: Okay.

MR. TISDALE: And that would go for us, as well, Your Honor.

THE COURT: The same thing --

MS. CANTWELL: And I'm glad to have them, Your Honor.

MR. TISDALE: They were named, also.

THE COURT: Well, why would they name Pinckney Inn? I mean, why are they --

MR. BARR: Your Honor --

THE COURT: -- I mean, that's commercial and this order doesn't have anything to do with that, does it?

MR. BARR: It was probably out of an abundance of caution on my part, but I just thought that they were interested parties and I did not want there to be a judication in which we would prevail and someone comes in and says, hey, wait a minute, we never got

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

notice of these proceedings.

THE COURT: All right. Ms. Cantwell, I'll be glad to hear you.

MS. CANTWELL: Thank you, Your Honor.

What we have, Your Honor, as the record clearly reveals, 45 Pinckney Street is occupied by an entire building. There is no setback, there's no side alleys, there's no nothing. The one building occupies the entire site. There's one way into the building and one way out of the building. That building, by Arkay's own evidence, is within 100 feet of a residential district. There's no dispute about that. You can argue about where you might want to take the measurement from, but at the hearing, the special exception, it was conceded that this building where this stable was proposed was within 100 feet of the residential district.

So what was proposed to the VZA was like, well, to get around that, we're going to subject this property to a horizontal property regime and we're going to devote I'm going to call it the back half -- it's actually more than that -- but we're going to devote the back half of the building to be where the horses are stored, then we're going to have a common area in between that's going to be used by the office

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

use at the front and by our carriage patrons.

And so they said because of that, we have a separate space in this building that is devoted to stables and no other part of the building will be able to use the use as a stable and, therefore, we meet the 100 feet.

Well, what the board said, and I want to go over their order because it's pretty clear -- and they made the finding that 45 Pinckney Street has one building. The horizontal property regime doesn't change that. And I will get into that in a minute. But just because you put -- subject a property to a horizontal property regime, that does not change any dimension of the lot, any dimension of the building. A horizontal property regime is a form of ownership only.

There's no dispute that the building is within 100 feet of the residentially-zoned district. The evidence is clear on that.

And then they said, while Unit A is going to be where the animals are going to be, they have to pass within -- they have to pass an area in the building, they have to use an area of this building, that's within 100 feet of the residential district. There's no question about that. You cannot get to the stable without using the front part of 45 -- the building on

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

45 Pinckney Street.

And what they said is, we can't discern intent to separate use from its access -- which was urged by Arkay. And here's what's important: when there is but one access to the building. And the law requires that an apartment in a horizontal property regime, which would be this so-called stable use, must either have direct access to a public street, which it did not, or direct access to a common area leading to a public street.

And if you go to the law of horizontal property regime, common areas are shared. They're owned by all of the apartment owners. They all have the right to use them, general common areas. Limited common areas, and in this case there is a limited common area that's just devoted to Unit B, to the so-called stable.

And so the point that I'm trying to make is that under the circumstances of this case, trying to create a separation, if you will, to dissect this building into discrete parts for purposes of the law to avoid a 100-foot separation does not work. The horizontal property regime law does not support that construction of what a horizontal property regime is.

And zoning, in general, Your Honor -- and I understand. I hear the argument about, well, it just

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-8313

applies to the use, to the use, not to the building that the use is in. But what does -- but what does zoning apply to? Zoning applies to the use of land, buildings, and structures. That's what you apply it to.

And right -- in this instance we had an applicant saying, I want to use 45 Pinckney Street, the building at 45 Pinckney Street, as a stable but in order to get around the 100-foot separation, I'm going to put them in the back of the house, if you will. Well, most respectfully, Your Honor, I think that is a strained interpretation of what the ordinance says and what zoning is intended to do.

It's impossible, it is impossible, to use Unit B for any purpose, for a stable or anything else, without using the building -- the front part of the building at 45 Pinckney Street. And I don't think anybody would argue with that. And what the board found is we cannot separate the two when that's the only way you can get in and out of this building is by going through portions of the building that are within 100 feet of the residential area.

And if you couple that with horizontal property regime law that says, hey, this common area and this easement is owned by everybody, I think that's a more

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

compelling reason that the board made the correct decision that the configuration or the attempted configuration of the uses within this building to get around the 100-foot separation was unavailing, did not fly, did not comply with the intent of council when they passed the ordinance.

And if you think about it, Your Honor, if what is being argued is correct, there would be no reason to put a horizontal property regime. You would just say, hey, I'll just put a restricted covenant on it. Or the board could say, all right, we'll just condition this special exception saying you have to keep it in the back part of the building. But even they thought that would not fly and so they come up with this clever, creative idea of trying to use a horizontal property regime. But the law doesn't support it.

The board legally could not separate the access of unit B -- from unit B because horizontal property regime law requires that apartment to have direct access to either a public street or a common area. The common area is an essential part of the ability to use or occupy unit B and you could not conveniently separate it when it doesn't suit your purposes.

And I would offer this up. The precedent we

FORM C-100 • LASER REPORTERS PAPER & MFG. CO. 800-626-6313

could be setting here goes far beyond the stable. Suppose -- their separation requirements in the ordinance let's say for adult uses from other uses. Well, if you're going to abide or adopt the construction of -- you only consider where the suggestive or racy activities are occurring, if you will, you just put that in a part of the building that meets the distance requirement and then you say, okay, even though the building itself where that's going on is with 100 feet -- within the 100 -- the prescribed separation limit.

So I think that the practical, logical construction of this ordinance is that you have to consider what it's being applied to. And it's being applied to a building, and it's being applied to a building that has one access. And whether the building stays just like it is today or whether you put a horizontal property regime over the property --

THE COURT: What's the purpose of 100 feet?

MS. CANTWELL: The 100 feet --

THE COURT: I mean, why isn't it 75 feet or 200 feet? What's the purpose of 100 feet?

MS. CANTWELL: Well, that was a legislative call, and Council determined that 100 feet was sufficient -- I would argue that that was a sufficient

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

distance to protect neighboring residential areas from the potential ill effects of stables.

THE COURT: Then you've got a statute that says -- talks about ventilation.

MS. CANTWELL: Correct.

THE COURT: Worried about odors, I assume; right? That's the whole purpose of the statute?

MS. CANTWELL: Well, you're worried about odors, you're worried about traffic --

THE COURT: Right.

MS. CANTWELL: -- you're worried about --

THE COURT: Well, traffic, I don't know why you're worried about it because it's everywhere in Charleston.

MS. CANTWELL: Well, but -- and here's where I differ again --

THE COURT: I mean, it's unreal, the traffic in downtown Charleston.

MS. CANTWELL: Well, here again is where I -- it does apply to downtown Charleston. But this stable ordinance, this is the only ordinance --

THE COURT: Right.

MS. CANTWELL: -- it applies citywide.

THE COURT: Right.

MS. CANTWELL: And there are other stables in

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

the city that are outside the downtown area. There's one up in Hampton Park. For example, there's a number of them on John's Island. And there are some I would imagine up on Highway 61 where you have more rural type of development. And so the idea was to -- everybody knows when you get stables, you get noise, you get odors, you get traffic potential, you get flies, you get all kind of things that just come with animals. That's just the way it is. And Council selected 100 feet as the minimum.

THE COURT: All right. Let me ask you this. I believe section 54-206, subsection P, the section provides safeguard to ensure cleaning, loading, tacking of horses will not slow down traffic, interfere with traffic, refuse and drainage needs will be met, odors will not be adequately laid out in the air, I guess for lack of a better term. I mean, aren't you concerned about the traffic? You don't have the horses and the carriages in the street blocking traffic when they're changing the horses and the carriages?

MS. CANTWELL: Yes, sir, that is a -- that is a concern.

THE COURT: All right. And then you've got your odors; right? And then you have what else? Refuse

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-8313

and drainage.

I mean, aren't you concerned about if the 100 feet is the magic figure, then what difference does it make if the building is within 100 feet but the objectionable part of the business is not within the 100 feet? I'm not sure of the logic of your argument, other than your horizontal property issue, i.e., the easement. The only thing that's going to be happening in the easement is access. You're not going to be unhooking horses, you're not going to be hooking up carriages. Hopefully, there's no odors there. I guess there could be. But, I mean, I'm -- if you're objecting to the odors, and the 100 feet is the magic, the what's producing the odors is outside the 100 feet.

MS. CANTWELL: Your Honor, but the 100 feet -- but the stable use itself --

THE COURT: Right.

MS. CANTWELL: -- is within 100 feet.

THE COURT: Well, the building is. But not the use, other than walking through it.

MS. CANTWELL: I have to -- well, that's correct.

THE COURT: Matter of fact, if a horse dumps in the easement, yeah, you might have a problem. But

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

that's going to get cleaned up. I mean, if your objection is odors, the use is outside the 100 feet, which is the objection on behalf of the City. And that's what you're trying to protect the residential zone from.

MS. CANTWELL: But the board has to apply the law that's given to it.

THE COURT: I understand. But I'm just asking you these questions with your argument.

MS. CANTWELL: And I don't disagree with what you're saying. But the building within which that activity is occurring is within 100 feet of the residential district.

THE COURT: I don't argue that.

MS. CANTWELL: And so that's where the board came down.

And, Your Honor, if you go to the tourism ordinance -- and I -- you know, frankly, I think we're comparing two different things. Got to comply with both. If you're a carriage operator, you've got to comply with the tourism ordinance. But if you're not, you don't.

But the point is how do they -- how does it define -- when City Council defines stable in there, it said it's the barn, the barn, where the animals are

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

kept. A barn is a building. A barn is a building. And what they're trying to do here, by a horizontal property regime, is try to carve out and say this is not part of that building anymore. It is.

THE COURT: I think the purpose of a horizontal property regime is so they can't come in and put stables in the front part, where that can be controlled -- as you said, it could be controlled by a restriction on the property.

MS. CANTWELL: Well, the board can make that -- they could have made it a condition --

THE COURT: And the board could -- the board could make that decision, impose that restriction on that.

MS. CANTWELL: Exactly.

THE COURT: I mean, I guess my difficulty with your argument is if the objection is the odors, and odors aren't supposed to be within 100 feet, the odors are outside the 100 feet except for whatever limited odors you have when horses are coming in and out of the easement going to the stables.

I think you've answered the best you can.

MS. CANTWELL: Well, I think, Your Honor, too, is that what they -- you know, the City Council obviously is concerned about the health of the horses,

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

the convenience of the neighborhood --

THE COURT: Right.

MS. CANTWELL: -- all those other things. But they said, we don't want a stable. And the question is is the stable a barn or is the stable -- is it a verb when it needs to be a noun and then a noun when it needs to be a noun. And they said, we don't want stables within 100 feet of a residential district.

And so the issue comes down is is the building at 45 Pinckney Street a stable and is it within 100 feet of the residential district. And we would say that it is.

THE COURT: So your position is there's just no way you could break up the building and the stable and offices?

MS. CANTWELL: I'm sorry?

THE COURT: There's no way you could break up the building and the stable and offices because of the easement?

MS. CANTWELL: Correct.

I don't think that that -- I believe that that is -- does not comport with the intent of council to separate -- the distance separation between residences and stables.

This is not a situation where there's two

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

buildings on the site. There is not a situation where you have separate accesses to the site. This is one building that occupies the whole site. And they're trying to circumvent, if you will, the distance requirements by saying we're going to restrict everything to the back, regardless of the fact, regardless of the fact, that we have to use other parts of the building to even legally occupy that as a stable.

I just don't know how he can separate the two. And that's where the board came down on this, on this factual situation that was presented to them.

THE COURT: Okay. Thank you very much.

MS. CANTWELL: Thank you.

THE COURT: Anybody else have any comments? Mr. Tisdale? Mr. Williams? Anything you want to add? I mean, it's not -- y'all are not involved in the appeal, but I know you're named as parties and I don't want to exclude you.

MR. TISDALE: Well, thank you very much.

And, well, just to say that we, of course, support in full what Ms. Cantwell said.

And I would simply add that City Council has the right and duty to set what the law is. They said it's 100 feet. They could have said 125 feet, they could

FORM C-100 · LASER REPORTERS PAPER & MFG. CO. 800-626-8313

have said 75 feet, but they said 100.

And the fact is that under the law of horizontal property regimes, the land is not changed. There's no way that this place can be a stable without that easement. And I think that pretty well settles the issue and the question.

But the traffic in and out of the building, they can't use the stable without the easement because they have to get through. And that's what City Council is trying to prevent. They picked the 100 feet, there's nothing wrong with 100 feet, and that's just where it is. And unfortunately for these folks, they're not -- they don't comply.

THE COURT: Okay. Thank you. Mr. Williams?

MR. JOHNSON: Wilbur Johnson, Your Honor.

THE COURT: I'm sorry, Mr. Johnson.

MR. JOHNSON: That's all right.

THE COURT: Excuse me. I'm sorry.

MR. JOHNSON: That's all right, Your Honor.

I think Ms. Cantwell and Mr. Tisdale and have stated it appropriately.

The only thing that I would add, Your Honor, is that the horizontal property regime law is pretty clear on this issue. By trying to put this easement in their place, they create one section of the

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

building where the so-called stable is and another section where offices are, is simply a legal fiction.

Under the horizontal property regime law, section 27-31-20, it's all one building. You can't -- you're not creating a separate building. You're not creating a separate structure under HPR law. It's still all one building under the HPR law. There is no question about that. The law is absolutely clear on that point.

So the board of zoning appeals had no authority -- they had no choice, actually -- but to wind up with the result that they wound up with. They said they could not discern any separation between the two because that is, in fact, what the law requires.

The easement is -- you know, I'm sorry to say on behalf of Arkay, but it's simply a legal fiction. It is an effort to do something indirectly which cannot be done directly. And the law is pretty clear on that, Your Honor.

THE COURT: Okay. Mr. Johnson, thank you very much.

Mr. Barr, anything you want to say on the horizontal easement? Or anything you want to say in reply, too.

MR. BARR: Well, much of what they argue about

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-826-6313

real property law is, in fact, not disputed.

And this was -- I appreciate counsel attributing some machiavellian scheme to me, but I wish I were that shrewd. But our intent in setting up the horizontal property regime was to give assurance that by doing that and filing a covenant, that this stable use would never be any closer than 119 feet away.

THE COURT: I understand. But like Ms. Cantwell said, the zoning board could have done that without the horizontal property --

MR. BARR: They could have. But we did it because we wanted to give them that assurance.

And this is not about adult use. This is about the way that these statutes are written now. And so we're not interpreting the adult-use statute. I haven't even read that.

The stable zoning statue clearly describes it as a use. And I respectfully suggest that the City still has not responded to that question.

THE COURT: Well, the way I -- their response is that easement is part of that use and the easement of the horses is within the 100 feet.

MR. BARR: And that's their argument.

THE COURT: And that's their argument.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

MR. BARR: But the use is -- if the use is defined -- now, if I were writing that tourism ordinance in this case, I would not have put the word barn in there. But it has to be -- but these have to be -- ordinances have to be interpreted together. And the operative description of a stable is where -- the place where the horses are kept. And that's the important thing. As Your Honor already asked -- pointed out, all of this activity is regulated by zoning as 119 feet away. They may have to get through some other place to get there, but it's no different from going in front of the house. So we respectfully suggest that the decision of the VZA should be reversed for that reason.

THE COURT: Okay. Thank y'all so very much. Give me a chance to read some of this stuff. I appreciate it. Thank you for being here.

The other one -- you've got the other one.

MR. BARR: Well, let me do this. I know that --

THE COURT: I mean, can't y'all do that on some short -- I'm sure you've already put it in your memorandum.

MR. BARR: I filed a memorandum, Your Honor, and I --

THE COURT: I mean, I'll be perfectly honest

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

with you, and I don't want to prejudge it because I haven't read it, if your argument on the use is not correct and they won't grant the variance, I'm sure there's enough in that transcript to justify the decision because that's a different standard from me. All I've got to do is look at that and see if there's sufficient facts --

MS. CANTWELL: It's a different --

THE COURT: -- to justify the denial of the variance. And I'm sure that's in there. I haven't read it, but I know Ms. Cantwell -- I've heard a lot of these cases that she's involved in, so I know there's enough in that record to justify it. Maybe I'm wrong. And I may be corrected after I read it. Okay?

MR. BARR: May I hand up -- I did a -- I filed a memorandum on the variance --

THE COURT: If y'all want to do a memorandum on that second issue, I'll be happy for you to do that.

There it is.

MS. CANTWELL: There is one, Your Honor. You've got one on --

And, Your Honor, just --

THE COURT: I guess what I'm saying, Mr. Barr, your hat is hanging on the use.

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

MR. BARR: Your Honor, if that -- I agree. I agree.

But we don't abandon the variance argument --

THE COURT: I understand. But I just don't --

MR. BARR: -- but it hangs on the question of -- we take the position that the intent of the zoning ordinance was to regulate and measure from the use of the --

THE COURT: Well, the intent was to control the odor from residential areas.

MR. BARR: Correct.

THE COURT: All right. Thank you.

[HEARING CONCLUDES AT 12:07 P.M.]

FORM C-100 · LASER REPORTERS PAPER & MFG. CO. 800-626-6313

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing held before the Honorable J.C. Nicholson, Jr., on Friday, April 11, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 12th day of September, 2014.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

PART 3
DEFINITIONS

Sec. 54-120. Definitions.

For the purpose of this chapter, certain terms and words are herein defined.

Accessory Building. A subordinate building on the same lot as the principal building(s) or use. Accessory buildings may include but not be limited to pool houses, additional living space, storage sheds, garages, and additional dwelling units in zoning districts that permit additional dwelling units. Accessory buildings in SR (Single-family Residential) zone districts shall not include kitchens.

Accessory Use. A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use.

Accommodations Uses. Commercial uses to provide living or sleeping units, for remuneration, to one or more individuals where the intended and/or usual occupancy would not exceed twenty-nine (29) consecutive days, including hotels, motels, inns, bed and breakfasts, short term rental units, rooming and boarding houses, hostels, lodging units, resort units, condominiums, cooperatives, apartments, units that are included in a "Vacation Timesharing Plan" as defined in S.C. Code Ann. § 27-32-10(7), and/or in a "Vacation Timesharing Lease Plan" as defined in S.C. Code Ann. § 27-32-10(8), as each may be amended from time to time, as well as any and all similar uses where the intended and/or usual occupancy is for periods not to exceed twenty-nine (29) consecutive days, and residence club uses. For purposes hereof, individual(s) mean a person, one who owns or receives an undivided interest in a premises, a partner in a partnership that owns a premises, a beneficiary in a trust that owns a premises, a shareholder in or member of a corporation that owns a premises, a beneficiary in a trust that owns a premises, a holder of a leasehold interest in a premises or a member of a residence club or other organization that owns a premises.

Adult Uses:

Adult Book /Video Store. An establishment having as a substantial or significant portion of its stock in trade books, magazines, videos, and/or other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical area" (as defined herein) or an establishment with a segment or section devoted to the sale, rental or display of such material. Adult Book/Video Store uses as defined herein, operating as legal nonconforming uses, shall be amortized and discontinued three (3) years after the effective date of Ordinance No. 1999-08.

Adult Drive-In Motion Picture Theater. Any outdoor theater requiring an automobile for admittance used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual

activities" or "specified anatomical areas" (as defined herein) for observation by patrons therein. This use when operated as a lawful non-conforming use shall be amortized and discontinued one year after the effective date of Ordinance No. 2003-50.

Adult Media/Novelty Store. An establishment with (1) ten percent or more of its retail sales area or (2) ten percent or more of its gross revenues from the sale or rental of any one or more of the following or combination thereof: (a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, DVD, slides, computer programs, or other visual representations which are distinguished or characterized by their emphasis on the exhibition or display of "specified sexual activities" or "specified anatomical areas" (sometimes hereinafter "adult media material") or (b) instruments, devices, or paraphernalia which are designed for use or marketed for stimulation of human genital organs (sometimes hereinafter "adult novelty").

Adult media/novelty store is a non-exclusive classification that may include adult book/video stores, adult drive-in motion picture theaters, adult mini-motion pictures theaters, adult motion picture theaters, or other adult uses, combinations thereof and combinations of adult uses and non-adult uses. The amortization period for adult media/novelty stores operated as a legal non-conforming use is one year from the date of this ordinance. As it relates to any amortization period, the more restrictive (shorter) amortization period shall apply to any business that is an adult media/novelty store and some other use. If a lawful amortization period for the use has already expired (for example, adult bookstore amortization period), then business shall not be entitled to an additional amortization period by operation of this section.

For the purposes of determining adult media/novelty store "DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS ON" means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of 'Specified Sexual Activities' or 'Specified Anatomical Areas,' the films so described are those whose dominant or principal character and theme are the exhibition or display of 'Specified Anatomical Areas' or 'Specified Sexual Activities'".

For the purposes of determining adult media/novelty store percentages of stock and percentages of revenue:

(1) Percentages of stock shall be determined by calculating the total display area generally available to customers and determining that percentage of that display space containing the specified adult media materials and adult novelty items. Stockrooms, backrooms and other areas not generally accessible to the public and off premises inventory shall not be counted towards percentages. Goods at another physical location shall not be counted towards percentage, even if operated by the same business.

(2) Percentages of gross revenue shall be counted only for the same physical business location and only bona fide sales or rentals may be counted. Where a sale or rental includes a free or reduced price "adult novelty" or "adult media material" with the purchase or rental of an item not an adult novelty or adult media material, the entire transaction shall be counted for the purposes of calculating revenue percentage.

(3) All techniques and devices used to artificially skew percentages shall be disregarded and the true business of the establishment shall be discerned. Techniques and devices used to artificially skew percentages include but shall not be limited to: reduced price or free adult materials with purchase of non-adult materials, sham transactions or sales, mis-statement of retail value by inflating non-adult material prices above prices generally prevailing as to goods of that type, goods not held for bona fide sale or rental, sham transactions, etc.

(4) Any business potentially operating as a non-conforming adult media /novelty store by selling or renting adult media material or adult novelties in an area not zoned LI (light industrial) or HI (heavy industrial) shall keep records at the store showing inventory on hand by category and retail value (updated no less than every month) as well as records showing for a six month period (updated no less than every month) which shall be available to zoning administrator or his designee upon request so as to enable zoning administrator or his designee to discern percentages of retail stock and percentages of gross revenue derived from sale or rental of adult media materials and adult novelty items as described above.

Adult Mini-Motion Picture Theater. Any business with an enclosed building or portion of a building with a capacity for less than fifty persons regularly used for presenting material which is characterized by an emphasis on the exhibition or display of "Specified Sexual Activities" or "Specified Anatomical Areas". This shall include booths or stalls (whether entirely enclosed or not) and arcades whether operated by coin or by attendant or otherwise where such materials are shown to a single person or up to forty-nine (49) persons. (This shall not include a bona fide hotel or motel room.) This use when operated as a lawful non-conforming use shall be amortized and discontinued one year after the effective date of Ordinance No. 2003-50.

Adult Motion Picture Theater. An enclosed building with a capacity for 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (as defined herein) for observation by patrons therein. This use when operated as a lawful non-conforming use shall be amortized and discontinued one year after the effective date of Ordinance No. 2003-50.

Adult Show Bar. An establishment used for presenting live performances of humans and/or animals having as a dominant theme or characterized or distin-

guished by an emphasis on (1) matter depicting or relating to specified sexual activities, as herein defined, or (2) the actual or simulated touching, caressing or fondling of the breast, buttocks, anus or genitals, or (3) actual or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law, or (4) indecent exposure (as defined by state law) for observation by persons therein and which sells alcoholic beverages to its customers. This use when operated as a lawful non-conforming use shall be amortized and discontinued one year after the effective date of Ordinance No. 2003-50.

Bath House. An establishment for providing bathing, sauna, steam and/or lavatory facilities for male and/or female persons which promotes its services by using and/or advertising the use of homosexual attendants or attendants of the opposite sex of the patron. This use when operated as a lawful non-conforming use shall be amortized and discontinued one year after the effective date of Ordinance No. 2003-50.

Cabaret. A nightclub, bar, juice bar, restaurant, or similar commercial establishment which features or tolerates any of the following: strippers, dancers, entertainers, patrons, impersonators, or other persons, either male or female, who expose to view of the patrons of said establishment at any time "Specified Anatomical Areas."

Massage Parlor. Any business, trade or profession commonly known as massage parlors, health salons, physical culture studios, clubs or establishments, or similar establishments by whatever name designated, wherein physical culture, massage, hydrotherapy or other physical treatment of the human body involving "specified sexual activities" (as defined herein) is carried on or practiced. This use when operated as a lawful non-conforming use shall be amortized and discontinued one year after the effective date of Ordinance No. 2003-50.

Sexual encounter establishment. Means a business or commercial establishment that offers as one of its primary business purposes, for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "Specified Sexual Activities" or the exposure of "Specified Anatomical Areas". The definition of sexual encounter establishment shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

Affordable Housing. Single-family, two-family or multi-family dwelling units, where occupants have, in the aggregate, household income of less than or equal to one hundred twenty (120) percent of median area income for owner occupied units, or eighty (80) percent of median area income for rental units. Median area income shall be determined annually by the U.S. Department of Housing and Urban Development as adjusted by the City of Charleston Department of Housing and Community Development, or its successor. Household income shall include all sources of financial support, both cash and in

kind, of adult members of the household, to include wages, salaries, tips, commissions, all forms of self-employment income, interest, dividends, net rental income, income from estates or trusts, Social Security benefits, railroad retirement benefits, Supplemental Security income, Aid to Families with Dependant Children or other public assistance or public welfare programs, other sources of income regularly received, including Veterans' (VA) payments, unemployment compensation and alimony, awards, prizes, government or institutional or eleemosynary loans, grants or subsidies and contributions made by the members' families for medical, personal or educational needs.

Alley. A right-of-way of narrow width publicly maintained and used principally as a means of secondary access.

Arborist. Means a person or firm, possessing a current city business license, who has been trained in the business of diagnosing, treating, pruning and removing trees.

Bed and Breakfast. A use by the record owner of property, who is also the resident of the property where the use is proposed, which contains one (1) or more rooms arranged for the purpose of providing sleeping accommodations for transient occupancy by one family.

Block. A tract of land bounded by streets on all sides.

Bona fide Agricultural Use. Means a parcel zoned C (Conservation) under the city's Zoning Ordinance which has greater than fifty percent (50%) of the parcel in active agricultural production.

Buffer Shrub. Means a three gallon or larger shrub, having a fullness appropriate for its container size, intended to be used in a landscape buffer for screening purposes. (Refer to Appendix A, unless otherwise specified.)

Building. Any structure built for the support, shelter, housing or enclosure of persons, animals or property of any kind, including appurtenances to buildings such as chimneys, stairs, and elevated stoops, porches, terraces and decks; except that assistive technology for accessibility including ramps and platform lifts shall not be defined as part of the building for the purpose of measuring setbacks and the lot occupancy of a building.

Casino. The use of a lot(s) or any buildings(s) thereon by one or more persons where, in the aggregate, such persons make available for use or play more than three (3) game machines or simulated gambling devices. For purposes of this definition, a game machine means an electronic video game machine that, upon insertion of cash, is available to play or simulate the play of games authorized by the South Carolina Tax Commission utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash, and simulated gambling device means any device that, upon connection with an object, is available to play or operate a computer simulation of any game, and which may deliver or entitle the person or persons playing or operating the device to a payoff. The following rules of construction apply to this definition of "simulated gambling device":

i. The term "device" means any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading

games from a central server system, machine, computer or other device or equipment. The term "device" also includes any associated equipment necessary to conduct the operation of the device.

ii. The term "upon connection with" means insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting an object to a device.

iii. The term "object" means a coin, bill, ticket, token card or similar object, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration.

iv. The terms "play or operate" or "play or operation" includes the use of skill, the application of the element of chance, or both.

v. The term "computer simulation" includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation.

vi. The term "game" includes slot machine, poker, bingo, craps, keno, any other type of game ordinarily played in a casino, a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, sweepstakes, and any other game associated with gambling or which could be associated with gambling, but the term "game" does not necessarily imply gambling as that term may be defined elsewhere.

vii. The term "payoff" means cash, monetary or other credit, billets, tickets, tokens or other electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually.

Communication Tower. A tower of any size which supports communication equipment, transmission or reception, and is utilized by commercial, governmental, or other public or quasi-public users. This does not include communication towers for amateur radio operators licensed by the Federal Communications Commission which are exempt from municipal zoning restrictions.

Canopy. A structure constructed of rigid materials, including, but not limited to, metal, wood, concrete, plastic or glass, which is attached to and supported by a building or by columns, poles or braces extended to the ground.

Certificate of Occupancy. A statement, signed by the administrative officer, setting forth either that a building or structure complies with this chapter of that a building, structure, or parcel of land lawfully may be employed for specified uses, or both.

City. The words "city," "the city" or "this city" shall mean the City of Charleston, in the County of Charleston, and State of South Carolina, except as otherwise provided.

Commercial Industrial or Office Developments. One (1) or more retail, industrial or office establishments or any other non-residential use not necessarily in single ownership

but which occupies common and/or adjacent buildings on one or more lots of record utilizing common parking, ingress or egress, developed as, and appearing to be, a unified entity.

Commercial Nursery. Means an ongoing business for the planting, growing, and sale of plants and trees. A commercial nursery does not include an ongoing silviculture operation.

Commercial Parking Lot. A tract of land, building, or structure used for the storage or parking of automobiles by the general public and either operated for profit by the charging of fees, rents or the like, or used as an accessory to a principal business or industrial use.

Commercial Timber Operation. Means property which, on the effective date of this Ordinance, is being used to raise, harvest or produce trees for commercial marketing. The burden shall be upon the owner to establish this use through evidence such as prior leases or marketing agreements, the actual planting of the trees for harvesting, etc.

Community Garage. A group of private garages, either detached or under one roof, arranged in a row or around a common means of access, and erected for use of residents in the immediate vicinity.

Community Parking Lot. An open area in a residential district for the parking of cars of residents of the immediate vicinity; provided, however, there shall be no sale of parking spaces on an hourly, daily, or weekly basis.

Corner Lot. A lot abutting upon two or more streets at their intersection.

Council, City Council. The words "the council" or "city council" shall mean the city council of the City of Charleston, South Carolina.

Court. An open unoccupied space, other than a yard, on the same lot with a building, unobstructed from floor or ground level to the sky.

Damage or Abuse. Means any action which does not follow good arboricultural practices. Abuse also includes damage inflicted upon roots by machinery, changing the natural grade above the root system or around the trunk, changing drainage patterns around the tree, destruction of the natural shape of the tree or any action which causes infection, infestation or decay.

Dance Halls and Studios. A building or a portion of a building used as a place of work, or for public or private entertainment, by one or more dancers.

Day Care. The care, supervision or guidance of a person or persons, unaccompanied by the parent, guardian or custodian, on a regular basis, for periods of less than twenty-four hours per day in a place other than the person or persons' own home or homes.

Day Care Facility. Any state licensed, registered or approved facility which provides care, supervision or guidance for any person who is not related by blood, marriage or adoption to the owner or operator of such a facility whether or not the facility is operated for profit and whether or not the facility makes a charge for services offered by it. For the

purposes of this definition, related means any of the following relationships by marriage, blood or adoption: parent, grandparent, brother, sister, step-parent, step-sister, step-brother, uncle, aunt, cousin of the first degree. Day Care Facilities include, but is not limited to day nurseries, day care centers, group day care homes and family day care homes. The term does not include:

1. any educational facility, whether private or public, which operates solely for educational purposes in grades one or above;
2. five-year-old kindergarten programs operated by a public or private school;
3. kindergartens, preschools, nursery schools or other daytime programs receiving children younger than lawful school age primarily for educational purposes;
4. facilities operated in connection with a shopping center-or service or other similar facility, where the same children are cared for less than four hours a day and not on a regular basis while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and immediately available;
5. summer resident or day camps;
6. Bible schools normally conducted during vacation periods;
7. programs offered by a church, synagogue or other religious institute which are primarily for the purpose of religious instruction or practice;
8. programs offered by parks, senior citizen centers, etc., for which the primary purposes are recreation and social interaction rather than care taking.

Types of Day Care Facilities:

Day Care Center. Any facility which regularly receives persons for day care during the hours of 6 a.m. to 7 p.m.

Family Day Care Home. Any facility, within a dwelling unit, which regularly provides day care for no more than five persons, unattended by a parent, custodian or legal guardian, during the hours of 6 a.m. to 7 p.m., including those persons living in the home and persons received for day care who are related to the resident caregiver, provided, however, that an occupied dwelling in which day care is regularly provided only for a person or persons related to the resident caregiver, or only for a person or persons of one unrelated family, or only for a combination of such persons, is not a family day care home. Please note that building codes may prohibit a family day care home within a dwelling unit without significant improvements. Applicants for family day care homes are advised to check with the City of Charleston Inspections Division prior to applying for zoning approval.

Group Day Care Home. Any facility, within a dwelling unit, which regularly provides day care for at least six but not more than twelve persons, unattended by a parent, custodian or legal guardian, during the hours of 6 a.m. to 7 p.m., including those persons living in the home and persons received for day care who are related to the resident caregiver, provided, however, that an occupied dwelling in which day

care is regularly provided only for a person or persons related to the resident caregiver, or only for a person or persons of one unrelated family, or only for a combination of such persons, is not a group day care home. Please note that building codes may prohibit a group day care home within a dwelling unit without significant improvements. Applicants for group day care homes are advised to check with the City of Charleston Inspections Division prior to applying for zoning approval.

Overnight Day Care Facility. Any facility which regularly provides day care for persons unattended by a parent, custodian or legal guardian between the hours of 7 p.m. and 6 a.m., provided, however, than an occupied dwelling in which day care is regularly provided only for a person or persons of one unrelated family, or only for a combination of such person, is not an overnight day care facility.

dBA. A uniform noise measurement that simulates people's perception of loudness and annoyance. It is weighted to account for those frequencies most audible to the human ear. This is known as the A-weighted sound level, or dBA.

Decibels. Sound is a fluctuation in air pressure. Sound pressure levels are measured in units called decibels (dB).

Deferred Presentment Lender. A business or use that regularly accepts checks from a borrower drawn on the borrower's bank account to be presented for payment at a later date and that charges a fee for the service, such as those regulated by Chapter 39 of Title 34 of the Code of Laws of South Carolina, 1976, as amended.

Depth of Lot. The mean horizontal distance between the front lot line and the rear lot line.

Depth of Front Setback. The least distance from any part of or point on the building to the front lot line of the lot.

Depth of Rear Setback. The least distance from any part of or point on the building to the rear lot line of the lot.

Diameter Breast Height (D.B.H.). Means the total diameter, in inches, of a tree trunk or leaders, measured four and one-half (4½) feet above existing grade. In instances where a tree splits into leaders below four and one-half (4½) feet above existing grade and the leaders are physically attached above the ground and of the same specie of tree, all leaders equal to or greater than six (6) inches D.B.H. shall be measured separately and count as one tree.

Dormitory. A building or part of a building operated by an academic institution containing a room or rooms forming one (1) or more habitable units which are used or intended to be used by residents of the institution for living and sleeping, but not for cooking or eating purposes.

Drip Line. Means an imaginary vertical line that extends downward from the outermost branches of a tree to the ground.

Dwelling. Any building, or part thereof, used and occupied for human habitation or intended to be so used including any appurtenances belonging thereto or usually enjoyed therewith but not including hotels, motels, inns, bed and breakfasts, boarding or rooming houses, and timesharing facilities (see also "Residential Use").

Types of Dwellings:

One-Family Detached Dwelling. A separate detached building designed for and occupied exclusively as a residence by one family.

One-Family Attached Dwelling. A building designed for and occupied exclusively as a residence by one family, being attached by means of a common dividing side wall or walls to one or more buildings likewise designed for and occupied as a residence for one family. A single housing unit occupies each structure from ground to roof and independent access is available for each unit from the outside. Such attached one-family dwellings are commonly referred to as "town", "patio", or "row" houses.

Two-Family Dwelling. A separate detached building designed for or occupied exclusively as a residence by two families.

Mobile Home. See definition under "Mobile Home" in this Section.

Multiple Dwelling. A building designed or occupied otherwise than as a one-family dwelling or a two-family dwelling. The term "multiple dwelling" shall be understood to include apartment houses, tenement houses, residential condominiums and similar multi-family buildings exclusive of hotels, apartment hotels, and motels, inns, boarding or rooming houses, bed and breakfasts, and timesharing facilities.

Dwelling Unit. One or more rooms arranged for the use of one (1) or more individuals living together as a single housekeeping unit, with cooking, living, sanitary and sleeping facilities.

Discount Stores. A single store or group of stores advertising a wide variety of merchandise for sale at less than retail cost.

Facade. The entire building wall, including parapet, fascia, windows, doors and canopy on any complete elevation. For purposes of this ordinance "building wall" shall also mean the exterior wall of an individual business unit within a building containing more than one business.

Family.

1. An individual; or
2. One (1) or more persons related by blood or marriage with any number of natural children, foster children, stepchildren or adopted children, plus not more than two (2) unrelated persons living together as a single housekeeping [unit]; or
3. A group of not more than four (4) persons not related by blood, marriage, adoption, or guardianship, living together as a single housekeeping unit, except that for properties in non-residential zoning districts containing twenty (20) or more dwelling units the maximum number of unrelated persons allowed in a single housekeeping unit shall be six (6).

Fence or Wall. Means a structural device erected to serve as an architectural element, landscape element, screen or barrier.

Foot Candle. A unit of illumination equal to the light flux falling on one square foot of area one foot away from a light source of one candle power.

Foot Lambert. A unit of brightness equivalent to the emission of foot candle of illumination from one square foot of area.

Fraternity House. A building maintained exclusively for fraternity members and their guests or visitors and affiliated with an academic or professional college, university or other institution of higher learning.

Front Setback. A setback across the full width of the lot extending from the front line of the lot to the corresponding line of the building.

Garage. A building or any portion thereof used for housing or repairing motor vehicles. This does not include rooms for storing, exhibiting or showing new cars for sale.

Garage Apartment. A room or rooms intended to be used as sleeping quarters, attached to a private or community garage.

Grade. Means the natural elevation of the ground.

Grand Tree. Means a tree twenty-four inches (24") or greater D.B.H. Grand trees shall not include any species of pine trees (genus Pinus).

Gross Acreage. The total area of a lot or lots including all submerged land and wetlands.

Gross Density. The number of dwelling units per gross acre.

Ground Cover. Means low growing plant material less than eighteen inches (18") in height.

Half Story. A story under a gabled or hipped roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the finished floor of such story.

Height of Building. The vertical distance measured from the curb line to the highest point on the finished roof, including appurtenant parts and mechanical penthouses, of the structure. Elevator shaft penthouses set back from the side lines of the building a distance equal to the height of such shafts shall be excluded for the purpose of measuring height.

Height of Terrace. The difference in elevation between the lowest terrace level and the top of the terrace at a point central to the width of the nearest on-lot building wall or building profile.

High Ground. Such portion of a lot or tract of land and exclusive of naturally occurring water bodies and any areas lying below the critical line of the South Carolina Office of Ocean and Coastal Resources Management (OCRM) or any areas within the jurisdiction of the U.S. Army Corps of Engineers as shown on a plat or site plan of a lot or tract that has been stamped by the OCRM or the U.S. Army Corps of Engineers, or both, as appropriate. A man-made body of water contained within the boundaries of a project shall be assessed at fifty percent (50%) of the total acreage of said body of water for purposes of calculating project density. However, the total number of developable acres shall not exceed a twenty percent (20%) increase in the number of developable acres that would exist if the body of water was excluded from the calculation.

Home Occupation. A home occupation shall be defined as an occupation, profession or trade that is customarily conducted within a dwelling by the resident of record, is incidental and subordinate to the principal residential use, and does not constitute a nuisance or adversely affect the use and development of adjoining properties in the neighborhood.

Hotel. A building or part of a building in which living or sleeping accommodations served by common entrances are used primarily for transient occupancy and may be rented on a daily basis.

Inn. See Hotel.

Inner Court. A court not extending to a street or alley or to a front or rear yard.

Interior Lot. A lot, the side lines of which do not abut on a street.

Land Development. Means the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics.

Landscaping. Means the practice or physical product of the arrangement of plant materials including ground cover, shrubs and trees, along with other natural and man-made elements such as rocks, fences and walls, as a means to enhance the built or natural environment by screening undesirable or unsightly land uses, buildings or other structures, or parking areas; by creating privacy; by buffering different land uses; and by modifying micro-climatic conditions (wind, shade, air temperature, etc.).

Leq(1). The constant sound level that, in a given situation and time period of one hour, conveys the same sound as the actual time-varying sound. This is a way of describing fluctuation sound by describing the fluctuating noise heard over a one-hour time period as if it had been a steady, unchanging sound. The method of averaging the noises made over a given time period weights the louder, more intrusive noises more heavily.

Lot. A portion or parcel of land laid out and approved by proper authorities and recorded as a single parcel in the R.M.C. office for Charleston County or Berkeley County, which is devoted to a common use or occupied by a building or buildings.

Lot Frontage. The front side of a lot that abuts a street or thoroughfare from which direct vehicular access to lots may be available.

Lot Occupancy of a Building. The horizontal area measured within the outside of the exterior walls or foundations of a building (see definition of "building"), except that appurtenances to buildings such as stairs and elevated stoops, porches, terraces and decks, that are not covered and are not elevated more than three feet above grade, shall not be included for the purpose of calculating lot occupancy of a building.

Mixed Occupancy. Occupancy of a building or land for more than one use.

Mobile Home. Any building or structure used or designed to be used for habitation of persons, or so designed and constructed that such building or structure may be transported in its entirety or in substantial part by a wheeled vehicle and placed upon a permanent foundation; or any manufactured structure designed or intended to be utilized as a single family dwelling which is over thirty-five feet (35') in length, or over eight feet (8') in width, and which can be temporarily or permanently parked upon a mobile home space.

Mobile Home Pad. A paved foundation equipped with utility connections located on a mobile home space.

Mobile Home Park. A development which meets the requirements of Article 3, Part 3, upon which two (2) or more mobile homes are placed for occupancy.

Mobile Home Space or Lot. A parcel or lot in a mobile home park or a single lot of record which meets the requirements of this ordinance for the placement of a mobile home.

Motel or Auto Hotel. A roadside commercial establishment offering lodging and automobile parking for transient travelers which has individual entrances from outside the building to serve the separate units.

Neighborhood Use. A term which shall be used to identify specific areas in a Planned Unit Development where a variety of uses including, but not limited to, residential, commercial, office and institutional uses may be permitted subject to zoning regulations on a PUD Master Plan approved in accordance with Article 2: Part 7 Planned Unit Development, PUD District.

Net Acreage. The total area of high ground on a given lot or group of lots, including areas for proposed public and private roads.

Net Density. The number of dwelling units per net acre.

Nonconforming Use. A use of building or land that does not conform with the regulations of the district in which it is situated.

OCRM. The South Carolina Office of Ocean and Coastal Resources Management.

Open Space. Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space. Open space shall not include streets, drives, off-street parking and loading areas, area so located or of such size or shape to have no substantial aesthetic or recreational value and any area within residential lots.

Ornamental Shrub. Means a three gallon or larger shrub, having a fullness appropriate for its container size, intended for ornamental purposes. (Refer to Appendix A.)

Outer Court. A court extending to a street or alley or to a front or rear yard.

Owner. The word "owner," applied to building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

Parapet. A vertical false front or wall extension above the roof line.

Personal Property. Includes every species of property except real property, as herein defined.

Person. The word "person" shall include a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual.

Porch. A roofed or unroofed structure forming an entrance to a building or used primarily as a partial access to the exterior of the building. A porch is primarily open and subject to exterior views of its interior portion.

Principal Building. The building(s) in which the principal use on a lot is conducted.

Property. The word "property" shall include real and personal property.

Protected Tree. Means a tree eight inches (8″) or greater D.B.H.

Protective Barricade. Means a physical structure not less than four feet (4′) in height, limiting access to protected and grand trees. A suitable protective barrier shall be composed of wood or other durable material which insures protection of protected trees and grand trees during development.

Real Property."Real property" shall include land, tenements, hereditaments, fixtures and appurtenances.

Rear Setback. A setback across the full width of the lot, extending from the rear line of the lot to the corresponding line of the building.

Recommended Tree. Means a tree of two and one-half inches (2½″) or greater in diameter as measured six inches (6″) above grade, which will grow to a minimum height of fifty feet (50′) at maturity. (Refer to Appendix A, unless otherwise specified.)

Relocated Tree. Means a protected tree that has been transplanted in the areas specified in Article 3: Part 3 and Part 7.

Remuneration. Money, rent, reward, recompense, salary, compensation or other bargained for consideration given in return for occupancy, possession or use of property, including the use of property to reward persons associated with clients or potential clients of a commercial venture.

Replaced Tree. Means the planting in the areas specified in Article 3: Part 6 of a recommended tree in place of a protected tree that is removed, irreversibly damaged or destroyed in violation of the standards set forth in Article 3: Part 6.

Residence Club Use. Use of a property by a club for the benefit of the members and/or guests of the club, who are eligible to occupy the property for varying lengths of time that may or may not exceed twenty-nine (29) consecutive days. Residence clubs are characterized by the ownership of properties and sale of club memberships for the purpose of allowing members and/or guests to occupy club-owned properties for varying lengths of time that may or may not exceed twenty-nine (29) consecutive days. Residence club uses are accommodation uses and subject to the regulations of the accommodations overlay zone.

Residential Use. The use of land or the building(s) thereon, or any part thereof, as a home by one or more individuals or families where the intended duration of occupancy is for a period of not less than thirty (30) consecutive days. Occupancy of a transient nature such as in motel, hotel, inn, bed and breakfast, rooming or boarding house, or timesharing uses shall not be defined as a residential use, but shall be defined as a commercial use.

Roadway. The word "roadway" shall mean that portion of a street improved, designed or ordinarily used for vehicular travel.

Roof Peak. The point at the highest level of the roofline excluding all appurtenant parts, mechanical penthouses and elevated shafts.

Screening. Means the use of landscape planting, fences, walls or other structures to obscure vision of an unsightly or undesirable land use or structure and to minimize the intrusion of lighting on neighboring property.

Setback. An open unoccupied space, other than a court, between the building and any lot line.

Shipping Container Storage Uses. Outdoor storage of three (3) or more shipping containers that are not attached to a truck trailer chassis and may or may not be used for storage of materials.

Shoreline Frontage. Means the edge of high ground along a river, and its tributaries and creeks, which is visible from any part of the river channel at high tide.

Short-term Lender. A deferred presentment lender or a title loan lender.

Short Term Rental. Short term rentals are a distinct type of accommodations use consisting of a limited number of fully functioning private dwelling units that are rented to families for periods of between one (1) day and twenty-nine (29) days. Distinguishing characteristics of a short term rental is: 1) it has all the attributes of a typical dwelling unit including cooking, living, sanitary and sleeping facilities, 2) is occupied by not more than four unrelated people pursuant to the definition for family, and 3) is located on a commercially zoned property with a limited number of short term rental units, if more than one such unit is provided.

Side Setback. A setback between the side line of the lot and the adjacent side line of the building, extending from the front yard to the rear yard. If there is no front yard, the side setback shall be considered as extending to the front line of the lot, and if there is no rear yard, the side setback shall be considered as extending to the rear line of the lot.

Sidewalk. The word "sidewalk" shall mean any portion of a street between the curbline and the adjacent property line, intended for the use of pedestrians.

Sign. Any device or representation for visual communication that is used for the purpose of bringing the subject thereof to the attention of others which is located on or attached to premises, real property, structures on real property, or a vehicle, and which is visible from a public street or way.

Types of Signs.

Abandoned Sign. A sign which was erected on property in conjunction with a particular use which has been discontinued for a period of ninety (90) days or more, or a sign the content of which pertains to a time, event or purpose which no longer applies.

Canopy Sign. A sign which is suspended from, attached to, supported from or forms a part of a canopy.

Dilapidated Sign. Any sign which is insecure or otherwise structurally unsound, has defective parts in the support, braces, guys and/or anchors or which is unable to withstand the wind pressure for which it was originally designed.

Directional and Warning Sign. (a) A traffic, directional or informational sign, permanently erected in the public right-of-way or on private property by a governmental agency and permitted signs in public rights-of-way; (b) off-premises signs which contain information regarding the time and place of regular meetings of civic or religious groups; and/or (c) an on-premises permanent sign located at the curb cuts of a commercial, industrial, or office establishment giving direction or

information as to matters as entrance, exit or the like. These signs may contain a logo or other information identifying the use of the premises, so long as such information is for direction and not advertising purposes.

Directory Sign. A sign listing only the names and/or use, or location of more than one business, activity or professional office conducted within a building, group of buildings or commercial center.

Flashing Sign. Any lighted or electrical sign which emits light in sudden transitory bursts. On/off time and temperature signs and message boards are not considered flashing signs for the purpose of this ordinance.

Freestanding Sign. A sign, not including sandwich boards, supported by a sign structure secured in the ground and which is wholly independent of any building, other than the sign structure, for support.

Illuminated Sign. A sign designed to give forth artificial light or to reflect such light from an artificial source.

Institutional Signs. On-premises signs which identify the name of an institution, such as a church, school, hospital, club, museum, a civic, fraternal or charitable organization, or similar entity and which describe the activities thereof.

Moving Message Board. Any electrical sign having a continuous message flow across its face by utilization of lights or other electrical impulses forming various words or designs.

Off-premises Sign. A sign identifying, advertising or directing the public to a business or commercial activity located on property other than where the sign is located.

On-premises Sign. A sign which (a) identifies, advertises or directs the public to a use, occupancy, function, service or product which is sold or manufactured on the property where the sign is located or at the site of a commercial, industrial or office development where the sign is located or (b) identifies, advertises or directs attention to a venture or message of a non-commercial or not-for-profit nature regardless of the location of such venture or message.

Portable Sign. Any sign, except a sidewalk/sandwich board sign, which is not permanently affixed to a building, structure or the ground.

Project Sign. Any sign erected and maintained on the premises temporarily while undergoing construction by an architect, contractor, developer, finance organization, subcontractor or materials vendor upon which property such individual is furnishing labor, services or material.

Reader Board. That portion of a sign face that allows for interchangeable letters, usually placed below the identification portion of the sign face. Reader boards are to be included in the calculation of the allowed sign size of a particular establishment.

Real Estate Sign. A temporary sign advertising the real property upon which the sign is located for rent, for lease, or for sale and providing the name and location of the owner or his agent.

Roof Sign. A sign erected over or on, and wholly or partially dependent upon, the roof of any building for support, or attached to the roof in any way.

Sandwich Board Sign. A freestanding movable sign, not secured or attached to the ground or any building or structure, composed of a sign panel and supporting structure or one or more panels which form both the structure and sign face, and which is intended to be placed in a sidewalk or pedestrian way.

Sign Band. A panel, either permanently affixed to or removable from a building façade, which is designed specifically to accommodate sign letters or graphics.

Snipe Sign. A sign which is tacked, nailed, posted, pasted, glued or otherwise attached to trees, poles, stakes or fences, or to other objects, and the advertising matter appearing thereon is not applicable to the present use of the premises upon which such sign is located.

Special Event Sign. A sign which carries a message regarding a special event or function which is of general interest to the community, such as historic, ethnic, cultural, religious, political or similar activities.

Temporary Sign. Any sign or information transmitting structure intended to be erected or displayed for a limited period, or any sign towed behind an aircraft.

Vehicle Sign. A permanent or temporary sign affixed, painted on, or placed in or upon any parked vehicle, parked trailer or other parked device capable of being towed, which is displayed in public view under such circumstances as to location on the premises, time of day, duration, availability of other parking space on the premises, and the proximity of the vehicle to the area on the premises where it is loaded, unloaded or otherwise carries out its principal function, which circumstances indicate that the primary purpose of said display is to attract the attention of the public rather than to serve the business of the owner thereof in the manner which is customary for said vehicle.

Window Sign. Any sign which is permanently painted on, applied to, attached to or projected upon the glass area of a building, including doors, whose identification, message, symbol, insignia, visual representation, logo type, or any other form which communicates information is intended to be read from off-premises, contiguous property or a public right-of-way.

Silviculture. Means the cultivation of a forest for the purpose of harvesting timber.

Site Plan. A plan delineating the overall design of a development on a tract of land, including but not limited to grading, engineering design, construction details and survey data for existing and proposed improvements, the size, height, shape and location of buildings, location and design of parking areas, landscaping, refuse areas, and pedestrian and vehicular circulation on site.

Skirting. Panels specifically designed for the purpose of screening the underside of a mobile home or manufactured dwelling unit by forming an extension of the mobile home body and covering the entire distance between the bottom of the exterior walls and the ground elevation below and along the entire perimeter of the mobile home or manufactured dwelling.

Sleeping Unit. A single room with accommodations for sleeping or a suite of rooms designed for occupancy by a family that has accommodations for sleeping.

Sorority House. See Fraternity House.

Special Exception. A departure from a general provision of this chapter which, by the expressed terms of such provision, may be permitted by the Board of Zoning Appeals upon application only after the Board finds the existence of facts and circumstances detailed in such provision.

Specified Anatomical Areas. "Specified Anatomical Area" means: a) less than completely and opaquely covered: i) human genitals, pubic region; ii) buttocks, and iii) female breast below a point immediately above the top of the areola; b) human male genitals in a discernibly tumid state, even if completely and opaquely covered; and c) a covering or device that when worn, simulates genitals, pubic region, buttocks, or any part of the female breast below the top of the areola.

Specified Sexual Activities. "Specified sexual activities" means: a) human genitals in a state of sexual stimulation or arousal; b) acts of human masturbation, sexual intercourse or sodomy; c) fondling or other erotic touching of human genitals, pubic region, buttocks, or female breast.

Specimen Tree. A tree listed in any of the categories in Section 54-331, that is healthy, undamaged, disease free and shows exceptional form and growth habits for that specific species.

State. The words "state" or "this state" shall mean the State of South Carolina.

Story. That portion of a building included between the surface of any floor and the surface of the next floor above, or if there be no floor above it, then the space between such and the ceiling next above it.

Street. The word "street" shall mean the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic and shall be taken to include any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge and approaches thereto within the city. The word "street" shall also mean a private street within a subdivision.

Street, Public. A dedicated public right-of-way which affords the principal means of access to abutting property and which has been accepted for maintenance by the city, county or the S.C. Department of Transportation. For the purposes of these regulations, the term street or streets shall also mean avenues, boulevards, roads, lanes and all other public rights-of-way.

Local Street. A public street used primarily for providing direct access to abutting property.

Collector Street. A public street designed primarily to connect private ways serving multi-family complexes or other local streets with arterial streets and may be expected to carry a significant volume of traffic having neither origin nor destination on the street.

Arterial Street. A federal or state highway designed primarily for the movement of large volumes of traffic from one area to another.

Structure. Anything constructed or erected, the use of which demands its permanent location on the land; or anything attached to something having a permanent location on the land. The word "structure" shall include the word "building."

Structural Alteration. Any change or replacement in the supporting members of a building or structure, such as bearing walls, columns, beams or girders.

Subdivision. Means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, lease, or building development, and includes all division of land involving a new street or change in existing streets, and includes re-subdivision which would involve the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law; or, the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, and includes combinations of lots of record.

Tenant, Occupant. The words "tenant" or "occupant" applied to a building or land shall include any person who occupies the whole or a part of such building or land, whether alone or with others.

Through Lot. An interior lot having frontage on two streets.

Timesharing. The use of land or the buildings thereon, or any part thereof, as living quarters by one or more individuals or families where the intended duration of occupancy is normally less than thirty (30) consecutive days and when the basis of the right to such occupancy is dependent upon the acquisition, either through title or lease, of units of time which entitle one to exclusive possession of the premises. Timesharing use includes fee simple ownership, commonly called "interval ownership" and right of use or non-fee contract.

Title Loan Lender. A lender which regularly extends short-term nonpurchase money loans secured by titles to motor vehicles, such as those regulated by S. C. Code § 37-3-413 (Cum. Supp. 2011). The term does not include other supervised lenders, banks, credit unions, savings banks and like depository institutions.

Total Ambient Noise Levels. All stationary and mobile noise sources including vehicular or truck traffic associated with the proposed use of the property. Total ambient noise will be measured at any property line, using a sound level meter which is capable

of measuring Leq(1) noise levels. Measurements should be made at a setback distance of 1,000 feet or greater from any existing roadway in order to accurately measure noises at the proposed use only. This measurement is not intended to restrict construction activity but only the operation of the proposed use.

Understory Tree. Means a 10 to 12 feet tall, which will grow to a minimum height of twenty feet (20') at maturity (refer to Appendix A, unless otherwise specified).

Usable Open Space. Open space areas of high ground developed to provide for active recreational uses.

Vacation Time Sharing Ownership Plans. Any arrangement, plan or similar devise, whether by tenancy in common, sale, term for years, deed, or other means, whereby the purchaser receives an ownership interest in real property and the right to use accommodations or facilities, or both, for a period or periods of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one year.

Variance. Relief from the literal enforcement of this chapter, permitting the use of property in a manner otherwise forbidden, granted by the Board of Zoning Appeals upon a finding that the enforcement of this chapter as written would inflict practical difficulty or unnecessary hardship as hereinafter described; provided, however, that the Board of Zoning Appeals may not, by variance, permit to be established or carried on in any use district an activity, business or operation which is not otherwise allowed in such district by a specific provision of this chapter.

Velocity Decibels. Vibration levels are measured in terms of velocity, representing the instantaneous speed at a point on the object that is displaced. The root mean square of a vibration signal is the average of the squared amplitude of the signal over a given period of time (usually one second). The rms velocity is normally described in inches per second. Decibel notation is defined as Lv = 20 X log10 (V/Vref), where Lv is the velocity level in decibels, V is the rms velocity amplitude, and Vref is the reference velocity amplitude. VdB is used for vibration decibels to reduce the potential for confusion with noise decibels.

Video Arcades. A building or any specifically designated portion thereof, the principal use of which is the providing of entertainment by means of coin or token operated machines for amusement and/or gaming.

Water-Dependent Structures. Means those structures associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within required building setbacks or buffers. Water-dependent structures do not include residences, restaurants or motel/hotel facilities.

Wetland. Means land that falls under the jurisdiction of one or more of the following agencies: OCRM or the United States Army Corps of Engineers.

Width of Court. The least horizontal dimension of a court at its lowest level.

Width of Side Setback. The least distance from any part of or point on the building or porch to the adjacent side lot line of the lot.

(Ord. No. 1996-227, 1, 2, 11-26-96 ; Ord. No. 1997-459, 1, 11-25-97; Ord. No. 1998-76, § 1, 4-28-98; Ord. No. 1998-147, § 1, 8-18-98; Ord. No. 1998-203, § 1, 11-24-98; Ord. No. 1999-02, §§ 1, 2, 1-12-99; Ord. No. 1999-08, § 1, 2-9-99; Ord. No. 1999-54, §§ 4, 5, 4-27-99; Ord. No. 1999-94, § 1, 8-17-99; Ord. No. 2001-44, § 11, 5-8-01; Ord. No. 2002-19, §§ 1, 2, 2-12-02; Ord. No. 2002-92, § 1, 8-13-02; 2002-130, § 1, 11-26-02; Ord. No. 2003-44, § 1, 4-22-03; Ord. No. 2003-50, §§ 1—3, 5-27-03; Ord. No. 2004-25, § 1, 3-9-04; Ord. No. 2005-92, § 1, 5-10-05; Ord. No. 2005-95, § 1, 5-17-05; Ord. No. 2006-397, § 1, 9-12-06; Ord. No. 2006-428, §§ 1—4, 9-26-06; Ord. No. 2006-489, § 1, 10-24-06; Ord. No. 2007-136, §§ 1, 2, 7-17-07; Ord. No. 2007-172, § 1, 9-11-07; Ord. No. 2008-160, § 1, 12-9-08; Ord. No. 2010-09, § 1, 3-9-10; Ord. No. 2011-08, §§ 1—3, 2-8-11; Ord. No. 2011-11, § 1, 2-8-11; Ord. No. 2011-28, § 1, 4-12-11; Ord. No. 2012-41, §§ 2, 3, 1-24-12; Ord. No. 2013-22, § 1, 2-26-13; Ord. No. 2013-31, § 1, 3-12-13)

That such museum operate during normal business hours and does not inherently exhibit noise, light or traffic conditions clearly debilitating to neighboring residents.

o. *Sewage disposal facilities* shall be permitted as an exception within the Conservation Zone where the Board, after review, determines that such uses are in accordance with the City's comprehensive land use plan.

→ p. *Stables* shall be permitted within the GB and UC district as an exception where the Board, after review, finds that:

1. The stable is not located within 100 feet of any residential zone district.
2. The City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable.
3. The stable complies with all city, county, and state regulations for stables.
4. A site plan is provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right-of-way.
5. A written explanation is submitted detailing how refuse will be handled in accordance with city, county, state, and federal regulations. This shall be reviewed by the Department of Public Service.
6. A plan is submitted showing how drainage on the property is to be collected in accordance with city, county, state, and federal regulations. This shall be reviewed by the Commissioners of Public Works and the Department of Public Service.
7. Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted.

q. *Electric substation or gas regulator station*. Such station shall be permitted within the Conservation District, all residential districts, the CT district, and the RO district only as an exception where the Board, after review, finds that such station is essential for service of the immediate area, will be enclosed within an appropriate woven wire or solid fence, will be suitably landscaped and no storage of vehicles or equipment will occur.

r. *Storage yards, junk yards, scrap yards or auto salvage yards*.

1. Outdoor storage yards, which are used for storage of materials and equipment, other than vehicles, boats or shipping containers, are permitted within the LI (Light Industrial) and HI (Heavy Industrial) districts as an exception where the Board, after review, finds that adequate provision and maintenance of visual screening by fences, planting or other means, from public streets, roads, residences and adjacent residential zone districts will be provided.
2. Junk yards, scrap yards, or auto salvage yards are *prohibited within the LI district* but permitted within the HI district as an exception where the board, after review, finds that the same standards for visual screening listed in 54-206.r.1. are met.

s. *Reserved.*

t. *Golf courses and membership sports and recreation clubs*, private or for profit, or changes thereto, shall be permitted within the Conservation district as an exception where the Board, after review, finds that the location, lighting, hours of operation, type and size of the facility, or changes thereto, will not adversely affect any neighboring residentially zoned areas.

u.

Charleston, South Carolina, Code of Ordinances >> - CITY CODE >> Chapter 29 - TOURISM >> ARTICLE V. - TRANSPORTATION BY ANIMAL-DRAWN VEHICLES FOR PURPOSES OF TOURING >> DIVISION 1. GENERALLY >>

DIVISION 1. GENERALLY

Sec. 29-201. Restricted.
Sec. 29-202. Franchise agreement required; restrictions.
Sec. 29-203. Route limitations.
Sec. 29-204. Drivers.
Sec. 29-205. Tour guide required.
Sec. 29-206. Gatekeeper loading and medallion issuance procedure.
Sec. 29-207. Design standards.
Sec. 29-208. Zones of operation.
Sec. 29-209. Diapering apparatus and sanitation communication required.
Sec. 29-210. Number of medallions to be issued.
Sec. 29-211. Fees.
Sec. 29-212. General health care and management requirements.
Secs. 29-213—29-218. Reserved.

Sec. 29-201. Restricted.

No person shall operate or cause to be operate for hire any vehicle, of whatever nature, drawn by animals for the purpose of conducting tours within the old city district or the old and historic district, except animal-drawn vehicles as provided in this chapter.

(Ord. No. 1983-22, § 56, 5-10-83)

Editor's note—

Formerly numbered as section 29-202

Sec. 29-202. Franchise agreement required; restrictions.

(a) *Findings of fact:*

(1) City council finds that certain of the operators of animal drawn vehicles in the old and historic district of the city have begun to utilize aggressive solicitation practices, adjacent to or upon the streets, sidewalks and public properties, urging upon citizens and visitors the use of their services; have abruptly approached citizens and visitors and thrust brochures in their hands, which are often unwanted and end up on the streets and sidewalks; have utilized solicitors, pamphleteers, persons holding signs, hawkers and pullers-in and have even placed fixed structures upon or adjacent to the streets, sidewalks and public properties to solicit business and/or distribute materials urging the use of their services.

(2) City council further finds that the success of such commercial practices requires that persons congregate and respond to such solicitation, thereby impeding pedestrian and vehicle travel.

(3)

City council further finds that such practices have an adverse impact on the ambiance of the city and its old and historic district; tend to create confrontations with citizens and visitors; adversely impact pedestrian and vehicle traffic flow; create litter; tend to create nuisances; adversely impact the health, safety and well being of the public; and otherwise have a negative impact on the tourism industry and economy of the city.

(4) City council further finds that it is appropriate that, as a condition of operating animal-drawn vehicles in the old and historic district, all persons must obtain a franchise, and must agree to desist from the aforesaid business practices, which agreement shall be a condition of the franchise.

(5) City council further finds that the operation of animal drawn vehicles on the public streets is a privilege and not a right and such operation is for the benefit of the public.

(6) City council further finds in the adoption of this section, that this is part of an ongoing effort to reasonably regulate the conduct of business upon the streets and sidewalks of the central business district and the market area for the benefit of the general public.

(b) *Franchise required:* No person shall operate or cause to be operated upon the streets or sidewalks of the old and historic district of the city any animal-drawn vehicle, without first entering into a franchise agreement with the city. Such franchise agreement shall be granted for a period of one (1) year and shall expire on the anniversary of the date of execution; provided, however, upon compliance with the provisions of the franchise agreement and Chapter 29, Articles V and VI, the agreement shall be automatically renewed. The franchise agreement shall contain the following provisions, which provisions are material and go to the essence of the franchise agreement:

(1) The franchisee shall maintain a current business license.

(2) The franchisee shall agree to operate its business strictly in accordance with the ordinances of the city, applicable thereto, as from time to time amended.

(3) The franchisee shall agree that it will not carry out the following business practices, or suffer them to be carried out on its behalf, upon the sidewalks, streets and public properties in the old and historic district, or upon private property adjacent to such streets, sidewalks and public properties, but directed at persons upon such streets, sidewalks and public properties:

a. The distribution of pamphlets or other printed materials to solicit or advertise for business.

b. The use of hawkers, pullers-in, pamphleteers, or persons holding signs to solicit or advertise the business or inviting the public to make inquiries to such persons.

c. The placement of fixed structures for the purpose of sales, solicitation, hawking, pullers-in, pamphleteering or the support of signage or advertising.

d. The parking or storage of animals or equipment on the public streets and sidewalks, except to load or unload passengers in approved loading zones. Nothing herein shall regulate the parking or storage of animals or equipment on private property.

(4) Nothing herein shall prohibit the solicitation of business immediately alongside an animal-drawn vehicle in an approved loading zone so long as such solicitation is not done in a raucous manner.

(5) The franchise shall be nonexclusive.

(6)

The franchisee shall agree that, upon the violation of the provisions of this section by the franchisee, its agents, employees, or persons acting on its behalf, the right to operate animal-drawn vehicles in the old and historic district shall be suspended as follows:

a. Upon two (2) violations within a six-month period, the franchise shall be suspended for a period not to exceed seven (7) days.

b. Upon three (3) violations within a one-year period, the franchise shall be suspended for a period not to exceed thirty (30) days.

c. Upon four (4) violations within a one-year period, the franchise shall be suspended for a period not to exceed one hundred eighty (180) days.

(c) *Administration and appeals.* This section shall be administered by the director of tourism. All appeals from an interpretation or determination by the director of tourism shall be made to the tourism commission, within fifteen (15) days of notice of such interpretation or determination. All appeals from an adverse decision by the tourism commission shall be made to the Court of Common Pleas within thirty (30) days of such decision.

(d) *Execution of agreement.* City council, by the adoption of this section, authorizes the mayor to enter into a franchise agreement with any and all persons who desire to operate animal-drawn vehicles in the old and historic district. Unless otherwise stated, each franchise agreement shall automatically renew on January 1 of every year so long as the franchisee is in good standing.

(Ord. No. 1995-110, § 1, 3-28-95; Ord. No. 1998-174, § 23, 9-22-98; Ord. No. 2001-133, § 1, 12-18-01; Ord. No. 2002-99, § 1, 8-13-02; Ord. No. 2006-200, § 1, 5-23-06)

Editor's note—

Ord. No. 1995-110, § 1, adopted March 28, 1995, enacted provisions designated as following former § 29-201. In order to accommodate the provisions of said ordinance, the editor renumbered former § 29-202 as § 29-201 and added the provisions of Ord. No. 1995-110 as § 29-202

Sec. 29-203. Route limitations.

Animal-drawn vehicles may operate on all streets or public ways in the district except the following:

(a) The bricked portion of Church Street, from Water Street to South Battery, and all cobblestone and Belgium block streets;

(b) Any public way designated as an alley, land or court (excluding St. Michael's Alley which may be used through Friday from 4:00 to 6:00 p.m., excepting legal holidays and Horlbeck Alley which may be used Monday through Friday from 9:00 a.m. to 4:00 p.m. and during regular touring hours on weekends and on legal holidays);

(c) The following streets:

(1) Atlantic Street;

(2) Price's Alley;

(3) Rope Maker's Lane;

(4) Bedons Alley;

(5) Ladson Street;

(6) Big Lamboll Street;

(7) Water Street (from Church to Meeting Streets);

(8) Church Street (from Tradd to Water Street);

(9) Broad Street (West of State Street) from 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m., Monday through Friday, excepting legal holidays;

(10) Meeting Street (North of Broad Street) from 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m., Monday through Friday, excepting legal holidays;

(d) On such streets or at such times as are restricted for such use by the department of traffic and transportation with the approval of the city council committee on traffic and transportation and so designated in the office of the commission.

(e) There shall be an amended commercial route that can be used during eastern standard time between the hours of 4:30 p.m. to 6:00 p.m. The commercial route approved is as follows: Market Street to Concord Street to Vendue Range to Prioleau Street to Elliot Street to E. Bay Street to Exchange Street to Prioleau Street to Concord Street to Market Street.

(Ord. No. 1983-22, § 59, 5-10-83; Ord. No. 1986-88, § 1, 8-19-86; Ord. No. 1993-58, § 9, 4-27-93; Ord. No. 2013-10, § 1, 1-22-13)

Sec. 29-204. Drivers.

All drivers of animal-drawn vehicles shall have a current automotive vehicle drivers license and demonstrate competence in handling animal-drawn vehicles. All drivers of animal-drawn vehicles shall be required to pass an animal-drawn vehicle competency examination which will satisfy the city that the driver is knowledgeable and capable of handling horses and animal-drawn vehicles in emergency situations.

(Ord. No. 1983-22, § 60, 5-10-83; Ord. No. 1993-58, § 7, 4-27-93)

Sec. 29-205. Tour guide required.

All tours on animal-drawn vehicles must be conducted by a registered or temporary tour guide.

(Ord. No. 1983-22, § 61, 5-10-83)

Sec. 29-206. Gatekeeper loading and medallion issuance procedure.

(a) The city shall establish a central location at the corner of North Market and Church Streets for the distribution of medallions to be issued in the conduct of tours in the zones of operation as established pursuant to section 29-208 of the Code of the City of Charleston. The central location point shall be designated as the "gate" which will consist of a structure to be occupied by a city employee authorized to issue medallions for touring as provided herein, said employee to be more commonly referred to as the "gatekeeper." The gate loading procedure shall require an animal-drawn vehicle to load and discharge passengers as herein provided and to pass through the gate to receive a medallion. This medallion shall indicate the zone in which the animal-drawn vehicle shall conduct its tour. The zone designation shall be obtained by random selection by the gatekeeper as hereinafter provided. The medallion shall be issued by the gatekeeper and affixed to the back of the animal-drawn vehicle. Upon completion of the tour, the medallion shall be returned to the gatekeeper by the driver or company representative of the animal-drawn vehicle having been issued the medallion. A medallion shall be returned to the gatekeeper no later than seventy-five (75) minutes after its issuance.

(b)

Animal-drawn vehicles shall load and discharge passengers at the city's one (1) central loading zone, located on Anson Street south of Pinckney Street and on North Market Street between Anson Street and Church Street, provided that an animal-drawn vehicle shall be able to load and discharge passengers on private property that is owned or operated by its company and provided that the said private loading zone is within the Market zone which is described as the area lying between and including Pinckney Street to the north; Cumberland Street to the south; East Bay Street to the east, and Meeting Street to the west.

(c) The gate shall operate between the hours of 9:00 a.m. through 5:30 p.m. during Eastern Standard Time and from 9:00 a.m. and 6:30 p.m. during daylight savings time. During Eastern Standard Time, medallions shall be issued until 4:30 p.m. and shall be returned by 5:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 5:00 p.m. During daylight savings time, medallions shall be issued until 5:30 p.m. and shall be returned by 6:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 6:00 p.m. Notwithstanding the foregoing, during the month of April 2011 only, the gate shall operate between the hours of 9:00 a.m. and 7:30 p.m. Furthermore, during the month of April 2011, medallions shall be issued until 6:30 p.m. and shall be returned by 7:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 7:00 p.m.

(d) Animal-drawn vehicles shall be permitted to remain in a loading zone no longer than fifteen (15) minutes prior to entering the gate to receive a medallion. If a medallion is not issued to a vehicle which has been in the loading zone for fifteen (15) minutes, the said vehicle shall move to the rear of the loading zone and wait in line to enter the gate and receive a medallion.

(e) A special tour, which is defined as a tour that has been scheduled in advance by the director of tourism, shall require a medallion before the said special tour can be conducted. A special tour must also utilize the city's loading zone or private property for loading and discharging passengers as provided herein.

(f) A commercial tour, shall be defined as a tour that is conducted in the commercial district only and after 4:30 p.m. There shall be no more than be five (5) commercial tours permitted to begin between 4:30 p.m. and 5:00 p.m. industry wide, and there shall be no more than five (5) commercial tours permitted to begin between 5:00 p.m. and 5:30 p.m. industry wide. The carriage company owners will determine among themselves how the five (5) commercial tours permitted to begin between 4:30 p.m. and 5:00 p.m. and the five (5) commercial tours permitted to begin between 5:00 p.m. and 5:30 p.m. will be divided up among the carriage companies. Commercial tours conducted after 5:30 p.m. shall not be restricted in the number of tours permitted and shall not require a medallion.

(Ord. No. 1983-22, § 62, 5-10-83; Ord. No. 1993-58, § 1, 4-27-93; Ord. No. 2002-73, § 1, 5-28-02; Ord. No. 2006-495, § 1, 11-14-06; Ord. No. 2010-85, § 2, 5-11-10)

Sec. 29-207. Design standards.

Animal-drawn vehicles shall be authentically styled passenger carriages. Wagons which patently were designed for cargo instead of passengers will not be approved. Carriages must not exceed twelve (12) feet in length or six (6) feet in width. Carriages will be measured from end to end, excluding the steps and shafts; and, from axle tip to axle tip. No part of the carriage may be over six (6) feet in width; provided, however, any certificated carriage which was in use as of January 1, 1982, and no longer than thirteen (13) feet may continue in use.

(Ord. No. 1983-22, § 63, 5-10-83; Ord. No. 1998-174, § 24, 9-22-98)

Sec. 29-208. Zones of operation.

(a) The peninsula city shall be divided into zones of operation as may be recommended from time to time by the commission and approved by city council. A map outlining such zones shall be maintained in the office of the director of tourism.

(b) Based upon traffic studies, industry input and observations and experience of the commission, the maximum number of animal drawn vehicles to be allowed to operate in a given zone may be restricted, all as may be recommended by the commission and approved by city council.

(c) The right to operate in Zones 1, 2 and 3 shall be made available to touring entities having animal drawn vehicles for which certificates of appropriateness have been issued as follows:

(1) Through the use of the gate and gatekeeper procedure as hereinabove defined, the gatekeeper shall utilize a bingo machine and twenty (20) pingpong balls, six (6) of which shall be designated for Zone 1, six (6) of which shall be designated for Zone 2, and eight (8) of which shall be designated for Zone 3, to randomly select a ball with a designated zone destination marked thereon, and that upon selection, the ball shall be removed from the bingo machine and replaced when the medallion is returned.

(2) When a medallion is issued, the gatekeeper shall record the company's name, the animal-drawn vehicle drivers' name, medallion number and the time that it is issued. No animal-drawn vehicle shall be issued more than one (1) medallion within forty-five (45) minutes from the time of issuance of the first medallion. When the medallion is returned, the check-in time shall be recorded by the gatekeeper. The gatekeeper shall verify that the maximum check-out time has not been exceeded.

(3) A medallion shall be returned to the gatekeeper no later than seventy-five (75) minutes from the time of its issuance.

(Ord. No. 1985-148, § 5, 12-17-85; Ord. No. 1986-49, § 2, 5-27-86; Ord. No. 1993-58, § 4, 4-27-93)

Sec. 29-209. Diapering apparatus and sanitation communication required.

It shall be unlawful for any person, firm, corporation or other entity to utilize any animal for the purpose of pulling any vehicle on city streets unless such animal is equipped with diapering apparatus that prevents the droppings of such animal from being deposited or otherwise left on city streets. It shall be the responsibility of the person, firm, corporation or other entity utilizing any animal-drawn vehicle to see that the diapering apparatus is maintained in working order. Further, every animal-drawn vehicle shall be equipped with a two-way communication system and flags to identify areas in need of sanitation. It shall be the responsibility of the person, firm, corporation or other entity utilizing any animal-drawn vehicle to drop a sanitation flag marking areas where animals deposit or otherwise leave excreta on city streets and to utilize two-way communications to provide notice of areas in need of equine sanitation.

(Ord. No. 1987-82, § 1, 7-21-87; Ord. No. 1998-174, § 25, 9-22-98; Ord. No. 2007-223, § 1, 11-27-07)

Sec. 29-210. Number of medallions to be issued.

(a) The city shall authorize a total of twenty (20) medallions to be distributed as follows:

Zone 1 6

Zone 2 6

Zone 3 8

(b) The medallions shall be labeled with a serial number as follows:

Zone 1 Serial Nos. 1—15
Zone 2 Serial Nos. 16—30
Zone 3 Serial Nos. 31—45
(Ord. No. 1993-58, § 3, 4-27-93)

Sec. 29-211. Fees.

(a) Each animal-drawn vehicle company authorized to do business within the City of Charleston shall be assessed an annual fee of seventeen thousand five hundred dollars ($17,500.00) to operate a carriage business in the City of Charleston. This fee will allow a company to have one (1) animal-drawn vehicle in the central loading zone at any given time.

(b) Each animal-drawn vehicle company shall be assessed a fee of three dollars ($3.00) each time one of its animal-drawn vehicles receives a medallion at the gate. The company shall be billed on a monthly basis.

(c) A company which operates an animal-drawn vehicle business in the City of Charleston shall be assessed a monthly sanitation fee in a sum to be assessed by the director of tourism, which fee shall be paid before the company shall be allowed to participate in the gatekeeper system, said fee to be billed to the company on a monthly basis.

(Ord. No. 1993-58, § 5, 4-27-93)

Editor's note—

Ord. No. 1993-58, § 5, adopted April 27, 1993, enacted a new section 29-212. In order to better conform to the organization of the Code, the editor has redesignated the provisions of § 5 of Ord. No. 1993-58 as § 29-211

Sec. 29-212. General health care and management requirements.

(a) *Findings of fact.* City council hereby makes the following findings of fact:

(1) The City of Charleston, carriage company operators, residents, and visitors to the City of cHarleston have sought to take a proactive approach to protect and ensure the health, safety and welfare of animals used in the tourism industry;

(2) A study was conducted to develop and recommend animal welfare policies to the tourism commission. In response to the study, the tourism commission formed the ad hoc committee on animal-drawn carriages which committee was comprised of representatives from the tourism commission, animal control, the carriage industry, the Society for the Prevention of Cruelty to Animals ("SPCA"), and an independent veterinarian;

(3) The ad hoc committee on animal-drawn carriages has now reviewed and updated the previously recommended policies after much deliberation and with input from the general public, Carriage Operators of North America ("CONA"), and the veterinarian community; and

(4) The codification of the ad hoc committee on animal-drawn carriages recommended regulations is in the best interest of protecting the health, safety, and welfare of the animals used in the tourism industry and protects the health, safety, and welfare of motorists and pedestrians using the public right-of-ways along with the residents and tourists of the City of Charleston.

(b) *Definitions.* Except where the context clearly indicates otherwise, the following terms and phrases as used in this section shall have the following meanings:

(1)

Animal shall mean any horse or mule used for touring purposes and operated under a franchise agreement as outlined in section 29-202

(2) *Contamination* shall mean the introduction of unwholesome or undesirable elements, including but not limited to, bedding, mold, bugs, and rodent droppings.

(3) *Director of tourism* shall mean the director of tourism or his or her designee.

(4) *Equine sanitation flag* shall mean the marker used to identify animal excreta and is generally recognized as a two and one-half-inch rubber ball cut in half with an eight-inch surveyor's flag attached.

(5) *Farrier* shall mean a specialist in horse care who addresses the hooves, feet and legs of the animal.

(7) *Inspection* shall mean to permit the director of tourism, the police department, or a city contracted veterinarian to enter upon the premises of any carriage company subject to this ordinance to make inspections and to examine and audit required records.

(8) *Old and Historic District* shall mean that portion of the city that is so designated from time to time on the official zoning map of the city.

(9) *Out of service* shall mean when the animal is unhitched from a carriage and out of its harness.

(10) *Police department* shall mean the chief of police or his or her designee.

(11) *Rest* shall mean the time when the animal is in service but not performing work as defined herein.

(12) *Stable* shall mean the barn where the animals are kept.

(13) *Stall* shall mean individual space within the barn where each animal is kept.

(14) *Tour* or *touring* shall mean the conducting of or the participation in sightseeing in the districts for hire or in exchange for a donation.

(15) *Touring stock* shall mean all animals used for touring pursuant to this section.

(16) *Vintage carriage* shall mean any carriage built before 1900.

(17) *Work* and *working* shall mean the act of pulling a carriage.

(18) Reserved.

(19) Reserved.

(20) *Free choice* shall mean that water shall be ready and in front of a horse for 15 minutes after a tour is conducted so that a horse is free to choose to drink or not to drink water.

(c) *Equipment.*

(1) Every carriage used for touring purposes and operated under a franchise agreement as outlined in section 29-202 shall be equipped with the following:

a. Head lights or lanterns and tail lights or lanterns which are visible for a distance of (500) feet when the carriage is operated from a half hour after sunset to a half hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred feet ahead;

b. A slow moving vehicle emblem attached to the rear of the carriage;

c. A diapering apparatus that prevents the droppings of the animal used to pull the carriage from being deposited on the ground or the right-of-way;

d. A fifth wheel or cut under turning mechanism on the front axle with the exception of vintage carriages;

e. Reflective ankle cuffs or another reflective device approved by the tourism committee shall be used on at least two (2) of the animal's legs if one (1) animal is pulling a carriage, or if two (2) animals are pulling a carriage reflective ankle cuffs or another reflective device approved by the tourism committee shall be used on at least one (1) of the outside legs of each animal when the carriage is operated from a half (½) hour after sunset to a half (½) hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred (500) feet ahead;

f. A two-way electronic communication system; and

g. A minimum of two (2) equine sanitation flags to mark animal excreta droppings.

(2) Carriages must be properly lubricated and the carriage wheels shall spin freely.

(3) Each carriage shall be maintained in a safe condition so as to not endanger any person or property.

(4) Each carriage shall be maintained in a clean and sanitary condition, free of liter and debris and at all times suitable for public transportation of passengers.

(5) No carriage shall be operated having more passengers than what is permitted by its certificate of appropriateness or having a combined weight of carriage, passengers, and drivers that is more than three (3) times the weight of the animal(s) pulling the vehicle.

(d) *Carriage stands, client pick-up locations, staging areas, and barns.*

(1) Carriages queuing in the medallion booth line shall move and circle the block during equine sanitation cleaning.

(2) Each carriage company shall ensure that their animals in the queue line at the medallion booth shall have a fresh water source every hour.

(3) Each carriage company shall post at their barns in a conspicuous place signage as required under applicable federal, state, and local laws, including but not limited to, the Equine Activity Liability Act (S.C. Code 47-9-730), along with providing brochures outlining the City's ordinances governing the general health and welfare of the animals used in the tourism industry of Charleston.

(e) *Care and shelter of animals.*

(1) No animal shall be used to draw a carriage unless the animal is in good health and the following standards are met:

a. The animal shall not have open sores, open wounds, diarrhea, nor shall the animal be lame or have any other ailments unless the city tourism office as well as the individual company's stable has a current written statement by a veterinarian on file that the animal is fit for such work not withstanding such condition. Further, the written statement by the veterinarian must have a required expiration date;

b. The hooves of all animals while engaged in work on pavement, brick, concrete or other like hard surfaces shall have rubber or elastomer shoes, boots or pads to prevent slipping and shall be evenly trimmed and shod. However, steel shoes can be used upon introduction to the touring stock during an initial two-week trial period. Also, if a farrier determines that the horse's hooves will not accommodate the use of rubber pads, metal shoes can be used on the rear legs of the animal;

c. The animal shall be properly and appropriately groomed;

d. The animal shall have adequate flesh and muscle tone as determined by the Body Condition Scale of the Henneke Chart and shall average between 4 and 7;

e. The animal is kept in good working condition;

f. At introduction into the touring stock then bi-annually thereafter, the animal shall have had a physical inspection completed by and a certificate of serviceability for carriage work signed by a licensed veterinarian, with the results thereof provided to the City of Charleston Tourism Director and made available for inspection on site;

g. All animals upon reasonable notice by the tourism director or police department shall be made available for an annual physical inspection to be conducted by the tourism director or police department's veterinarian with the results thereof being maintained by the office of tourism with a copy being provided to the carriage company operator;

h. At introduction into the touring stock then quarterly thereafter, the animal shall have been de-wormed; and

i. At introduction into the touring stock, the animal has been vaccinated under the direction of a veterinarian for appropriate diseases and risk factors of the area, as outlined on the certificate of serviceability.

(2) Free choice water shall be provided to each animal immediately after completing a tour for a minimum of fifteen (15) minutes.

(3) Animals shall be provided electrolyte supplements at each feeding.

(4) Animals shall have at least fifteen (15) minutes rest between back to back tours.

(5) In a twenty-four-hour period, animals shall not engage in Work more than eight (8) consecutive hours or ten hours with out a one and one-half (1½) hour break being disconnected from the carriage, in a twenty-four-hour period.

(6) Animals shall not engage in work more than six (6) days in a seven-day period.

(7) Animals shall not engage in work with equipment causing an impairment of vision, other than normal blinders.

(8) Animals shall not be driven at a speed faster than a slow trot.

(9) Animals shall not be subject to any cruel or harassing treatment or equipment.

(10) Animals shall not be sold or disposed of except in a humane manner in accordance with American Association of Equine Practitioners' guidelines.

(11) Animals shall be at least three and one-half (3½ years of age and shall not weigh less than nine hundred fifty (950) pounds in fit condition.

(f) *Harnesses.*

(1) Animals shall not engage in work with harnesses or bits that harm or are unsafe to the animal.

(2) Harnesses, bridles, bits and padding shall be properly fitted and kept in clean and good repair.

(3) Harnesses shall be kept free of makeshifts like wire, rope, and rusty chain.

(4) Trace chains shall not put pressure on the collar and shoulders of the animal when it starts pulling the carriage resulting in a jolting start versus a smooth start with a snug collar already in place.

(5) Breeching shall fit so that it will not rub or hinder the hind leg movement of the animal.

(g) *Weather conditions.*

(1) Carriage company operators and drivers shall use caution when Working animals in adverse weather conditions such as high heat and humidity, snow, ice, heavy rain, and other slippery or reduced visibility situations.

(2) When the ambient temperature reaches or exceeds eighty-five (85) degrees Fahrenheit at any point during the carriage company's hours of operation, the carriage company operators shall implement a mandatory system of taking the rectal temperature of each working animal immediately after completing a tour. In the event an animal's temperature reaches one hundred three (103) degrees Fahrenheit or above, the animal's temperature shall be taken every fifteen (15) minutes until the animal's temperature falls below one hundred three (103) degrees Fahrenheit before the animal is allowed to return to work.

(3) When the rectal temperature of an animal reaches between 103—103.9 degrees Fahrenheit, the carriage company operator shall require the animal to be removed from service and be cooled down to a temperature of 101.5 degrees Fahrenheit before returning them to engage in Work.

(4) In the event that an animal's rectal temperature reaches 104 degrees Fahrenheit or above the animal shall be taken out of service for the day and cooled down.

(5) In the event an animal can not be cooled down to a rectal temperature of 101.5 degrees Fahrenheit within two (2) hours of the first 103 degree Fahrenheit or above rectal temperature recording, a veterinarian shall be immediately contacted to inspect the animal.

(6) At any time when an animal's rectal temperature reaches 105.0 or above, or if any animal shows signs of distress such as panting motions; thumping of the chest (synchronous diaphramic flutter), tying up, or stiffening of legs or back, muscle trembling, or colic, a veterinarian shall be immediately contacted to inspect the animal.

(7) When either the ambient temperature reaches ninety-eight (98) degrees Fahrenheit or the Heat Index reaches one hundred twenty-five (125) degrees Fahrenheit, as determined by the director of tourism or the police department, the carriage company operators shall discontinue working their animals and pull them off the street until the temperature decreases below the above stated temperatures as authorized by the director of tourism or the police department.

(8) The official thermometer used for determining the temperature and the heat index shall be located at 113 Calhoun Street, in the City and County of Charleston, South Carolina. In the event this thermometer is out of service, as determined by the director of tourism or the police department, the back-up thermometer shall be the thermometer located at 180 Lockwood Drive, in the City and County of Charleston, South Carolina.

(h) *Feeding.*

(1) Animals shall receive an adequate amount of equine feed daily, which is free from contamination, sufficient in quantity, having nutritional value, and be provided frequently enough to meet normal daily requirements for the animal's condition, special needs, environmental factors and size of the animal so as to maintain a healthy flesh.

(2) Clean drinking water free from contamination shall be available to an out of service animal at all times.

(3) Out of service animals shall at all times have access to salt in a block or loose form.

(i) *Stables and stalls.*

(1) Stables shall be safe, well lighted, ventilated, and provide protection from the weather as described herein;

a. Stables and stalls shall be kept clean and in good repair and excreta shall be removed daily;

b. The floors of the stalls shall be graded and raked to keep their surface dry; each stall shall have rubber mats under the shavings or shavings with a minimum depth of four (4) inches;

c. Fans shall be used to increase ventilation when the ambient temperature reaches eighty (80) degrees Fahrenheit;

d. Sharp surfaces and any other hazards shall not be permitted in any stable or stall where they can come in contact with the animals;

e. Stables and stalls shall be kept free of leaks, including but not limited to, leaks form roofs or from plumbing;

f. Stalls sizes shall be no less than five (5) feet nine (9) inches × eleven (11) feet unless a carriage company undertakes any remodeling or refurbishing of any sorts to their stable that equals fifty (50) percent of the market value of the stable or moves their stable. In the event a carriage company does remodel or refurbish their stable as stated in the previous sentence then they must implement a minimum stall size of twelve (12) feet × twelve (12) feet for every stall;

g. The practice of tethering the animal in a stall is permitted so long as the animal can lie down without the risk of entanglement or injury;

h. Occupied stalls shall have a minimum of three (3) inches of bedding or have a specialized surface so as to keep animals clean, dry and free of concussion, abrasion or pressure points;

i. Interior and exterior areas of the stable shall be kept clean, properly drained and free of nuisances including, but not limited to, unreasonable and excessive odors and unreasonable accumulation of refuse and excreta;

j. There shall be no smoking at any time in stables; and

k. Unless otherwise directed by a veterinarian, animals shall be given a pasture turn-out time of a minimum of four (4) consecutive days to total fourteen (14) days within four (4) months;

(2) Stables shall be located within walking distance the medallion gate located at the corner of Church and North Market.

(3) All stables shall have a yearly inspection by the fire department. Fire extinguishers must be kept in obvious places in every stable as required by law and as recommended by the fire department.

(j) *Recordkeeping.*

(1) Feeding, shoeing, medication, and treatment logs, bi-annual inspection records, certificate of serviceability, quarterly de-worming records, rectal temperature logs, work schedules, disposal documentation, and such other records as requested by the tourism director and police department shall be maintained for a three year period by each carriage company operator for every animal used in the touring stock.

(2) These records shall be made available for inspection by the city and its designee.

(k) *Inspections.* In addition to the annual inspection provided for herein, animals, facilities and records shall be subject to random or unannounced inspections at the discretion of the tourism director, police department, and/or the city designated veterinarian. The inspector is

permitted to take notes, pictures and video if they deem appropriate. These inspections shall be brief in order to not interfere with the work flow of the business. The inspector should be allowed to enter the premises no longer than fifteen (15) minutes after arrival at the facility during business hours.

(Ord. No. 2007-90, § 1, 4-24-07; Ord. No. 2011-58, §§ 1—10, 8-16-11; Ord. No. 2011-59, § 1, 8-16-11; Ord. No. 2011-60, § 1, 8-16-11)

Secs. 29-213—29-218. Reserved.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Trial Court Case No. 2013-CP-10- 3864
Appellate Case No. 2014-001466

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

v.

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

RECORD ON APPEAL - VOLUME II

Capers G. Barr, III
Barr, Unger and McIntosh, LLC
P. O. Box 1037
Charleston, S.C. 29401
(843) 577-5083
Attorney for Respondents

Charlton deSaussure, Jr.
Corporation Counsel

Frances I. Cantwell
Assistant Corporation Counsel
50 Broad Street
Charleston, S. C. 29401
(843) 724-3730
Attorneys for Appellants
City of Charleston and City of
Charleston Board of Zoning Appeals

Wilbur E. Johnson
Young, Clement, Rivers, LLP
P.O. Box 993
Charleston, S. C. 29402-0993
(843) 724-6659
Attorney for Appellant
Andrew Pinckney Inn

Thomas S. Tisdale, Jr.
Hellman, Yates & Tisdale
105 Broad Street
Charleston, S.C. 29401
(843) 414-9747
Attorney for Appellant
Michael A. Molony

VOLUME II

INDEX

	Volume I Page
Corrective Order dated June 19, 2014	1
Motion to Reconsider, Alter or Amend Judgment	14
Petition and Appeal	22
Return, City of Charleston and City of Charleston Board of Zoning Appeals	114
Answer to Petition and Appeal, Andrew Pinckney Inn	119
Return, Michael A. Molony	125
Memorandum of Petitioner on Appeal (Special Exception) dated April 7, 2014.	130
Memorandum of Petitioner on Appeal (Variance) dated April 11, 2014	146
Transcript of Proceedings of April 11, 2014	152
Charleston Zoning Ordinance, Sec. 54-120	213
Charleston Zoning Ordinance, Sec. 54-206 (p)	237
Charleston Tourism Ordinance, Sec. 29-201 – 29-212	238
	Volume II Page
Circuit Court Record on Appeal	251
Certificate of Counsel	488

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ARKAY, LLC and)
ROBERT R. KNOTH, its member,)
Petitioners,)

v.)

CITY OF CHARLESTON BOARD)
OF ZONING APPEALS, ANDREW)
PINCKNEY INN and MICHAEL A.)
MOLONY,)
Respondents.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2013-CP-10- 3864

RECORD ON APPEAL
(Special Exception Order)

FILED
2013 OCT -7 PM 12: 29
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The following constitutes the Record on Appeal of the within matter:

1. Order of Board of Zoning Appeals dated June 4, 2013;
2. Transcript of Board of Zoning Appeals hearing of April 16, 2013;
3. Transcript of Board of Zoning Appeals hearing of June 4, 3013;
4. Arkay, LLC Application for a Special Exception, to include exhibits; 358 – 373
5. Alexander Peabody Plot Plan; 374
6. Photographs: Exterior, 45 Pinckney Street; Interior, 16 Hayne Street; 376
7. Zoning Map; 379
8. City of Charleston Site Map; 381
9. Arkay, LLC Exhibits 1 – 10; 385 (Remedy)

10. Letter of Wilbur E. Johnson, Esq, dated April 8, 2013, with attachments, on behalf of Andrew Pinckney Inn;

11. Letters of non-support;

12. E-mail of CWS compliance;

13. Charleston Zoning Ordinance, Sec. 54- 206 (p), Requirements for Special Exception for a Stable in the GB and UC Zoning Districts.

Filed by:

Frances I. Cantwell

Frances I. Cantwell, Esq.
Assistant Corporation Counsel
50 Broad Street
Charleston, South Carolina 29401
Tel. 843-724-3730

TAB 1

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CITY OF CHARLESTON
BOARD OF ZONING APPEALS

IN RE:)
)
)
45 Pinckney Street) ORDER
)
)
)

The matter before the Board is an application by Arkay, LLC (herein "Applicant") for a special exception to locate a horse stable at 45 Pinckney Street. A hearing was held on April 16, 2013. After having heard the testimony, reviewed the exhibits and other evidentiary matter and the applicable law, the Board denies the application.

FACTS

Forty-five Pinckney Street is located in downtown Charleston. A building occupies the entire site. There is only one entrance to the building, that being on Pinckney Street.

The site is abutted on the west by the Andrew Pinckney Inn, on the east by a multi-story parking garage and on the south by Nos.14 and 16 Hayne Street. Across Pinckney Street to the north of the site are single family homes.

Forty-five Pinckney Street is zoned General Business (GB), as are the properties to its east, west and south. Across Pinckney Street to the north, the properties upon which single family homes are constructed are zoned Commercial Transitional (CT). The zoning district changes to Single, Two Family Residential (STR) immediately beyond the single family homes that are directly across the street from the site. A survey demonstrated the distance from 45 Pinckney Street to the nearest property zoned for residential use is 93.5 feet.

Forty-five Pinckney Street has been used as a stable in the past. In fact, the Applicant operated its horse carriage businesses from the site for some 8 years, from 1990 to 1998. It was thereafter operated as a stable until 2009.

Testimony revealed that the Applicant has lost its month-to-month lease at 16 Hayne Street, the current site of its horse carriage business. It must vacate the Hayne Street location by May 31, 2013. The Applicant has attempted to find other sites for a stable that are appropriately zoned

and which are within the "Market area" defined in the tourism ordinance as the area of the peninsula lying between and including Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east, and Meeting Street to the west. These efforts have proven unsuccessful.

The Applicant owns 45 Pinckney Street and intends to subject it to a horizontal property regime (herein "HPR"). The HPR will consist of 2 units. The first 11.5 feet of the building, measured from Pinckney Street, will become Unit B. This unit will contain 435 square feet, and will house the offices of the Applicant's horse carriage business and another business that sanitizes streets where carriage tours are conducted. Unit B will be restricted to prevent it from being used as a stable. Unit B will be subjected to an easement or common area to allow ingress and egress from Pinckney Street to the remainder of the HPR.

The rear 69.51 feet of the building will become Unit A. This unit will contain 1639 square feet and will be where stable operations occur. This unit will have 6 stalls, and this is the unit in which horses will be fed, groomed and stored.

Units A and B will be separated by 14 linear feet of General Common and Limited Common areas. The General Common area will contain 137 square feet and will contain restroom facilities. The Limited Common area will contain 360 square feet and will be limited for the use of Unit B. The Limited Common Area will be used as a waiting area for carriage business patrons. The only access from Unit A (where stable operations will occur) to Pinckney Street is across the Limited Common area and across Unit B, by way of easement.

The Applicant has designed a modern stable facility that includes stalls sized to meet the requirements of the tourism ordinance and a state-of-the-art ventilation system. To address the 300 pounds per day of waste that will be produced by its horses, the Applicant has contracted with a company to remove the waste daily, except on Sundays. The tourism commission has issued Certificates of Appropriateness for the carriages used by the Applicant in its carriage business.

Property owners to the west (owner of Andrew Pinckney Inn) and north (owner and/or personal representative of owner of single family homes) appeared at the hearing in opposition to the application. These owners, who had experienced the operation of prior stables at this location, voiced concern about the noise, rodents and odor attendant to a stable. There was a particular concern raised by the owner of the inn regarding the potential for odor wafting through its cinder block wall, the only wall separating it from the site. Issues were also raised regarding the legality of the proposed HPR. Most significantly, it was contended the stable was within 100 feet of a residentially zoned district and therefore could not, as a matter of law, meet the requirements for a special exception.

The Preservation Society of Charleston and the Historic Ansonborough Neighborhood Association opposed the application, and other interested persons submitted letters in opposition as well.

DISCUSSION

Forty-five Pinckney Street is zoned General Business. In this zoning district, stables are permitted, if granted a special exception by this Board. The criteria for the special exception are set out in Sec. 54 – 206 (p) of the Zoning Ordinance and require this Board to find:

1. The stable is not located within 100 feet of any residential zone district;
2. The City Tourism Commission has issued a Certificate of Appropriateness for the stable;
3. The stable complies with all city, county and state regulations for stables;
4. A site plan demonstrates that cleaning/loading and tacking area will not impede traffic flow in the public right-of-way;
5. A written explanation of how refuse will be handled in accordance with city, county, state and federal regulations has been reviewed by the Department of Public Service;
6. A plan showing how drainage is to be collected in accordance with city, county, state and federal regulations has been reviewed by the Commissioners of Public and the Department of Public Service; and
7. Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted.

The evidence demonstrated and the Board is satisfied that the proposed stable complies with county and state regulations, that the loading and tacking area will not impede the flow of traffic, that adequate plans for handling waste, refuse and drainage are, or will be, in place, and these plans have been reviewed by the applicable agencies and city departments as required by the ordinance. As to odor, the evidence demonstrated the use by the Applicant of a product new to the market that substantially absorbs odor from animal waste. The stable will be equipped with a ventilation system designed to circulate air and release it from the roof of the building at a location farthest from the inn adjoining the site. And with respect to the cinder block wall, the Applicant proffered that the potential for odor seeping through could be addressed by its constructing an interior wall at the site, and it would do so as a condition of receiving the special exception. As to the Certificates of Appropriateness, as defined by the tourism ordinance, these certificates are issued for horse drawn vehicles, not stables; however to the extent there is a disconnect between the zoning and tourism ordinances regarding the Certificates of Appropriateness, the Board does not find this issue dispositive of the question before it, as any approval of this Board would be conditioned on compliance with the requirements of the tourism commission.

The remaining criterion is the distance of the stable from a residential zone district. As an initial matter, the Board rejects the contention that residential zone district means something other than a residential zoning district designation. The fact that Pinckney Street and Maiden Lane are in a residential parking district is not germane to the question of a residential zoning district. The Board finds that the criterion of the ordinance requiring a stable to be beyond 100 feet of a residential zone district means a residentially zoned district under the zoning ordinance. As applied here, a residentially zoned district is in place at No. 4 Maiden Lane and No. 57 Hasell Street. A survey submitted with the application reveals, measured from the building at 45 Pinckney to lots lines of these properties, that No. 4 Maiden Lane is 95.1 feet from the building at 45 Pinckney Street and No. 57 Hasell Street is 93.5 feet from the building at 45 Pinckney.

The Applicant contends the special exception applies to a stable as a use. Citing a definition from the tourism ordinance that defines a stable as the barn where animals are kept, it contends that here, the animals will be kept in Unit A of the HPR, more than 100 feet from a residentially zoned property. The applicant contends that the barn or stable use within the building at 45 Pinckney is more than 100 feet from a residentially zoned district. The Board does not agree.

Forty-five Pinckney Street is occupied by one building. The HPR does not alter this circumstance. There is no dispute as to the fact that the building is within 100 feet of a residentially zoned district. While Unit A within the building is where the animals will be stored, to access that area, it is necessary to pass through Unit B, an area within 100 feet of a residentially zoned district. This Board cannot discern intent to separate the use from its access when there is but one access to the building, and the law requires an apartment in a HPR to have either direct access to a public street or a common area leading to a public street. The common area or easement to Pinckney Street from Unit A is appurtenant to, or a part of, the Unit, rendering it within the 100 foot limitation. Thus, 45 Pinckney Street does not qualify as the site of a stable because it is located within 100 feet of a residential zone district.

NOW, THEREFORE, in light of the foregoing, the application for a special exception to establish a stable at 45 Pinckney Street is denied.

Charleston, South Carolina
6/4, 2013

Acting Chairman

TAB-2

COPY

CITY OF CHARLESTON BOARD OF ZONING APPEALS -- ZONING
TRANSCRIPTS OF PROCEEDINGS
APRIL 16, 2013

RE: 45 PINCKNEY STREET
REQUEST FOR SPECIAL EXCEPTION

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

City of Charleston Board of Zoning Appeals Meeting April 16, 2013:

CHAIRMAN KRAWCHECK: We welcome you to the April 16, 2013, Meeting of the City of Charleston Board of Zoning Appeals. Present are Mr. Altman, Miss Smith, Mr. Smalls, Mr. Robinson, Mr. Krawcheck. On the right from the City Planning Staff, Miss Elliott, Miss Ashby, and Mr. Batchelder.

These proceedings are being recorded.

Miss Campbell is present as well.

We ask you, please, to identify yourself if you speak.

The -- this Board does three basic things. We hear appeals from the Zoning Administrator. We hear requests for special exceptions of the zoning ordinance, and we hear requests for zoning variances.

The zoning variance test is a hardship test. This Board has to find and has to be showed that there are extraordinary exceptional conditions pertaining to the particular piece of property. These conditions do not generally apply to other property in the vicinity.

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, lastly, in order to

grant a zoning variance, the Board has to find that the authorization of the variance would 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.

Our procedure is to first hear recommendations from the City Planning Staff. If that recommendation is in favor of the application and if the application otherwise meets the requirements of the zoning ordinance and if there's no one present who opposes the application, then usually the Board will treat the matter as being uncontested. We'll pass it rather quickly.

If someone is present who opposes the application or if the City Staff is opposed to the application, the matter will be treated as contested. We will then ask to hear from the applicant, from anyone else in favor of the application, and from the opponents; and after that, we'll give the applicant a short time to rebut the arguments of the opponents. Then we will close the public hearing portion of the Meeting, and we will make a decision.

Those of you who will testify before this Board tonight, will you please raise your right hand.

(Witnesses are sworn.)

CHAIRMAN KRAWCHECK: Those of you who have cell phones, would you please turn them off. And check and make sure that they are off.

* * *

We've got some members who are here only for a limited time this evening; and in view of that, I'm going to exercise the chairman's prerogative and move Item 6, which is 45 Pinckney Street, to Item 2 on the agenda.

* * *

Is there any objection to moving Item No. 6, which is 45 Pinckney Street, to Item No. 2 on the agenda?

(No response.)

CHAIRMAN KRAWCHECK: Hearing none, Mr. Altman, again, I ask you to preside.

MR. ALTMAN: All right. This is Item No. 6. This is 45 Pinckney Street. We have two members recusing themselves, Mr. Robinson and Mr. Krawcheck. This is a request for a special exception under Section 54-206 to allow a stable in GB, General Business, zoning district. Mr. Batchelder.

MR. BATCHELDER: This application concerns a property in the City's market area on Pinckney Street. So here is a zoning map or -- or not a zoning map but

just a map that shows the property. Here is Pinckney Street. This is Pinckney. This is Maiden Lane. This is Church Street and Anson Street, and this is Hayne Street right here.

So the property is rectangular in shape fronting on Pinckney Street. The zoning ordinance states that a stable use is permitted within the General Business and Urban Commercial zoning districts as a special exception, and it lists seven criteria that the Board must find in order to grant the special exception.

This property is zoned General Business, and the first criteria states that the stable is not located within 100 feet of any residential zoned district.

Now, I'm going to hand out this drawing that -- that highlights the proximity of the property to the residential zoned district, and this is the -- the plat that shows the portion of 45 Pinckney Street, and it shows the distance in -- in measurements to the residential zoning district boundary, which is highlighted.

And this aerial view may help you relate that drawing, but so 45 Pinckney is this building right here. And the residential -- the closest residential properties are this property right here, this home on Maiden Lane, and then there's a parking lot back here,

which happens to be within that residential zoning district.

So the zoning boundary that I've highlighted on that plat runs approximately in this location right here, and the properties immediately across Pinckney Street from 45 Pinckney are actually zoned commercially. They are zoned Commercial Transitional; and then, of course, the properties on all sides -- other sides of 45 Pinckney Street to the east, to the west, and to the south are all commercially zoned properties in the General Business zoning district.

So the closest residentially zoned properties are these properties that I've highlighted in my presentation, and the zoning boundary is the -- the line, the property line of those properties as shown on that plat. So you can see that from 45 Pinckney Street, the closest residential zoning district boundary is 93.5 feet to the north, and it is the zoning boundary dashed property line of 57 Hasell Street.

Now, the -- the wording of the ordinance in this particular instance refers to a use, a special exception use. On the table of permitted uses, a stable use is listed as a special exception use within the General Business zoning district.

And under this provision in the Special

Exceptions Section 54-206 of the zoning ordinance, the wording refers to the stable, which I interpret to mean the use; and that means the use, the stable use, cannot be located within 100 feet of any residential zoned district.

Now, the front of the building is within 100 feet of the residential zoned district; but as you'll see, the actual use that they are proposing to place in this building at the back of the building is the stable use and that that use would be some 25 feet from the front of the property to the south of Pinckney Street so that would thereby increase the distance between the actual use and the residential zoned district boundary and -- and that distance would, then, exceed 100 feet.

The second criteria is the City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable. The Tourism Commission actually does issue Certificates of Appropriateness. They're not specifically for the stable. They're actually for the carriages of the -- of the horse carriage business that's operating in the market area.

So they -- this -- this is a proposal for an existing carriage company to relocate to 45 Pinckney Street. The company has been in operation for many years. They have the Certificates of Appropriateness

for their carriages so that criteria of the special exception requirements has been met.

No. 3, the stable must comply with all City, County, and State regulations for stables. This -- this stable, if it is approved, would be built pursuant to the City's building code requirements, which, of course, are required by the State. And in addition, they would -- the stable spaces, the stalls, would actually be constructed to requirements of the City's code that -- that regulates horse carriage businesses and stables in the City.

And this would be the first stable within the market area that would be constructed to these standards because when they were adopted, they weren't made retroactive to existing stables. They were to apply to any new stables, and so this would be the first stable; and you'll hear more about that, I think, from the applicant. So that criteria will be met.

No. 4, a site plan is provided showing that cleaning, loading, tacking, and -- and tacking areas shall not be -- not impede traffic flow in the public right-of-way. The -- the plans for the stable, which I'm sure the applicant will go into greater detail with; but these handouts just generally show the -- the layout of the proposed stables within the building, and it's

hard to read that small size.

But basically all of the cleaning, loading, and tacking areas would be inside the building and not impeding traffic on Pinckney Street; and they've explained that as well in their application materials.

Five, a written explanation is submitted detailing how refuse will be handled in accordance with City, County, State, and Federal regulations. This shall be reviewed by the Department of Public Service.

The applicants have submitted with their application their contract with Carolina Waste Services; and they've described how this company actually picks up all the refuse on a daily basis, except for Sunday, from the stable. So this is their method for -- for having their refuse handled.

And, in addition, they have spoken with the City's Department of Public Service; and I have received word from the Deputy Director of that department that they are fine with this arrangement.

No. 6, a plan is submitted showing how drainage on the property is to be collected in accordance with City, County, State, and Federal regulations. This shall be reviewed by the Commissioners of Public Works and the Department of Public Service.

Again, they -- they have submitted the plans

showing how that would work, that the drainage would tie into the City's sanitary sewer system; and they have contacted Charleston Water Service, the now named organization instead of CPW, which is what the ordinance referred to, but Charleston Water Service has sent me an e-mail indicating that they are fine with the system and that they know it -- that that drain line from the inside of this building does tie into the sanitation sewer system of the City.

And, in addition, I do have an e-mail from -- from the City Engineer indicating that they're fine with the stable drainage system as well. So I do have that documentation. They have met that requirement as well.

So then we come to the last requirement, which is the buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted. They have in their plans that you will see designed a system of ventilating the interior spaces of the stable; and, in addition, they have designed a system that would, I think, filter the odors that -- that would be ventilated from the interior so that what -- what leaves the building is going to be not objectionable because of the filtration system.

And, in addition, they've designed the -- the ventilation system to minimize any impacts on adjoining

property to the east, which is the Andrew Pinckney Inn. That building actually -- well, this is that plat that I was referring to earlier with the highlighted line where the zoning boundary is; but that building next door to the east, the Andrew Pinckney Inn, actually does have some windows on that western side overlooking 45 Pinckney Street. And so they have come up with a design for the ventilation -- ventilation system to prevent the objectionable odors from impacting that property.

So, in short, I -- I believe that they have satisfied the requirements of the zoning ordinance; and my recommendation is --

MR. ALTMAN: Mr. Batchelder, how do you -- how do you get over No. 1 on your list? What's the requirements?

MR. BATCHELDER: Well, again, if you look at the context of the -- the requirement in this Section 54-206, it states that the stable is not located within 100 feet from any residential zoned district. And when I -- when I read this, I read that to mean the "use," the stable "use," is not located within 100 feet of any residential zoned district.

There are other types of land uses that are identified in the same section of the zoning ordinance

where the wording is such that it specifies that you measure from the building or from the property line. In this case there's no mention of a building or property line that -- that is where you should take the measurement from.

So I think it's appropriate to measure it from the use; and if that use is not at the front of the building, then you don't have to measure from the front of the building.

Could be that, for instance, if the -- if the First Baptist gymnasium located a half a block away was renovated and turned into multiple commercial tenant spaces, which it could be because that is a commercially zoned property, and you placed a stable in one of those spaces but then had offices and restaurants and shops and other tenant spaces, that you would measure from the space that was actually occupied by the stable use and not from the building.

So I think it's appropriate to do that in this case, and you'll hear from the applicants more information about that as well.

MR. ALTMAN: So the City is recommending approval?

MR. BATCHELDER: Right.

MR. ALTMAN: All right. And is the --

MR. BATCHELDER: And I also want to point out that I recommend approval with conditions that they do relay the -- the slab, that they remove the existing slab in the building, pour a new slab that does satisfy the drainage plan that they are proposing with their application, and that they also make the necessary improvements in the ventilation system based on what they will describe to you and present today.

MR. ALTMAN: Okay. The City recommends approval with conditions. Is the applicant present?

MR. BARR: Yes, the applicant is present.

MR. ALTMAN: You can move forward.

MR. BARR: Mr. Chairman, and Board of Zoning Appeals, for the record, my name is Capers Barr; and my son Adam and I -- Adam and -- (Inaudible.) Proud to represent the Knoth family.

Let me introduce them first. Bobby Knoth, Sally Knoth, Richard and Rhett back there. Bobby, Jr., I think is -- is working, and the Knoth family has been in the carriage business since 1990; and they find themselves in a pickle.

Thank you, Pennye. That's the one I was looking for. (Inaudible.)

MALE VOICE: Yes.

MR. BARR: Hope we amended it. Got the

wrong one. I'll use my hand.

FEMALE VOICE: (Inaudible.)

MALE VOICE: Oh, here we go. If you want to use these arrows.

MR. BARR: No. Do you have a laser pointer?

MR. BATCHELDER: That's this one right here.

MR. BARR: Oh, okay. Thank you.

To orient -- to orient you, this drawing, this map can be sometimes confusing. There's Market Street. North Market Street there and South Market Street there, and here is Hayne Street right there. My hand is not steady, and then Pinckney Street there. And the property at issue is -- I'm -- I'm going to give this back to you.

MR. BATCHELDER: (Inaudible.)

MR. BARR: The property at -- the property at issue is -- is this piece right here, which is 45 Pinckney.

Now, the Carolina Polo & Carriage Company is currently at 16 Hayne right here, and the short version of the story is that the apartment they're in is leased. The new owner is requiring them to -- to leave by May 31; and although this certainly is not determinate

of your decision, they are in a position where they could lose the company if they can't relocate.

I've -- I have prepared some additional documents, and I've given a copy of these to Wilbur Johnson; and I would like to, perhaps, put this one in for the record. And I think we've got more members who are voting. What about you? Two. Three. Four. And Mr. Logan, I'm going to give you a question because that's -- I think it's a very appropriate one. But let me -- let me get there, if you'll permit me, this way.

Just to let you know what's in this notebook, first of all. The -- the first tab is -- is the special exception use section of the City code. I'll get to that in a minute.

The second tab is the City Tourism code, which is -- which is incorporated into this special exception paragraph.

The third tab is a memorandum and -- and it's -- it's lengthy but, Mr. Altman, it's addressing your question; and I will -- I will summarize it. You, obviously, won't have time to read it in the span of this presentation, I would suppose.

The fourth tab is -- I don't know that Mr. Batchelder showed you this, but this is the plat plan which y'all will discuss in a minute. What the

Knoths are creating in this building is a condominium, a horizontal property regime, the back unit of which is a stable. That's unit on Tab 4. The front unit of which is office use, and it's restricted against use as a stable.

Tab 5 is the -- is the plat you've already seen measuring the distance from the front of the building to the nearest residential district.

Tab 6 is an affidavit from Bobby Knoth.

Seven is an affidavit from Richard Knoth.

Eight are a number of letters of support, which I will go over at the appropriate time.

Nine is really a -- a copy of the plat of the - of the map that you see on the screen.

And -- and ten are some revised ventilation plans. These were drawn after we had a meting with Mr. Varn of the -- of the -- of the Andrew Pinckney Inn yesterday.

So if you'll -- if you'll permit me, if you'll permit me, if we could refer to Tab 1. I -- I'm going to assume, unless someone calls me down, that this may be a case of first impression to the Board of Zoning Appeals in as much as this Board may have never taken up an application for a special exception use as a stable.

If you turn to Subsection P, which is on page 3

of 6 at the top, Subsection P there, there's some stuff highlighted. Stables. I -- I'd like to first make the -- a couple of points about what the special exception ordinance does say.

First of all, it's -- it's mandatory in the sense that it says, "stable shall be permitted," not "may be" permitted. But "shall be" permitted if this Board finds the -- the facts enumerated below. Mr. Batchelder has outlined them. I'm going to discuss them further.

But I'd like to invite your attention to a couple of differences between the special exception use for a stable and other special exception uses. There are no criteria under the stable special exception use for discretionary factors such as compatibility with the neighborhood, impact on traffic, noise and the like. It's just by illustration, if you look at the first page of this tab under day-care centers, subparagraph 8 of that says that "there must be a decision that the facility is compatible with the surrounding neighborhood."

If you look at drive-through tellers on the next page, there has to be adequate off-street parking, vehicular access will not create a traffic hazard. Those are somewhat subjective standards. The same with

gas stations, homes for the elderly; and on beyond stables, golf courses will not adversely affect neighboring residents, residentially zoned dwellings.

So the first point I would like to make is that -- that this is a -- this is more of a factual determination than other special exception considerations are. In other words, if you find factually that the criteria are met, issues such as the neighborhood -- (Inaudible.) Or impact on traffic, which could be decided in -- in another forum, Department of Public Transportation, the courts, or noise. I'm not suggesting we're going to do all those things. All I'm saying is that the stable special exception criteria are specific to their facts.

So that's -- that's the first point I would like to make.

Now, the -- the -- the next point I would like to make is this: You'll notice that under Criteria 3, P3, it says that "the stable complies with all City, County, and State regulations for stables."

Well, the -- I don't think there are any County or State regulations, but there are City regulations for stables; and those City regulations for stables are contained in the tourism ordinance. And if you'll turn to Tab 2, you'll see the tourism ordinance. And then if

you flip over to page 8 of 13 on Tab 2, I'm -- I'm sorry. Not 8 of 13.

12 of 13. There should be a highlighted paragraph on page 12 of 13 under its -- it's subparagraph 2. "Stables shall be located within walking distance of the -- of the medallion gate located at the corner of Church and North Market."

Okay. So what's my point? It's this. If you'll look with me now back to the -- the zoning map on the screen, the -- the corner of -- of North Market and Church is right here, and so what we know is that the City ordinance requires the stable -- the stables -- and we're talking about this is active for carriage stables, have to be within walking distance of the gate right there.

Now, although the ordinance doesn't define "walking distance," we find other places in the ordinance that refer to the ability of carriage companies to onload (SIC) and offload in -- on private property provided that it's within the Market District, which is roughly Pinckney Street to the north and Cumberland to the south and east -- East Bay to the east and Meeting to the west.

So I think it's fair to say that when City Council adopted this special exception ordinance for

carriages and the tourism ordinance saying that the -- the stables have to be within walking distance, that City Council's intent is that the stable has to be somewhere within the Market District.

And so, therefore, the interpretation of -- of the -- of the meaning of "stable," which goes to your question, Mr. Altman, the -- the meaning of "stable" and as -- as Mr. Batchelder points out, is "stable" referring to a physical location? Or is "stable" referring to a use? A form of use?

It is, after all, called a special exception what? A special exception "use." Not a special exception "building" but a special exception "use."

For example, if over here on -- I think this -- (Inaudible.) Right up here is one of those huge Ports Authority warehouses, by the way. They're not available either but if -- if we were to put a -- if we were to seek to put a -- a -- a stable in this corner with the Ports Authority blessing and let's assume there's a -- let's make it this corner; and let's assume that that were a residential district, you wouldn't measure the location of the stable from the building. You would measure it from the use.

The next point. Consider the context, again, o the enactment of the ordinance. What is available

within that area? What property is available in that area on which a stable could be located? Well, I can guarantee you there's nothing on Meeting Street. There's nothing on East Bay Street. I believe that this lot right here, this is the convenience store at the corner of Cumberland and State, that that may be a proper location; but that's been sold, or it's under contract right now.

Certainly nothing on Market Street would be appropriate. I would suggest that the only properties at the time that City Council adopted the ordinance and -- and defined the "stable" are those where existing carriage companies are located, which are clustered here at -- at Pinckney Street, Anson Street, and Hayne Street. There are several of them there. And at the time Carolina Polo was once at 45 -- was formerly at 45 Pinckney, by the way. And then -- then moved to 16 Hayne Street.

So what I'm suggesting is that in construing the stable condition, the 100-foot condition, what are you going to measure from? Are you going to measure from the building? You going to measure from the use? Like this is discussed a lot more extensively in my memorandum, and I realize this process is -- doesn't lend itself to studying lengthy memoranda, but there are

many more points that I address.

So -- so let's take a look at what Carolina Pol proposes to do -- (Inaudible.) Maybe I can use this now. Can you switch the --

MR. ALTMAN: I'm sorry. I'm going to do something that's really unusual. I've got something that's at 6 o'clock. I'm not stopping you here, but I've got to go ahead and make a telephone call so I can come back in.

MR. BARR: I apologize.

MR. ALTMAN: You don't -- you don't need to apologize. I'm here, but I will get in trouble if I don't make this call.

(Pause in proceedings.)

MR. ALTMAN: Mr. Barr, I apologize to everybody; and I apologize to Mr. Barr who I interrupted. Please continue.

MR. BARR: Thank you, sir.

There's no Court Reporter to help me remember where I was.

I think where I was pointing out is that the context when Council adopted the -- these -- this special exception on stables was focused on the area that I just pointed to; and, therefore, as we interpret "stable," it's not here like we're defining a stable

that's out on Johns Island. We're defining a stable that everybody knows can only fit within walking distance of that gate.

The -- as I mention -- as I mentioned, the Knoth family has been in the stable business -- in the carriage business for many years. One of the affidavits in the -- in your package there is from Bobby Knoth, and I'll just summarize factually what -- many of the things that he says.

In -- in 1990 he began Carolina Carriage Company and at the time held other assets. He was, unfortunately, put into bankruptcy in '95. He lost his companies. He reformed this Carolina Polo & Carriage Company in 1996. Now, all of that time he was operating from 45 Pinckney Street, this -- this same location.

In 1996 a competitor took his lease away from him, which is when he moved around the corner to 16 Hayne. Point to remember is: Carolina Polo has not been in this location for 17 years from today, but the use as a carriage company continued there. And as I explained to you, they're now in a position where they're having to move; and this is the only available location for them.

So -- so the -- I know what I was getting ready to do was to -- I pointed at the screen.

MR. ALTMAN: Don't even have to -- (Inaudible.)

MR. BARR: Okay. If you'll take a look at the property, you may have ridden by there before; but here's a front shot of -- of the -- of the property. To the left is the Andrew Pinckney Inn, and to the right is the Board of -- Bank of America parking garage.

There's a closer shot of the gate of -- of this property. Not only do you see there -- what do you see there? You see horse head silhouettes. Again, it's been used as a barn. Before that it was Gatch's Garage.

This is an interior shot of -- of the building. It -- it's quite spacious. It's about at least a half a time -- half as much more as large as where they were on 16 Hayne Street. There's a shot looking back out toward the front.

This is a shot from the roof. I -- I -- anticipating, perhaps, what you may be hearing from the Andrew Pinckney Inn, which is -- which is over on the right right there, that's the Andrew Pinckney Inn. This is the parking garage. The -- our -- our seller put this brand new roof on it in within the past five years. But after Carolina Polo left in '96, the roof deteriorated into terrible, terrible shape which caused -- (Inaudible.) Of problems to Mr. Varn's

predecessor, Andrew Pinckney; but it is a solid stable, beautiful roof right now.

Interestingly, this is the roof of 16 Hayne Street. This is where Carolina Polo is right now, and what you see there are two vents. There are more vents below here which exhaust air, which exhaust the -- the air from inside the stable to the outside air. To the extent that there's any concern about -- about ventilation affecting the Andrew Pinckney Inn and -- and when you hear from Sandy Logan, the architect, you'll hear that the stack for our ventilation system is to go right about in there, which is about the same distance from here to the nearest window as to there to the window -- nearest window but with much more -- much more refined system.

This is a shot looking south from 16 Hayne Street where we are. The point there is that that's the DoubleTree Inn so we've been operating across from the inn at this distance for -- since 1996. This is a shot -- FYI, this is what it looks like at 16 Hayne Street in terms of its dimensions compared with what you see there or what we'll be able to move into at 45 Pinckney Street. It's -- it's absolutely ideal, and Sandy Logan will describe that to you.

Now, as Mr. Batchelder explained, the -- the --

the surveyed measurement from the corner -- the nearest corner of the building to a residential district is this line right here, which is 93-and-a-half feet, just -- just shy of the required 100.

So here's the proposal. Here's the plan. We've -- we've created a Master Deed, and the Master Deed is creating two units. Unit A here. Unit B consisting of this. And unit -- Unit A will be used as a stable. Mr. Logan will present his plan to you, but there will be six -- six stalls 12 by 12 which is in compliance with the current care and treatment of horse -- (Inaudible.)

The front unit, Unit B, is restricted against use as a stable. It cannot be used as a stable by -- by what will be a recorded covenant. The area right in there is a general common area where restrooms will be installed. This is a customer waiting area where customers will wait and onload (SIC) and offload within the building.

Again, I'll get the specific criteria under the ordinance; but you might remember the requirement is that the -- the carriages be able to be unloaded and offloaded off of the public right-of-way as well as tack. So the -- the tacking area will go on in there as well.

Mr. Logan will address this a little more definitely. Actually, these drawings are revised and -- and Mr. Logan will be referring to Tab 10 when we get to the ventilation of these -- (Inaudible.) And -- and in your -- in your book.

So I'm not ready yet, Sandy. Just give me a few minutes.

MALE VOICE: (Inaudible.)

MR. BARR: Yeah, yeah.

So let's go back -- let's go back, then, to Tab 1; and let's take a look at Subsection B stables. The stable is not located -- the first criteria is that "the stable is not located within 100 feet of any residential zoned district."

I don't know who will get which one, but if you look at -- if you look at the -- at the plat that I have on the -- on the screen right now, which is the plat land for the condominium, this unit is -- the whole area is 43 -- 435 square feet, and one is 11 by 12 and the other is 11 by 13. One of them will be the office of Carolina Polo & Carriage Company, the business office. There will be desks, chairs, telephones, computers, a receptionist in one office.

The other office will be the office for -- and I haven't said this yet; but Richard Knoth was recently

awarded the contract by the City for the equine sanitation, you know. The folks who go around and spray to -- to keep the streets clean after the horses pass by. So the other office is going to be Richard's office.

This will be an ingress and egress easement whereby the horses go to and from; but tell me, how could you possibly -- how could you possibly measure the 100 feet from Richard Knoth's desk there? Or Bobby Knoth's desk there? It just doesn't make sense. It -- it doesn't pass the sense of logic at all.

Now, granted, the horses -- the horses and carriages will be going in and out of this egress, but let's take another look at -- at another section of the tourism ordinance. If you go now to Tab 2 and go to page 8 of 13 under Tab 2.

Although "stable" is not defined in the zoning ordinance, there it says "a 'stable' shall mean the barn where the animals are kept and a 'stall' shall mean individual space within the barn where each animal is kept."

Okay. So where is the animal is going to be kept here? The operative phrase being where are the animals being kept? Where do they eat and sleep? And they're going to be kept back in Unit A. They're not

going to be kept in Unit B. They're not going to be kept in the common area.

So that the only conclusion that can logically be reached is that when City Council enacted a special exception use, emphasis on the word "use," they intended that these criteria relate to that use but not necessarily to the structure in which it's contained.

Now, the other criteria under -- under -- or back to the zoning code. The other criteria Mr. -- I don't know that there's any great issue as to them. We have our Certificate of Appropriateness, but let me -- let me point something out about that.

Under the -- under the -- under the Tab 1, again, going back to page 3 of 6, it says, "The City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable." And they're using the word "stable" there. But as Mr. Batchelder said, what the issue is the Certificate of Appropriateness for the carriages, the manner of using the business.

Again, they use the "stable" there, City Council did, in the context of "use." "Stable" is "use." "Stable" refers to the "use" not to the physical structure. "Stable" complies with --

MR. ALTMAN: I've got a question for you.

MR. BARR: Yes, sir.

MR. ALTMAN: I -- I've glanced through here, and I'm sure that there's a lot that we're missing here. But I'm -- I'm looking at Tab -- Tab No. 3.

MR. BARR: All right.

MR. ALTMAN: And it's Item No. 6 at the top, it says, "Although not defined in the zoning ordinance, 'stable' is defined in the franchise ordinance which -- (Inaudible.) By franchise the operation of animal drawn vehicles, the purpose of tourism is as follows: 'Stable' shall mean the barn where the animals are kept."

I -- I'm having a hard time with this. That's why I asked the question to start off with. Help me out with this because it looks like there's a conflict here as far as "use" and this definition here that -- that I just saw one time.

MR. BARR: I don't -- I don't disagree -- I don't disagree with your question, Mr. Altman; and I do agree that the -- and I've read that to you myself; and that's the one I just referred to, as a matter of fact. It does there refer to "barn." But I would suggest that "barn" can easily have been the word "place." Once again, it's just the operative thing is where the animals are kept. The animals are not going to be kept in these offices.

The animals -- the animals are not going to be kept in this common area. That's my point. My -- my point is: Think of the intent. The intent is to take the animals where they're eating, sleeping, and defecating, is to take them, the animals, where they're doing those activities. "Being kept" is to take them at least 100 feet away from the nearest residential district. This distance from there to the residential district is 119 feet.

It's -- it's -- it just has to be viewed commonsensically. Mr. Altman, my answer is I can't reconcile that word. I cannot reconcile that word, other than that it's not in the zoning part. It's in the tourism part, but I realize I can't have one and not the other. I recognize that.

But -- but what your job is is to try to reconcile the hole; and by reconciling the hole, that's why I said, you've got to look at the entire context into which -- in which this was enacted. It was enacted, again, with reference to this. "This" being you got to find a place for a stable somewhere in there; and then it's got to meet the other criteria.

Well, let's apply some common sense to that. That's got to be the answer to it. Now, if somebody wanted to vote against this and wanted to hang their hat

on something, maybe that's what they'd do; but I don't think -- respectfully, I don't think that that would meet the tests of logic and common sense. Aside from the fact of its impact on the Knoths, I just don't think it would fit; and I hope I've answered as best that I can.

Thank you. I was reviewing the other criteria, then I want to introduce some other people.

The -- the -- the compliance with City ordinances -- (Inaudible.) And Sandy will talk about that in just a minute. The site plan for the cleaning and loading, tacking areas, you've actually got -- I think -- I think the site plan -- I don't know that there's one -- we didn't send one in for the overhead. I think you've got it in the application on these blue drawings here, and I've got some more of these applications.

But that's fundamentally going to be the site plan which shows -- and I've shown it on the plat plan as well where the tacking and cleaning is going to happen. Refuse has been addressed, which gets us now to drainage and ventilation.

So let me turn the floor over now to my friend Sandy Logan who --

MR. ALTMAN: Before you do that, Mr. Barr,

is there anybody on the Board who has any questions for Mr. Barr?

FEMALE VOICE: Yes. So I guess my thoughts are similar. So your -- your contention is, then, that the building is not the barn and the stall.

MR. BARR: I'm saying --

FEMALE VOICE: The barn --

MR. BARR: I'm saying that we've got a barn within the building. I'm saying that we're going to create a barn within the building.

FEMALE VOICE: Being the space that -- or being the place that --

MR. BARR: The place where the animals are kept. We're not going to keep the animals in the offices or in the -- in the public waiting areas. The animals are going to be kept in the Unit A.

And, again, it goes to the question of what does "stable" mean? Does it refer to a place under the zoning piece? The zoning -- does "stable" refer to a "place" or does it refer to a "use"? And I'm suggesting under the zoning act -- under the zoning ordinance, it refers to a "use." The ordinance itself refers to "special exception use."

MR. SMALLS: I have a question.

MR. BARR: Yes, sir.

MR. SMALLS: Under P on 3 of 6, it states that -- (Inaudible.) Detailing how refuse can be handled in accordance with the City, County, State, and Federal regulations.

MR. BARR: Yes, sir.

MR. SMALLS: Did you address that?

MR. BARR: I sure can. I -- I really -- does the -- did the members of the Board get a copy of the application?

MR. BATCHELDER: I gave a couple copies --

MR. BARR: There are a couple of them out there. You'll see -- you'll see here that we have a contract -- I think it's the last exhibit on here. We have a contract with Carolina Waste.

MR. BATCHELDER: It's not in here. I have it right here.

MR. BARR: Okay. This is -- this is a copy of the contract with Carolina Waste Services, which -- which handles our refuse now because we're right around the corner. It's -- and so Carolina Waste is going to be -- is going to be handling the refuse; and they'll just keep handling it, and the Department of Public Service has reviewed and approved that as -- as Mr. Batchelder confirmed.

MR. ADAM BARR: In the photo --

MR. BARR: Beg your pardon?

MR. ADAM BARR: Photo 16 -- (Inaudible.) Shows the container.

MR. BARR: It does?

MR. ADAM BARR: Yeah.

MR. BARR: Adam points out that we've got a photo. The container is this right here? Is that right?

MR. ADAM BARR: Yeah. That goes back -- (Inaudible.) Picked up every day.

MR. BARR: And so that's picked up every day.

MR. ADAM BARR: Except Sunday.

MR. BARR: Except for Sunday. Yes, sir. Now -- now -- and what you're going to hear also through Mr. Logan and -- and -- and another gentleman who will -- we'll describe for you a product that we're using is that we -- Darren Akhurst is also going to speak to you. So let me mention this to you.

But -- Richard, when was it we started using this --

MR. RICHARD KNOTH: In the spring.

MR. BARR: Last -- last spring Carolina Polo was introduced to a -- a -- a waste treatment product that will be described to you in greater detail

by its manufacturer, which has made a substantial difference in the -- in the control of odors both at this location and, as Richard will speak, in his work around the City.

But let me sit down and -- and I'm going to ask Sandy Logan to discuss with you items -- the items relating to the drainage and to the ventilation.

Sandy, thank you.

MR. LOGAN: That's okay.

MR. BARR: Yes, sir.

MR. LOGAN: That's the building. I'm Sandy Logan, architect for the project. (Inaudible.) Reminded of where it is now.

This -- this is the half size of what we're moving into. Really there are two main concerns with any kind of a stable use. One is manure and its disposal. One is ventilation. And I'll address both of those as to how we're going to propose to -- to deal with it.

Solid waste, so you know, is -- manure is defined as -- (Inaudible.) People matter -- (Inaudible.) The straw that's contaminated from those things that gets shoveled out of the stalls, and it's then placed in a holding container of -- of the appropriate size.

The -- it's -- it's incredible to me but that each horse produces about 51 pounds of manure a day. And so the total output for these six horses is going to be 300 pounds plus; and in terms of volume, that's not what we have -- what we have allocated to in that -- in that plan is about twice as much as this; and this apparently, according to the owners, gets half filled every day. And so we have two of those.

And what we don't have at the present are we're starting to use is this spray and pellets which will -- it's hard to believe -- neutralize those odors -- (Inaudible.) And the -- they will be treated. Every time new material is put in, they'll be treated with this product.

And there will be -- collection will be where they're rolled out to the front of the building and still within the building. The truck will back up, back in up into the building, not out in the street. It won't be ever out on the street at all, and then it will be brought back to the back of the building.

The back of the building is where these are -- are contained, and I wish you could refer to the plans but -- (Inaudible.)

MALE VOICE: Sandy, which ones do you want?

MR. LOGAN: Yeah. (Inaudible.)

As you see here, that -- (Inaudible.) The back of the -- the very back of the building. These are -- these are six stalls, and that's sort of a demarcation line between the common area and this area. One is tack area. Other is tack -- (Inaudible.) To go upstairs to where you drop the feed in some tubes overhead into the trough.

So there will be -- collection of this stuff will be taken up as -- (Inaudible.) They say it comes every day except on Sunday. Within the building and not out in the street.

That leads to -- that's -- that's solid material. What we then move to is drainage, which presents a -- a double issue of having to not only get the wet material out as fast as possible but also to get it and into the drains and carry it to the sanitary sewer but also to collect it before it gets spread out all over the -- over the -- (Inaudible.)

To that effect, we have located the trench drains at the -- along each of these two lines where the -- (Inaudible.) Goes to that point. It's collected in the trench drains this way in the trench drains and meet in the middle, and they come out towards the existing line that's out there.

And somewhere between here and where -- where it

exits the building, there will be a device called a separator which separates -- you've heard of all the water separators that you use with parking garages to separate gas and oil from -- from the water before it goes back into the -- the City sanitary sewer.

This is pretty much the same thing except it's to -- it's to trap the particulate matter, the stuff like the straw and anything that -- that got through before being picked up, small -- small matter, fecal matter. And that will, then, trap all that, get cleaned out probably twice a day and allowing just the liquids to -- to -- which include water, which -- which the horses are washed down with to go out to the sanitary sewer.

This -- this plan has been accepted by -- who's the gentleman at CPW?

MALE VOICE: John Bellan.

MR. LOGAN: John Bellan as being -- as being adequate. And more than adequate, being fine. And we have -- feel we need to go the extra mile and put this separator in there as well so that before it even reaches the collection point leaving the building, it has any -- anything that could clog this -- this -- the sewer or gum up the works, as he -- as he used the word, is removed before; and it's totally liquid as it goes in

the -- the -- the sanitary sewer.

Ventilation is the other -- is the other issue. The worst time for ventilation, of course, is in the summer where it's at the hottest; and the ventilation is more really for the comfort of the horses rather than humans. There are -- there are a lot of people who build stables out in the country who build them like houses which -- which are airtight, and you don't want to have a building of this sort being airtight. You want it to breathe.

And the amount of air required to -- to keep horses happy is about -- you need about 8 complete air changes every hour; and that means one every seven minutes of the whole volume, which is 44,000 cubic feet. That has to be changed out that many times an hour, and there's a very simple way to do it.

You -- you place these -- these fans, which are in yellow there, one over -- one over each stall and a couple in the middle and then one over the -- the bins for the collection, and they go to a point in the back wall where they are -- (Inaudible.) Into a ceiling pipe and then they -- it doesn't show in this earlier plan, but where we have it now is in this other material.

MR. BARR: It's in Tab 10.

MR. LOGAN: Okay. Tab 10 shows the revised

and -- (Inaudible.) Where it goes and -- (Inaudible.) Shows -- shows the plan -- (Inaudible.) Come all the way back here to the corner to get the -- (Inaudible.) Up in this corner right here, furthest away -- (Inaudible.) And -- and have at the top of that, once it leaves the building a container which is -- is this box really needed for a system-boosting ventilation up to where it doesn't -- it's wafted around according to the prevailing breezes.

And the filtering of that is really a dilution method where the top of this box, fresh air from the outside is drawn in at the same time as this air is going out the top of it; and you put an extra heavy pump motor in to accelerate that air fast enough so that it goes out straight up for about 20 or 30 feet before it's even allowed to -- to dissipate with the prevailing breezes so it's up high enough.

That's better than trying to run the stack 30 more feet up in the air, which would be virtually impossible to support not having access like that road -- (Inaudible.) Hotel arm that allows us to attach it to the building, or vise versa, to the parking deck so we would have to go out to support -- (Inaudible.) That can't -- that can't happen.

So in order to get that air up above the highest

window next door to the -- to the inn, put an extra -- extra volumizer on this to where the -- the -- it shoots out in a steady stream high enough to where it can't -- it can't reach the -- (Inaudible.) It's also as far away as we could possibly get on that structure.

Now, the -- the air for the filtration to bring in to create all this, there's a formula for that. It's 10 percent of the volume required by the air changes; and the size of the opening for an intake for that air is half the size of the front gate that you see, the arched gate there, which is not closed. It's -- it's got -- it's grilled. And so that that 10 percent is exceeded by -- by doubling the amount of area that can be brought in and brought through the building through these ventilation fans so that by the time it exits, it's -- it's a desirable amount of -- of breathing to -- to pull the air -- (Inaudible.) Through the whole building.

And we are in contact with an engineer from Cullum Mechanical with whom I've consulted on this very issue and will be engineered further as -- as the project goes along to make sure that it's exactly what's needed.

As -- as a for instance, we're needing -- we're needing total volume change every seven minutes. That's

about 14 times as much as you get on any filtration of a normal house if there's cracks in the windows, cracks in the doors. So it's -- it's a ton of them, but it's not excessive. It's just much more than you experience in a house. That's why barn owners today who build to residential standards get in trouble with their air. They just go -- (Inaudible.)

So we have a volume created at the very front because we have to mechanically induce this because normally, you'd want it to come from all sides of the building, which out in the country you can do. But here we've got three walls blocked off that are -- that are, as you can see -- (Inaudible.) There are three walls back and two sides where no air can come in. So we're relying totally on the front for -- for that volume of air to be brought in, which is a bit more than adequate. It's -- it's about twice as much as you would need.

So that is basically the methodology to -- to reduce this and -- and the -- (Inaudible.) Up on top has been -- the dilution method has been shown to be even in -- (Inaudible.) To be 50 percent effective.

And we're already treating this stuff with these pellets that you'll hear about next and spreading before it even leaves the building. (Inaudible.) So we are taking an engineered approach to the removal of this

odor, which is probably the most objectionable thing that a person can imagine about a facility such as this; and this will be engineered to a -- fairly well to -- to see that that does not happen.

MR. ALTMAN: Thank you very much. Any questions for Mr. Logan?

(No response.)

MR. BARR: Yes, Mr. Chairman, I'd like now to call on Richard Knoth, who is the son of Bobby and Sally. Richard -- Richard works principally in the company; but as I suggested earlier, recently was awarded the contract for the street cleanup. And he's going to talk to you a little bit about this -- this product that he's using for the dampening the smells; and then he's going to introduce Darren Akhurst, who's also present.

MR. RICHARD KNOTH: For the record, my name is Richard Knoth. Thank everyone for your time.

I've worked with horses my entire life which means I've been cleaning up after horses my entire life. Cleaning up after horses in an urban environment is also a lot of work. I've through the years used hundreds of products probably in hundreds of different applications. We've been very successful and been working hard at it.

I met Darren Akhurst, who you'll meet in just a

moment, in the spring of 2012. He approached me with his product. He primarily has worked with hog and chicken waste, and he came to us and suggested he had a product that could potentially help us.

It was great in many ways. One in his green initiative, which we all are -- (Inaudible.) To be as green as possible. His products are all naturally derived. So I said, "Okay, Darren, we'll give it a shot."

To say that I was surprised at the results would possibly be the understatement of the year, of the century for me. It's amazing how well the product worked. We use it in our barn. In about July I called a meeting with Darren and asked him to come to the city to talk with me; and the reason I wanted him to come was I was looking at the equine sanitation project, which these are the guys that clean up after the horses on the street.

I wanted to see if Darren could make this product in a liquid form. The form that we use in the stalls is a powder form which helps with the absorbancy of any liquid as well as neutralizing. Basically what it does, the product, when it makes contact with ammonia, it lowers the pH, which greatly reduces or eliminates the emissions of odors or ammonia.

Darren said, "I think I can make a liquid that would work for the sanitation contract"; and I cautioned Darren. I said, you know, "The streets of Charleston were once my playground. We're going to make it my office if we take this product out to the streets." And that's something I take very, very seriously. The responsibility I don't take lightly.

Well, we moved forward with this product. It's worked fantastic with the sanitation. We've gotten some -- some great feedback from residents. I just spoke with Danielle Dillahey. Some of you may know she was a tourism manager for the City until last week. She just actually took a position with the Citadel Athletic Department. She was going to try to come tonight, but she couldn't because of her new job. Wonderful things to say about it.

I'm going to -- Ashley Austin, who's standing right here, she works in the -- in the market. She's going to say a few things about her -- I guess her testimonial of the product. She's a basket maker right on the corner of Church and South Market.

If the Board sees fit to hopefully let us continue our livelihood and move forward at 45 Pinckney Street, that is my -- will be my -- our office. I don't think any greater spotlight could shine on the

sanitation company to have a clean-smelling operation, clean-smelling office. To not have that would be, in my mind, comparable to a painter or a house painter that lives in a house with paint chipping off the side. It would be a testament to me personally, my life and my -- and my work ethic.

So hopefully you guys can evidence to that. This is -- Capers, do you want Ashley to speak for a second?

MR. BARR: Well, let's -- let's let Darren talk about his product and then introduce Ashley. The point of this is that we're not here to sell Darren's product but in terms of -- in terms of ventilation -- although Darren is. But in terms of the ventilation requirement under the special exceptions conditions, this product will be -- will be used to treat the effluent inside the barn when it's deposited in there and put in the boxes.

And then Sandy's already explained to you the exhaust process and the -- the -- the special exhaust treatment before it's vented into the air.

But, Darren, if you would speak for a few minutes about what your product does, yeah.

MR. AKHURST: My name is Darren Akhurst. I'm the owner and chief chemist of US Environmental

based out of Walterboro, and I am the inventor of the patent-pending product called OdaLock.

But I guess I should start off by saying that my company, we have -- our background is in dealing with large-scale intensive agriculture, particularly what I call CAEO or Concentrated Animal Environmental Operations. And we have contracts with Smithfield Corporation in North Carolina and Virginia handling their manure -- manure operations. My background is basically in dealing with animal waste.

OdaLock, the product, is -- I want to say what it's not to start off with. It's not fragrances, or it's not masking agents or anything like that. OdaLock is a product that removes ammonia or reduces ammonia volitazation based on sound chemical absorption. And it does that basically, Richard mentioned it before, animal waste, whether it's manure or urine, the nitrogen contained in them is either -- it typically either uric acid or urea. And when it leaves the animal, it rapidly turns into ammonia. That's a hydrolysis reaction. And then that ammonia can be released to the atmosphere by volitazation.

A couple of things can affect that. One of them is temperature, and the other one is pH. And as you well know, the ammonia smells at worst during the

hottest spring and summer months. Summer months. So what the product does, the product is -- it's naturally derived. It's a -- based on a mixture of cationic inorganic salts, and it lowers the pH; and by providing additional hydrogen ions, it chemically transforms the ammonia into an ammonium. And ammonium is not atmospherically volatile. It cannot be released. So that's -- that's fundamentally how the product works.

I just wanted to finish off by saying that the product has been independently tested by the University of Delaware. This is in compliance with the US Environmental Protection authority. It's not regulated under the FIFRA Act. It's in compliance with the Florida Department of Environmental Protection, and it's also in compliance with the requirements of the South Carolina Department of Health and Environmental Control.

MR. ALTMAN: Thank you very much.

MR. BARR: Darren, thank you for coming.

First, I propose how this does dampen the odor. We're very pleased to have with us Ashley Austin. Ashley is a basket maker; and as I understand it, Ashley's station is -- is a favorite spot for horses to stop and --

MS. AUSTIN: Hello.

MR. BARR: -- produce substance. So Ashley

is going to talk a little bit about her observation of this product.

MS. AUSTIN: Hello, guys. My name is Ashley Austin. I was working in the market since I was 12 years old. So it's just 15 years now.

I am located right on the corner of Church and South Market. The horses pull up every morning. That's their spot.

Since Richard came up with this liquid, it's just a little spray. It doesn't -- first, it was the Pine-Sol scent, which everybody hated. Now they have this liquid spray. It's just a little bit of spray, and you smell nothing. You smell nothing, not -- nothing. I mean, there's no -- like he said, there's not a fragrance. You don't -- you smell nothing. It actually works wonders. I'd say we don't have any problems in the market. From sunup until evening, there's nothing. So the product definitely works. It definitely does.

MR. ALTMAN: Thank you very much.

MR. BARR: With that issue, I rest my case.

MR. ALTMAN: All right. You're finished with --

MR. BARR: I'm concluding right now. I just ask Bobby to say a few words. He's the patriarch here and --

MR. BOBBY KNOTH: Thank you for taking time wanting to listen to my plea to stay in business. We've been doing this for about 23 years, and we've had our ups and downs, like any business; but we've always tried to respond in a responsible way.

And I think the fact that the City's entrusted my son, how he -- the company, sort of one in the same in a way, with keeping the whole peninsula clean and hopefully odor free, we ought to be able to deal with that in our barn as well.

And so anyway, thank you for your time. If you have any questions of me, I'd be glad to answer them.

MR. ALTMAN: Anybody have any questions for Mr. Knoth?

(No response.)

MR. BARR: That's our presentation.

MR. ALTMAN: Does anyone here -- besides the presentation, anyone here in favor of the application that might want to speak? If not, we'll go to opposition.

MALE VOICE: I have a question. For Mr. Altman, you -- you -- you're opposed --

MR. ALTMAN: Why don't you address it to me?

MALE VOICE: Okay. Mr. Altman, I'm sorry.

(Inaudible.) I have a question. I'm a long-term resident, local.

The first thing that you had said that I think the easement from the 100 foot you were concerned about. The -- if the -- the building's zoned commercial or the building -- the two offices were, let's say, hypothetically two -- maybe two contractors, subcontractors, would that -- would that ease -- would that 100-foot easement be considered if they weren't to the carriage company?

MR. ALTMAN: I don't think we can answer that question for you right now.

MALE VOICE: Okay.

MR. ALTMAN: Okay. That's not what's before us, and generally we don't go ahead and venture into areas where we're not required to venture.

MALE VOICE: Okay.

MR. ALTMAN: Okay. In opposition. Yes, sir.

MR. JOHNSON: Good evening, Mr. Altman and the rest of the Board members. My name is Wilbur Johnson. I represent the Andrew Pinckney Inn. Steve Varn is here for the Andrew Pinckney Inn, Barry Hutto, Jack Versace.

Now you know, as we see this, it's pretty

simple. We oppose this application for a special exception; and our opposition is not personal, of course. In -- my client has run his inn for a number of years down in that location. We've had this problem before, as you heard from the earlier presentation.

There have been stables there before. We've had this odor problem before. We've had these drainage issues before. So -- so with this special exception application, actually as you probably know, before this, there was a zoning variance application that had to be withdrawn or didn't go forward. And so now what we have, again, is an effort to come back with a special exception application.

But nothing's really changed, if you will, about this application. We still have the same issues that we had with the zoning variance application. My client, the Andrew Pinckney Inn, is still going to have the same issues that we had before. Now, there's an effort made in this application, as you've already heard, to so-called condominiumize (SIC) this location at 45 Pinckney, and I'll address that in a second.

So once you begin by making note of the question that you've already addressed, and I think you put your finger on one of the major problems with this particular application; and that is the P1, 100 feet problem. You

can't get around that problem. You can't get around that requirement by any sort of verbal or legal ginacities.

It says "stable." It means "stable." It means the "building." It does not mean the "use" no matter how many ways or how many times, how often you try to pitch that. It means what it means.

If you -- if this Board were to accept that logic and grant an exception based upon that kind of logic, you'd be opening the door to a plethora of problems for this community. You'd have applicants coming before you who have tucked away some use in a far corner of a building, and that that met the criteria because you had some little spot in that some far corner of a building and that because it's so far away, that you've got to look at, quote, use, and not the building. And so, therefore, the building would be within or would meet this 100-feet requirement.

I submit to you that's not rational. That's not logical. That could not be what the City Council intended. The special exception requirement of P1 says what it says. 100 feet from the stable. The only logical interpretation of that is the building. Otherwise, again, I submit to you you're opening a Pandora's Box of problems for this community if you

accepted this logic that what's -- what's really meant is not a building but a use. I submit to you it doesn't make sense.

We have a number of -- of problems with this particular application. I'm going to address a few of them. I'll come back to the 100-feet issue again; but we have a couple of fundamental issues I want to address beforehand, before I get to this matter of use or the 100 feet again.

First, you have before you what appears to us to be essentially a legal fiction is what we have. And let me -- let me tell you or show you from my appropriate space for -- (Inaudible.) What I mean by that.

I'm going to hand up a little package that I prepared, and I've given a copy of this to Mr. Barr; but what you have is essentially an effort to really create a legal fiction. What is ostensibly before you is a condominium or an effort to condominiumize (SIC) this building; but I submit to you that under the law and under State statute, which you'll find at the very first document in this submission, no condominium exists.

If you look at page 2 of this document, second page, there's a section that says, 21 -- 27-31-30, and it talks about how you establish a horizontal property regime; and it requires the filing of a Master Deed.

Admittedly, no Master Deed has been filed. So you don't have -- in essence, you don't have anything before you tonight. You do not have an entity, certainly not a legal entity, before you that you can pass upon in terms of this application for a special exception.

The fact of the matter is under the law, it simply does not exist because no Master Deed has been filed. In the absence of the filing of a Master Deed, this thing could be changed tomorrow. You could have some master -- if you ruled on this tonight in the absence of a Master Deed, you could have a filing three days from now or a filing two days from now or filing two weeks from now which totally changes everything that you've heard tonight.

So, in fact, you do not have a legal entity before you upon which you can make a ruling as to the legitimacy of this application for a special exception.

Secondly, even if you accepted the reasoning that there is, in fact, a legal horizontal property regime before you tonight and we tell you and we believe that there is not one, you don't have a proper unit within that horizontal property regime -- (Inaudible.)

What we are told is that you have two units. One unit is "A," apparently this unit. And another unit down here is "B." That is the scheme by which this

application comes before you. The ostensible separation of the units. I submit to you, once again, by operation of State law, "A" -- "A," the unit that -- that is to be used as the stable, is not a proper unit.

If you'll look at, again, the submission I passed up to you on the front page, 27-31-20 Subsection A defines what a proper unit of a horizontal property regime is. To read that language that's highlighted, it says, "That a proper horizontal property regime unit must meet several requirements, one of which is that it must have direct exit to a public street or a highway or to a common" -- this doesn't have it.

Doesn't have direct exit. It simply doesn't have it. So even if you could get past -- even if you could get past the legal requirement for a horizontal property regime, that is the filing of a Master Deed, even if you accepted that, you still couldn't get past the fact that "A" is not a proper unit.

So what we really have under the law, the operation of law, what we really have, even if you accepted that this was a proper horizontal property regime, you really only -- you only have one unit there. The whole scheme, if you will -- I don't mean anything nefarious by that. The whole idea of this application is built around the logic that "A" is far enough away to

meet the 100 yards (SIC) requirement. 100 feet. I'm sorry. Requirement.

If you don't have -- "A" is not proper, and you don't have a unit in "A," then what you really have is just one big unit here that's been already conceded does not meet the 100-feet requirement. It's already been conceded. So it does not, and you can't get around that. Can't get around that 100-feet requirement by creating what is, in effect, a legal fiction. Unfortunately, that's what we have here; and it's just not right.

It's just not the way that we believe the City Council intended this special exception ordinance to be applied. This is a way -- this is a way -- this is an effort, with all due respect, to circumvent the ordinance. This is an effort to circumvent the application of the special exception rule. We don't think it's right. We don't think -- we don't think that this is the way things ought to be done, and we don't think that you all ought to accept this application. This simply is not right.

Now, I've included in my submission to you, there's a letter you will see in here dated April 8, 2013, that I wrote to Mr. Batchelder. And I was pointing out to him what I just said to you. I included

a copy of 54-206 Section P. And I also attached to this letter a copy of the writ of -- of the residential parking district, which you will see.

This clearly shows the proximity of 45 Pinckney to the residential zone district. It can't be any more clearer than what is shown on this map; and, again, the special exception ordinance has to mean what it says. It has to mean what it says. Otherwise, we open a Pandora's Box. You have every Tom, Dick, and Harry coming in here and saying, "Well, no, my use is that far away. My use is that far away. My building may be right here, but my use is in the backyard somewhere or is on the top floor way back in the corner." Just can't be the way the City Council intended this ordinance to operate.

Logically it just can't be the way that this is supposed to work. We believe -- my client and I believe that this map can't be any clearer. 45 Pinckney is clearly -- clearly does not meet the 100-feet requirement. Now, we have even more -- for use of my client anyway, for the Andrew Pinckney Inn, we have an even more fundamental problem, if you will, especially with respect to the kind of business that my client runs.

And this is an inn. This is a hotel for people

to stay and rent rooms. You all know that. So this is a people-oriented business; and this business operates like any other hotel, inn, or other business. It operates by word of mouth in many respects. And what people say about their stay here at the inn or their stay in the inn and the conditions about that stay and the conditions surrounding that -- surrounding that stay means a lot to the Andrew Pinckney Inn and my client.

So we have a real fundamental issue I want to point out to you. It's on this particular slide. This is the slide you were shown earlier, and it's looking into the front of this so-called barn. This wall right here. This is an Andrew Pinckney's inn -- this is Andrew Pinckney's wall. It's my client's wall right here.

These supports, what I call supports or beams or wood structures here, they belong to 45 Pinckney; but there's nothing, not no single thing between these supports and my client's wall. Now, there's a wall over here at 45 Pinckney; but there's nothing here. All we have is a support here. We've got rooms right up here that people rent right above this wall.

We've got rooms that are here. Invariably, you've got horses in here. They're going to urinate and do whatever else animals do. This is a concrete wall

that is porous. This is a porous wall. This is my client's wall. I can't say that -- I can't emphasize that enough. This is my client's wall. Porous concrete wall. Odors, the smells are drawn right into this wall, right up into the rooms in the Andrew Pinckney Inn.

In short, this is a design issue. This is a design issue under P7 of the ordinance. This is a building design issue that has not been addressed. It cannot be addressed, at least as this present application is -- (Inaudible.) It doesn't treat this at all. There's not any mention in the present application of this problem for my client. Rooms right up here. My client's customers are going to smell the odors.

Invariably, inevitably, it's happened before; and it's going to happen again. Again, this is a design issue. It cannot be addressed. For this reason alone -- (Inaudible.) If you wanted to, the legal issues is what the -- (Inaudible.) The legal issues --

(Inaudible.)

MR. JOHNSON: Thank you. I just wanted to say in closing on this particular issue that even if you put aside all of the questions about whether or not this is a, in fact, a condominium, we think it's not. But, in fact, you have a proper unit, if "A" is a proper unit.

And by the way, the horses -- the only way to get in and out of this barn is to go through "B" to get to "A." Or to get out is to come out of "A" through "B." And, again, I think what this points to is -- is sort of the fictionalization, if you will, of this application. Because really what -- what we have is really one big unit that a -- a legal fiction is being created to try to show some sort of separation that "A" is far enough from a residential zoning district that you ought to let this slide.

But we can't -- the horses can't get out unless they come through "B," and they can't get in unless they come through "B." It's all the same, in fact. And we submit to you that you ought not to accept that. So beyond that, this problem hasn't been rectified. It hasn't been rectified, and it's going to create no end of issues or problems for my client; and with all due respect, my client's business is going to be threatened. My client's business is going to be hurt. I don't know how he can stay in existence with this kind of thing going on.

Now, I have a couple of other issues. I'm not going to take up too much of your time; but this matter of the Certificate of Appropriateness is another concern that we have that we'll bring to your attention now.

The application says that we don't need another Certificate of Appropriateness because one has already been issued. It doesn't seem to me, again, that this is what the City Council intended. It doesn't seem to me -- with all due respect, I disagree with the City Staff on this point. The Certificate of Appropriateness cannot simply refer to the carriages. It defies logic that that would be the case.

In the context of this ordinance, the Certificate of Appropriateness has to refer to the place where a special exception -- where you are being asked to apply the special exception. It's included right there in P2. It simply cannot mean -- it defies logic to read that requirement to mean just the carriages. That you get a Certificate of Appropriateness at one time in your history for your carriages, that you can move them all around. Don't have to ever get another Certificate of Appropriateness.

Certificate of Appropriateness has, to me, a place where you are operating the business. In other words, we believe that you've got to get -- you've got to obtain another Certificate of Appropriateness for 45 Pinckney Street. That's the only logical reading we think of this special exception requirement; and since there isn't one in this application or submitted with

this application, the application fails P7. I'm sorry. P2. The application fails P2.

I want to wrap up because I know we've been here a long time. I'm going to let my client speak. There may be others in the room that want to speak about this particular matter, but I want to just point out to you the impasse that this operation will have in this particular location.

I included in my submission some photographs. There is a part of the special exception ordinance that talks about P4. It speaks about impeding traffic flow. You can't get around that issue. Invariably these operations are going to take place in the right-of-way impeding traffic flow. These photographs which are -- were taken very recently show that. Each and every one of them. That's the nature of this beast. It is going to happen. It has happened, and it will continue to happen. For this reason, it fails the requirement of P4.

I mentioned a moment ago -- and I'll close on this, at least for the moment. I'll also point out to you that there is a -- a letter included in my packet from the neighborhood association talking about the impacts of this operation. Well, I'm here tonight really on behalf of the Andrew Pinckney Inn and my

client because this operation is going to have a particularly deleterious effect on those operations on my client's business.

The owners, which I pointed out to you, they talk about these ventilation systems and fancy designs and that sort of thing. We know how this works. We know no matter how many vents you put up, those odors are going to come over to the Andrew Pinckney Inn. The smell is going to come right through that concrete wall up to the rooms. The rats are going to be there as they were previously. Other rodents are going to be around, as they were previously. Those impacts are going to be there.

And my client is going to see that every day. My client's going to look at TripAdvisor or one of those online activities that we all know about, and we all read and we all see from time to time. What he's going to see, what's going to be on there, "I had a miserable stay at the Andrew Pinckney Inn. Couldn't get to sleep at night because the horses were kicking the walls. Couldn't get to sleep at night because the odor is coming up right in my room."

That's the impact it's going to have on my client and my client's business; and for that reason, and for the reasons that this application does not meet

the requirements of the special exception ordinance, we'd ask you to make that decision to deny this application.

Thank you.

MR. ALTMAN: Thank you.

I'm going to encourage everybody -- we're going on two hours here. Okay. And -- and all of us have been at work all day, and I don't want to go ahead and cut anybody off; but see if you can go ahead while you're waiting here to organize your thoughts and be as succinct as possible.

Thank you very much. Mr. Varn.

MR. VARN: I'll be very brief, Mr. Chairma and Board members. Steve Varn is my name. I'm owner of the Andrew Pinckney Inn. Also did the historic renovation of the City Market, and have been Chairman of the Market Association, worked on the Market Commission with Henry Fishburn. I'm well aware of the issues of the market. I work with Mr. -- (Inaudible.) With the care issues in the market. I'm sympathetic to Mr. Knoth and his group.

But unlike a lot of people that come before you that are -- want you to deny a request for variance, I -- I don't have to project it. I lived it. We actually had the -- (Inaudible.) And my mother had an

old saying. She said, "The road to hell is paved with good intentions." And I hear all this, and I see all this. And Wilbur, Mr. Johnson, has pointed out to you a direct problem.

Well, what other problems haven't we had or are they going to really maintain this facility like they say they are? So I -- I'll -- that's it. I'll sit.

Thank you.

MR. ALTMAN: All right. Anyone else who would like to speak in opposition to the application?

MR. MALONEY: Mr. Chairman, members of the Board, my name's Michael Maloney; and I wanted to say a couple of things in my capacity as a property owner there. And if we could just flip back to the aerial photograph.

FEMALE VOICE: Right here, Michael.

MALE VOICE: Oh.

MALE VOICE: That one?

MR. MALONEY: No. That one.

For the Board's information, this is my home. Right there, directly across the street from the barn. I just measured it on my -- based on Mr. Barr's map, and it's about 25 feet to my bedroom. I built this property and this property. This property is zoned Commercial Transitional, and it's -- (Inaudible.) In the package.

It's in error. It's unlimited business. It's designated CT.

So this property I built, I live there right after -- right -- right before Hurricane Hugo. This property is now owned by Mason Ashby. I measured there to here, and it's less than it is from my house to his bedroom.

This property I also built. It's owned right now by me as a representative of my dad's estate. It's a property here that I own, and then a property -- this line all in here and back up in here, I'm a trustee of a trust that my family set up. So we have a tremendous vested interest in the stable coming in place.

And as Steve just mentioned, this is not a situation where what might happen. We know what's going to happen. We know what's happened before.

Now, the ordinance says the stable is not located within 100 feet of any residential zoned district. Did I say "residential zoned property"? I said "residential zoned district." I promise you that if you park your car right there, which is about 40 feet from that building right there, you're going to get a ticket unless you have a residential zoned permit on your car. That is a residential zone.

There are three signs here. You can barely make

one out here. "Residential parking only." This is a residential area. In fact, my house right -- I've gotten tickets across the street because I don't have a sticker on there, and I paid them. Okay. So you -- you can do all the legal semantics you want, but use common sense on this. I mean, the City Council did not intend for a -- a line to be drawn here and intend for it to be drawn or to protect human beings.

This is my home. My home. I mean, that's what the ordinance is all about. You know, the other thing that Wilbur pointed out -- and I don't want to go back -- (Inaudible.) Assuming for a minute that all their condominium arguments fly, everything has to -- this is a common area. This is commonly owned by Unit A, the back of Unit B right here. So if you're going to measure it, assuming everything is appropriate, you measure from right there anyway. You can't just move it back because you claim that you did -- there won't be horses there. For God's sakes, the horses couldn't get to the street unless they walk through there.

And for your point, Mr. Smalls, about the refuse. Think about it. 300 pounds a day based on what their expert says is a ton of refuse a week. A ton. They could do all they want inside the building, but let

me tell you what happens. I live there. I see this every day. They roll out that cart you saw right on the street. Sometimes they roll it out at 4 or 5 o'clock in the morning. Sometimes they roll it out the night before. It sits there all night. Rats, all sorts of stink comes out of there.

Now, imagine, it's a ton of -- of horse manure a week across the street from my house. Now, heard anything about that? Have they done anything to address it? Not the ordinance says within the building, but they could put that -- that stinking stuff in there. They could build a little cage or whatever it is. They going to put that on a public street?

The other thing that I wanted to point out is: Right outside my window here, use your common sense again. You're talking about traffic flow and talking about impeding the traffic flow in the public right-of-way, one of the criteria. You can't get in and out of there at one time like Mr. Doll's (phonetic) property. You can come in. You go out. It has two access points. This has one. So what happens is if there's a group of people waiting here or they're packing up a horse or something's going on on the side there, that carriage is going to sit there sometimes for as much as 15 to 20 minutes.

This is Pinckney Street. That's the 200 -- 200 Meeting Street garage. There's tons and tons of traffic coming up that way. The traffic will back up. I've seen it, and it will back up. It's gotten a lot worse since they left several years ago. So, you know, I -- I think on each one of these criteria, I -- I think they've failed the rest.

The principal one they've failed is the 100-foot limitation. I think it's pretty clever that they've come up with this argument about the condo issue; but if you buy that, I mean, the precedent that's going to set for this Board is going to be unbelievable. The one thing that kept coming up to me as I listened to all the tortured logic of all this is enforcement. How in the name of God can you enforce all this?

What am I going to do if, in fact, we do have these odor problems? (Inaudible.) And how are you going to enforce something like that? It's going to be a nightmare.

We don't have to prove anything and they -- they didn't call it a special exception agreement. City Council called it a special exception. Now, all the other issues and all the other uses he assigned to you dealt with everything but tourist. This is a tourism-oriented use. All of the provisions that apply to

tourism ordinance apply here.

Mr. Johnson made a real good point about having a Certificate of Appropriateness for that particular stable. Not just a medallion. You put a medallion on a car. That stable has to be approved by the City of Charleston Tourism Commission for its appropriateness as a use. It's not been done.

And I would submit to you, it probably couldn't be done because of the dimensions and so forth they would need for the stalls and stables, you know. I -- I can't -- I can't tell you how strongly I feel about this.

I wish it weren't the Knoths. I think the worl of Bobby and Richard and -- and his brother; and I hate to be in a situation with Capers Barr, a good friend of mine. I wish there was some way we could work this out. But you know what? This is a business problem for him. This is a legal problem, a living problem for me. I'm going to lose a tremendous amount of value in my home at 46 Pinckney Street, which I bought falling down; and I spent a lot of money fixing back up. These two homes here -- my 90-year-old mother can't be here tonight. Lives in this home.

We own all this property back up through here, and we intend to develop. That stable goes in there, I

can guarantee you we're going to lose a tremendous amount -- not only value, but quality of life in this area. So I ask you to, you know, respectfully consider my comments and look at the criteria. I think what was laid out, you know, pretty artfully and articulately -- (Inaudible.) And deny the application.

MR. ALTMAN: Thank you very much.

Anyone else in opposition?

MR. BATCHELDER: I do want to mention that I did receive a letter from Council Member Aubry Alexander who wrote to -- to oppose the -- the special exception. I just want to pass this out to the Board members to make you aware of that because I think that's what we intended to do.

MR. ALTMAN: Mr. Gurley, would you like to say --

MR. GURLEY: Yes, sir. I'm Robert Gurley, Preservation Society of Charleston. I'm concerned about this application. We're opposed to it for all the reasons that have already been articulated. We think zoning was created to separate -- (Inaudible.) Uses. And we believe that this is not the best -- (Inaudible.) For the neighbors. We ask that it be denied.

MR. ALTMAN: Anyone else? Mr. Seekings.

MR. SEEKINGS: I don't know, Mr. Chairman,

if you have a section for observation; but I'd like just to make a brief observation.

My name is Mike Seekings. I live at 29 Montague Street. I'm a City Councilman, and Mr. Davis is not in my district. I own the property at 34 Pinckney Street. I've lived a long time in that area. I've had a long relationship with the Knoths. Richard drove me in his carriage for my wedding, happiest night of my life.

And I would just ask this Board to look at the ordinances presented before you. That -- we've heard a lot tonight, but you have to look at the ordinance and particularly P1. And P1 has a couple terms in there. One is "stable," which is not a defined term. So, again, using your common sense, look at what we've got.

The other is 100 feet within any residential zone district, and I think that picture shows it all. I mean, as you look from that red dot across, those are houses; and so if it's not defined in the ordinance, I don't think you can leave common sense behind. Those are houses that are across the way from there and -- and in this instance, you're putting a barn and a business in a residential zoned district, which is exactly what P1 prohibits.

So this is an unfortunate situation. I mean, the lifeblood of the City is our businesses and our

residents; and this puts them together. So this ordinance that is there to sort of separate and protect both; and I think if you read it, which you will, I know, for what it says, not what people think it says, the word "use" is not anywhere in this ordinance. You can't find it in P1 through 7. It says "stable."

Now, stable use -- the stable is that building. The residential zoned district is across the street, and the ordinance speaks very clearly to it.

So thank you for allowing me to speak.

MR. ALTMAN: All right. We have to close. We're going to give you a chance of a short rebuttal, but I'm going to take about two minutes. Okay?

(Pause in proceedings.)

MR. BARR: Thank you, Mr. Chairman, ladies and gentlemen. Thank you. I -- I will try to be brief. I know I've stood here for -- (Inaudible.) Let me just follow the points that -- (Inaudible.) I'll try to get -- (Inaudible.) And not belabor -- (Inaudible.)

Point No. 1, Mr. Johnson said that no condominium exists and, therefore, we lose. I'm somewhat taken aback. There's no very secret that we've not yet filed a condominium regime because it could well be defined by conditions that you impose here tonight. That's why we didn't do it. So we certainly expect that

as a condition of any approval of this, it would be conditioned on filing the -- the dedication -- the horizontal property regime as represented in the application or as modified by you in your approval. That's the point about that.

Even if there is a legal horizontal property regime, there's not a proper unit is the next argument; and that has to do with the fact that the -- the State statute refers to access to a public street. The State statute, which is the first page of what Wilbur handed to you says, a property means blah, blah, blah, blah, blah, and with a direct exit to public street or highways or to a -- (Inaudible.) To such street or -- (Inaudible.)

Well, there it is right there. It's an easement. It's an easement. Now, if you feel like that ought to be a common area, tell us that. We can try to make it a common area; or if they think there's a legal issue there, they can take it up on appeal. But the point is: There is a direct access to a public street, Pinckney Street A through its own limiting common element and then across the easement. It's a legal question. I think you can cure it if you think Mr. Johnson is right by saying we'll make it a common area.

Third point: The third point argued was the map of the residential parking district, and the argument there is that because the residential parking district -- and that was in one of Mr. Johnson's handouts -- because the residential parking district looks like this. That, therefore, that's the distance you measure to.

Well, the -- the City -- the City code in 54-103 is entitled, "Rules for Determining Zoning District Boundaries" and -- (Inaudible.) A, unless otherwise indicated, the district boundaries follow landlock lines. Not residential parking lines. Follow landlock lines.

Your Director of Zoning has represented to you that the -- that the zoning district line -- the zoning district line is -- is there. We've -- we've filed a survey with you by a registered surveyor who has surveyed the residential zoning district lines so I would suggest that that's a -- that's a nonissue as well.

The next point that -- that was addressed is that -- let me see. Oh, is the -- is the common law, what I -- I really regret this is the first time we've heard anything about this. Is that Mr. Johnson has pointed out that this is a -- where is my red line? Has

pointed out that this cinder block wall is the fire wall belonging to Andrew Pinckney.

Well, that can be solved. If you want to make it as a condition that we put our own wall inside of that. I mean, that's a way to fix that. I just dearly wish that Andrew Pinckney had said something to us about that before tonight. We certainly could have avoided that as an issue.

Nevertheless, the arguments that odors will somehow seep through the wall is a creation of my friend Wilbur Johnson's rhetoric; and there's certainly no evidence to suggest that that physical phenomenon could even occur.

But -- but as -- if you're concerned about that wall and odors going through it, then you can require us to put covering on that wall and to create our own wall within it. It's a matter of just whatever instruction details are. So -- so we're willing to build over it if you want to make that a condition.

The Certificate of Appropriateness is also an issue. Several folks argued that the Certificate of Appropriateness cannot refer only to the carriage. It must refer to the stable. Well, I invite your attention. I'll hand this around. Under the Tourism Ordinance Section 29-2, defines what? Certificate of

Appropriateness. You don't have it in front of you. I'm going to hand it around. My partner found this one.

"Certificate of Appropriateness shall mean a certificate authorizing the use of certain -- of a certain motor vehicle or animal drawn vehicle for touring purposes." That's what it means. Director of Zoning has said that's what it means. I think he's probably familiar with the Director of Tourism who says that's what it means.

So this stuff is all just made up. The Certificate of Appropriateness means what the ordinance says it means, not what -- what the opponents believe the -- (Inaudible.) Again, I agree with Mr. Seekings on this. We need to take a look at the ordinance and go down the ordinance and see what it does say.

Mr. Johnson argued about the impact on impeding the traffic flow if you can't get around it. He talked about that, and he pointed out the picture of a carriage in front of a -- of Carolina Polo's current location. What was that? I think that's in -- (Inaudible.) That's in what -- (Inaudible.)

And, first of all, there's no showing that that carriage parked on the street is impeding traffic or that it's -- it's in the process of being tacked or cleaned or unloading and offloading. Again, what the

ordinance says is that the impeding traffic condition says that the site plan shows that the cleaning, loading, tacking area shall not impede traffic flow.

Well, we've shown you that. And Mr. Logan (SIC) speculates that there's going to be stacked up carriages and -- as -- as one carriage is coming into this property and the other out of this property, there are others waiting to come in; but that's not a criteria under the ordinance. The ordinance simply doesn't say that that's something you take into consideration. That's a traffic and transportation problem. It's not a -- it's not an issue that's stated in these -- in these criteria for the special exception.

There's a letter from the neighborhood. I neglected to invite your attention to -- to our tab earlier, to Tab 8. We've got about 12, I think, letters in there of support from residents of Ansonborough. I mean, it's a -- it's a split question.

But, again, although letters of support, letters of opposition are there, they really don't mean anything because you have objective criteria that you're called upon to address.

There was an argument about TripAdvisor, and there's these negative entries on TripAdvisor. Well, if TripAdvisor -- the things on TripAdvisor is written

about Andrew Pinckney Inn saying the horses smell, where's the TripAdvisor printout? You can get it off of the -- off of the internet. I mean, it's up to them to show that affects their assertion; and I'll represent to you that Richard has read every one of them, and not one of them says anything about the smell of horses or the noise of the horses, period.

My friend Michael Maloney talked about the -- the -- the waste -- the system of waste control and he -- he said with reference to this photograph that he -- maybe I broke your red light.

That he -- he -- he says that -- that containers of refuse were being left out here all night. Do you remember him saying that? Well, remember, Carolina Polo has not been in this property for 17 years; and maybe some other guy did that, but Carolina Polo doesn't. Now, the guy who did that was relying on the Public Works to pick up his refuse.

We don't. You see our contract put in there. We have private waste removal. We have a contract with someone who comes in here privately. The truck rolls up. We roll it out of the barn. It's dumped into his -- his -- his truck, and it's carted away. So that condition simply would not pertain here.

How unfortunate, my friend Michael argues, how

do you enforce the failure of any company to follow these conditions? The answer is simple. There -- there's at least one full-time police officer. I think he's full-time.

MALE VOICE: Yeah -- (Inaudible.)

MR. BARR: He's a full-time police officer whose function is to patrol the Market District. One of the reasons maybe for the walking distance requirement to the -- to the market zone is so that it can be efficiently patrolled, and there is a police officer. And so if there's any problem with traffic stacking up on this corner or someone doing something with waste over here that's not appropriate or out of the tourism ordinance, that's what he is there for.

So at the -- at the end of the day, I -- I -- I've echoed the sentiments of my dear friend Michael and Wilbur and we're all -- we're all friends here. We're all caught in a very ticklish position. Wilbur doesn't want to say "no" to Bobby Knoth, nor does Michael, nor does Mr. Varn whom we've recently met but we didn't -- but -- but what is a business to do? The -- the ordinance says that you measure the stable to the nearest residential zoned district, and we know where that is.

And we know if you measure from the front of the

building, it's 93-and-a-half feet; and we know that -- that the front of that building is not going to have horses in it. And we can be hypertechnical (SIC), and we can say, "Oh, well, this is -- this whole building is a stable" and we'd be putting Carolina Polo out of business. When really the intent of the -- of the legislation is to keep the people away from where the animals are sleeping and doing their nightly things.

And that's what we've done. We've kept -- we're going to be 119 feet away. So I'll sit down, Mr. Chairman.

MR. ALTMAN: Thank you very much, Mr. Barr.

MR. BARR: I apologize to all of you for speaking --

MR. ALTMAN: We thank you all for your presentations.

And I want to compliment you all. It's been rather long for all of us, but y'all have brought some real interesting points before us; and what we're going to do here right now is go ahead and make a decision. And I'll make an opening statement. Of course, I can't make any motions or second anything.

But my concern, Bob, from the very beginning is the first statement that I made when I asked Mr. Batchelder about the 100 feet. And that's still,

after listening to everything, there were very valid points made throughout and some that, you know, that I never even dreamed of when this argument started.

But just to throw it on the table, that's my concern. If I look through these documents and I've seen different -- potentially different definitions of "location," the definition of "stable," and -- and I'm just concerned about it. I'm looking at -- at No. 1 on here, P1, it says, "Building or equipment shall not be within 100 feet of any existing day-care, school, church." You know, it's -- it's -- I'm looking -- (Inaudible.)

It's "stable is not located within 100 feet of any residential zoned district." That's -- that's the key to it. Anyhow, I'll throw it open to any comments and, certainly, any motions.

FEMALE VOICE: My thoughts are, I guess, in determining, No. 1, whether or not the building's concerned the barn, where there can -- (Inaudible.) Whether the space, as they say here, where the animals are kept is considered the barn.

So, then, that would make -- I could make the decision then. If the space has a -- identified here where the animals are kept, is that -- because that is considered the barn, then that's the space. That's

within the -- (Inaudible.) Almost in the center of the building.

So the distance, then, would be from what they shared with us into that space and that would -- the use, then, would be within the 100 -- or over the 100 feet. If it's considered the building itself as being the barn, which is really technical, if the building is considered the barn, then that would be the whole space. And, of course, that would eliminate really the question because that building is within the 100 feet.

So -- and in my mind, I have to clarify whether that space the animals are kept, not in the front, but in another portion of that barn that is outside of the 100 feet. I don't know what else I -- .

MR. ALTMAN: Well, is there -- is there a question too? You have a barn. You have to have an entrance and an exit in the barn to get the animal into, you have to go within the --

FEMALE VOICE: But it says, "Where the animals are kept. The animals are kept."

MR. ALTMAN: Well, if you're talking about the barn, do you have -- do you have any area without -- without an entrance, without an entrance to that area where the animals are kept? And what do you call that area of -- between where the animals, you know, live

and -- or where -- where you get into the barn?

FEMALE VOICE: I know, but why would you consider that?

MR. ALTMAN: I don't know. I'm just --

FEMALE VOICE: I would say, no, because it doesn't say -- it just specifically says "the place where animals are kept." So you can't prove that building and the barn happens to be marked maybe the center of the building. Anybody else -- (Inaudible.)

FEMALE VOICE: I look at -- I look at Section 29-212. It says, "'Stable' shall mean the barn where the animals are kept. 'Stalls' shall mean the individual space within the barn where each animal is kept."

I have a hard time not considering the barn to be the building, and I have no problems at all with any other criteria.

FEMALE VOICE: Yeah, yeah, the other criteria --

FEMALE VOICE: (Inaudible.) I think the Knoths would do a great job. I think this would be a good building for them. I don't think it would bother the Pinckney Inn. I don't think it would -- (Inaudible.) And if I -- if this would have been presented as a variance, I would probably have voted --

I don't think I can vote -- I don't think I can find that it is not within 100 feet of a residential zoning district and that's -- that was my problem in the beginning, and it still is my only problem.

MR. ALTMAN: That's still the problem.

FEMALE VOICE: Yeah, just the -- just the first one, yeah. And, I guess, it's subjective to an extent that it all depends upon how you perceive or how you interpret this.

MR. ALTMAN: Does anyone want to make a motion?

FEMALE VOICE: I'm tending to lean to the fact that I believe that the -- the stable is where the animals are kept. And the animals are kept in the middle part of the building, and as a result that would be the stable would be within the 100 feet. It would exceed the 100 feet.

MR. ALTMAN: All right. Are there any -- (Inaudible.)

MR. SMALLS: On the building district, are you basing that on the nearest residence?

FEMALE VOICE: Based on the zoning district?

MR. SMALLS: Yeah.

FEMALE VOICE: No. I'm basing it on the

definition.

MR. SMALLS: The definition is -- (Inaudible.)

FEMALE VOICE: Well, again, as I said, it's subjective as far as, you know, how you interpret it.

MR. ALTMAN: I need somebody --

FEMALE VOICE: I make a motion, then, that we accept staff's recommendation with the conditions.

MR. ALTMAN: All right. Miss Campbell moves for approval with -- with the condition set forth by Mr. Batchelder. Do I have a second?

FEMALE VOICE: And I think there were two conditions. One was that --

MR. BATCHELDER: The new slab for the drainage system.

FEMALE VOICE: And the ventilation.

MR. BATCHELDER: And the improved ventilation system.

MR. ALTMAN: Do we have a second -- do we have a second to Miss Campbell's motion?

(No response.)

MR. ALTMAN: I don't think we do. So we can't go ahead and move forward with that. Does anybody else have a motion that they'd like to put on the floor?

FEMALE VOICE: (Inaudible.)

MR. ALTMAN: All right. Miss Smith has made a motion that we deny the application. Is there a second? There is a second. Any discussion on the motions?

(No response.)

MR. ALTMAN: All in favor of denying the application say "aye."

(Three respond.)

MR. ALTMAN: All opposed?

MS. CAMPBELL: Nay.

MR. ALTMAN: By a vote of three to one, the application is denied. Thank y'all very much.

(End of requested transcription.)

- - -

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, Ronda K. Blanton, a Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the City of Charleston Board of Zoning Appeals - Zoning audio recordings were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete, and true record of the City of Charleston Board of Zoning Appeals - Zoning audio recordings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on July 26, 2013, at Charleston, Charleston County, South Carolina.

Ronda K. Blanton

Ronda K. Blanton, RPR
Notary Public, South Carolina
My Commission expires:
May 14, 2018.

TAB-3

ORIGINAL

CITY OF CHARLESTON BOARD OF ZONING APPEALS -- ZONING

TRANSCRIPTS OF PROCEEDINGS

JUNE 4, 2013

RE: 45 PINCKNEY STREET

REQUEST APPROVAL OF WRITTEN ORDERS

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

City of Charleston Board of Zoning Appeals Meeting June 4, 2013:

CHAIRMAN KRAWCHECK: -- June 4, 2013, City of Charleston Board of Zoning Appeals. Present are Mr. Altman, Mr. Lester, Miss Smith, Mr. Smalls, Mr. Krawcheck. The Planning Staff Miss Ashby, Miss Ellington, Mr. Batchelder.

These proceedings are being recorded. We ask you if you speak to please identify yourself.

This Board does three basic things. We hear appeals from the Zoning Administrator. We hear requests for special exceptions. We hear requests for zoning variance.

The zoning variance test is a hardship test; and in order for this Board to find to grant a zoning variance, it has to be shown and it has to find that there are extraordinary exceptional conditions pertaining to a particular piece of property. These conditions do not generally apply to other properties in the vicinity.

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, lastly, we have to find the authorization of a variance will not be of a

substantial detriment to adjacent property or the public good or the character of the district will not be harmed by the granting of the variance.

Our procedure is to receive a description and recommendation from the zoning staff, usually Mr. Batchelder. If that recommendation is in favor of the application, if there's no one present opposed to the application and if the application otherwise meets the requirements of the zoning ordinance, then usually the Board will treat the matter as being uncontested and will pass it quickly.

If the City is opposed to the application or if there's anyone present opposed to the application, we treat the matter differently. We treat it as contested, in which case we'll ask to hear from the applicant, from anyone else in favor of the application, then from the opponents; and then we'll give the applicant a short time to rebut the arguments of the opponents. We will then close the public hearing portion of the Meeting and then make a decision.

Those of you who will testify tonight, please raise your right hand.

(Witnesses are sworn.)

CHAIRMAN KRAWCHECK: Item No. B5, 9 Prices Alley, has been withdrawn so we're not going to hear

that tonight. Miss Ashby, I don't think anybody else has been deferred or withdrawn?

MS. ASHBY: No, sir.

CHAIRMAN KRAWCHECK: Those of you who have cell phones, would you please check them and turn them off and make sure they're off, please.

Item 1 on the agenda, 45 Pinckney Street, is for request approval of written orders for recent decisions of the Board concerning 45 Pinckney Street. It's zoned General Business.

Mr. Altman, I'm going to let you preside.

MR. ALTMAN: These are two decisions that -- that the Board made in open -- in open Meeting over the last, I believe, the last month and a half or so; and Miss Cantwell, who is one of the City Attorneys, has prepared orders based on what I believe is the findings of facts and conclusions of law that we made our decision on.

And I believe that all of those orders were sent to the -- (Inaudible.) Who are sitting here tonight, and I believe we have a majority of the people who voted in favor of denying each of the applications, one for special exception and the other for a variance, here.

And I -- what I'd like to do is ask if anyone has any questions regarding the order that either

Miss Cantwell or I can try to answer for you.

(No response.)

MR. ALTMAN: If not, do I hear a motion? Let's do each one separately. For the special exception, which was the first one, is there a motion to go ahead and authorize the signing the order confirming what we actually did in the open Meeting? Miss Smith. Seconded by Mr. Smalls.

All in favor a say "aye."

(Four Members respond.)

MR. ALTMAN: We -- (Inaudible.) And we put it back in order, and I'll be happy to sign that.

The second one, which is the variance -- (Inaudible.) We have -- (Inaudible.) A motion on that motion? On that order, is there any motion that anyone would like to make?

(No response.)

MR. ALTMAN: I can't make it so somebody help me. Do you have a motion?

MR. SMALLS: I -- (Inaudible.)

MR. ALTMAN: Pardon me?

MR. SMALLS: (Inaudible.)

MR. ALTMAN: It was an order denying -- approving what the Board did, which was denying the application.

MR. SMALLS: (Inaudible.)

MR. ALTMAN: Okay. And is there a second? Second. Is there any discussion?

(No response.)

MR. ALTMAN: All in favor of me signing that order denying the variance, please say "aye."

(Four Members respond.)

MR. ALTMAN: Opposed, and on that one what --

CHAIRMAN KRAWCHECK: Mr. Altman, I recused myself from consideration on that matter; and I have not seen a copy of those orders nor do I need to see a copy of those orders, and I did not participate in the vote which you just took.

MR. ALTMAN: It was Mr. Robinson who's not here, did not participate in the -- (Inaudible.) I think we have a copy of the -- (Inaudible.)

(End of requested transcription.)

- - -

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, Ronda K. Blanton, a Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the City of Charleston Board of Zoning Appeals - Zoning audio recordings were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete, and true record of the City of Charleston Board of Zoning Appeals - Zoning audio recordings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on July 26, 2013, at Charleston, Charleston County, South Carolina.

Ronda K. Blanton

Ronda K. Blanton, RPR
Notary Public, South Carolina
My Commission expires:
May 14, 2018.

WORD INDEX

<1>
1 4:7
14 7:16

<2>
2013 1:7 2:2, 3 7:10
2018 7:16
26 7:10
29415 1:16

<4>
4 1:7 2:2, 3
45 1:10 4:7, 9

<7>
73129 1:15

<8>
843-762-6294 1:16

<9>
9 3:24

<A>
adjacent 3:1
Administrator 2:11
affixed 7:8
agenda 4:7
ahead 5:6
Alley 3:25
Altman 2:5 4:11, 12 5:3, 11, 18, 21, 23 6:2, 5, 8, 10, 15
answer 5:1
anybody 4:1
APPEALS 1:5 2:1, 4, 11 7:4, 6
applicant 3:15, 17
application 2:21 3:7, 8, 8, 12, 13, 16 5:25
applications 4:22
apply 2:19
APPROVAL 1:11 4:8
approving 5:24
arguments 3:18
Ashby 2:6 4:1, 3
ASSOCIATES 1:15
Attorneys 4:15
audio 7:4, 6
authorization 2:25
authorize 5:6
aye 5:9 6:6

<B>
B5 3:24
back 5:12
based 4:16
basic 2:10
Batchelder 2:7 3:6
believe 4:14, 16, 19, 21
BLANTON 1:14 7:1, 10
BOARD 1:5 2:1, 4, 10, 15 3:10 4:9, 13 5:24 7:4, 6
BOX 1:15
Business 4:10

<C>
Cantwell 4:15 5:1
CAROLINA 7:1, 3, 10, 15
case 3:15
cause 7:8
cell 4:5
certify 7:3, 6
CHAIRMAN 2:3 3:24 4:4 6:10
character 3:2
CHARLESTON 1:5, 16 2:1, 4 7:1, 4, 6, 10, 10
check 4:5
CITY 1:5 2:1, 3 3:12 4:15 7:3, 6
CLARK 1:15
close 3:19
Commission 7:15
complete 7:5
computer-aided 7:5
concerning 4:9
conclusions 4:17
conditions 2:17, 19, 21
confirming 5:6
consideration 6:11
contested 3:14
copy 6:12, 12, 17
counsel 7:8
COUNTY 7:1, 10

<D>
decision 3:20 4:18
decisions 4:8, 12
deferred 4:2
denying 4:22 5:23, 24 6:6
description 3:4
detriment 3:1
differently 3:14
discussion 6:3
district 3:2

<E>
effectively 2:23
either 4:25
Ellington 2:7
events 7:8
exception 4:23 5:5
exceptional 2:17
exceptions 2:12
expires 7:15
extraordinary 2:17

<F>
facts 4:17
favor 3:6, 16 4:22 5:9 6:5
find 2:15, 16, 25
findings 4:17
first 5:5
foregoing 7:5
Four 5:10 6:7
full 7:5
further 7:6

<G>
General 4:10
generally 2:19
give 3:17
go 5:6
going 3:25 4:11
good 3:2
grant 2:15
granting 3:3

<H>
half 4:14
hand 3:22 7:8
happy 5:12
hardship 2:14
harmed 3:2
hear 2:10, 11, 12 3:15, 25 5:3
hearing 3:19
help 5:19
hereunto 7:8

<I>
identify 2:9
Inaudible 4:20 5:11, 14, 14, 20, 22 6:1, 16, 17
interested 7:8
Item 3:24 4:7

<J>
July 7:10
JUNE 1:7 2:2, 3

<K>
KRAWCHECK 2:3, 3:24 4:4 6:10

<L>
Large 7:3
lastly 2:24
law 4:17
Lester 2:5

<M>
majority 4:21
matter 3:10, 14 6:11
Meeting 2:1 3:19 4:13 5:7
meets 3:8
Members 5:10 6:7
month 4:14
motion 5:3, 5, 14, 15, 15, 19

<N>
NCRA 1:14
need 6:12
neither 7:6

TAB-4

Application for Variance, Special Exception, Reconsideration, or Extension to the Board of Zoning Appeals – Zoning (BZA-Z)

City of Charleston

Instructions – Submit this application, along with the required information and fee, to the Zoning Division office at 75 Calhoun Street. **Applications are due by 12 Noon on the deadline date and must be complete to be accepted and placed on an agenda.** A sign will be posted on the property, and a public hearing will be conducted by the Board of Zoning Appeals – Zoning. **Permits authorized by the Board cannot be issued during a five (5) business day appeal period following the decision of the Board, except for use variances, the appeal period shall be fifteen (15) calendar days.** An appeal to the Board during this appeal period stays all further action on the application.

THE APPLICANT HEREBY REQUESTS:

- ☑ A Variance and/or Special Exception as indicated on page 2 of this application.
- ☐ Reconsideration of a decision of the Board or action of a zoning official (attach Appeal form).
- ☐ Extension of an unexpired Variance and/or Special Exception approval.

MEETING DATE REQUESTED: 4/16/2013

Property Address 45 Pinckney St. TMS # 458-05-03-002

Property Owner ARKAY, LLC Daytime Phone 577-5083

Applicant Robert R. Knoth, by attorney Capers G. Barr, III Daytime Phone 577-5083

Applicant's Mailing Address 16 Hayne Street, Charleston 29401

E-mail Address carolinapolo@aol.com

Relationship of applicant to owner (same, representative, prospective buyer, other) same

Zoning of property GB-A

Information required with application: (check information submitted)

- ☑ Scaled plans or plats, including elevations, showing the variance(s) or special exception(s) being requested (3 sets)
- ☐ For new construction or additions within a flood zone, show HVAC units and platform on scaled plans
- ☑ Scaled floor plans with rooms labeled and the total floor area for each dwelling unit noted are required for all density variances and building additions, unless exempted by the Zoning staff (3 sets)
- ☑ Plans or documents necessary to show compliance with special exception requirements (3 sets)
- ☑ Check, credit card or cash (make checks payable to the City of Charleston)
- ☑ Pursuant to Section 6-29-1145 of the South Carolina Code of Laws, is this Property, which is the subject of this Application, restricted by any recorded covenant, restriction, easement or other document that is contrary to, conflicts with or prohibits the proposed land use encompassed in this permit application? YES ____ NO X

Optional but very helpful information:

- ☐ Photographs
- ☐ Letters or petitions from neighbors or organizations directly affected by your request

I certify that the information on this application and any attachments is correct, that the proposed improvement(s) comply with private neighborhood covenants, if there are any, and that I am the owner of the subject property or the authorized representative of the owner. I authorize the subject property to be posted with a notice of the Board hearing and inspected.

Applicant Capers Barr III Date 3-18-2013

For office use only
Date application received 3/18/13 Fee $ 150.00 Time application received 12 Noon
Staffperson Receipt # 177954

1

For **Variance** requests, applicants should list the specific variance(s) being requested and, if possible, explain how the variance test that follows is met (add as an attachment if necessary):

Variance Test: The Board of Zoning Appeals-Zoning is authorized to approve a 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 the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. 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
4. The authorization of the 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.

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. (SC Code of Laws Section 6-29-800)

For **Special Exception** requests, applicants should list the specific approval(s) being requested and include documentation to demonstrate compliance with the relevant special exception requirements of the Zoning Ordinance, such as Sec. 54-110, Sec. 54-206, or sections in Article 5 (add as an attachment if necessary):

(See Attached)

All approvals of the Board shall remain valid for two (2) years from the approval date, unless extended in accordance with the provisions of Article 9, Part 5 of the zoning ordinance. Applicants may not apply for the same request that has been denied by the Board until a period of six (6) months has lapsed.

SPECIAL EXCEPTION APPLICATION

45 PINCKNEY STREET; USE AS A STABLE (City Code Section 54-206p.)

By this application, ARKAY, LLC, owner of 45 Pinckney Street (the "Property") seeks to use a portion of the Property as a stable for the operation of a horse drawn carriage touring business known as Carolina Polo and Carriage Company, Inc.

The Property has been subjected to a Horizontal Property Regime, more commonly known as a condominium, whereby the front or northern portion of the building will house two offices: one the business office of GREEN HORSE EQUINE SANITATION which currently holds the contract with the City of Charleston for the street sanitation of animal-drawn carriages; the other office will contain the business office of Carolina Polo and Carriage Company. The offices will comprise, together, one of the units or "apartments" of the Horizontal Property Regime and are restricted against any use as a stable. The space is shown as "UNIT 'B'" on the attached Plot Plan by Alexander Peabody.

The second apartment of the Horizontal Property Regime is located within the building, twenty five (25') feet to the south of the building façade on Pinckney Street, and will be used as the stable. The space is shown as "UNIT 'A'" on the attached Plot Plan.

Special Exception criteria, pursuant to Code Section 54-206p, are met as follows:

1. Location: The stable is located greater than one hundred feet from the nearest residential zone district. Attached as Exhibit "A" are the following:
   a. Plot Plan by Alexander Peabody;
   b. Architectural drawing by Logan Architecture of the building floor plan of the Property, depicting the location, size and dimensions of the stalls;
   c. Architectural drawing depicting the ventilation and drainage systems;
   d. Survey showing measured distance from front of building to nearest residential district. The stable use of UNIT "A", within the building, located twenty five and a half (25.5) feet south of the Pinckney St. façade, is greater than one hundred feet from the nearest residential zone district.
   e. Color photos of building interior.
2. Certificate of Appropriateness: Because Carolina Polo and Carriage Company is an existing franchisee, the City of Charleston has previously issued a Certificate of Appropriateness for the stable. Please note the additional comments in the narrative below.

3

3. Code compliance: The stable complies with all city, county and state regulations for stables. Please note additional comments below.
4. Site plan: A site plan is attached, depicting the area for cleaning/loading/tacking within the building.
5. Refuse: Attached is Applicant's contract with Carolina Waste Disposal for refuse disposal. Carolina Waste picks up refuse daily, except Sundays.
6. Drainage: See the attached plan from Logan Architecture. Drainage will utilize existing lines that have served previous carriage stable operations in the Property in the past.
7. Ventilation: See Logan Architecture plans attached. Exhaust headers will be located centrally above each stall, with a manifold duct leading to a central exhaust tube that vents through the existing skylight of the building to the outside.

Animal drawn touring vehicles are highly regulated by the City pursuant to Chapter 29 of the City Code. There are presently only five franchises issued, of which Carolina Polo and Carriage Company is one. Among other things the Code requires carriage stables to be within "walking distance" of the medallion gate located at the corner of Church and North Market Streets.

Carolina Polo is currently located at 16 Hayne Street on a month to month tenancy, and the current owner of the property is requiring that the property be vacated by Carolina Polo by May 31, 2013. Accordingly, the ability of Carolina Polo to relocate to 45 Pinckney is necessary for its survival as a carriage tour business.

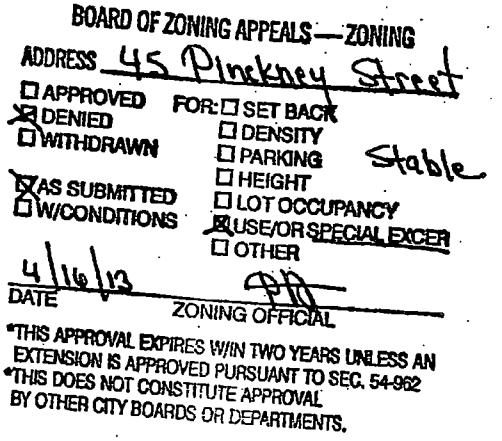
Robert Knoth, the individual applicant, has been in the carriage business since 1990. His current entity, Carolina Polo and Carriage Company, Inc., has been a franchised carriage tour operator since 1996. The City of Charleston Tourism Commission has issued Certificates of Appropriateness for its vehicles employed in the business, which are numbered as follows: 100, 101, 102, 103, 104, 105, 219, 251 and 290. Carolina Polo and Carriage, Inc. is in compliance with all city, county, and state regulations for stables. The City recently upgraded its requirements for stables and stalls that did not require existing companies to come into compliance, recognizing them as non-conforming. Accordingly the stable at 45 Pinckney Street will become the first "state of the art" stable in the City. The interior of 45 Pinckney Street, being much larger than the applicant's current location at 16 Hayne Street, will allow for all loading, unloading, tacking and cleaning to occur comfortably within the interior of the building.

Mr. Knoth operated his carriage business, then Carolina Carriage Company from this same Property location at 45 Pinckney St. from 1990 to 1996, then reformed as Carolina Polo and Carriage Company and continued to operate from 45 Pinckney until 1998, when it moved to its current location at 16 Hayne. Thereafter another carriage company operated from 45 Pinckney from 1998 until approximately 2009. See for example, Exhibit "B", a plat from 2009 showing the Property's use as a carriage

4

company. Among the Property's uses before 1990 was that of an automobile service garage, known as "Gatch's".

Because the Special Exception Use criteria have been met, and particularly in light of the history of use of the Property as a stable we respectfully suggest the Board of Zoning Appeals must issue its Certificate of approval.


BOARD OF ZONING APPEALS — ZONING

ADDRESS 45 Pinckney Street

☐ APPROVED
☒ DENIED
☐ WITHDRAWN

FOR: ☐ SET BACK
☐ DENSITY
☐ PARKING
☐ HEIGHT
☐ LOT OCCUPANCY
☒ USE/OR SPECIAL EXCEP
☐ OTHER

Stable

☒ AS SUBMITTED
☐ W/CONDITIONS

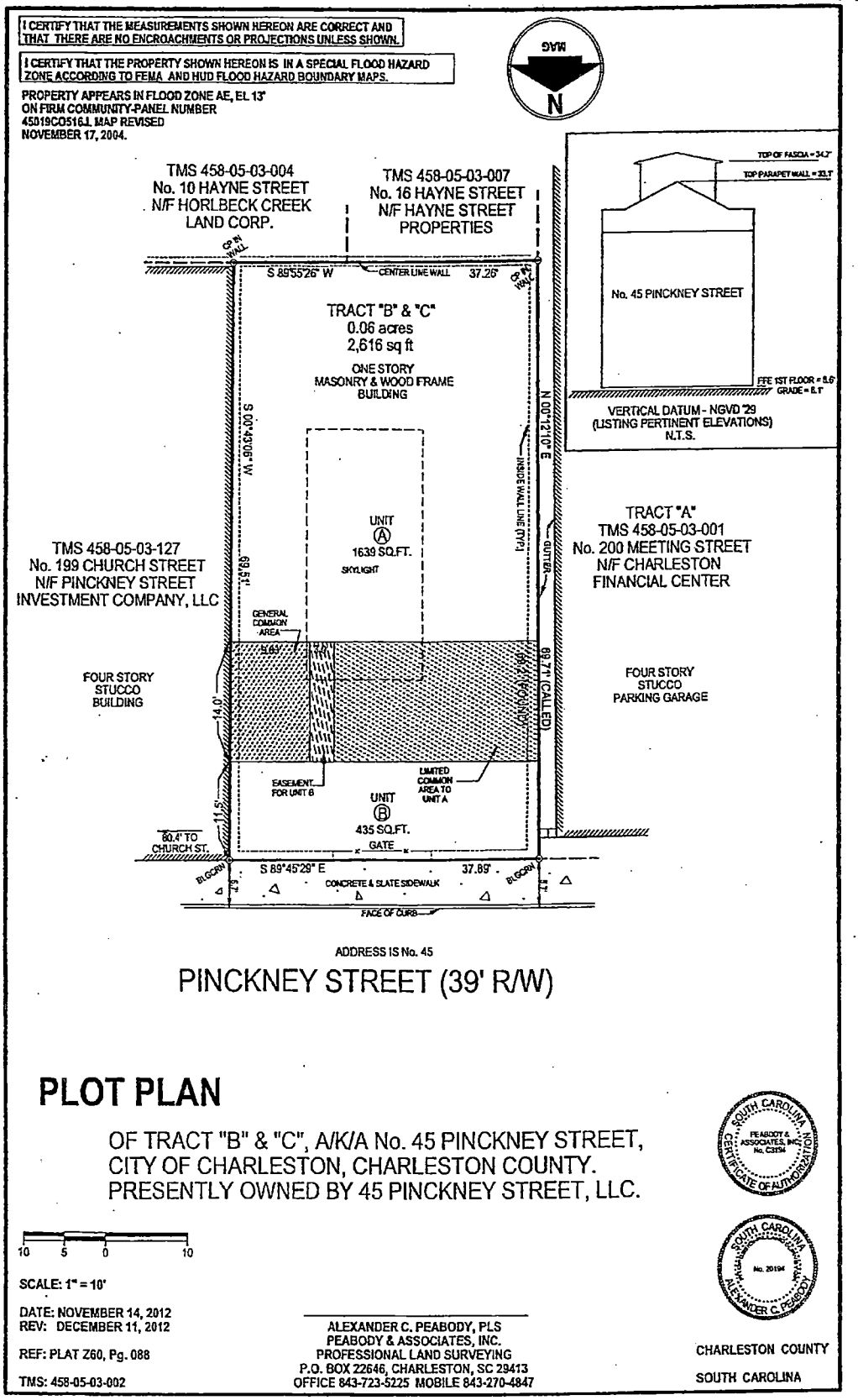
4/16/13
DATE

ZONING OFFICIAL

*THIS APPROVAL EXPIRES W/IN TWO YEARS UNLESS AN EXTENSION IS APPROVED PURSUANT TO SEC. 54-962
*THIS DOES NOT CONSTITUTE APPROVAL BY OTHER CITY BOARDS OR DEPARTMENTS.

5

EXH A(a)



PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.

SOUTH CAROLINA
PEABODY & ASSOCIATES, INC. No. C3194
CERTIFICATE OF AUTHORIZATION

10 5 0 10

SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: DECEMBER 11, 2012

REF: PLAT Z60, Pg. 088

TMS: 458-05-03-002

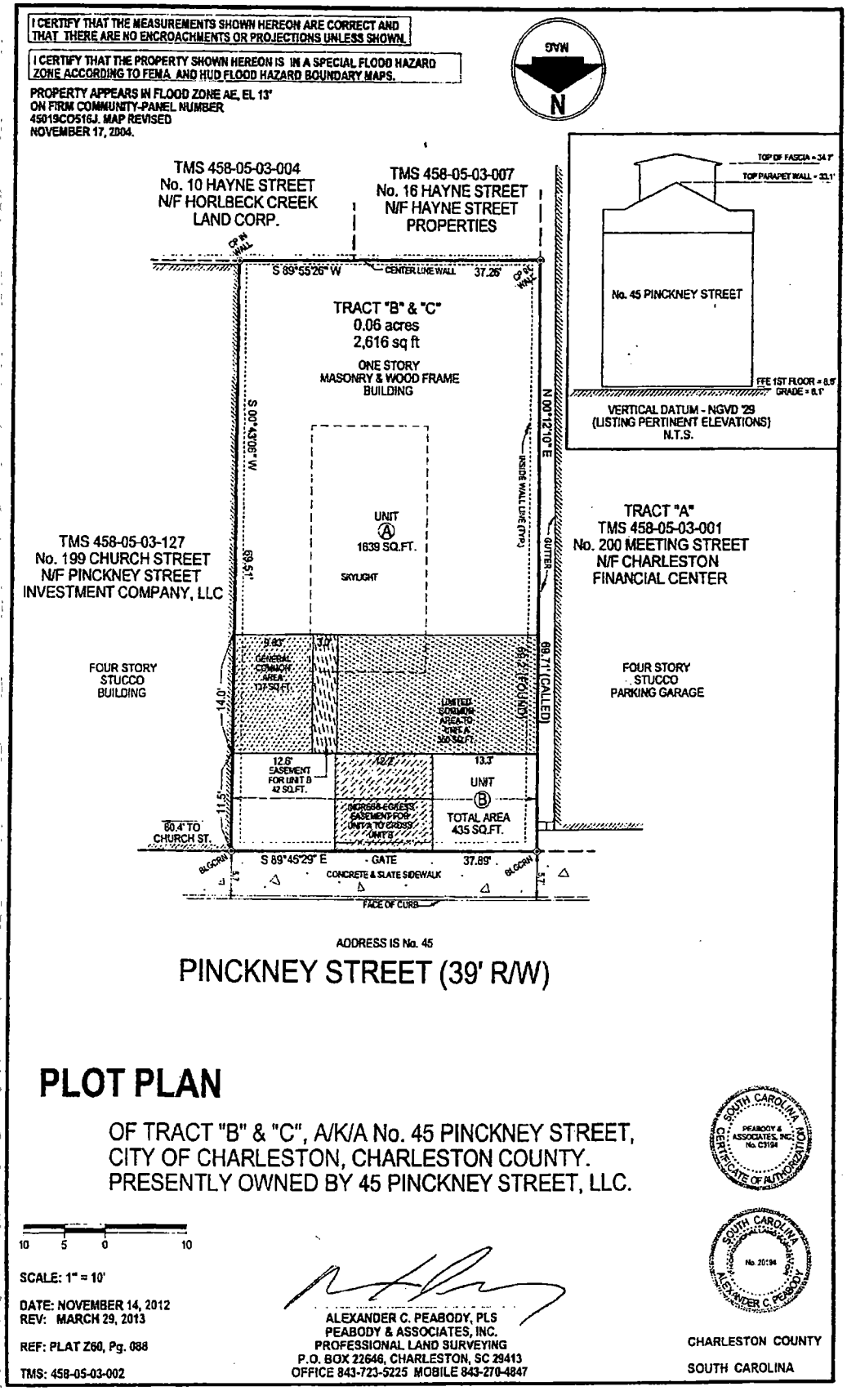
SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

CHARLESTON COUNTY

SOUTH CAROLINA

6



PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.

10 5 0 10

SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: MARCH 29, 2013

REF: PLAT Z60, Pg. 088

TMS: 458-05-03-002

SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY

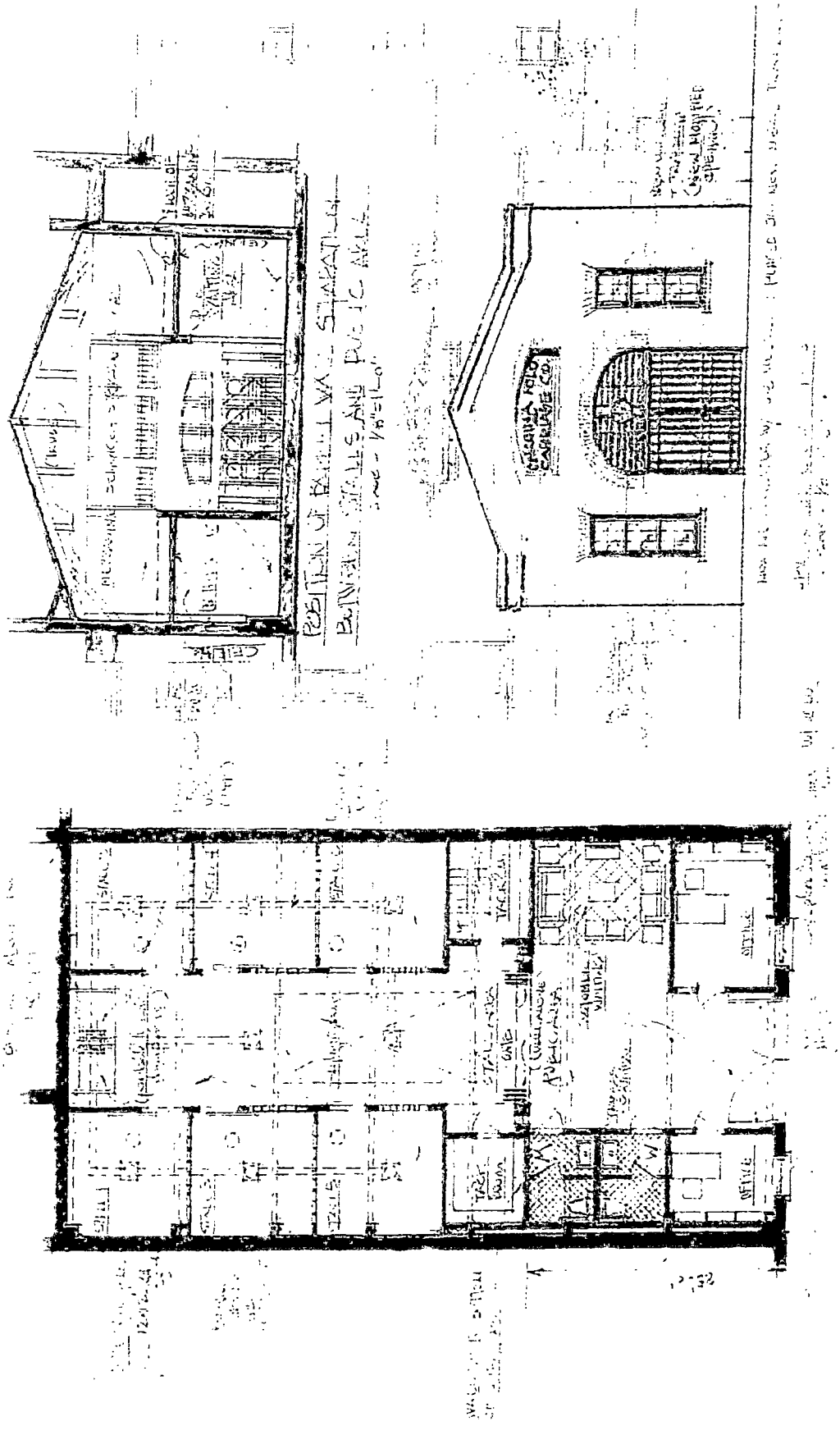
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

CHARLESTON COUNTY

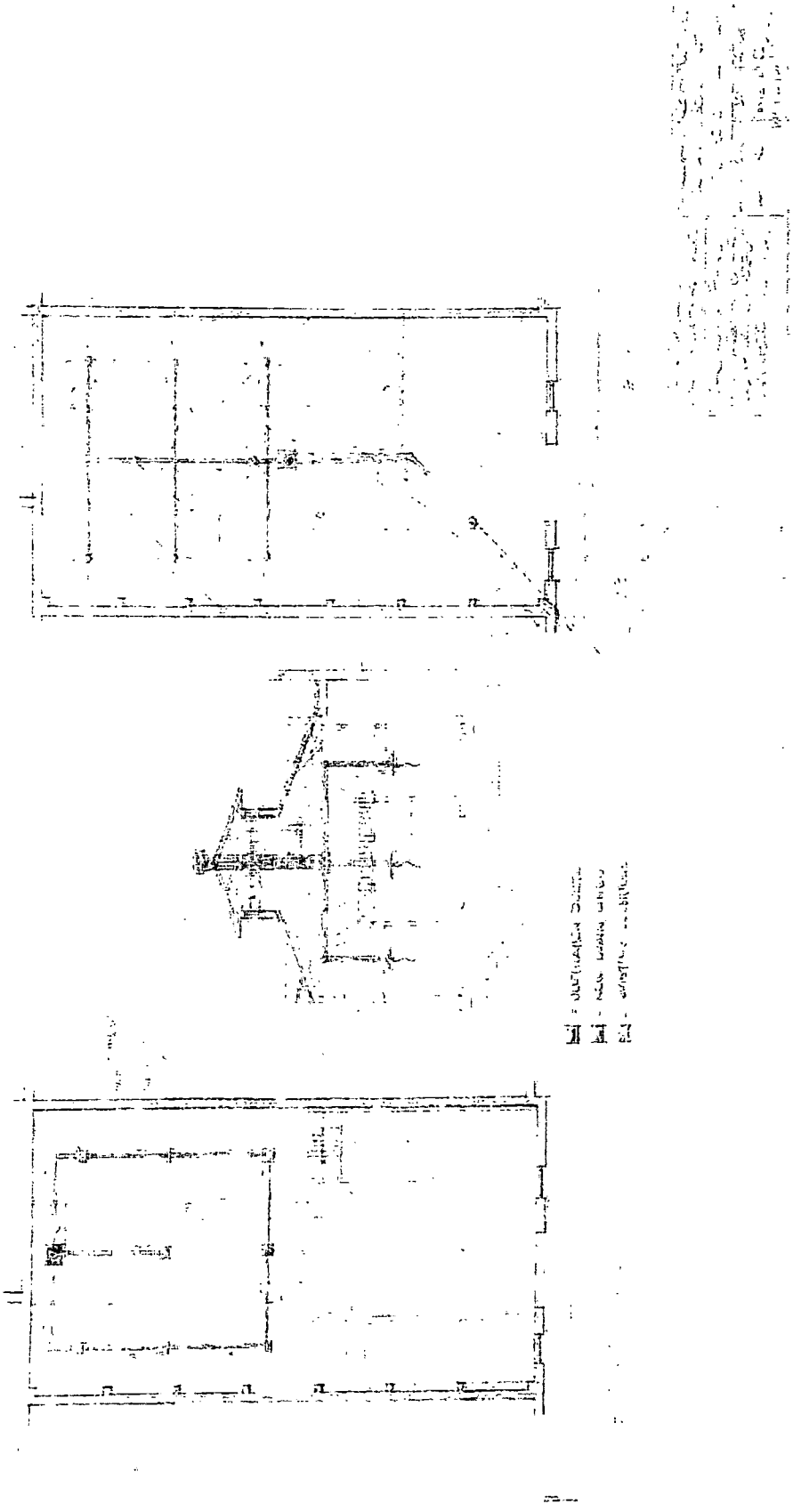
SOUTH CAROLINA

7

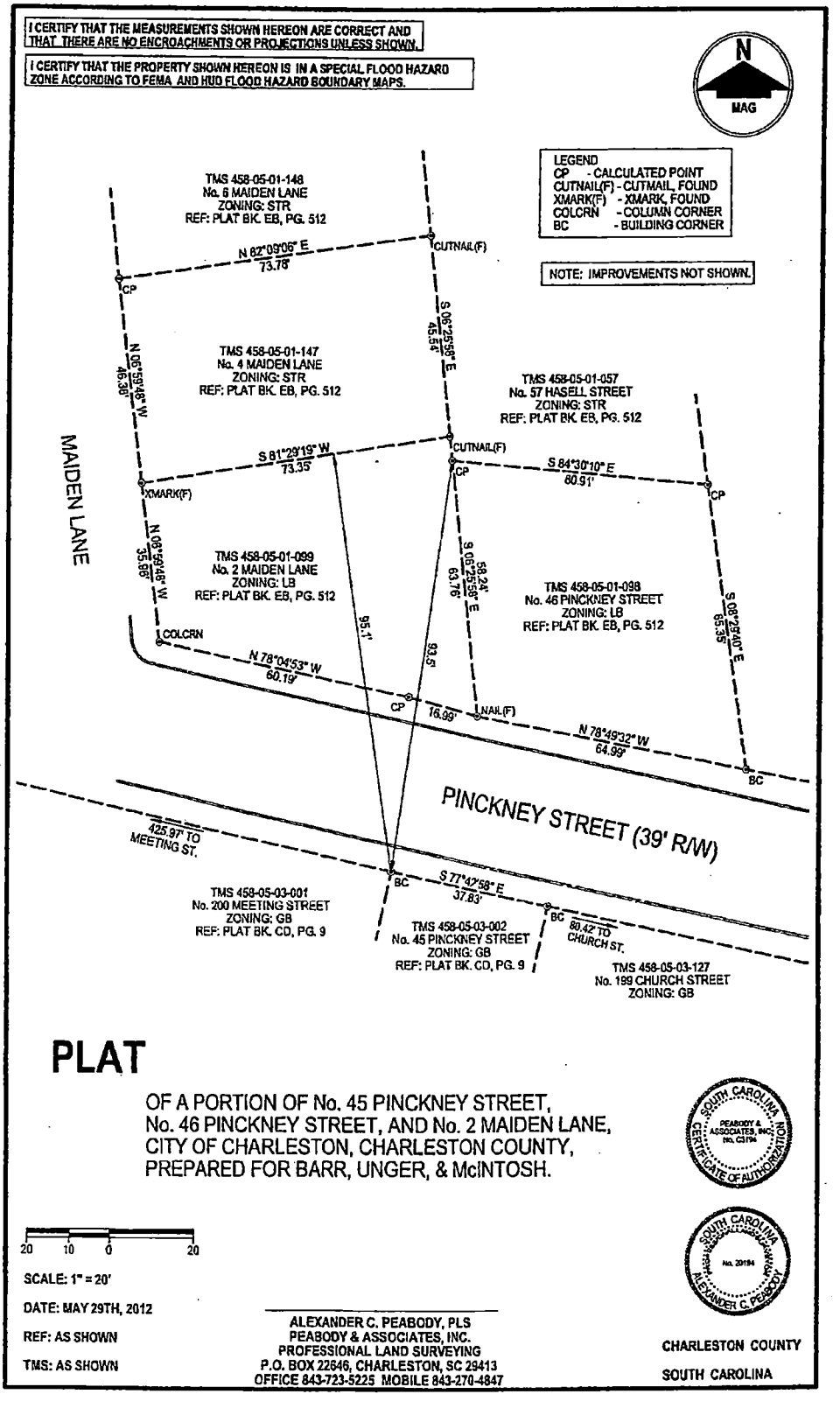
EXH
A(b)



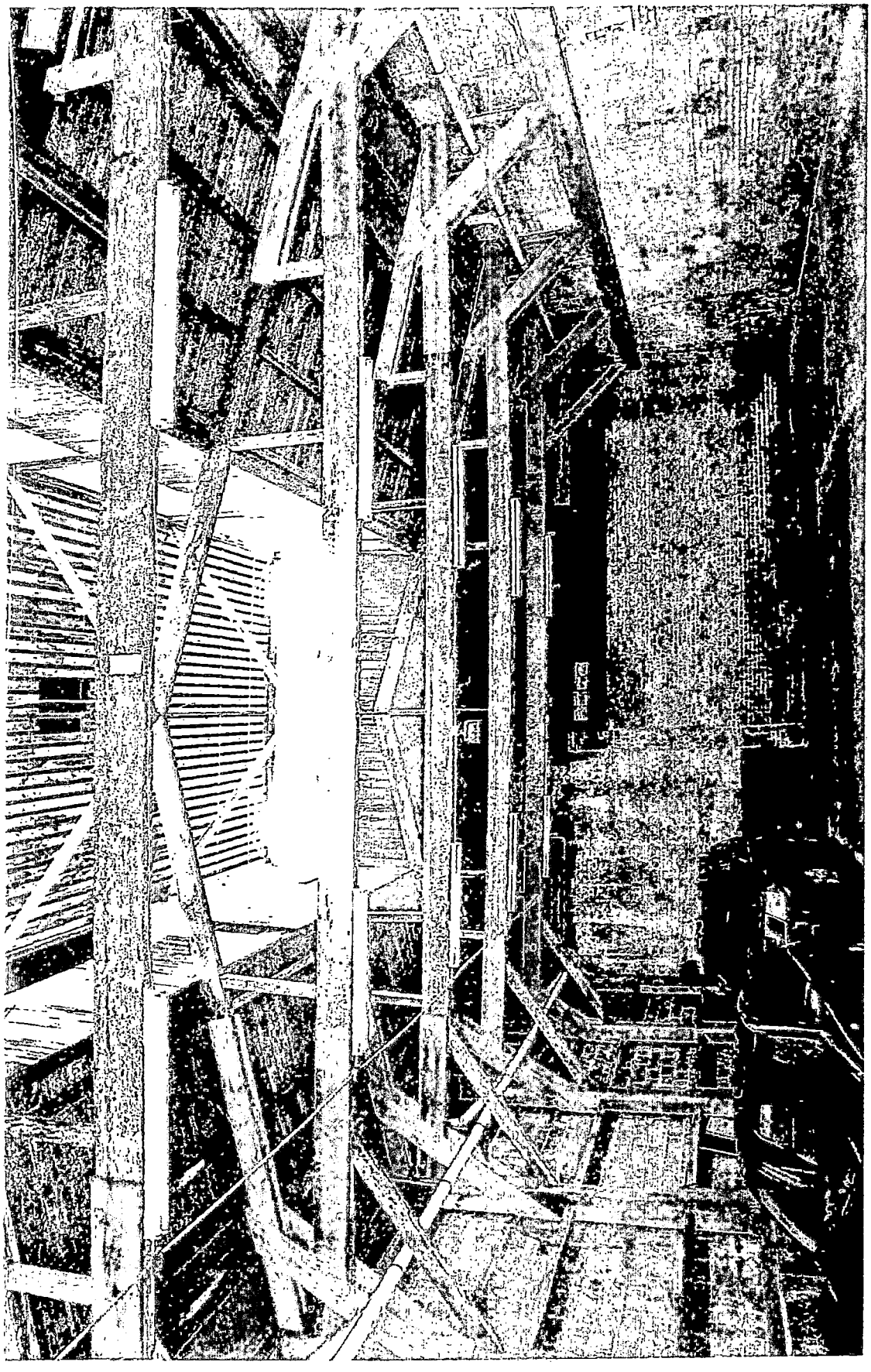
EXH
A(c)



EXH. A(d)

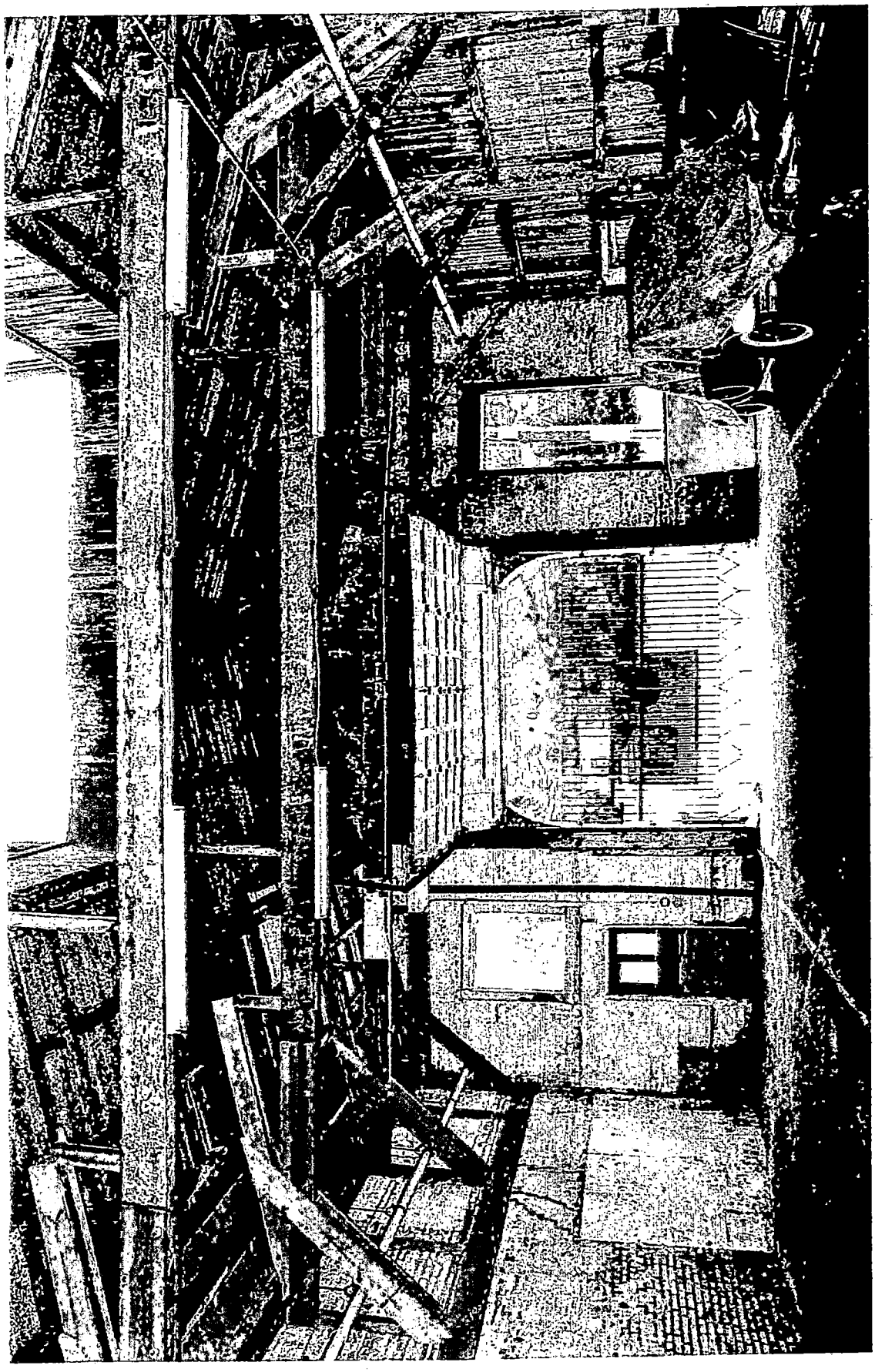

I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTNAIL, FOUND
XMARK(F) - XMARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-148
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-098
No. 46 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
PINCKNEY STREET (39' R/W)
N 82°09'06" E 73.78'
S 06°25'58" E 45.54'
N 06°59'48" W 46.30'
S 81°29'19" W 73.35'
S 84°30'10" E 60.91'
N 06°59'48" W 35.88'
S 06°25'58" E 63.76'
58.24'
95.1'
93.5'
S 08°25'40" E 65.35'
N 78°04'53" W 60.19'
16.99'
N 78°49'32" W 64.99'
425.97' TO MEETING ST.
S 77°42'58" E 37.83'
80.42' TO CHURCH ST.
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
CUTNAIL(F)
CP
XMARK(F)
COLCRN
NAIL(F)
BC
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET, No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE, CITY OF CHARLESTON, CHARLESTON COUNTY, PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION
SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA

10



EXH A (e)

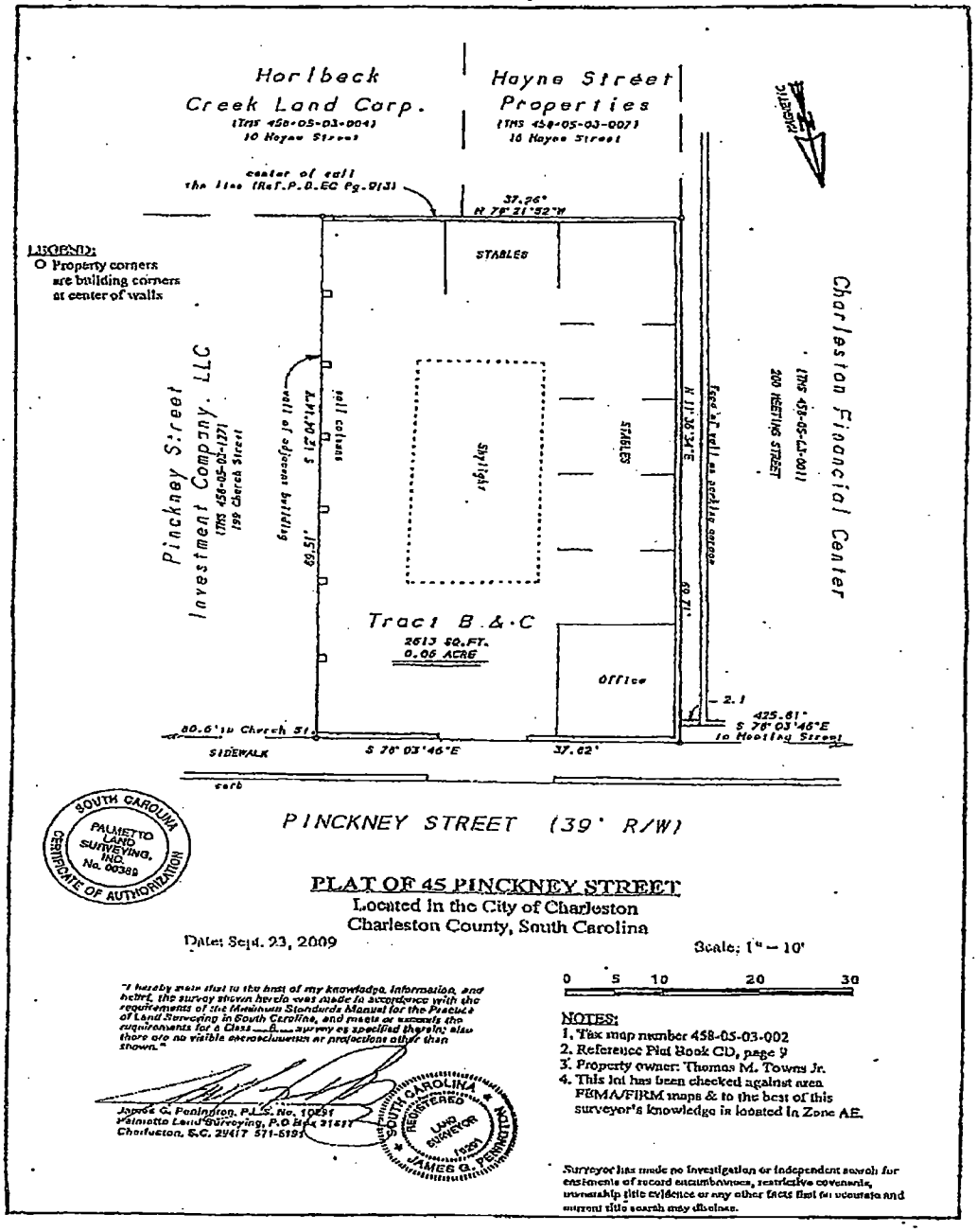
11



EXH. A(3)

12

Ex B



SOUTH CAROLINA PALMETTO LAND SURVEYING, INC. No. 00389 CERTIFICATE OF AUTHORIZATION

PLAT OF 45 PINCKNEY STREET

Located in the City of Charleston
Charleston County, South Carolina

Date: Sept. 23, 2009

Scale: 1" = 10'

0 5 10 20 30

"I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein; also there are no visible encroachments or projections other than shown."

James G. Pennington, P.L.S. No. 10691
Palmetto Land Surveying, P.O Box 31511
Charleston, S.C. 29417 571-5191

SOUTH CAROLINA REGISTERED LAND SURVEYOR 10691 JAMES G. PENNINGTON

NOTES:
1. Tax map number 458-05-03-002
2. Reference Plat Book CD, page 9
3. Property owner: Thomas M. Towns Jr.
4. This lot has been checked against area FEMA/FIRM maps & to the best of this surveyor's knowledge is located in Zone AE.

Surveyor has made no investigation or independent search for easements of record encumbrances, restrictive covenants, ownership title evidence or any other facts that an accurate and current title search may disclose.

13

Ashby, Pennye

From: Megan Gardner <mgardner@barrungermcintosh.com>
Sent: Monday, March 18, 2013 2:40 PM
To: Ashby, Pennye
Cc: Capers Barr
Subject: 45 Pinckney Street Variance
Attachments: Waste Service Agreement.pdf

Ms. Ashby:

Attached please find the Waste Services Agreement that is referred to in paragraph #5 on the Special Exception Application. I would appreciate it if you would please include the attachment with the application in the above referenced matter. Please let me know if you are unable to open the attachment.

Thank you,

Megan Gardner
Paralegal to Capers G. Barr, III
Barr, Unger & McIntosh, L. L. C
11 Broad Street
Charleston, South Carolina 29402-1037
(843) 577-5083
(843) 723-9039 (fax)
mgardner@barrungermcintosh.com

Carolina Waste Services, LLC

P.O. Box 22767, Charleston, SC 29413-843-576-1100

Waste Service Agreement

This Agreement is made and entered into by and between Carolina Waste Services, LLC, a South Carolina limited liability company ("Contractor") and Carolina Pride Storage ☐ Inc. ☐ LLC ☐ Partnership/Proprietorship.

Service Location: 16 Wayne Street **Service Commencement Date:** Aug 1 2007

☐ New Site ☐ New Svc. ☐ Change of Address ☐ Inc. Svc. ☐ Dec. Svc. Previous size & rate _____ Existing Customer# _____

Customer Billing Address: ☐ Change of Ownership/Name
PO Box 633
City: Mt Pleasant State: SC Zip: 29465

Site Address:
16 Wayne Street
City: Chas State: SC Zip: 29401
County: Chas C.C. $ Up Front: _____

Fed. ID / SS # _____ PO #: _____
Billing Contact: Robert Nash
Phone #: 216-167 Fax #: 577-5555
DL # _____

Contact & Phone #: _____
CC#: _____ Ex Date: _____
Name on Card: _____

T P C

Front End Container Service

Quantity	Size & Type	Frequency of Service	Monthly Charge	Cost per Extra Collection	Delivery Fee	Disposal Fee	Type of Waste	Max. Weight Allotment
One	2yd	6x/wk	230.00	36.00	NC	County	MSW	2T 1bs *
						Inc		2T yard

T P C

Roll Off Service

* average $166.00 per haul

Quantity	Size & Type	Frequency of Service	Monthly Charge	Cost per Haul	Delivery Fee	Disposal Fee	Type of Waste	Max. Weight Allotment

T P C

Recycling Service

Quantity	Size & Type	Frequency of Service	Monthly Charge	Cost per Extra Collection	Delivery Fee	Disposal Fee	Type of Product

Special Instructions: * If Customer must move the unit the rental will be suspended.
* Must be moved Monday

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 1 day of Aug, 2007

THIS AGREEMENT IS SUBJECT TO ALL TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE

CONTRACTOR
By: _____ Signature
Print Name: _____
Title: _____

CUSTOMER
By: _____ Signature
Print Name: _____
Title: _____

15

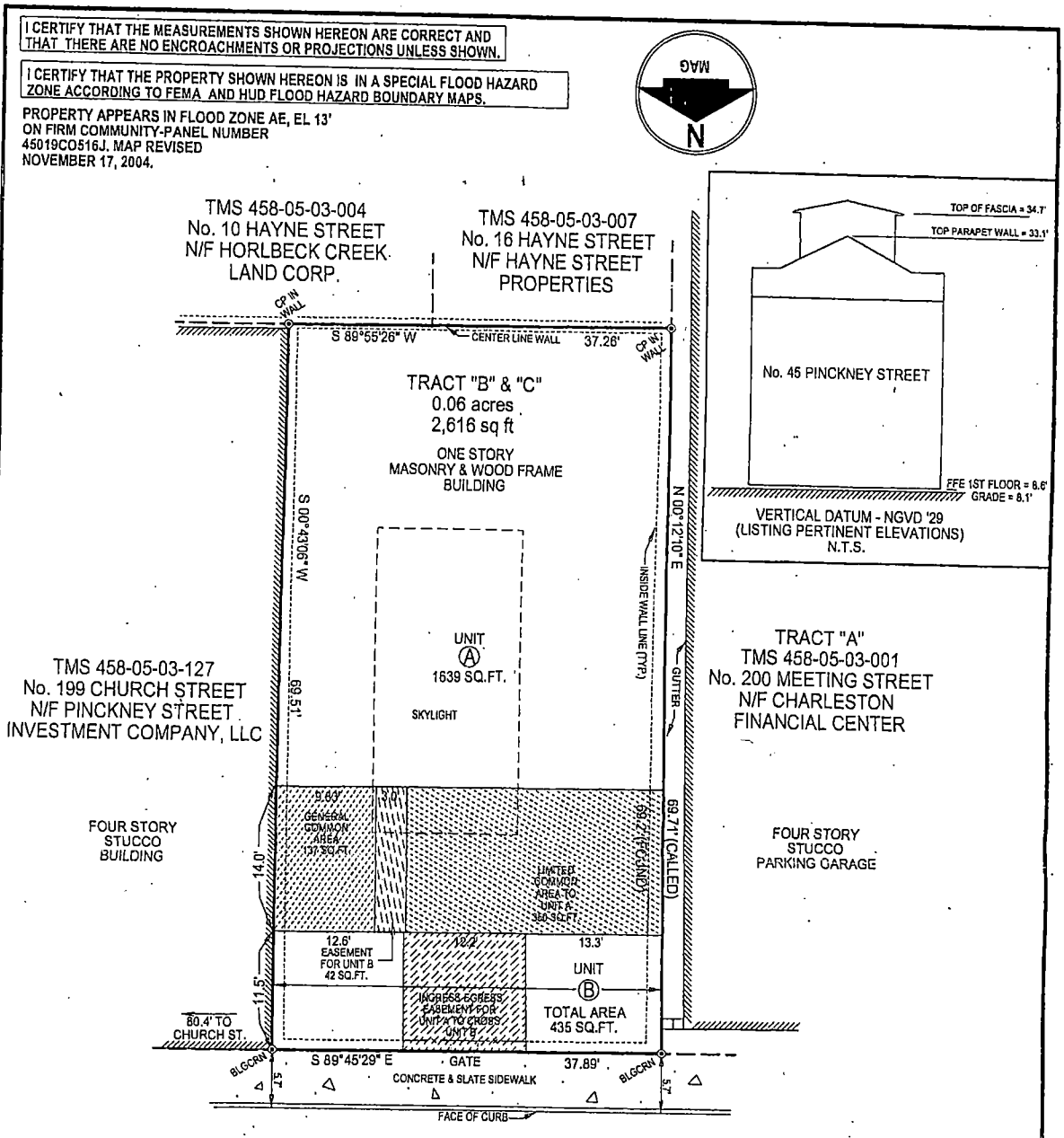
TAB-5

Appendix 381

I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.

I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.

PROPERTY APPEARS IN FLOOD ZONE AE, EL 13'
ON FIRM COMMUNITY-PANEL NUMBER
45019C0516J. MAP REVISED
NOVEMBER 17, 2004.



ADDRESS IS No. 45

PINCKNEY STREET (39' R/W)

PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.

SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION

10 5 0 10

SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: MARCH 29, 2013

REF: PLAT Z60, Pg. 088

TMS: 458-05-03-002

SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY

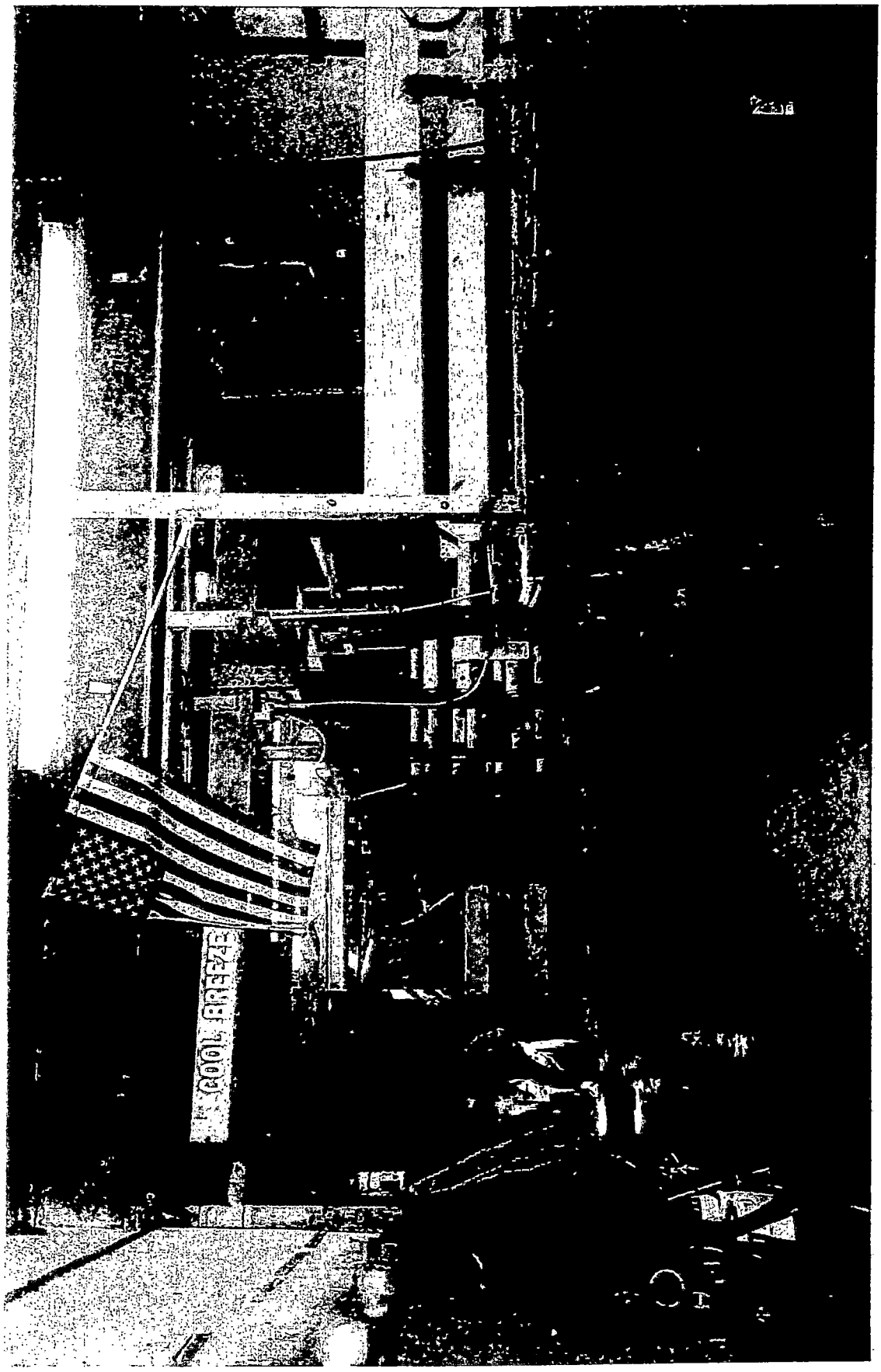
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

CHARLESTON COUNTY

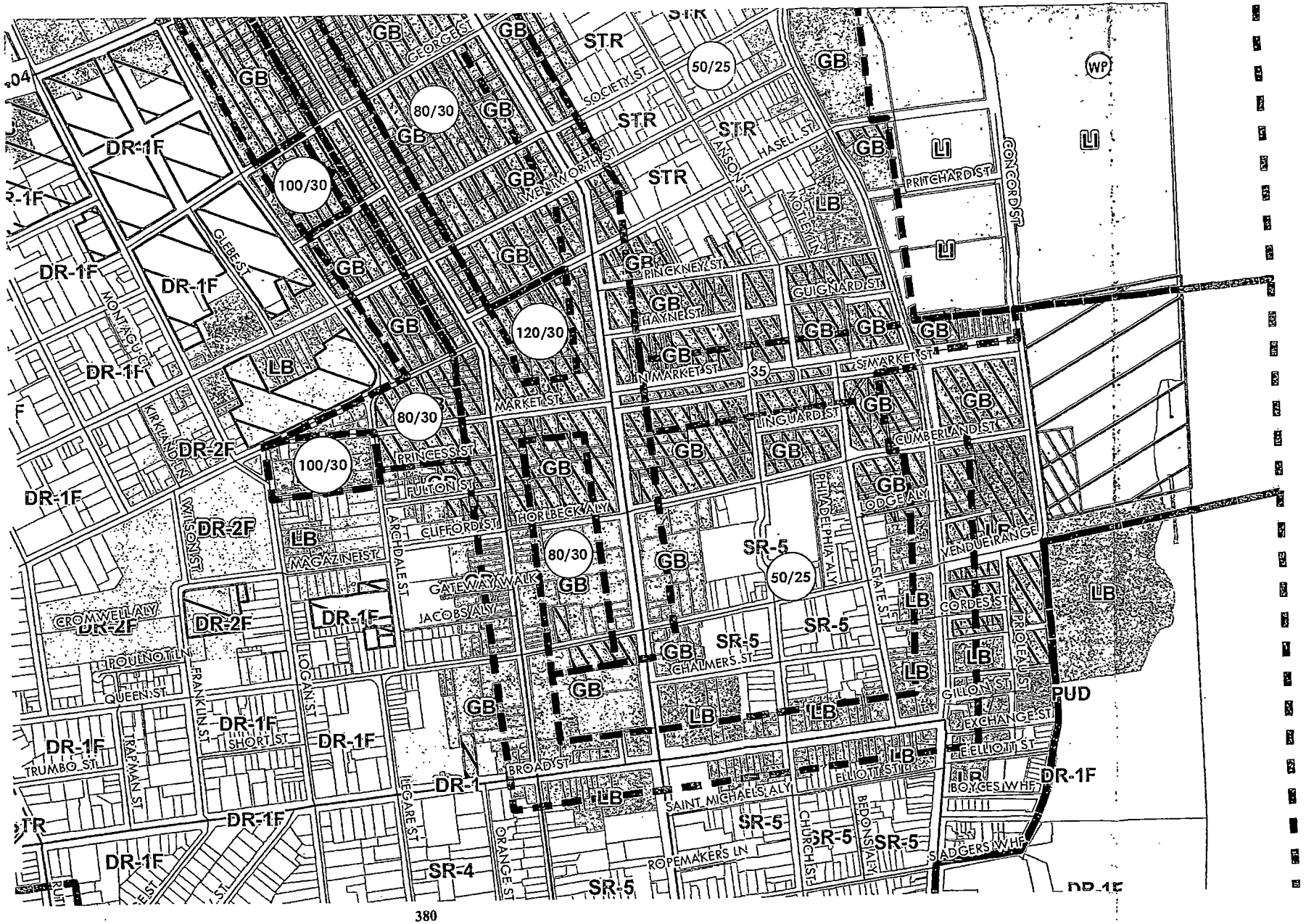
SOUTH CAROLINA

TAB-6




COOL BREEZE

TAB-7



Appendix 386

TAB-8

City of Charleston
Board of Zoning Appeals- Zoning
Tuesday, April 16, 2013

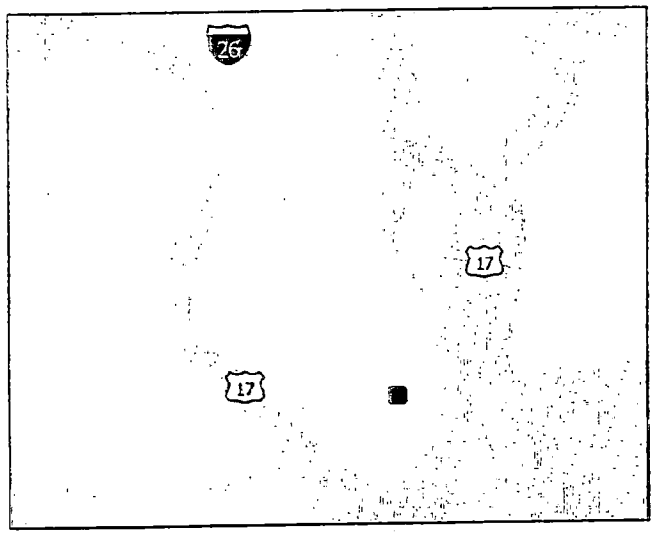
Item: B 6

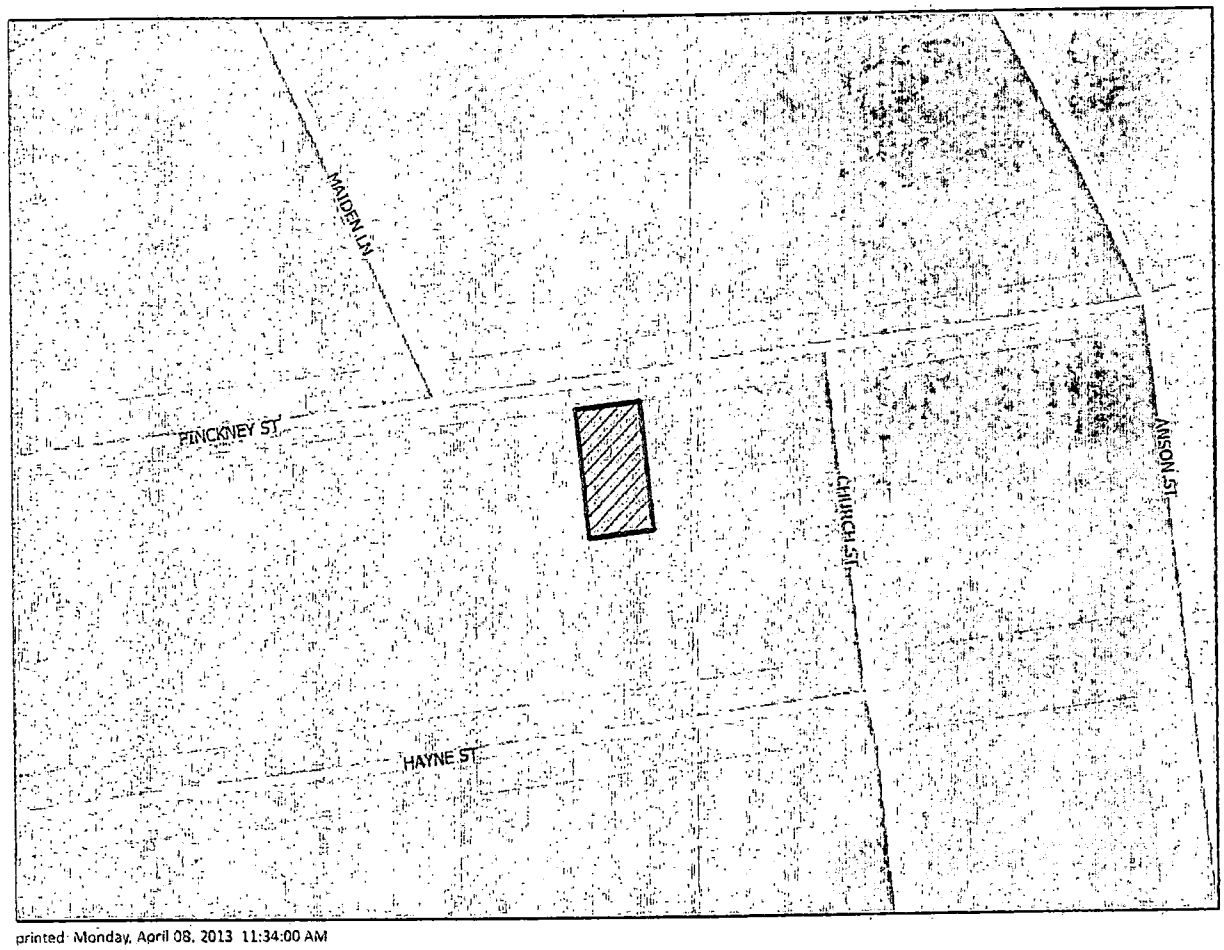
Request special exception under Sec. 54-206 to allow a stable in a GB (General Business) zone district.

Address:
45 Pinckney St.

TMS:
4580503002

Zoning: GB





printed: Monday, April 08, 2013 11:34:00 AM

City of Charleston - Mapnet v2.1 Output

Wednesday March 20th, 2013 - 5:42pm



TAB-9

BZA TABLE OF CONTENTS

45 Pinckney Street

April 16, 2013

1.	Ordinance Section 54-206, p: Special Exception Use	387
2.	City Code 29-212: General Health Care and Management Requirements	394; 400
3.	Memorandum to BZA	410
4.	Plot Plan (Exhibit "1" to Memorandum)	416
5.	Plat (Exhibit "2" to Memorandum)	420
6.	Affidavit of Robert R. Knoth	425
7.	Affidavit of Richard Knoth	430
8.	Statements of Support	433
9.	Zoning Map	443
10.	Revised Ventilation Plan	446

TAB 9-1

Sec. 54-206. - Special exception uses.

Uses designated in the Table of Permitted Uses and listed below, may be permitted in certain districts where the Board of Zoning Appeals—Zoning after review, finds that requirements listed below for such uses are met.

a. *Additional dwelling units in the SR zoning districts*. Additional dwelling units shall be permitted as an exception within all single-family residential, SR zoning districts, in dwellings constructed prior to August 17, 1966, where the Board, after review, finds that such existing dwelling contains such an amount of space available and suitable for residential purposes that it is unreasonable to require its use as single family dwelling.

b. *Cemeteries*. Cemeteries shall be permitted within the Conservation and all residential zones only as an exception where the Board, after review, finds that no building or parking lot thereof will be closer than one hundred (100) feet to an adjoining lot, and that all facilities will be adequately screened and landscaped in a manner appropriate to the character of the district.

c. *Church*. A church shall be permitted only as an exception within the Conservation and all residential zones where the Board, after review, finds that it will not be closer than twenty-five (25) feet to an adjoining property line and that the required off-street parking spaces, separated from property lines by an appropriate buffer strip, will be provided.

d. *Dairy farms & dairy products manufacture* shall be permitted only as an exception within the Conservation Zone where the Board, after review, determines that such uses are in accordance with the City's comprehensive land use plan.

e. *Day care centers*. A day care center, which is an accessory use to a church, school, park or other institution, shall be permitted as an exception within the Conservation District, all residential districts, and the CT District, where the Board, after review, determines that an application for such a use satisfies the following requirements:

1. proof of the application for the facility's licensing by the Department of Social Services is provided; and
2. the proposed facility satisfies the definition of a day care center; and
3. all signage is in conformity with that allowed for home occupations; and
4. outdoor play is allowed only between the hours of 8 a.m. and 6 p.m.; and
5. if a play area is within fifty feet (50') of a residential structure, it is appropriately buffered; and
6. there exist at least two (2) parking spaces per employee; and
7. plans for ingress/egress, loading/unloading and the location of the parking and play areas are approved for safety by the appropriate city department(s); and
8. the facility is compatible with the surrounding neighborhood based upon consideration of the number of persons cared for, potential traffic and noise impacts, location of the play, parking, loading and circulation areas and relation to other noise or traffic generating institutions (particularly if another non-residential facility is facing or abutting the same block face or is within three hundred feet (300') of the proposed site); and
9.

the proposed outdoor lighting of the facility does not unduly impact neighboring properties.

f. *Reserved.*

g. *Drive-thru or automated teller facilities for depository institutions, banks, savings and loans,* credit unions or similar depository institutions shall be permitted within the GO district only as an exception where the Board, after review, finds that the proposed teller facility satisfies the following requirements:

1. adequate off-street parking and traffic circulation is provided.
2. the vehicular access will not create a traffic hazard.

h. *Reserved.*

i. *Reserved.*

j. *Reserved.*

k. *Gasoline service stations* may be permitted within the LB, GB, UC, BP, LI, or HI districts as an exception where the Board, after review, finds that:

1. Buildings or equipment will not be within one hundred (100) feet of any existing day care, school, church, hospital, or public library.
2. Buildings or equipment will not be within fifty (50) feet of any residential zone district or existing dwellings.
3. Buildings or functionary facilities other than signs relating to the principal use will not be closer than twenty (20) feet to street abutting lot lines.
4. Any portion of an entrance or exit driveway leading to a public street will not be closer than three (3) feet to a fire hydrant.
5. Entrance and/or exit driveways will not be in excess of forty (40) feet wide or closer than fifteen (15) feet to the intersection of streets.
6. Stations within LB will restrict hours of operation to between 7 a.m. and 11 p.m.

l. *Homes for the elderly* which care for no more than twenty (20) persons shall be permitted within the DR-1, DR-1F, DR-2, DR-2F, DR-3, CT, LB, GB or UC zones as an exception where the Board, after review, finds that the proposed facility will be compatible with the character of the neighborhood, its population density, traffic patterns and parking facilities and not adversely impact the immediate neighborhood. The Board may, after review, permit larger facilities when it finds that the public interest will be served thereby.

m. *Logging camps and forestry activities* shall be permitted as an exception within the Conservation Zone where the Board determines that such uses are in accordance with the City's comprehensive land use plan.

n. *Museums* shall be permitted within the SR-3, SR-4, SR-5, SR-6, STR, and all diverse residential, DR districts where the Board, after review, finds the following:

1. That such museum is organized, that is, is a duly constituted body with expressed responsibilities.
2. That such museum is permanent, that is, expected to continue in perpetuity.
3. That such museum is a non-profit institution, that is, has documentary evidence of its tax-exempt status under the regulations of the U.S. Internal Revenue Service.
4. That such museum is essentially educational or aesthetic, that is, manifests its expressed responsibilities by knowledgeable utilization of its objects and exhibits them for elucidation and enjoyment.

5. That such a museum maintains a professional staff, that is, has at least one paid employee who commands an appropriate body of special knowledge and the ability to reach museological decisions consonant with the experience of his or her peers, and who has access to and acquaintance with the literature of the field. The continuity of employment of at least one professional staff member, who must work sufficient hours to meet adequately the current demand of the institution for administration, record keeping and care of collections is essential.
6. That the tangible objects, animate and inanimate, forming the museum's collections must have intrinsic value to science, history, art or culture.
7. That such museum maintain regular and predictable hours which constitute substantially more than token opening, so that access is reasonably convenient to the public.
8. That such museum operate during normal business hours and does not inherently exhibit noise, light or traffic conditions clearly debilitating to neighboring residents.

o. *Sewage disposal facilities* shall be permitted as an exception within the Conservation Zone where the Board, after review, determines that such uses are in accordance with the City's comprehensive land use plan.

p. *Stables* shall be permitted within the GB and UC district as an exception where the Board, after review, finds that:
1. The stable is not located within 100 feet of any residential zone district.
2. The City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable.
3. The stable complies with all city, county, and state regulations for stables.
4. A site plan is provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right-of-way.
5. A written explanation is submitted detailing how refuse will be handled in accordance with city, county, state, and federal regulations. This shall be reviewed by the Department of Public Service.
6. A plan is submitted showing how drainage on the property is to be collected in accordance with city, county, state, and federal regulations. This shall be reviewed by the Commissioners of Public Works and the Department of Public Service.
7. Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted.

q. *Electric substation or gas regulator station*. Such station shall be permitted within the Conservation District, all residential districts, the CT district, and the RO district only as an exception where the Board, after review, finds that such station is essential for service of the immediate area, will be enclosed within an appropriate woven wire or solid fence, will be suitably landscaped and no storage of vehicles or equipment will occur.

r. *Storage yards, junk yards, scrap yards or auto salvage yards*.
1. Outdoor storage yards, which are used for storage of materials and equipment, other than vehicles, boats or shipping containers, are permitted within the LI (Light Industrial) and HI (Heavy Industrial) districts as an exception where the Board, after review, finds that adequate provision and maintenance of visual

screening by fences, planting or other means, from public streets, roads, residences and adjacent residential zone districts will be provided.

2. Junk yards, scrap yards, or auto salvage yards are *prohibited within the LI district* but permitted within the HI district as an exception where the board, after review, finds that the same standards for visual screening listed in 54-206.r.1. are met.

s. *Reserved.*

t. *Golf courses and membership sports and recreation clubs*, private or for profit, or changes thereto, shall be permitted within the Conservation district as an exception where the Board, after review, finds that the location, lighting, hours of operation, type and size of the facility, or changes thereto, will not adversely affect any neighboring residentially zoned areas.

u. *Dwellings within the HI district* shall be permitted as an exception where the Board, after review, finds that there shall not be created any unsafe living conditions given the existing uses in the area.

v. *Mining* for the purpose of extracting materials from a property shall be permitted as an exception in all districts if the total size of the area to be mined does not exceed two (2) acres. For larger operations, Dirt Mining/Resource Extraction shall be permitted as an exception only in the Light Industrial (LI) and Heavy Industrial (HI) zone districts.

1. Mining operations not exceeding two (2) acres in total mining area and meeting all of the following conditions shall be permitted in any zone district as an exception where the Board, after review of documentation submitted by the applicant, finds that:

   a. The total mining area, work zone and construction access road is shown on a scaled site plan of the property, and is intended as preparation for residential use, recreational use or agricultural use.

   b. The mining use will not last more than one (1) year from the date of approval.

   c. The mining work zone, as shown on the scaled site plan, will be located at least fifty (50) feet from any property boundary and at least one hundred (100) feet from any dwelling.

   d. A mining operation has not occurred on the subject property within three (3) years prior to the date of the application.

   e. Variances and/or special exceptions from Article 3, Part 6: Tree Protection Requirements, if required, have been approved.

   f. Existing vegetation will be maintained and adequately protected as a natural buffer between adjacent dwellings, existing water bodies or wetlands and the mining work zone.

   g. The applicant agrees in writing to restrict the hours of operation for mining operations to between 8:00 a.m. and 7:00 p.m., Monday through Saturday.

   h. The applicant will not use any office facilities at the mining location except in the LI and HI zone districts.

   i. A stabilized access road for mining vehicles will be constructed and maintained to the specifications of the City Engineer and to a minimum depth of 50 feet from the public right-of-way.

2.

Mining operations exceeding two (2) acres in area shall be allowed in the Light Industrial (LI) and Heavy Industrial (HI) zone districts as an exception where the Board, after review, finds that:

a. The applicant agrees in writing to restrict the hours of operation for mining operations to between 7 a.m. and 7 p.m., Monday through Saturday.

b. Variances and/or special exceptions from Article 3, Part 6: Tree Protection Requirements, if required, have been approved.

c. The size, shape and location of the area to be mined are such that it will allow for the conversion of the mining area into an amenity for the eventual use of the property. Evidence for this finding shall require the submittal of a plat of the property which 1) complies with the preliminary plat requirements of Section 54-810; 2) indicates the limits of clearing and excavation for the mining operation; 3) indicates the intended post-mining use of the mining area and other areas of the tract in conjunction with the Zoning Ordinance; and 4) indicates the depth of the mined area and the final slopes of the sides.

d. Vehicle access from a public road for the mining operations is shown on a plat of the tract where the mining will occur, will be located in a manner that minimizes or removes any adverse impacts on adjoining parcels, and will not be through any residential areas. The applicant shall:

   i. Submit a copy of the approved SCDOT or City encroachment permit for the proposed access road;

   ii. Construct and maintain a paved roadway from the access point on a public right of way prior to commencing mining operations. The paving shall extend a minimum of fifty (50) feet into the property from the right-of-way. When the vehicle access to the mining area is less than two-hundred and fifty (250) feet from a residential area, the Board may increase the distance the road must be paved or may require a maintenance plan for an unpaved road to eliminate dust and noise issues.

e. The mining work zone will have adequate separation from adjoining properties and all wetland areas or areas below the critical line. The minimum separation from adjoining non-residential property, which is not part of the proposed development the amenity is intended to serve, shall be one-hundred (100) feet. The minimum separation from an existing water body, wetland, area below the critical line, or adjoining property with a residential zoning or residential use, shall be two hundred fifty (250) feet. The Board may increase the required distance between the mining work zone and an existing water body, wetland, area below the critical line, or adjoining property to mitigate potential adverse impacts due to an insufficient existing vegetative buffer, an environmentally sensitive area, or an existing residential use.

f. Where vegetation exists along a property boundary, natural water body or wetland, the operator shall maintain sufficient existing vegetation to provide a buffer between the mining operation and property boundary, natural water body or wetland.

W.

Membership sports and recreation clubs and civic, social and fraternal clubs shall be permitted within the SR-3, SR-4, SR-5, SR-6, STR, DR-6, DR-9, DR-12, DR-1F, DR-1, DR-2F, DR-2 and DR-3 districts where the Board, after review, finds the following:

1. Required off-street parking spaces, separated from property lines by an appropriate buffer strip, will be provided.
2. The location of the facility will not significantly increase pedestrian traffic or automobile traffic and parking on minor and local streets within existing residential neighborhoods.
3. That such organization is a non-profit organization and has documentary evidence of its tax-exempt status under the regulations of the U.S. Internal Revenue Service.

x. *Sidewalk cafés for licensed businesses not meeting the requirements of Section 54-213 subsection k. paragraph 2. and/or subsection k. paragraph 3.* shall be permitted within residential areas as an exception where the Board, after review, finds the following:

1. A completed application for a sidewalk café permit has been submitted for review by the Zoning Administrator;
2. The applicant meets the requirements of section 54-213 with the sole exception of subsection k. paragraph 2. and/or subsection k. paragraph 3.
3. The sidewalk café can be operated in the proposed location without compromising public safety or the use of sidewalks for pedestrian travel and access.
4. The sidewalk café hours of operation will be restricted and be compatible with the surrounding area.
5. The business applying for the sidewalk café permit is not licensed to permit on premises consumption of alcoholic beverages and will not permit the consumption of alcoholic beverages in the sidewalk café.
6. The applicant has submitted a petition signed by twenty-five (25) or more residents of the neighborhood in which the sidewalk café is to be located and, if the location is within a neighborhood with a neighborhood association recognized by the City of Charleston, the applicant must provide proof of having presented the proposal for said sidewalk café to that neighborhood association.

(Ord. No. 1996-227, §§ 3—6, 11-26-96; Ord. No. 1997-279, § 1, 7-15-97; Ord. No. 1997-280, § 2, 7-15-97; Ord. No. 1998-147, § 3, 8-18-98; Ord. No. 1998-203, § 5, 11-24-98; Ord. No. 1999-01, § 3, 1-12-99; Ord. No. 1999-54, § 4, 4-27-99; Ord. No. 1999-137, § 4, 9-28-99; Ord. No. 2001-31, § 1, 3-14-01; Ord. No. 2002-92, § 2, 8-13-02; Ord. No. 2003-44, § 4, 4-22-03; Ord. No. 2004-68, § 1, 7-20-04; Ord. No. 2006-489, § 2, 10-24-06; Ord. No. 2007-59, § 7, 3-6-07; Ord. No. 2008-146, § 5, 11-25-08; Ord. No. 2009-55, § 2, 4-14-09; Ord. No. 2009-207, § 2, 10-13-09; Ord. No. 2009-208, § 1, 10-13-09; 2011-121, § 1, 9-13-11)

TAB 9-2

Charleston, South Carolina, Code of Ordinances >> - CITY CODE >> Chapter 29 - TOURISM >> ARTICLE V. - TRANSPORTATION BY ANIMAL-DRAWN VEHICLES FOR PURPOSES OF TOURING >> DIVISION 1. - GENERALLY >>

DIVISION 1. - GENERALLY

Sec. 29-201. - Restricted.
Sec. 29-202. - Franchise agreement required; restrictions.
Sec. 29-203. - Route limitations.
Sec. 29-204. - Drivers.
Sec. 29-205. - Tour guide required.
Sec. 29-206. - Gatekeeper loading and medallion issuance procedure.
Sec. 29-207. - Design standards.
Sec. 29-208. - Zones of operation.
Sec. 29-209. - Diapering apparatus and sanitation communication required.
Sec. 29-210. - Number of medallions to be issued.
Sec. 29-211. - Fees.
Sec. 29-212. - General health care and management requirements.
Secs. 29-213—29-218. - Reserved.

Sec. 29-201. - Restricted.

No person shall operate or cause to be operate for hire any vehicle, of whatever nature, drawn by animals for the purpose of conducting tours within the old city district or the old and historic district, except animal-drawn vehicles as provided in this chapter.

(Ord. No. 1983-22, § 56, 5-10-83)
Editor's note—
Formerly numbered as section 29-202

Sec. 29-202. - Franchise agreement required; restrictions.

(a) *Findings of fact:*

(1) City council finds that certain of the operators of animal drawn vehicles in the old and historic district of the city have begun to utilize aggressive solicitation practices, adjacent to or upon the streets, sidewalks and public properties, urging upon citizens and visitors the use of their services; have abruptly approached citizens and visitors and thrust brochures in their hands, which are often unwanted and end up on the streets and sidewalks; have utilized solicitors, pamphleteers, persons holding signs, hawkers and pullers-in and have even placed fixed structures upon or adjacent to the streets, sidewalks and public properties to solicit business and/or distribute materials urging the use of their services.

(2) City council further finds that the success of such commercial practices requires that persons congregate and respond to such solicitation, thereby impeding pedestrian and vehicle travel.

(3)

City council further finds that such practices have an adverse impact on the ambiance of the city and its old and historic district; tend to create confrontations with citizens and visitors; adversely impact pedestrian and vehicle traffic flow; create litter; tend to create nuisances; adversely impact the health, safety and well being of the public; and otherwise have a negative impact on the tourism industry and economy of the city.

(4) City council further finds that it is appropriate that, as a condition of operating animal-drawn vehicles in the old and historic district, all persons must obtain a franchise, and must agree to desist from the aforesaid business practices, which agreement shall be a condition of the franchise.

(5) City council further finds that the operation of animal drawn vehicles on the public streets is a privilege and not a right and such operation is for the benefit of the public.

(6) City council further finds in the adoption of this section, that this is part of an ongoing effort to reasonably regulate the conduct of business upon the streets and sidewalks of the central business district and the market area for the benefit of the general public.

(b) *Franchise required:* No person shall operate or cause to be operated upon the streets or sidewalks of the old and historic district of the city any animal-drawn vehicle, without first entering into a franchise agreement with the city. Such franchise agreement shall be granted for a period of one (1) year and shall expire on the anniversary of the date of execution; provided, however, upon compliance with the provisions of the franchise agreement and Chapter 29, Articles V and VI, the agreement shall be automatically renewed. The franchise agreement shall contain the following provisions, which provisions are material and go to the essence of the franchise agreement:

(1) The franchisee shall maintain a current business license.

(2) The franchisee shall agree to operate its business strictly in accordance with the ordinances of the city, applicable thereto, as from time to time amended.

(3) The franchisee shall agree that it will not carry out the following business practices, or suffer them to be carried out on its behalf, upon the sidewalks, streets and public properties in the old and historic district, or upon private property adjacent to such streets, sidewalks and public properties, but directed at persons upon such streets, sidewalks and public properties:

a. The distribution of pamphlets or other printed materials to solicit or advertise for business.

b. The use of hawkers, pullers-in, pamphleteers, or persons holding signs to solicit or advertise the business or inviting the public to make inquiries to such persons.

c. The placement of fixed structures for the purpose of sales, solicitation, hawking, pullers-in, pamphleteering or the support of signage or advertising.

d. The parking or storage of animals or equipment on the public streets and sidewalks, except to load or unload passengers in approved loading zones. Nothing herein shall regulate the parking or storage of animals or equipment on private property.

(4) Nothing herein shall prohibit the solicitation of business immediately alongside an animal-drawn vehicle in an approved loading zone so long as such solicitation is not done in a raucous manner.

(5) The franchise shall be nonexclusive.

(6)

The franchisee shall agree that, upon the violation of the provisions of this section by the franchisee, its agents, employees, or persons acting on its behalf, the right to operate animal-drawn vehicles in the old and historic district shall be suspended as follows:

a. Upon two (2) violations within a six-month period, the franchise shall be suspended for a period not to exceed seven (7) days.

b. Upon three (3) violations within a one-year period, the franchise shall be suspended for a period not to exceed thirty (30) days.

c. Upon four (4) violations within a one-year period, the franchise shall be suspended for a period not to exceed one hundred eighty (180) days.

(c) *Administration and appeals.* This section shall be administered by the director of tourism. All appeals from an interpretation or determination by the director of tourism shall be made to the tourism commission, within fifteen (15) days of notice of such interpretation or determination. All appeals from an adverse decision by the tourism commission shall be made to the Court of Common Pleas within thirty (30) days of such decision.

(d) *Execution of agreement.* City council, by the adoption of this section, authorizes the mayor to enter into a franchise agreement with any and all persons who desire to operate animal-drawn vehicles in the old and historic district. Unless otherwise stated, each franchise agreement shall automatically renew on January 1 of every year so long as the franchisee is in good standing.

(Ord. No. 1995-110, § 1, 3-28-95; Ord. No. 1998-174, § 23, 9-22-98; Ord. No. 2001-133, § 1, 12-18-01; Ord. No. 2002-99, § 1, 8-13-02; Ord. No. 2006-200, § 1, 5-23-06)

Editor's note—

Ord. No. 1995-110, § 1, adopted March 28, 1995, enacted provisions designated as following former § 29-201. In order to accommodate the provisions of said ordinance, the editor renumbered former § 29-202 as § 29-201 and added the provisions of Ord. No. 1995-110 as § 29-202

Sec. 29-203. - Route limitations.

Animal-drawn vehicles may operate on all streets or public ways in the district except the following:

(a) The bricked portion of Church Street, from Water Street to South Battery, and all cobblestone and Belgium block streets;

(b) Any public way designated as an alley, land or court (excluding St. Michael's Alley which may be used through Friday from 4:00 to 6:00 p.m., excepting legal holidays and Horlbeck Alley which may be used Monday through Friday from 9:00 a.m. to 4:00 p.m. and during regular touring hours on weekends and on legal holidays);

(c) The following streets:

(1) Atlantic Street;

(2) Price's Alley;

(3) Rope Maker's Lane;

(4) Bedons Alley;

(5) Ladson Street;

(6) Big Lamboll Street;

(7) Water Street (from Church to Meeting Streets);

(8) Church Street (from Tradd to Water Street);

(9) Broad Street (West of State Street) from 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m., Monday through Friday, excepting legal holidays;

(10) Meeting Street (North of Broad Street) from 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m., Monday through Friday, excepting legal holidays;

(d) On such streets or at such times as are restricted for such use by the department of traffic and transportation with the approval of the city council committee on traffic and transportation and so designated in the office of the commission.

(e) There shall be an amended commercial route that can be used during eastern standard time between the hours of 4:30 p.m. to 6:00 p.m. The commercial route approved is as follows: Market Street to Concord Street to Vendue Range to Prioleau Street to Elliot Street to E. Bay Street to Exchange Street to Prioleau Street to Concord Street to Market Street.

(Ord. No. 1983-22, § 59, 5-10-83; Ord. No. 1986-88, § 1, 8-19-86; Ord. No. 1993-58, § 9, 4-27-93; Ord. No. 2013-10, § 1, 1-22-13)

Sec. 29-204. - Drivers.

All drivers of animal-drawn vehicles shall have a current automotive vehicle drivers license and demonstrate competence in handling animal-drawn vehicles. All drivers of animal-drawn vehicles shall be required to pass an animal-drawn vehicle competency examination which will satisfy the city that the driver is knowledgeable and capable of handling horses and animal-drawn vehicles in emergency situations.

(Ord. No. 1983-22, § 60, 5-10-83; Ord. No. 1993-58, § 7, 4-27-93)

Sec. 29-205. - Tour guide required.

All tours on animal-drawn vehicles must be conducted by a registered or temporary tour guide.

(Ord. No. 1983-22, § 61, 5-10-83)

Sec. 29-206. - Gatekeeper loading and medallion issuance procedure.

(a) The city shall establish a central location at the corner of North Market and Church Streets for the distribution of medallions to be issued in the conduct of tours in the zones of operation as established pursuant to section 29-208 of the Code of the City of Charleston. The central location point shall be designated as the "gate" which will consist of a structure to be occupied by a city employee authorized to issue medallions for touring as provided herein, said employee to be more commonly referred to as the "gatekeeper." The gate loading procedure shall require an animal-drawn vehicle to load and discharge passengers as herein provided and to pass through the gate to receive a medallion. This medallion shall indicate the zone in which the animal-drawn vehicle shall conduct its tour. The zone designation shall be obtained by random selection by the gatekeeper as hereinafter provided. The medallion shall be issued by the gatekeeper and affixed to the back of the animal-drawn vehicle. Upon completion of the tour, the medallion shall be returned to the gatekeeper by the driver or company representative of the animal-drawn vehicle having been issued the medallion. A medallion shall be returned to the gatekeeper no later than seventy-five (75) minutes after its issuance.

(b)

Animal-drawn vehicles shall load and discharge passengers at the city's one (1) central loading zone, located on Anson Street south of Pinckney Street and on North Market Street between Anson Street and Church Street, provided that an animal-drawn vehicle shall be able to load and discharge passengers on private property that is owned or operated by its company and provided that the said private loading zone is within the Market zone which is described as the area lying between and including Pinckney Street to the north; Cumberland Street to the south; East Bay Street to the east, and Meeting Street to the west.

(c) The gate shall operate between the hours of 9:00 a.m. through 5:30 p.m. during Eastern Standard Time and from 9:00 a.m. and 6:30 p.m. during daylight savings time. During Eastern Standard Time, medallions shall be issued until 4:30 p.m. and shall be returned by 5:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 5:00 p.m. During daylight savings time, medallions shall be issued until 5:30 p.m. and shall be returned by 6:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 6:00 p.m. Notwithstanding the foregoing, during the month of April 2011 only, the gate shall operate between the hours of 9:00 a.m. and 7:30 p.m. Furthermore, during the month of April 2011, medallions shall be issued until 6:30 p.m. and shall be returned by 7:30 p.m., provided no animal-drawn vehicle shall be allowed to conduct a tour in a residential zone after 7:00 p.m.

(d) Animal-drawn vehicles shall be permitted to remain in a loading zone no longer than fifteen (15) minutes prior to entering the gate to receive a medallion. If a medallion is not issued to a vehicle which has been in the loading zone for fifteen (15) minutes, the said vehicle shall move to the rear of the loading zone and wait in line to enter the gate and receive a medallion.

(e) A special tour, which is defined as a tour that has been scheduled in advance by the director of tourism, shall require a medallion before the said special tour can be conducted. A special tour must also utilize the city's loading zone or private property for loading and discharging passengers as provided herein.

(f) A commercial tour, shall be defined as a tour that is conducted in the commercial district only and after 4:30 p.m. There shall be no more than be five (5) commercial tours permitted to begin between 4:30 p.m. and 5:00 p.m. industry wide, and there shall be no more than five (5) commercial tours permitted to begin between 5:00 p.m. and 5:30 p.m. industry wide. The carriage company owners will determine among themselves how the five (5) commercial tours permitted to begin between 4:30 p.m. and 5:00 p.m. and the five (5) commercial tours permitted to begin between 5:00 p.m. and 5:30 p.m. will be divided up among the carriage companies. Commercial tours conducted after 5:30 p.m. shall not be restricted in the number of tours permitted and shall not require a medallion.

(Ord. No. 1983-22, § 62, 5-10-83; Ord. No. 1993-58, § 1, 4-27-93; Ord. No. 2002-73, § 1, 5-28-02; Ord. No. 2006-495, § 1, 11-14-06; Ord. No. 2010-85, § 2, 5-11-10)

Sec. 29-207. - Design standards.

Animal-drawn vehicles shall be authentically styled passenger carriages. Wagons which patently were designed for cargo instead of passengers will not be approved. Carriages must not exceed twelve (12) feet in length or six (6) feet in width. Carriages will be measured from end to end, excluding the steps and shafts; and, from axle tip to axle tip. No part of the carriage may be over six (6) feet in width; provided, however, any certificated carriage which was in use as of January 1, 1982, and no longer than thirteen (13) feet may continue in use.

(Ord. No. 1983-22, § 63, 5-10-83; Ord. No. 1998-174, § 24, 9-22-98)

Sec. 29-208. - Zones of operation.

(a) The peninsula city shall be divided into zones of operation as may be recommended from time to time by the commission and approved by city council. A map outlining such zones shall be maintained in the office of the director of tourism.

(b) Based upon traffic studies, industry input and observations and experience of the commission, the maximum number of animal drawn vehicles to be allowed to operate in a given zone may be restricted, all as may be recommended by the commission and approved by city council.

(c) The right to operate in Zones 1, 2 and 3 shall be made available to touring entities having animal drawn vehicles for which certificates of appropriateness have been issued as follows:

(1) Through the use of the gate and gatekeeper procedure as hereinabove defined, the gatekeeper shall utilize a bingo machine and twenty (20) pingpong balls, six (6) of which shall be designated for Zone 1, six (6) of which shall be designated for Zone 2, and eight (8) of which shall be designated for Zone 3, to randomly select a ball with a designated zone destination marked thereon, and that upon selection, the ball shall be removed from the bingo machine and replaced when the medallion is returned.

(2) When a medallion is issued, the gatekeeper shall record the company's name, the animal-drawn vehicle drivers' name, medallion number and the time that it is issued. No animal-drawn vehicle shall be issued more than one (1) medallion within forty-five (45) minutes from the time of issuance of the first medallion. When the medallion is returned, the check-in time shall be recorded by the gatekeeper. The gatekeeper shall verify that the maximum check-out time has not been exceeded.

(3) A medallion shall be returned to the gatekeeper no later than seventy-five (75) minutes from the time of its issuance.

(Ord. No. 1985-148, § 5, 12-17-85; Ord. No. 1986-49, § 2, 5-27-86; Ord. No. 1993-58, § 4, 4-27-93)

Sec. 29-209. - Diapering apparatus and sanitation communication required.

It shall be unlawful for any person, firm, corporation or other entity to utilize any animal for the purpose of pulling any vehicle on city streets unless such animal is equipped with diapering apparatus that prevents the droppings of such animal from being deposited or otherwise left on city streets. It shall be the responsibility of the person, firm, corporation or other entity utilizing any animal-drawn vehicle to see that the diapering apparatus is maintained in working order. Further, every animal-drawn vehicle shall be equipped with a two-way communication system and flags to identify areas in need of sanitation. It shall be the responsibility of the person, firm, corporation or other entity utilizing any animal-drawn vehicle to drop a sanitation flag marking areas where animals deposit or otherwise leave excreta on city streets and to utilize two-way communications to provide notice of areas in need of equine sanitation.

(Ord. No. 1987-82, § 1, 7-21-87; Ord. No. 1998-174, § 25, 9-22-98; Ord. No. 2007-223, § 1, 11-27-07)

Sec. 29-210. - Number of medallions to be issued.

(a) The city shall authorize a total of twenty (20) medallions to be distributed as follows:

Zone 1 6

Zone 2 6

Zone 3 8

(b) The medallions shall be labeled with a serial number as follows:

Zone 1 Serial Nos. 1—15
Zone 2 Serial Nos. 16—30
Zone 3 Serial Nos. 31—45
(Ord. No. 1993-58, § 3, 4-27-93)

Sec. 29-211. - Fees.

(a) Each animal-drawn vehicle company authorized to do business within the City of Charleston shall be assessed an annual fee of seventeen thousand five hundred dollars ($17,500.00) to operate a carriage business in the City of Charleston. This fee will allow a company to have one (1) animal-drawn vehicle in the central loading zone at any given time.

(b) Each animal-drawn vehicle company shall be assessed a fee of three dollars ($3.00) each time one of its animal-drawn vehicles receives a medallion at the gate. The company shall be billed on a monthly basis.

(c) A company which operates an animal-drawn vehicle business in the City of Charleston shall be assessed a monthly sanitation fee in a sum to be assessed by the director of tourism, which fee shall be paid before the company shall be allowed to participate in the gatekeeper system; said fee to be billed to the company on a monthly basis.

(Ord. No. 1993-58, § 5, 4-27-93)

Editor's note—

Ord. No. 1993-58, § 5, adopted April 27, 1993, enacted a new section 29-212. In order to better conform to the organization of the Code, the editor has redesignated the provisions of § 5 of Ord. No. 1993-58 as § 29-211

Sec. 29-212. - General health care and management requirements.

(a) *Findings of fact.* City council hereby makes the following findings of fact:

(1) The City of Charleston, carriage company operators, residents, and visitors to the City of cHarleston have sought to take a proactive approach to protect and ensure the health, safety and welfare of animals used in the tourism industry;

(2) A study was conducted to develop and recommend animal welfare policies to the tourism commission. In response to the study, the tourism commission formed the ad hoc committee on animal-drawn carriages which committee was comprised of representatives from the tourism commission, animal control, the carriage industry, the Society for the Prevention of Cruelty to Animals ("SPCA"), and an independent veterinarian;

(3) The ad hoc committee on animal-drawn carriages has now reviewed and updated the previously recommended policies after much deliberation and with input from the general public, Carriage Operators of North America ("CONA"), and the veterinarian community; and

(4) The codification of the ad hoc committee on animal-drawn carriages recommended regulations is in the best interest of protecting the health, safety, and welfare of the animals used in the tourism industry and protects the health, safety, and welfare of motorists and pedestrians using the public right-of-ways along with the residents and tourists of the City of Charleston.

(b) *Definitions.* Except where the context clearly indicates otherwise, the following terms and phrases as used in this section shall have the following meanings:

(1)

Animal shall mean any horse or mule used for touring purposes and operated under a franchise agreement as outlined in section 29-202

(2) *Contamination* shall mean the introduction of unwholesome or undesirable elements, including but not limited to, bedding, mold, bugs, and rodent droppings.

(3) *Director of tourism* shall mean the director of tourism or his or her designee.

(4) *Equine sanitation flag* shall mean the marker used to identify animal excreta and is generally recognized as a two and one-half-inch rubber ball cut in half with an eight-inch surveyor's flag attached.

(5) *Farrier* shall mean a specialist in horse care who addresses the hooves, feet and legs of the animal.

(7) *Inspection* shall mean to permit the director of tourism, the police department, or a city contracted veterinarian to enter upon the premises of any carriage company subject to this ordinance to make inspections and to examine and audit required records.

(8) *Old and Historic District* shall mean that portion of the city that is so designated from time to time on the official zoning map of the city.

(9) *Out of service* shall mean when the animal is unhitched from a carriage and out of its harness.

(10) *Police department* shall mean the chief of police or his or her designee.

(11) *Rest* shall mean the time when the animal is in service but not performing work as defined herein.

(12) *Stable* shall mean the barn where the animals are kept.

(13) *Stall* shall mean individual space within the barn where each animal is kept.

(14) *Tour* or *touring* shall mean the conducting of or the participation in sightseeing in the districts for hire or in exchange for a donation.

(15) *Touring stock* shall mean all animals used for touring pursuant to this section.

(16) *Vintage carriage* shall mean any carriage built before 1900.

(17) *Work* and *working* shall mean the act of pulling a carriage.

(18) Reserved.

(19) Reserved.

(20) *Free choice* shall mean that water shall be ready and in front of a horse for 15 minutes after a tour is conducted so that a horse is free to choose to drink or not to drink water.

(c) *Equipment.*

(1) Every carriage used for touring purposes and operated under a franchise agreement as outlined in section 29-202 shall be equipped with the following:

a. Head lights or lanterns and tail lights or lanterns which are visible for a distance of (500) feet when the carriage is operated from a half hour after sunset to a half hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred feet ahead;

b. A slow moving vehicle emblem attached to the rear of the carriage;

c. A diapering apparatus that prevents the droppings of the animal used to pull the carriage from being deposited on the ground or the right-of-way;

d. A fifth wheel or cut under turning mechanism on the front axle with the exception of vintage carriages;

e. Reflective ankle cuffs or another reflective device approved by the tourism committee shall be used on at least two (2) of the animal's legs if one (1) animal is pulling a carriage, or if two (2) animals are pulling a carriage reflective ankle cuffs or another reflective device approved by the tourism committee shall be used on at least one (1) of the outside legs of each animal when the carriage is operated from a half (½) hour after sunset to a half (½) hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred (500) feet ahead;

f. A two-way electronic communication system; and

g. A minimum of two (2) equine sanitation flags to mark animal excreta droppings.

(2) Carriages must be properly lubricated and the carriage wheels shall spin freely.

(3) Each carriage shall be maintained in a safe condition so as to not endanger any person or property.

(4) Each carriage shall be maintained in a clean and sanitary condition, free of liter and debris and at all times suitable for public transportation of passengers.

(5) No carriage shall be operated having more passengers than what is permitted by its certificate of appropriateness or having a combined weight of carriage, passengers, and drivers that is more than three (3) times the weight of the animal(s) pulling the vehicle.

(d) *Carriage stands, client pick-up locations, staging areas, and barns.*

(1) Carriages queuing in the medallion booth line shall move and circle the block during equine sanitation cleaning.

(2) Each carriage company shall ensure that their animals in the queue line at the medallion booth shall have a fresh water source every hour.

(3) Each carriage company shall post at their barns in a conspicuous place signage as required under applicable federal, state, and local laws, including but not limited to, the Equine Activity Liability Act (S.C. Code 47-9-730), along with providing brochures outlining the City's ordinances governing the general health and welfare of the animals used in the tourism industry of Charleston.

(e) *Care and shelter of animals.*

(1) No animal shall be used to draw a carriage unless the animal is in good health and the following standards are met:

a. The animal shall not have open sores, open wounds, diarrhea, nor shall the animal be lame or have any other ailments unless the city tourism office as well as the individual company's stable has a current written statement by a veterinarian on file that the animal is fit for such work not withstanding such condition. Further, the written statement by the veterinarian must have a required expiration date;

b. The hooves of all animals while engaged in work on pavement, brick, concrete or other like hard surfaces shall have rubber or elastomer shoes, boots or pads to prevent slipping and shall be evenly trimmed and shod. However, steel shoes can be used upon introduction to the touring stock during an initial two-week trial period. Also, if a farrier determines that the horse's hooves will not accommodate the use of rubber pads. metal shoes can be used on the rear legs of the animal;

c. The animal shall be properly and appropriately groomed;

d. The animal shall have adequate flesh and muscle tone as determined by the Body Condition Scale of the Henneke Chart and shall average between 4 and 7;

e. The animal is kept in good working condition;

f. At introduction into the touring stock then bi-annually thereafter, the animal shall have had a physical inspection completed by and a certificate of serviceability for carriage work signed by a licensed veterinarian, with the results thereof provided to the City of Charleston Tourism Director and made available for inspection on site;

g. All animals upon reasonable notice by the tourism director or police department shall be made available for an annual physical inspection to be conducted by the tourism director or police department's veterinarian with the results thereof being maintained by the office of tourism with a copy being provided to the carriage company operator;

h. At introduction into the touring stock then quarterly thereafter, the animal shall have been de-wormed; and

i. At introduction into the touring stock, the animal has been vaccinated under the direction of a veterinarian for appropriate diseases and risk factors of the area, as outlined on the certificate of serviceability.

(2) Free choice water shall be provided to each animal immediately after completing a tour for a minimum of fifteen (15) minutes.

(3) Animals shall be provided electrolyte supplements at each feeding.

(4) Animals shall have at least fifteen (15) minutes rest between back to back tours.

(5) In a twenty-four-hour period, animals shall not engage in Work more than eight (8) consecutive hours or ten hours with out a one and one-half (1½) hour break being disconnected from the carriage, in a twenty-four-hour period.

(6) Animals shall not engage in work more than six (6) days in a seven-day period.

(7) Animals shall not engage in work with equipment causing an impairment of vision, other than normal blinders.

(8) Animals shall not be driven at a speed faster than a slow trot.

(9) Animals shall not be subject to any cruel or harassing treatment or equipment.

(10) Animals shall not be sold or disposed of except in a humane manner in accordance with American Association of Equine Practitioners' guidelines.

(11) Animals shall be at least three and one-half (3½ years of age and shall not weigh less than nine hundred fifty (950) pounds in fit condition.

(f) *Harnesses.*

(1) Animals shall not engage in work with harnesses or bits that harm or are unsafe to the animal.

(2) Harnesses, bridles, bits and padding shall be properly fitted and kept in clean and good repair.

(3) Harnesses shall be kept free of makeshifts like wire, rope, and rusty chain.

(4) Trace chains shall not put pressure on the collar and shoulders of the animal when it starts pulling the carriage resulting in a jolting start versus a smooth start with a snug collar already in place.

(5) Breeching shall fit so that it will not rub or hinder the hind leg movement of the animal.

(g) *Weather conditions.*

(1) Carriage company operators and drivers shall use caution when Working animals in adverse weather conditions such as high heat and humidity, snow, ice, heavy rain, and other slippery or reduced visibility situations.

(2) When the ambient temperature reaches or exceeds eighty-five (85) degrees Fahrenheit at any point during the carriage company's hours of operation, the carriage company operators shall implement a mandatory system of taking the rectal temperature of each working animal immediately after completing a tour. In the event an animal's temperature reaches one hundred three (103) degrees Fahrenheit or above, the animal's temperature shall be taken every fifteen (15) minutes until the animal's temperature falls below one hundred three (103) degrees Fahrenheit before the animal is allowed to return to work.

(3) When the rectal temperature of an animal reaches between 103—103.9 degrees Fahrenheit, the carriage company operator shall require the animal to be removed from service and be cooled down to a temperature of 101.5 degrees Fahrenheit before returning them to engage in Work.

(4) In the event that an animal's rectal temperature reaches 104 degrees Fahrenheit or above the animal shall be taken out of service for the day and cooled down.

(5) In the event an animal can not be cooled down to a rectal temperature of 101.5 degrees Fahrenheit within two (2) hours of the first 103 degree Fahrenheit or above rectal temperature recording, a veterinarian shall be immediately contacted to inspect the animal.

(6) At any time when an animal's rectal temperature reaches 105.0 or above, or if any animal shows signs of distress such as panting motions, thumping of the chest (synchronous diaphramic flutter), tying up, or stiffening of legs or back, muscle trembling, or colic, a veterinarian shall be immediately contacted to inspect the animal.

(7) When either the ambient temperature reaches ninety-eight (98) degrees Fahrenheit or the Heat Index reaches one hundred twenty-five (125) degrees Fahrenheit, as determined by the director of tourism or the police department, the carriage company operators shall discontinue working their animals and pull them off the street until the temperature decreases below the above stated temperatures as authorized by the director of tourism or the police department.

(8) The official thermometer used for determining the temperature and the heat index shall be located at 113 Calhoun Street, in the City and County of Charleston, South Carolina. In the event this thermometer is out of service, as determined by the director of tourism or the police department, the back-up thermometer shall be the thermometer located at 180 Lockwood Drive, in the City and County of Charleston, South Carolina.

(h) *Feeding.*

(1) Animals shall receive an adequate amount of equine feed daily, which is free from contamination, sufficient in quantity, having nutritional value, and be provided frequently enough to meet normal daily requirements for the animal's condition, special needs, environmental factors and size of the animal so as to maintain a healthy flesh.

(2) Clean drinking water free from contamination shall be available to an out of service animal at all times.

(3) Out of service animals shall at all times have access to salt in a block or loose form.

(i) *Stables and stalls.*

(1) Stables shall be safe, well lighted, ventilated, and provide protection from the weather as described herein;

a. Stables and stalls shall be kept clean and in good repair and excreta shall be removed daily;

b. The floors of the stalls shall be graded and raked to keep their surface dry; each stall shall have rubber mats under the shavings or shavings with a minimum depth of four (4) inches;

c. Fans shall be used to increase ventilation when the ambient temperature reaches eighty (80) degrees Fahrenheit;

d. Sharp surfaces and any other hazards shall not be permitted in any stable or stall where they can come in contact with the animals;

e. Stables and stalls shall be kept free of leaks, including but not limited to, leaks form roofs or from plumbing;

f. Stalls sizes shall be no less than five (5) feet nine (9) inches × eleven (11) feet unless a carriage company undertakes any remodeling or refurbishing of any sorts to their stable that equals fifty (50) percent of the market value of the stable or moves their stable. In the event a carriage company does remodel or refurbish their stable as stated in the previous sentence then they must implement a minimum stall size of twelve (12) feet × twelve (12) feet for every stall;

g. The practice of tethering the animal in a stall is permitted so long as the animal can lie down without the risk of entanglement or injury;

h. Occupied stalls shall have a minimum of three (3) inches of bedding or have a specialized surface so as to keep animals clean, dry and free of concussion, abrasion or pressure points;

i. Interior and exterior areas of the stable shall be kept clean, properly drained and free of nuisances including, but not limited to, unreasonable and excessive odors and unreasonable accumulation of refuse and excreta;

j. There shall be no smoking at any time in stables; and

k. Unless otherwise directed by a veterinarian, animals shall be given a pasture turn-out time of a minimum of four (4) consecutive days to total fourteen (14) days within four (4) months;

(2) Stables shall be located within walking distance the medallion gate located at the corner of Church and North Market.

(3) All stables shall have a yearly inspection by the fire department. Fire extinguishers must be kept in obvious places in every stable as required by law and as recommended by the fire department.

(j) *Recordkeeping.*

(1) Feeding, shoeing, medication, and treatment logs, bi-annual inspection records, certificate of serviceability, quarterly de-worming records, rectal temperature logs, work schedules, disposal documentation, and such other records as requested by the tourism director and police department shall be maintained for a three year period by each carriage company operator for every animal used in the touring stock.

(2) These records shall be made available for inspection by the city and its designee.

(k) *Inspections.* In addition to the annual inspection provided for herein, animals, facilities and records shall be subject to random or unannounced inspections at the discretion of the tourism director, police department, and/or the city designated veterinarian. The inspector is

permitted to take notes, pictures and video if they deem appropriate. These inspections shall be brief in order to not interfere with the work flow of the business. The inspector should be allowed to enter the premises no longer than fifteen (15) minutes after arrival at the facility during business hours.

(Ord. No. 2007-90, § 1, 4-24-07; Ord. No. 2011-58, §§ 1—10, 8-16-11; Ord. No. 2011-59, § 1, 8-16-11; Ord. No. 2011-60, § 1, 8-16-11)

Secs. 29-213—29-218. - Reserved.

DIVISION 2. - CERTIFICATE OF APPROPRIATENESS

Sec. 29-219. - Required.
Sec. 29-220. - Application; inspection.
Sec. 29-221. - Transferability.
Sec. 29-222. - Suspension or revocation.
Sec. 29-223. - Expiration.
Secs. 29-224—29-234. - Reserved.

Sec. 29-219. - Required.

No animal drawn vehicle shall operate without a duly issued certificate of appropriateness and without having paid such fee therefor as city council may, from time to time, establish. The certificate of appropriateness must be permanently affixed to the vehicle in a location approved by the commission.

(Ord. No. 1983-22, § 58, 5-10-83; Ord. No. 1985-148, § 5, 12-17-85)

Sec. 29-220. - Application; inspection.

(a) An applicant for a certificate of appropriateness shall provide the tourism director with the following:
  (1) Adequate identification of the applicant and animal-drawn vehicle and proof of ownership;
  (2) Material setting forth the characteristics of the vehicle including its dimensions, weight, passenger capacity, maker, year built;
  (3) Color photographs not less than eight (8) inches by ten (10) inches of all four (4) sides of the vehicle or, in the discretion of the tourism director, sketches of a similar make and model and samples of colors proposed for use on the vehicle;
  (4) Adequate proof of liability insurance with PIP coverage in an amount determined by the tourism commission;
  (5) A fee as set forth by city council;
  (6) After approval but prior to the issuance, a current city business license.

(b) Upon receipt of the information set forth in subsection (a)(1)—(4) and (6), the tourism director shall submit the application to the tourism commission for the commission's determination as to whether the application should be approved. In acting upon and evaluating any application, the tourism commission shall consider the design standards as set forth in section 29-207 of this chapter as well as the proposed color of the vehicle.

(c) Nothing herein shall be construed so as to prohibit the tourism director or the commission from requiring visual inspection of the vehicle.

(Ord. No. 1983-22, § 64, 5-10-83; Ord. No. 1987-83, § 2, 7-21-87; Ord. No. 2007-202, § 1, 10-23-07)

Sec. 29-221. - Transferability.

A certificate of appropriateness required by this division shall be issued on a specific vehicle and for a specific owner and is not transferable. The certificate remains the property of the city and must be surrendered upon expiration or revocation.

(Ord. No. 1983-22, § 65, 5-10-83)

Sec. 29-222. - Suspension or revocation.

(a) Failure to abide by the provisions of this chapter or any of the ordinances of the city or laws of the state in any manner affecting or regulating the operation of the vehicle for which the certificate is issued, or the failure to maintain the required insurance shall be grounds for suspension for a reasonable time or the revocation of a certificate of appropriateness issued under this division.

(b) If, in the opinion of the tourism director, a certificate of appropriateness should be suspended or revoked, he shall give written notice to the holder thereof, by certified mail of the right to appear before the commission and show cause why the certificate should not be suspended or revoked.

(Ord. No. 1983-22, § 67, 5-10-83; Ord. No. 2007-202, § 2, 10-23-07)

Sec. 29-223. - Expiration.

All certificates of appropriateness shall be granted for a period of one year and shall expire on the anniversary of the date of issuance; provided, however, upon compliance with the provisions of section 29220(1), (4), (5), and (6) the certificate shall be renewed.

(Ord. No. 1983-22, § 66, 5-10-83; Ord. No. 2007-202, § 3, 10-23-07)

Secs. 29-224—29-234. - Reserved.

TAB 9-3

BARR, UNGER AND MCINTOSH, L.L.C.
ATTORNEYS AT LAW
11 BROAD STREET
P. O. BOX 1037
CHARLESTON, SOUTH CAROLINA 29402-1037

CAPERS G. BARR, III
H. WAYNE UNGER, JR.
WILLIAM S. BARR
H. THOMAS MCINTOSH, JR.
ADAM E. BARR
CAPERS G. BARR, IV
W. SIAU BARR, JR.

TELEPHONE 843-577-5083
FAX 843-723-9039
www.barrungermcintosh.com

EDISTO ISLAND OFFICE
806 OYSTER PARK
EDISTO ISLAND, SC 29438
TELEPHONE 843-869-2389
FAX 843-869-0110

MEMORANDUM

To: City of Charleston Board of Zoning Appeals

From: Capers G. Barr, III and Adam E. Barr

Re: 45 Pinckney Street Use as a "Stable"; Condominium Unit

Date: April 16, 2013

Arkay, LLC seeks to resume the use of 45 Pinckney Street as a "Stable". It is creating a horizontal property regime, assigning two separate and distinct uses for the property that will clearly separate the "Stable" use from other uses. The area of the building extending 11.5 feet from the Pinckney Street facade will not permit stable use, and will be designated Unit "B". Its use will be for offices.

Attached as Exhibit "1" is a Plot Plan by surveyor Alexander Peabody, depicting the configuration of the horizontal property regime. Exhibit "2" is a plat of survey by Mr. Peabody showing the measured distance from the front of the building to the nearest residential zone district.

Unit "A", to be used as a stable, comprises the rearmost 44.01 feet of the building. The limited common area of Unit "A" and the General Common Area for both units, shown as the 14 foot wide area in shading on the Plot Plan, will be used for restrooms, customer waiting, loading and offloading, and will not be used for a stable.

By the configuration as described, the Stable use will be 119 feet distant from the nearest residential zone district, and thereby will comply with the setback requirement of the Special Exception Use as a Stable, as set forth in City Code Section 54-206(p).

The central position addressed in this memorandum is that the statutory 100 foot setback from a residential zone district must be measured from the Stable "use"; rather than measured from the outside of the building within which the "use" is contained. The configuration of 45 Pinckney Street as proposed in this memorandum, and the measurement of the 100 foot setback from the use within the building, will comport with the setback requirements of the City Code, according to the statutory syllogism discussed below.

1. First, the intent of Council in enacting the Special Use Exception for stables should be viewed from its broad context: The Special Exception Use as a "Stable" was intended to apply only to stables in the tourism carriage industry. This is evident because of the language of Subsections 54-206, p, subparagraphs 2 and 4, requiring a "Certificate of Appropriateness" from the City Tourism Commission, and also requiring that the cleaning/loading/tacking area shall not "impede traffic flow in the public right of way." These circumstances could only apply to activities unique to the tourism carriage industry and would not apply, for example, to a horse stable on John's Island.

2. Secondly, the zone of the City in which a "Stable" may be located is limited under the Tourism provisions of the Code. Chapter 29, Article V, Sections 29-201, *et. seq.*, provides for city franchises for carriage companies, and more specifically provides that "Stables shall be located within walking distance (from) the Medallion Gate located at the corner of Church and North Market." Although the phrase "walking distance" is not further defined in the Code, another section strongly suggests that "walking distance" means the area called the "Market Zone", bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and Meeting Street to the west. The Tourism provisions of Chapter 29 are incorporated into the Zoning provisions of Chapter 54 by Section 54-206. p. 3: "The stable complies with all city, county, and state regulations for stables."

This is because Code section 29-206(b) provides that carriages shall load and discharge passengers at the "Gate", or they may load and discharge on private property within the "Market Zone". The "Market Zone" is there defined as the area bounded by Pinckney Street to the north, Cumberland Street to the south, East Bay Street to the east and by Meeting Street to the west. It appears, therefore that the intent of Council in providing for "walking distance" to the Gate, was to mean that the Stable be within the "Market Zone".

If the central point of carriage tours was intended to be the Gate, and if tourists are nevertheless permitted to mount and dismount away from the Gate, provided that the mount/dismount area must be in the "Market Zone", it stands to reason that "Market Zone" and "walking distance" were intended to be synonymous. This is also logical from a City monitoring standpoint, so that City enforcement personnel are enabled to monitor carriage operations within a "walking distance" range of the Gate.

3. Thirdly, therefore, if it is correct that "walking distance" is intended to be within the "Market Zone", a review of the properties within the Market Zone suggests very few properties were suitable for Stable use, either presently or at the time of enactment of the provisions of the Tourism Ordinance.

First of all, the central, east-west axis of the Market Zone is the City Market itself, as well as the adjacent restaurants and shops on the south side of North Market Street and on the north side of South Market Street. It is obvious that none of the

properties on the east-west axis of the Market Zone could be used as a "Stable", as a practical matter.

Neither could there be any reasonable expectation that a property on the western boundary, fronting on Meeting Street could be used as a stable; or, likewise, that properties on the eastern boundary fronting on East Bay Street, could be used, either.

On the southern boundary of the Market Zone there may be one potential property, although there is no suggestion that it would be available for use, much less as a Stable. That is the property currently used as a convenience store at the northeast corner of State and Cumberland Streets. Otherwise, the properties on the southern boundary of the Market Zone which front on Cumberland Street are either within 100 feet of a residential district, or are properties used as city parking garages or as established office buildings.

On the northern boundary of the Market Zone, viewed from west to east, the Bank of America building consumes most of the first block extending eastward from Meeting Street; and immediately to the east is the property at issue, 45 Pinckney Street. To the east of 45 Pinckney is the Andrew Pinckney Inn. Proceeding easterly across Church Street is the First Baptist Church School Gymnasium, and across Anson Street to the east is the stable of Palmetto Carriage Company, then a small Inn, a veterinary clinic, a surface parking lot, an office building and "Big John's" Café.

Between North Market and Pinckney Streets there are several open automobile parking lots that could theoretically be converted to stable use. Several are on the north side of Hayne Street, and another is east of Anson Street, between North Market and Pinckney Streets. However none of the surface lot properties are known to be available, and it is unlikely that automobile parking would become secondary to Stable use, as a practical matter.

Therefore, the properties theoretically or practically available for use as a Stable in the Market Zone are at 16 Hayne Street, the current location of Carolina Polo & Carriage Company, 45 Pinckney Street, the location at issue in this Memorandum, or one of the surface automobile parking lots as described.

The point to be made is that, in construing the intent of City Council in providing for "Stable" use as a Special Exception, the properties for which that intended use would be eligible were limited. Accordingly, the construction and use of the term "Stable" in the City Code must be framed within this practical context.

4. "Stables" are permitted in general business and urban commercial districts as a Special Exception Use. Code Sections 54-201(l); 54-206(p).

5. "Stable" is not defined in the city's Zoning Ordinance. It is noteworthy that the ordinance provides only for stables as a Special Exception "Use". Emphasis, here, is on the term "Use".

6. Although not defined in the Zoning Ordinance, "Stable" is defined in the Franchise Ordinance, which authorizes by franchise the operation of animal drawn vehicles for the purposes of tourism, as follows: "*Stable* shall mean the barn where the animals are kept." Section 29-212(b)(12). "*Stall*" is also defined: "Stall shall mean individual space within the barn where each animal is kept." Section 29-212(13).

7. The question of statutory construction therefore presented is this: Where the Special Exception Use provides in Section 54-206(p)(1) that "the stable (shall not be) located within 100 feet of any residential zone district", is the 100 feet to be measured from the outside of the building within which the stable is located, or may the 100 foot measurement be made from the area of the building within which the stable is located, if the building includes more than one use?

A review of Section 54-206(p), the zoning ordinance, suggests that "Stable" is used in that section to describe a "Use", and not a "Structure".

a. In the first place Section 54-206 itself deals with "Special Exception Uses."

b. Secondly, in 54-206(p)(2) a requirement of the special exception is that the Tourism Commission issue a Certificate of Appropriateness "for the stable". The requirement for issuing a Certificate of Appropriateness is found in the Tourism Chapter of the Code, Sections 29-219, *et. seq.* However, the Tourism Commission's Certificate of Appropriateness is not issued for a "Stable", at all. Instead, it is issued for an animal drawn vehicle. The Section requires that horse drawn carriages comply with certain proof of ownership, that they adhere to certain manufacturing specifications; that color photographs of carriages be maintained in the tourism office; that proof of liability insurance be filed; that a fee be paid; and that the carriage company obtain a current city business license. All of these things are the standards by which a "Certificate of Appropriateness" is issued by the Tourism Commission. Therefore, as used in Section 54-206(p)(2), the term "Stable" does not refer to a physical structure, at all. Rather, it refers to "Stable" as a form of use.

c. Likewise, Section 54-206(p)(4) contains the requirement that a site plan be provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right of way. This requirement has nothing to do with the existence of any building that could be called a "Stable", but rather relates to an operational or "use" function. Likewise, Sections 5 and 6 deal with "uses" as a stable, requiring proof of how refuse is to be handled and how drainage is to be collected.

d. However, subsection (7) of Section 54-206(p) uses an altogether different term. The Section provides that "Buildings" shall be designed, utilizing appropriate ventilation to prevent objectionable odors from being emitted." It is noteworthy that City Council used the term "Buildings" in subsection 7, rather than "Stables". The use of this different term supports the inference that "Stable" was not used

in the other subsections to describe a building or structure, at all. Rather "Stable" is used to describe a form of use; and use as a "Stable" may be part of a larger "Building", which can include other uses.

8. Arkay is creating a Horizontal Property Regime at 45 Pinckney Street, consisting of two "units" or "apartments". The northernmost unit, measured 11.5 feet in a southerly direction from the front of the building on Pinckney Street consists of office use. This unit, referred to as Unit "B", is restricted against use as a stable.

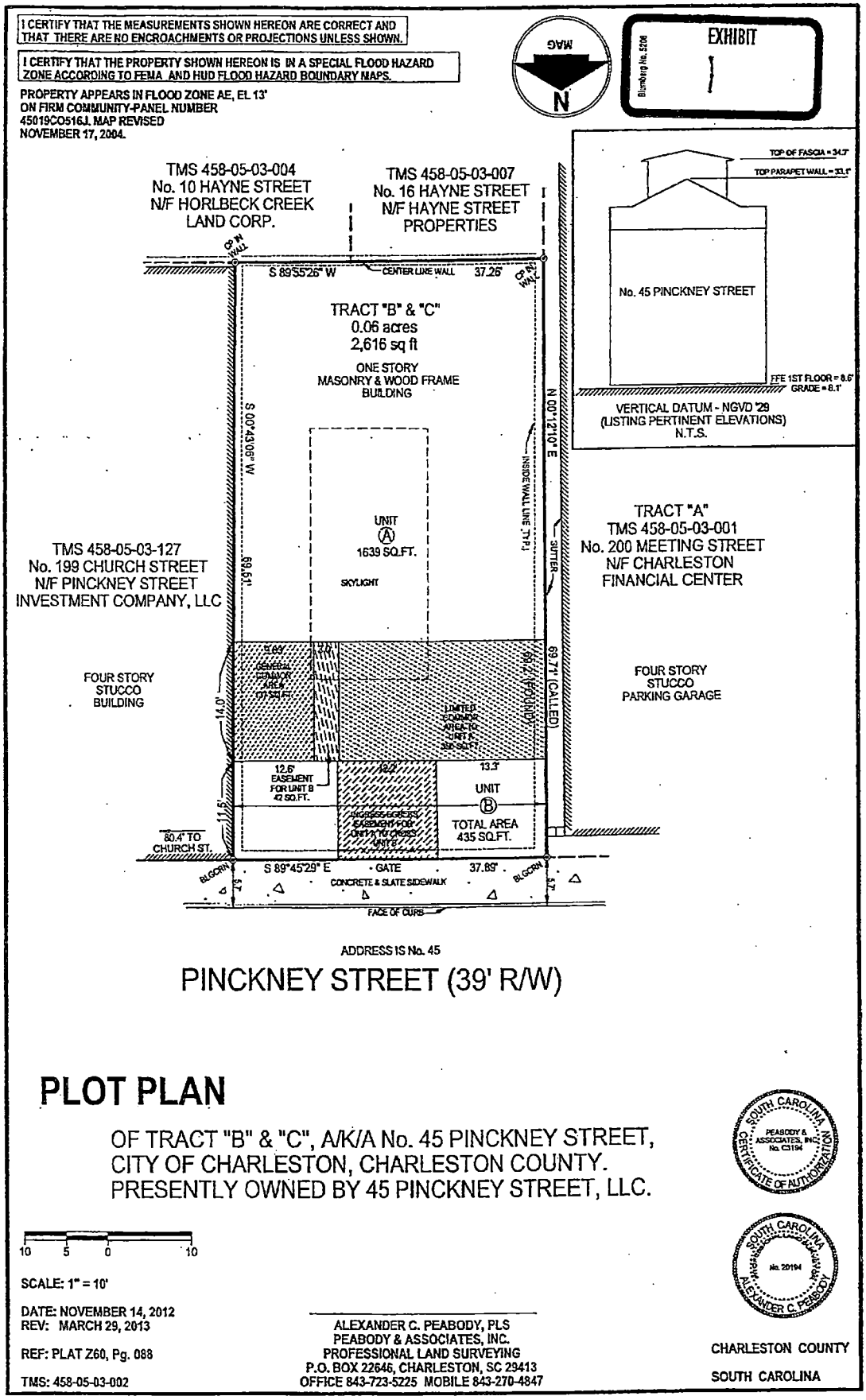
To the south of the Unit B offices is a 14 foot deep Limited Common Area for Unit A, and General Common Area for both units, but which is not a part of Unit A. It will be used for restrooms, customer waiting, customer loading and unloading, and tacking.

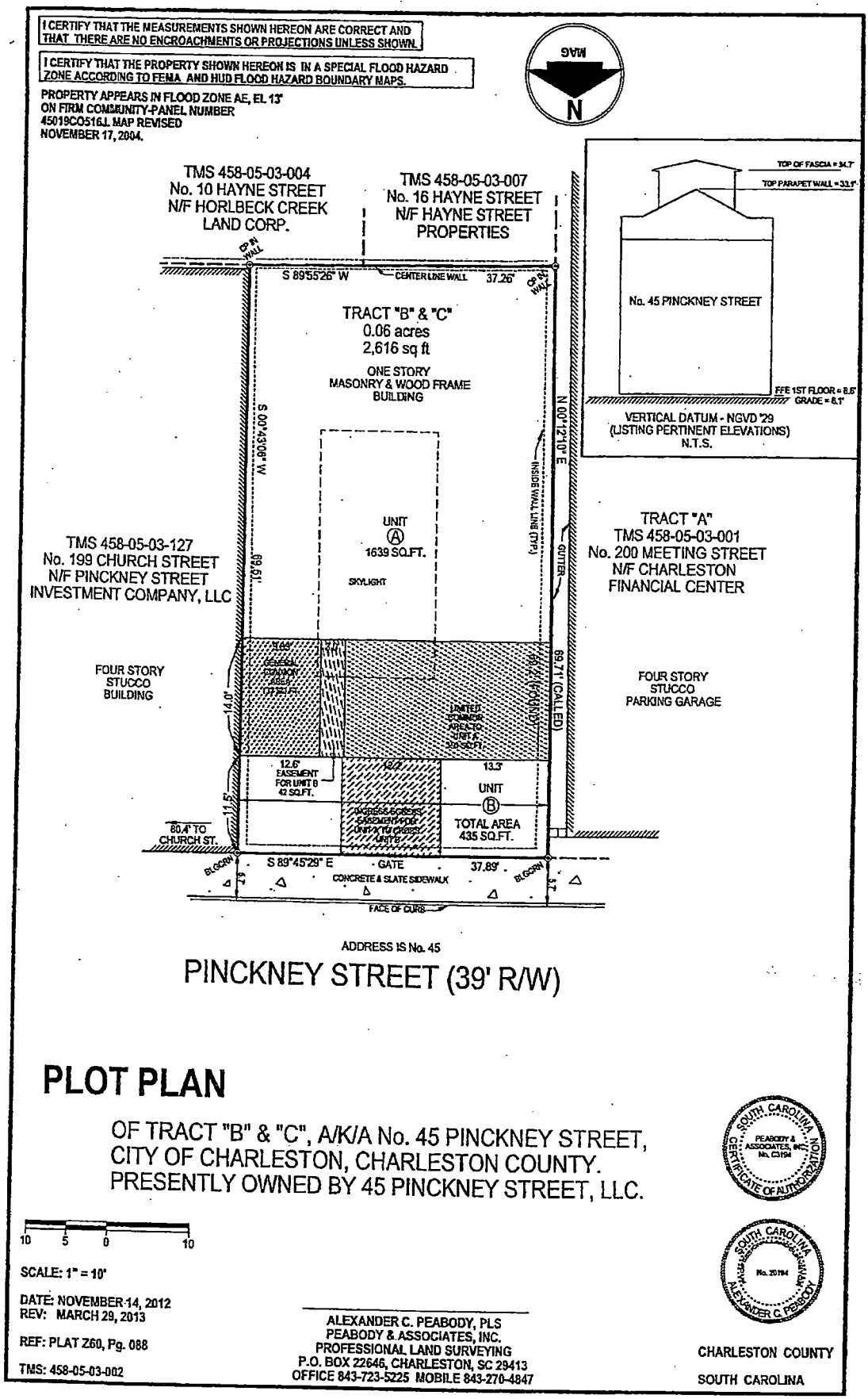
The remainder of the building, Unit "B", will be the area beginning 25.5 feet from the front of the building, to the rear wall of the building, a space 37.8 feet wide and 44.01 feet deep. Unit "B" will be used as a stable; that is to say, as a space "where the animals are kept", and for cleaning and tacking. It will include 6 stalls and 2 tack rooms.

The entryway though the existing arched doorway shall be an access easement for ingress and egress to Units "A" and "B".

9. To the extent that "Stable" describes the space where animals are "kept" [29-212(b)(12)], the intent of Council was to provide for a separation of the space within which animals sleep, eat and defecate of 100 feet from a residential district. By creating an area 25.1 feet deep that will not be used as a stable, that will be used only for human purposes, and that will be restricted against use as a Stable, the Applicant is assuring the City and neighbors that no animal will be "kept" within 100 feet of the residential district.

TAB 9-4


I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
PROPERTY APPEARS IN FLOOD ZONE AE, EL 13'
ON FIRM COMMUNITY-PANEL NUMBER
45019C0516J. MAP REVISED
NOVEMBER 17, 2004.
MAG
N
EXHIBIT
1
TMS 458-05-03-004
No. 10 HAYNE STREET
N/F HORLBECK CREEK
LAND CORP.
TMS 458-05-03-007
No. 16 HAYNE STREET
N/F HAYNE STREET
PROPERTIES
S 89°55'26" W
CENTER LINE WALL
37.26'
TRACT "B" & "C"
0.06 acres
2,616 sq ft
ONE STORY
MASONRY & WOOD FRAME
BUILDING
UNIT
Ⓐ
1639 SQ.FT.
SKYLIGHT
S 00°43'06" W
N 00°12'10" E
INSIDE WALL LINE TYP.
69.71' (FOUND)
69.71' (CALLED)
SUTTER
TMS 458-05-03-127
No. 199 CHURCH STREET
N/F PINCKNEY STREET
INVESTMENT COMPANY, LLC
FOUR STORY
STUCCO
BUILDING
TRACT "A"
TMS 458-05-03-001
No. 200 MEETING STREET
N/F CHARLESTON
FINANCIAL CENTER
FOUR STORY
STUCCO
PARKING GARAGE
GENERAL ENJOY. AREA
LIMITED COMMON AREA TO UNIT A
12.6' EASEMENT FOR UNIT B 42 SQ.FT.
UNIT
Ⓑ
TOTAL AREA
435 SQ.FT.
14.0'
11.5'
80.4' TO CHURCH ST.
S 89°45'29" E
GATE
37.89'
CONCRETE & SLATE SIDEWALK
BLGCRN
FACE OF CURB
TOP OF FASCIA = 34.7'
TOP PARAPET WALL = 33.1'
No. 45 PINCKNEY STREET
FFE 1ST FLOOR = 8.6'
GRADE = 8.1'
VERTICAL DATUM - NGVD '29
(LISTING PERTINENT ELEVATIONS)
N.T.S.
ADDRESS IS No. 45
PINCKNEY STREET (39' R/W)
PLOT PLAN
OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.
10 5 0 10
SCALE: 1" = 10'
DATE: NOVEMBER 14, 2012
REV: MARCH 29, 2013
REF: PLAT Z60, Pg. 088
TMS: 458-05-03-002
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION
SOUTH CAROLINA
REGISTERED
No. 20194
ALEXANDER C. PEABODY
CHARLESTON COUNTY
SOUTH CAROLINA



PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.

SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION
PEABODY & ASSOCIATES, INC. No. C3194

10 5 0 10

SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: MARCH 29, 2013

REF: PLAT Z60, Pg. 088

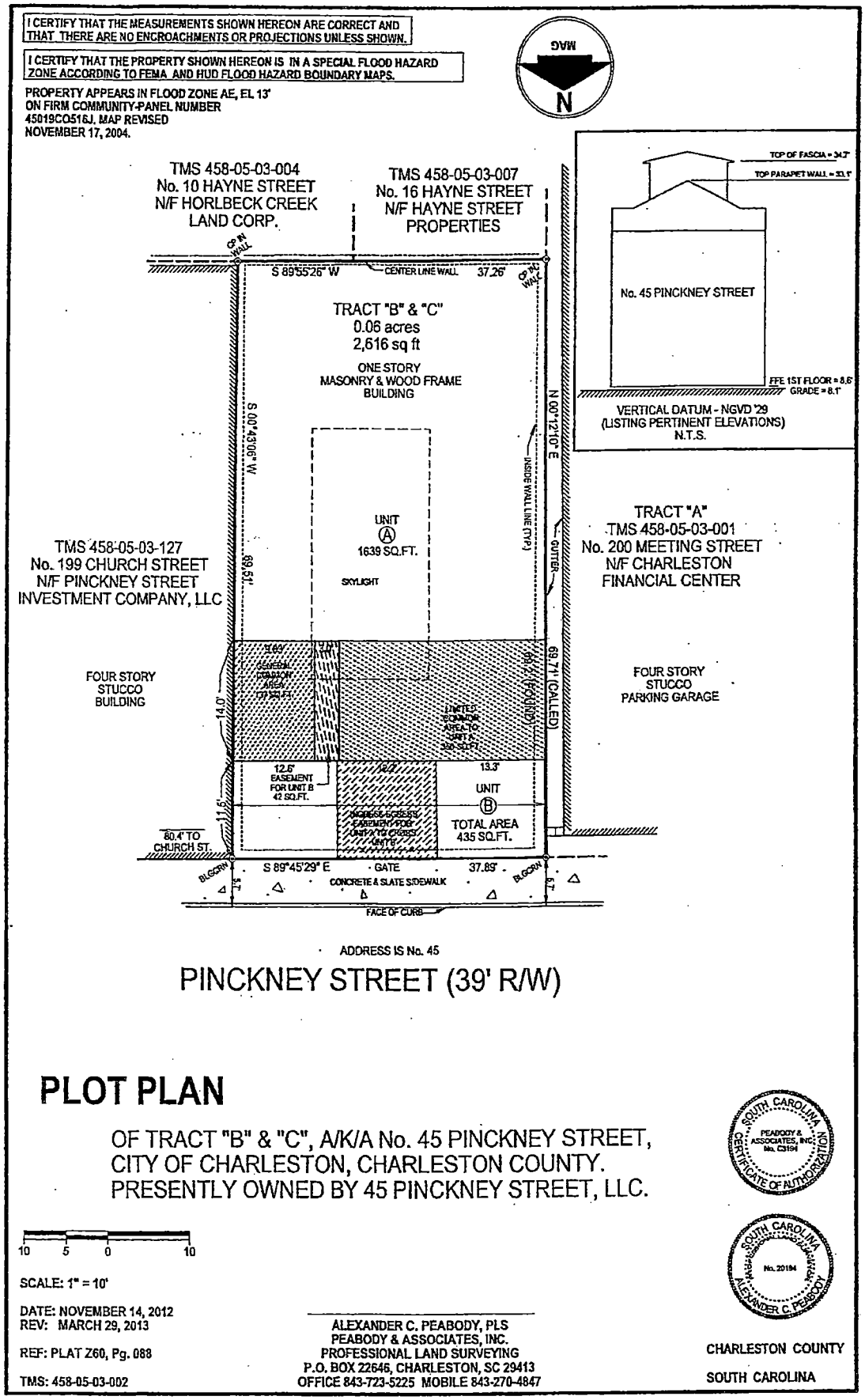
TMS: 458-05-03-002

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

SOUTH CAROLINA REGISTERED LAND SURVEYOR
No. 20194
ALEXANDER C. PEABODY

CHARLESTON COUNTY

SOUTH CAROLINA



PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.

10 5 0 10

SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: MARCH 29, 2013

REF: PLAT Z60, Pg. 088

TMS: 458-05-03-002

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

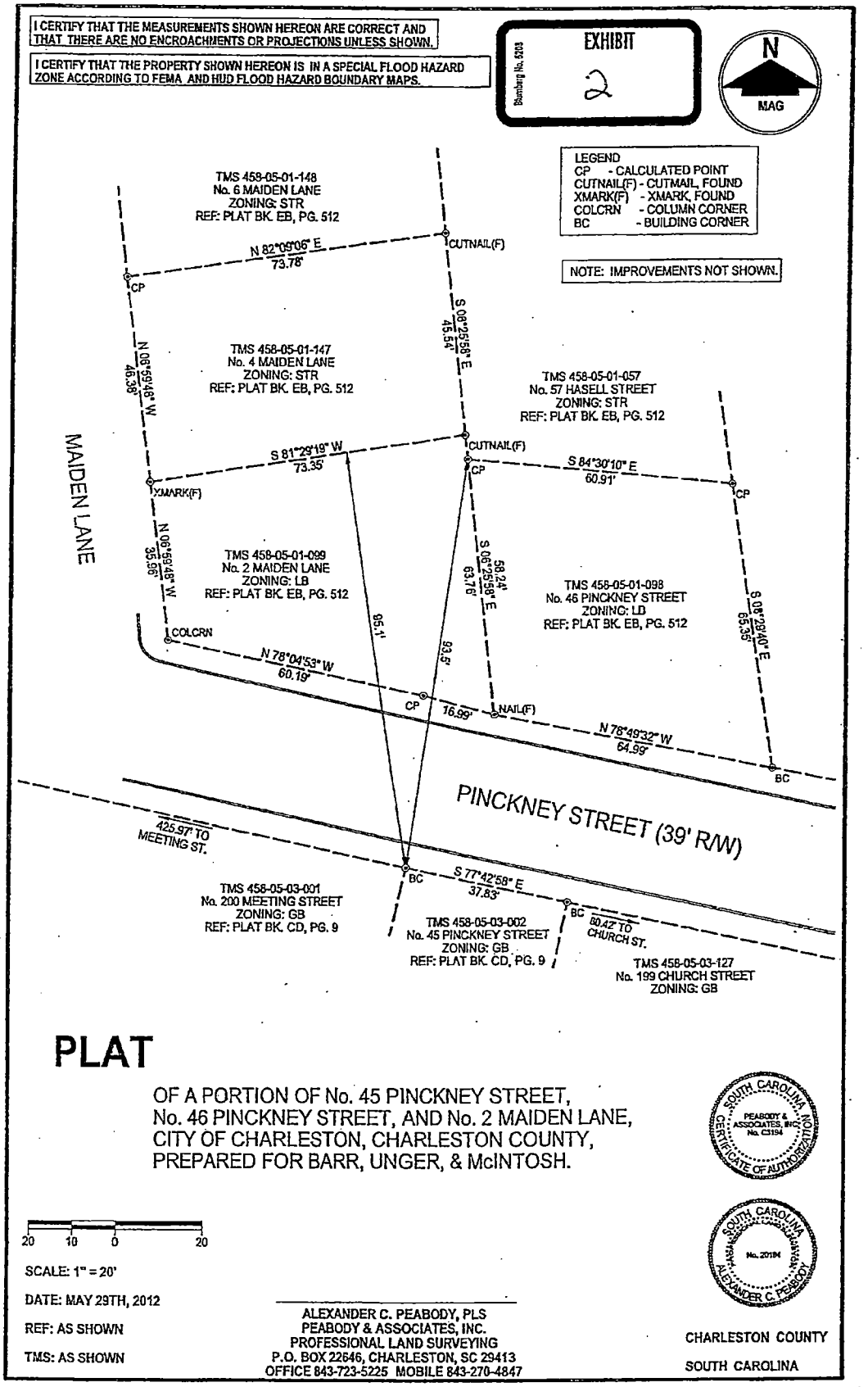
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION

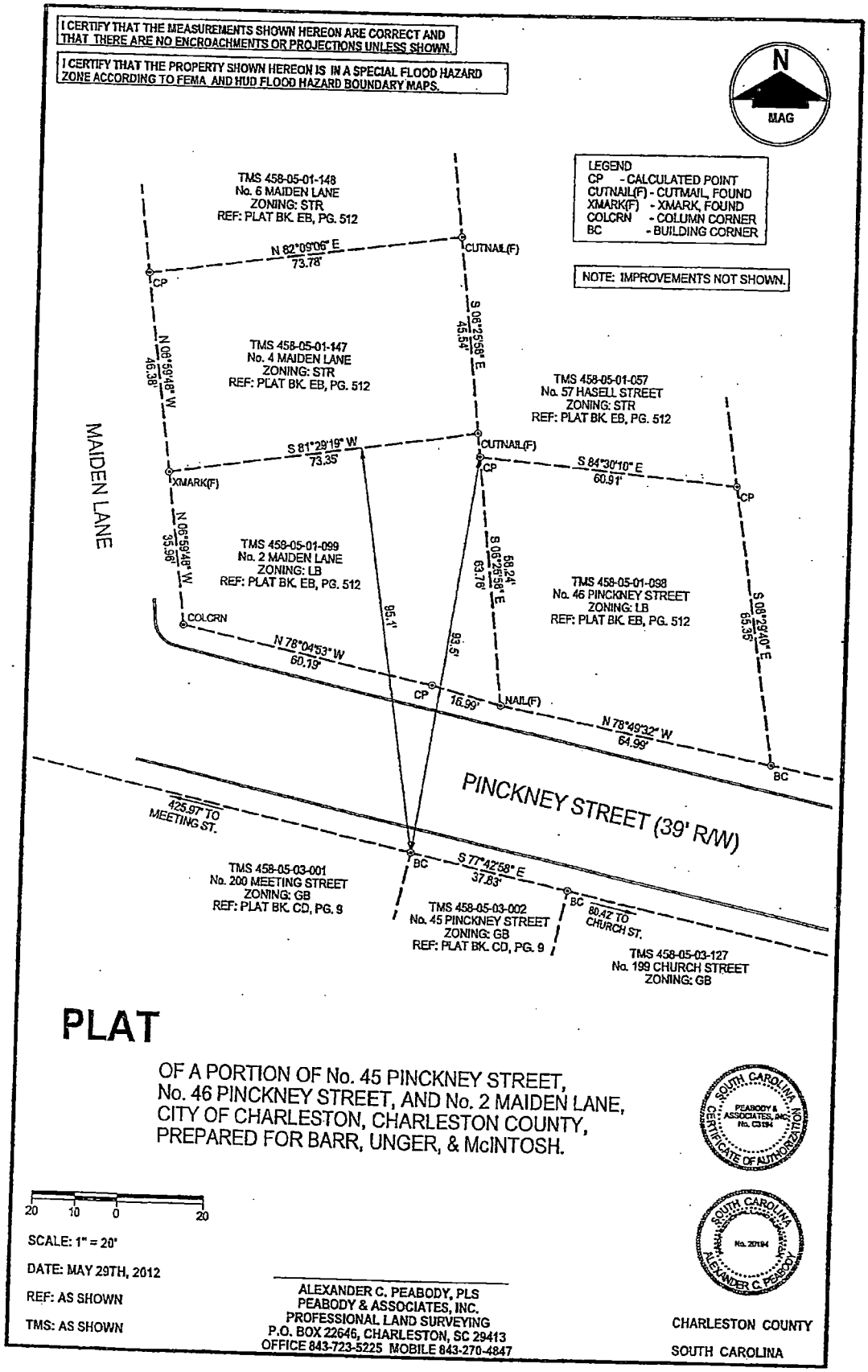
SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY

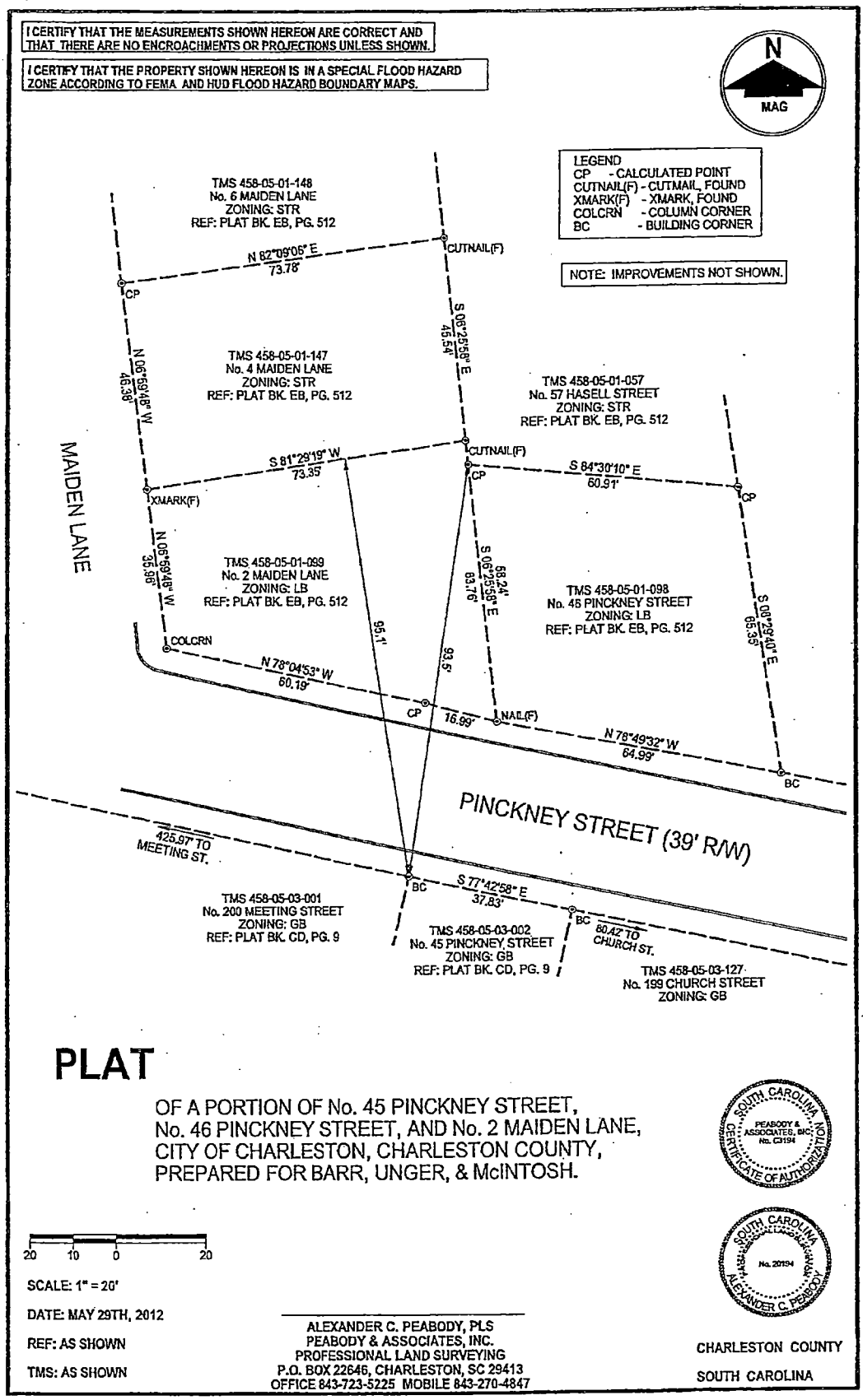
CHARLESTON COUNTY

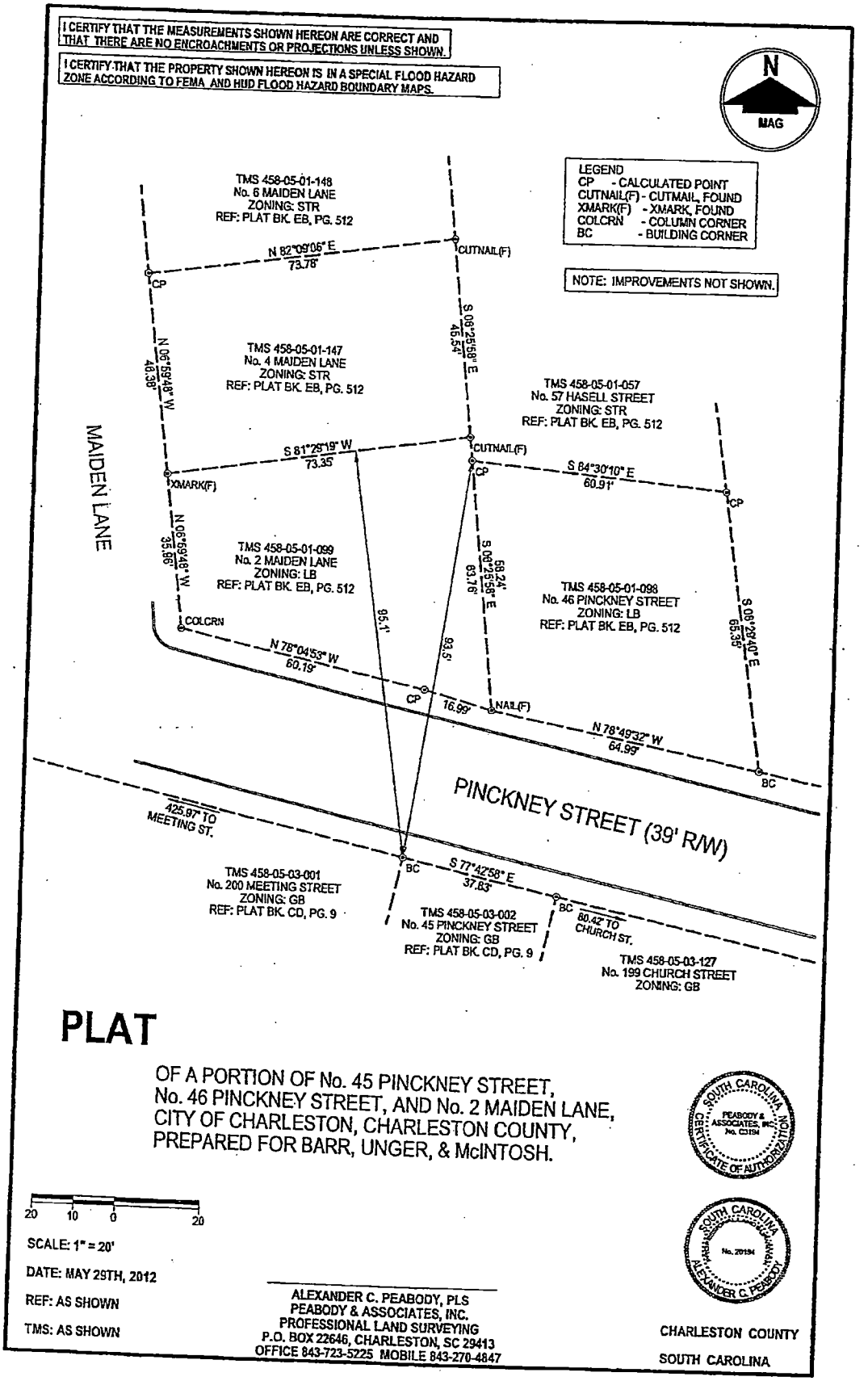
SOUTH CAROLINA

TAB 9-5


I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
Bamberg No. 5203
EXHIBIT
2
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTNAIL, FOUND
XMARK(F) - XMARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-148
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
N 82°09'06" E
73.78'
CUTNAIL(F)
CP
S 08°25'58" E
45.54'
N 08°59'48" W
46.36'
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
S 81°29'19" W
73.35'
CUTNAIL(F)
CP
S 84°30'10" E
60.91'
CP
XMARK(F)
N 08°59'48" W
35.96'
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
58.24'
S 08°25'58" E
63.76'
TMS 458-05-01-098
No. 46 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 08°29'40" E
65.35'
95.1'
93.5'
COLCRN
N 78°04'53" W
60.19'
CP
16.99'
NAIL(F)
N 78°49'32" W
64.99'
BC
PINCKNEY STREET (39' R/W)
425.97' TO MEETING ST.
BC
S 77°42'58" E
37.83'
BC
60.42' TO CHURCH ST.
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET,
No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE,
CITY OF CHARLESTON, CHARLESTON COUNTY,
PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA


I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTMAIL, FOUND
XMARK(F) - XMARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-148
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
N 82°09'06" E
73.78'
CUTNAIL(F)
CP
N 08°59'48" W
46.38'
S 08°25'58" E
45.54'
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
S 81°29'19" W
73.35'
CUTNAIL(F)
CP
XMARK(F)
S 84°30'10" E
60.91'
CP
N 08°59'48" W
35.58'
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 08°25'58" E
63.76'
58.24'
TMS 458-05-01-098
No. 46 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 08°29'40" E
65.35'
COLCRN
95.1'
93.5'
N 78°04'53" W
60.19'
CP
16.99'
NAIL(F)
N 78°49'32" W
64.99'
BC
PINCKNEY STREET (39' R/W)
425.97' TO MEETING ST.
BC
S 77°42'58" E
37.83'
BC
80.42' TO CHURCH ST.
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET,
No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE,
CITY OF CHARLESTON, CHARLESTON COUNTY,
PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C0194
CERTIFICATE OF AUTHORIZATION
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA


I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTMAIL, FOUND
XMARK(F) - XMARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-148
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
N 82°09'06" E
73.78'
CUTNAIL(F)
CP
S 06°25'58" E
45.54'
N 06°59'48" W
45.38'
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
S 81°29'19" W
73.35'
CUTNAIL(F)
S 84°30'10" E
60.91'
CP
CP
XMARK(F)
N 06°59'48" W
35.95'
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 06°25'58" E
63.76'
68.24'
TMS 458-05-01-098
No. 45 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 08°29'40" E
66.35'
95.1'
93.5'
COLCRN
N 78°04'53" W
60.19'
CP
16.99'
NAIL(F)
N 78°49'32" W
64.99'
BC
PINCKNEY STREET (39' R/W)
425.97' TO MEETING ST.
BC
S 77°42'58" E
37.83'
BC
60.42' TO CHURCH ST.
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET, No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE, CITY OF CHARLESTON, CHARLESTON COUNTY, PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
SOUTH CAROLINA
No. 20194
ALEXANDER C. PEABODY
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA


I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTMAIL, FOUND
XMARK(F) - XMARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-148
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
N 82°09'06" E
73.78'
CUTNAIL(F)
CP
S 08°25'58" E
45.54'
N 06°59'48" W
48.38'
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
S 81°29'19" W
73.35'
CUTNAIL(F)
CP
S 84°30'10" E
60.91'
XMARK(F)
CP
N 06°59'48" W
35.56'
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 08°25'58" E
63.76'
59.24'
TMS 458-05-01-098
No. 46 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 08°29'40" E
65.36'
COLCRN
95.1'
83.5'
N 78°04'53" W
60.19'
CP
16.99'
NAIL(F)
N 78°49'32" W
64.99'
BC
PINCKNEY STREET (39' R/W)
425.97' TO
MEETING ST.
BC
S 77°42'58" E
37.83'
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
BC
80.42' TO
CHURCH ST.
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET,
No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE,
CITY OF CHARLESTON, CHARLESTON COUNTY,
PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3154
CERTIFICATE OF AUTHORIZATION
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
SOUTH CAROLINA
No. 20134
ALEXANDER C. PEABODY
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA

TAB 9-6

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

Personally appears before me Robert R. Knoth, who being duly sworn states as follows:

1. Affiant is 68 years of age and is married to Elender "Sally" Campbell Knoth. Affiant and Sally have three children, Bobby, Jr., Richard, and a daughter, Rhett.

2. Affiant and his family own and operate Carolina Polo & Carriage Company, a horse carriage tour business presently located at 16 Hayne Street in the City of Charleston. Affiant seeks to relocate Carolina Polo to 45 Pinckney Street. The operation of Carolina Polo provides to affiant and his wife their only source of income.

3. Affiant's son Richard also works with him in the company. Richard is married and has three children. Richard was recently awarded the contract by the City of Charleston to provide equine sanitation cleanup services on all horse carriage routes in the city, effective January, 2013. Richard does business in that capacity as Green Horse Equine Sanitation, LLC. The only source of income for Richard and his family is Carolina Polo and Green Horse Equine Sanitation.

4. In addition to affiant and Richard, the company employs approximately 16-20 employees, depending on the time of year, who work as tour guides, stable hands, and clerical personnel.

5. Affiant has been in the carriage tour business for 23 years. He formed Carolina Carriage Company in 1990, which began its operation at 45 Pinckney Street, the location at issue in this matter.

6. At the time of forming Carolina Carriage Company, affiant had other business interests. However, in 1995/1996 he was forced into bankruptcy and lost all of his holdings. Following bankruptcy, he reformed Carolina Carriage Company into Carolina Polo & Carriage Company, and ultimately resumed operations at 45 Pinckney Street.

7. Carolina Polo operated 45 Pinckney Street until 1996, when a competitor, Confederate Carriage Company, obtained the lease for that location, forcing Carolina Polo to move. Notably Affiant's last use of 45 Pinckney Street was 17 years ago.

8. Carolina Polo relocated to 16 Hayne Street at that time, in 1996.

9. 45 Pinckney continued to be used as a carriage stable by Confederate Carriage, and then by Old Towne Carriage Company, until 2009.

10. Affiant's current location at 16 Hayne Street, which is leased, has recently been sold. The new owner requires Carolina Polo to vacate 16 Hayne Street by May 31, 2013.

11. When the opportunity arose for affiant to purchase 45 Pinckney Street in the summer of 2012, he applied to this Board for a Special Exception. However, the application was withdrawn, primarily because of the position of the Malony family who reside nearby.

12. The City Tourism Ordinance requires in Section 29-212(i)(2) that tour carriage stables be located within walking distance of the "Gate", from which Tour Medallions are issued by the City. The Gate is located at the northeast corner of Church and North Market Streets.

13. After withdrawing his application last fall, affiant and others assisting him sought alternative properties to use as a stable within the "walking distance" parameters required by the tourism ordinance. However, there is no other site available within a GB or UC district that is within walking distance of the Gate.

14. Affiant will be forced to lose his business if his stable cannot be relocated to 45 Pinckney Street.

15. There are currently five horse carriage tour companies in operation in the city: Carolina Polo, now at 16 Hayne seeking relocation to 45 Pinckney; Palmetto at 8 Guignard Street; Old South at 14 Anson Street; Old Towne at 20 Anson Street; and Classic at 10 Guignard Street.

16. In 2007, City Council substantially amended the horse carriage tour ordinance to add Section 29-212, which provides for the healthcare and management of horses.

17. In 2007, the existing carriage companies were all non-conforming uses, so that no company has yet been required to meet the current code standards. Carolina Polo will be the first company to provide a "state-of-the-art" stable at 45 Pinckney. Perhaps most significantly, the stalls at 45 Pinckney will be constructed to a 12x12 standard, to which no other company currently conforms.

18. Architect Sandy Logan has designed a ventilation system for 45 Pinkney Street that is also state-of-the-art. Odors within the building, and air discharged from the building, will be treated at two stages. First, at the collection stage, affluent is treated with "Odalock", a product currently used by the company, and also used by Richard Knoth with Green Horse Equine Sanitation. The producer of Odalock, Darren Akherst will present an explanation of its product to the Board. Secondly, before air is evacuated from the building, it would pass through a charcoal filtration system to ensure that the air entering the atmosphere will be odor controlled.

19. Architect Sandy Logan has also depicted a site plan showing the location of stalls within the stable, showing the ventilation system, and showing the drainage system. As shown on Mr. Logan's drawings, that the corridor area between the stalls of the stable, as well as the

"public area", where customers will be waiting, will be used for the purposes of cleaning, and tacking of horses and carriages, and for on-loading and off-loading customers, thus avoiding that activity in any public right of way.

20. I pledge to be a good neighbor to the nearby residents of Ansonborough and to the staff, guests and general operations of the Andrew Pinckney Inn, my neighbor to the east; and to Bank of America, my neighbor to the west.

Robert R. Knoth

Subscribed and sworn to before me
this 16th day of April, 2013

NOTARY PUBLIC for South Carolina
My Commission Expires: 02/11/2021

TAB 9-7

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

Personally appears before me Richard Knoth, who being duly sworn states as follows:

1. Affiant is 39 years of age and is married to Christina Knoth. Affiant and Christina have three children.

2. Affiant is currently employed with Carolina Polo & Carriage Company, which has been and is his principal source of income.

3. In January, 2013 he began the operation of Green Horse Equine Sanitation, LLC, which was awarded the contract with the City of Charleston for equine sanitation cleanup. That company is not yet producing income.

4. Affiant has worked with Carolina Polo for many years and his family relies on that source of income for its principal means of support.

5. In approximately the Spring of 2012, affiant was introduced to Darren Akhurst, and his product known as "Odalock", which is designed for the control of livestock effluent odor. Carolina Polo has been using the product for many months.

6. Odalock is substantially superior to the prior means of controlling stable odors. Previously, chlorine bleach was used which, when combined with horse urine produced ammonia, which was potentially toxic and created an unpleasant odor itself.

7. Odalock provides no such reaction with animal effluent. Affiant and Mr. Akhurst have presented Odalock as a product to several organizations, including the Tourism Commission and The French Quarter Neighborhood Association for their information. The product is environmentally friendly and biodegradable.

8. Affiant also uses the Odalock Product in the operation of Green Horse Equine Sanitation, to use as spray on the streets of Charleston for horse urine and feces cleanup and odor control.

9. In the fall of 2012, Affiant undertook an investigation of potentially available properties for use as a stable within "walking distance" of the horse carriage gate at the northeast corner of North Market and Church Streets. There are no available properties, except for 45 Pinckney Street, which is the property currently pending a Special Exception status by the City of Charleston Board of Zoning Appeals.

Richard Knoth

Subscribed and sworn to before me
this 16th day of April, 2013

NOTARY PUBLIC for South Carolina
My Commission Expires: 02/11/2021

TAB 9-8

LANIER PARKING SOLUTIONS
200 Meeting Street "Bank of America Place Garage" Charleston, SC 29401

June 21, 2012

Dear Sir or Madam:

I am writing this letter in regards to the proposal for Carolina Polo and Carriage Company relocating to Pinckney Street. I have been the Facility Manager for LPS holdings at 200 Meeting Street since February of 2011 and at no time have we had any traffic problem coming from Carolina Polo or Carriage. There have been multiple times when I have been in at odd hours between midnight and six am and have never once heard any noise coming from the barn in regards to the horses also we have never received any complaints from tenants or visitors in regards to animal noise or smell. If you have any questions that you would like to ask me please feel free to contact me.

Sincerely,

Christopher Porter
Lanier Parking Solutions
cporter@lanierparking.com
843-805-7774

Marcella Giannasio
19 Anson Street
Charleston, SC 29401

July,10 2012

To Whom It May Concern:

I am the owner of the house at 19 Anson Street and would like to formally express that I have no objection to having a horse stable reside at 45 Pinckney Street.

Thank you,

Marcella Giannasio

Marcella Giannasio

July 12, 2012

Suzanna Bryant

13 Anson Street

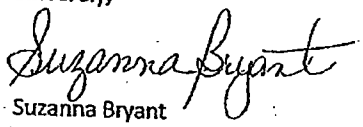
Charleston, South Carolina

29401

To Whom It May Concern,

I am the resident at 13 Anson Street and I do not have any objection with 45 Pinckney Street being a horse barn.

Sincerely,



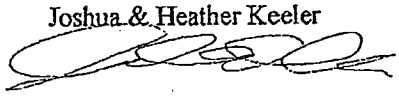
Suzanna Bryant

330-284-2723

To Whom It May Concern:

As the owners of 15 Anson Street we are in full support of Carolina Polo Carriage Company relocating from 16 Hayne Street to 45 Pinckney Street. We feel that they will not only be a welcomed addition to our neighborhood but also an asset. If you have any further questions please feel free to contact me.

Sincerely,
Joshua & Heather Keeler



15 Anson St.
Josh@twoboroughslarder.com
Heather@twoboroughslarder.com
\215.514.9752

July 10, 2012

To Whom It May Concern:

As residents of 28 Anson Street, my husband and I support the Carolina Polo Company moving to 45 Pinckney Street. As property owners, we support any opportunity for local businesses to grow and their improvement to surrounding properties is welcomed.

Sincerely,

Angela and Lucas Drake

28 Anson Street
Charleston, SC 29401

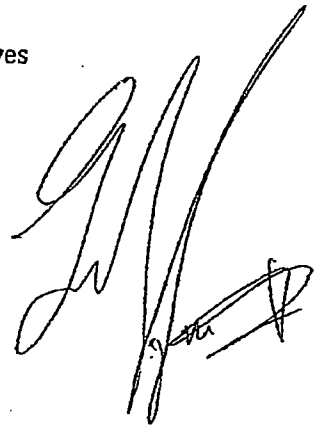
To whom it may concern,

I hope your week is going well. I live at 43 ½ Hassel Street and I wanted to write a letter to state that I don't have any issues with The Carolina Polo and Carriage Company (currently located at 16 Hayne Street) moving to the location on Pinckney Street. I think this is a wonderful idea and it has my full support.

Thank you for your time.

Sincerely

George Hayes



Lawrence B. Place, Pharm.D., M.D.
90 Lake Dornoch Drive
Pinehurst, NC 28374

June 23, 2012

To Whom it May Concern:

As a part time resident, and owner of the residence at 17 Anson Street, I would like to endorse the purchase and conversion to a stable of the property at 45 Pinckney Street by Carolina Polo and Carriage..

Please feel free to contact me at the above address should questions arise.

Lawrence B. Place

July 10, 2012

To Whom it May Concern:

We are not opposed to having 43 Pinckney Street used for Delivering Horses.

Our home is 3 Motley Lane.

Bill & Jean Dahuz

TO WHOM IT MAY CONCERN:
I AM A RESIDENT AT 11 ANSON ST, CHARLESTON, SC. I AM IN FULL SUPPORT FOR CAROLINA POLO AND CARRIAGE CO, USING 45 PICKNEY ST. AS A BARN TO STABLE THEIR CARRIAGE HORSES.
THANK YOU FOR YOUR TIME

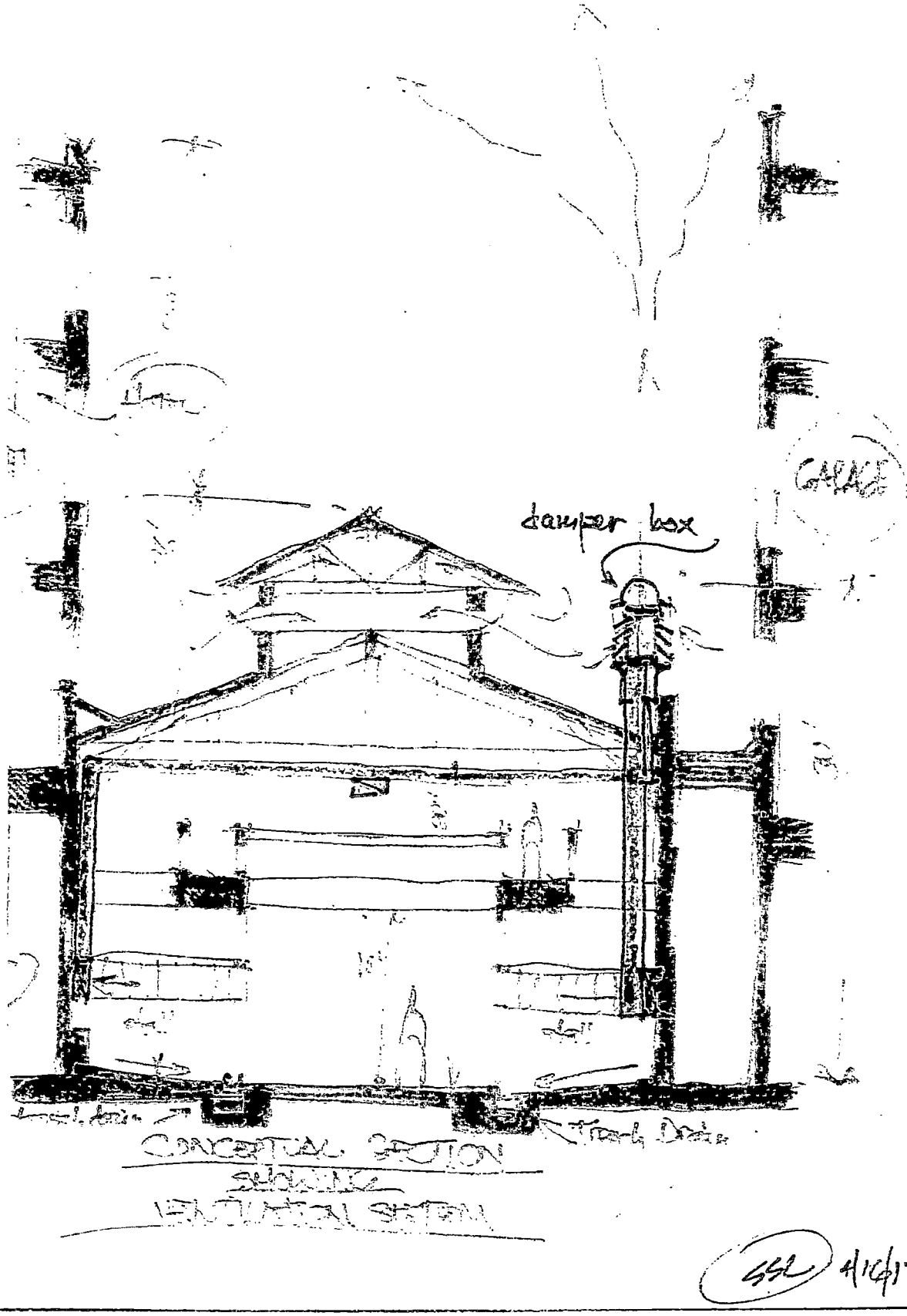
MATT RUTKOWSKI

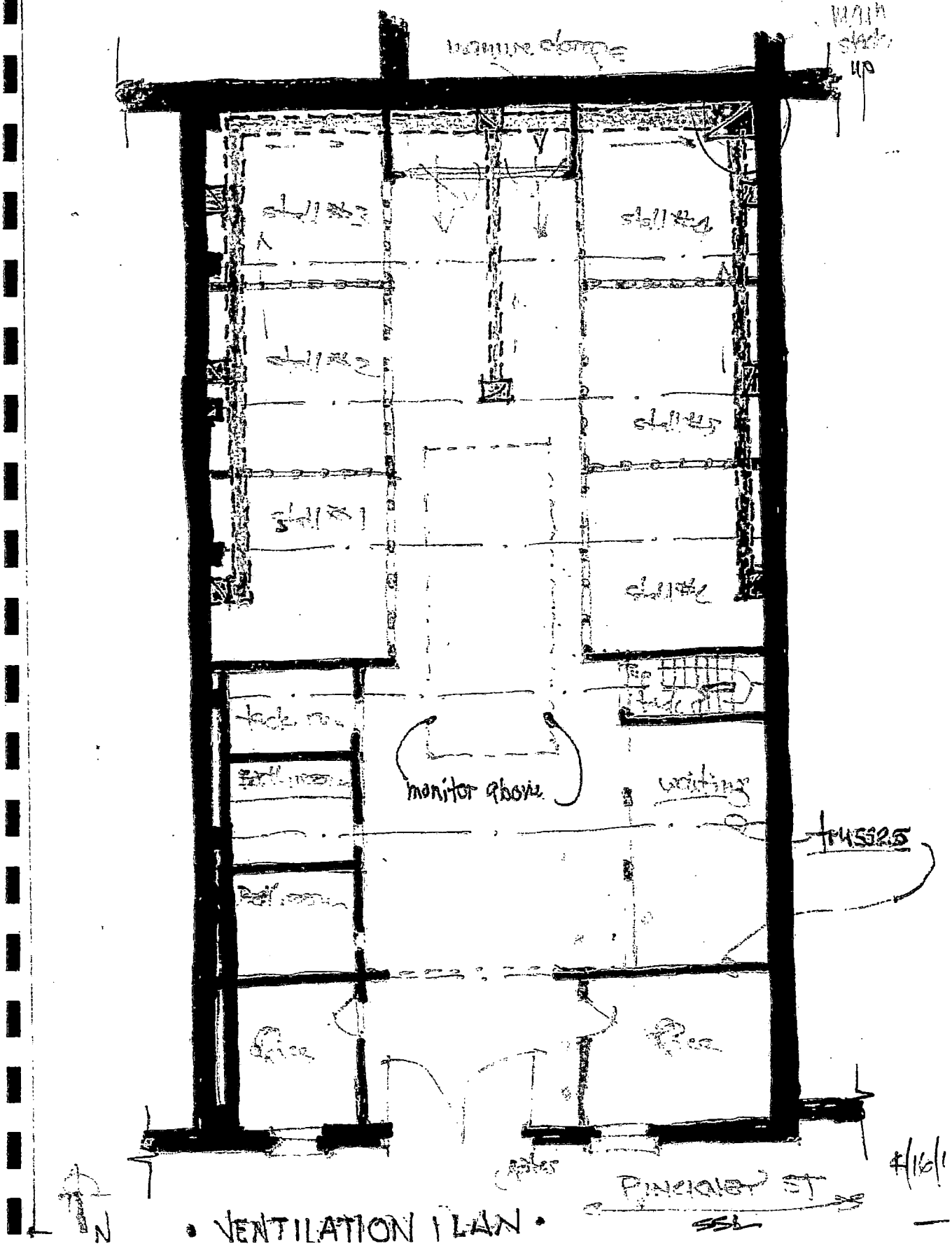
TAB 9-9

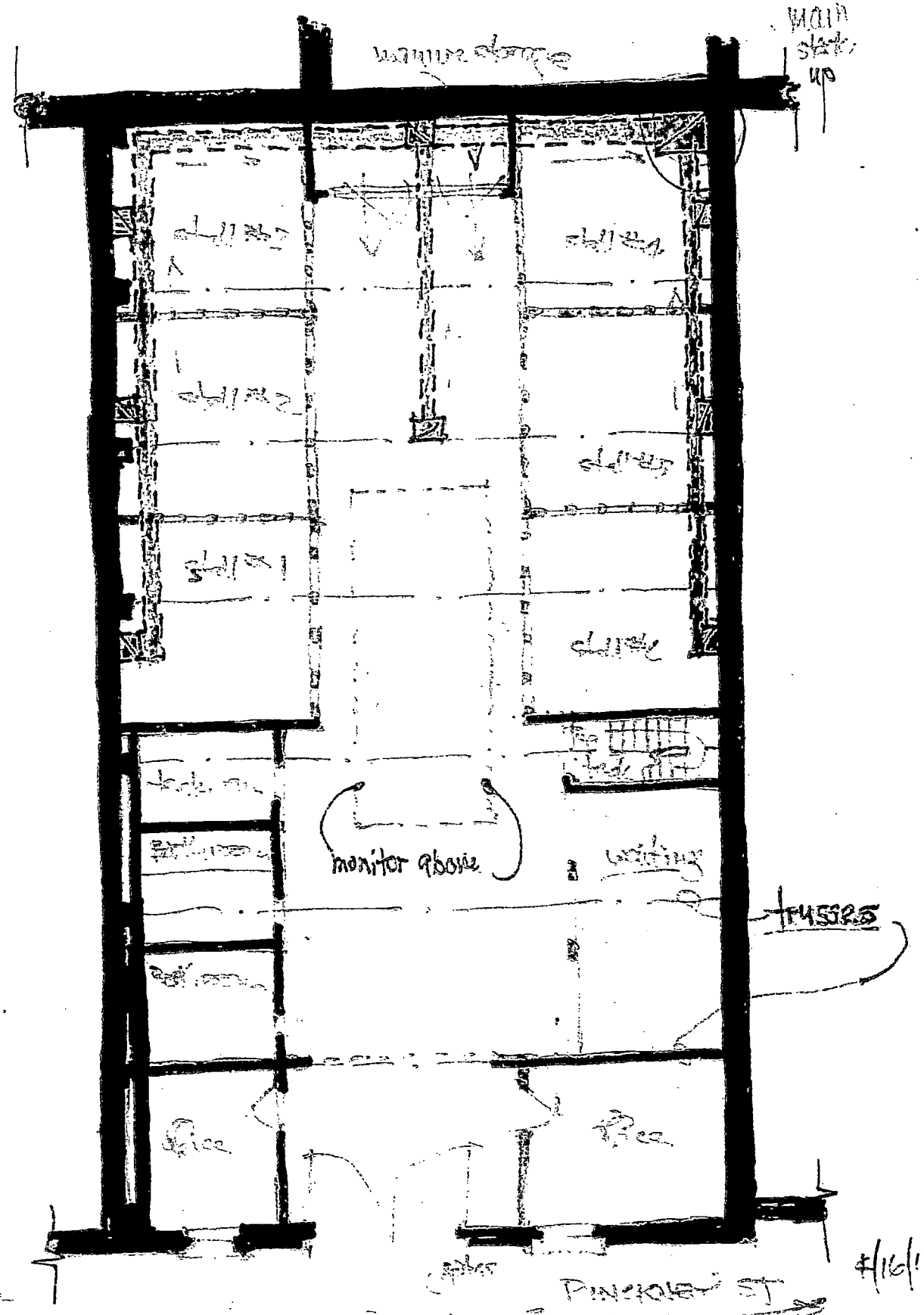


Appendix 449

TAB 9-10


damper box
GARAGE
CONCEPTUAL SECTION
4/16/13


monitor above
writing
TRUSSES
PINCKNEY ST
N
• VENTILATION PLAN •


monitor above
TRUSSES
PINCKNEY ST
N
• VENTILATION PLAN •

TAB 10

YCRLAW
Young Clement Rivers, LLP

Wilbur E. Johnson
Managing Partner

Direct Dial: (843) 724-6659
Direct Fax: (843) 579-1332
E-mail: wjohnson@ycrlaw.com

April 8, 2013

Via E-mail: batchelderl@ci.charleston.sc.us
And Regular Mail
Mr. Lee C. Batchelder, AICP
Zoning Administrator
City of Charleston
Planning, Preservation & Sustainability
75 Calhoun Street, 3rd Floor
Charleston, SC 29401

RECEIVED
APR 09 2013
CITY OF CHARLESTON
DESIGN, DEV & PRESERVATION

Re: 45 Pinckney Street – TMS #458-05-03-002

Dear Lee:

I am enclosing a copy of City Ordinance 54-206(p)(1) which clearly states as follow:

"The stable is not located within 100 feet of any residential zone district."

I am also enclosing a copy of the City's residential zone district map indicating that my client's property is clearly within the residential district and well within this 100 foot prohibition.

We respectfully request that the application, as submitted, be rejected since it does not and cannot meet the requirements of the Special Exception Ordinance.

Please do not hesitate to contact me if there are any questions.

With best regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Wilbur E. Johnson
Managing Partner

WEJ/kir
Enclosures
cc: Michael S. Seekings, Esquire
Barry Hutto
Jack Geraci
Steve Varn
(All via e-mail and regular mail)(w/encs.)

8. That such museum operate during normal business hours and does not inherently exhibit noise, light or traffic conditions clearly debilitating to neighboring residents.

o. Sewage disposal facilities shall be permitted as an exception within the Conservation Zone where the Board, after review, determines that such uses are in accordance with the City's comprehensive land use plan.

p. Stables shall be permitted within the GB and UC district as an exception where the Board, after review, finds that:

1. The stable is not located within 100 feet of any residential zone district.

2. The City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable.

3. The stable complies with all city, county, and state regulations for stables.

4. A site plan is provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right-of-way.

5. A written explanation is submitted detailing how refuse will be handled in accordance with city, county, state, and federal regulations. This shall be reviewed by the Department of Public Service.

6. A plan is submitted showing how drainage on the property is to be collected in accordance with city, county, state, and federal regulations. This shall be reviewed by the Commissioners of Public Works and the Department of Public Service.

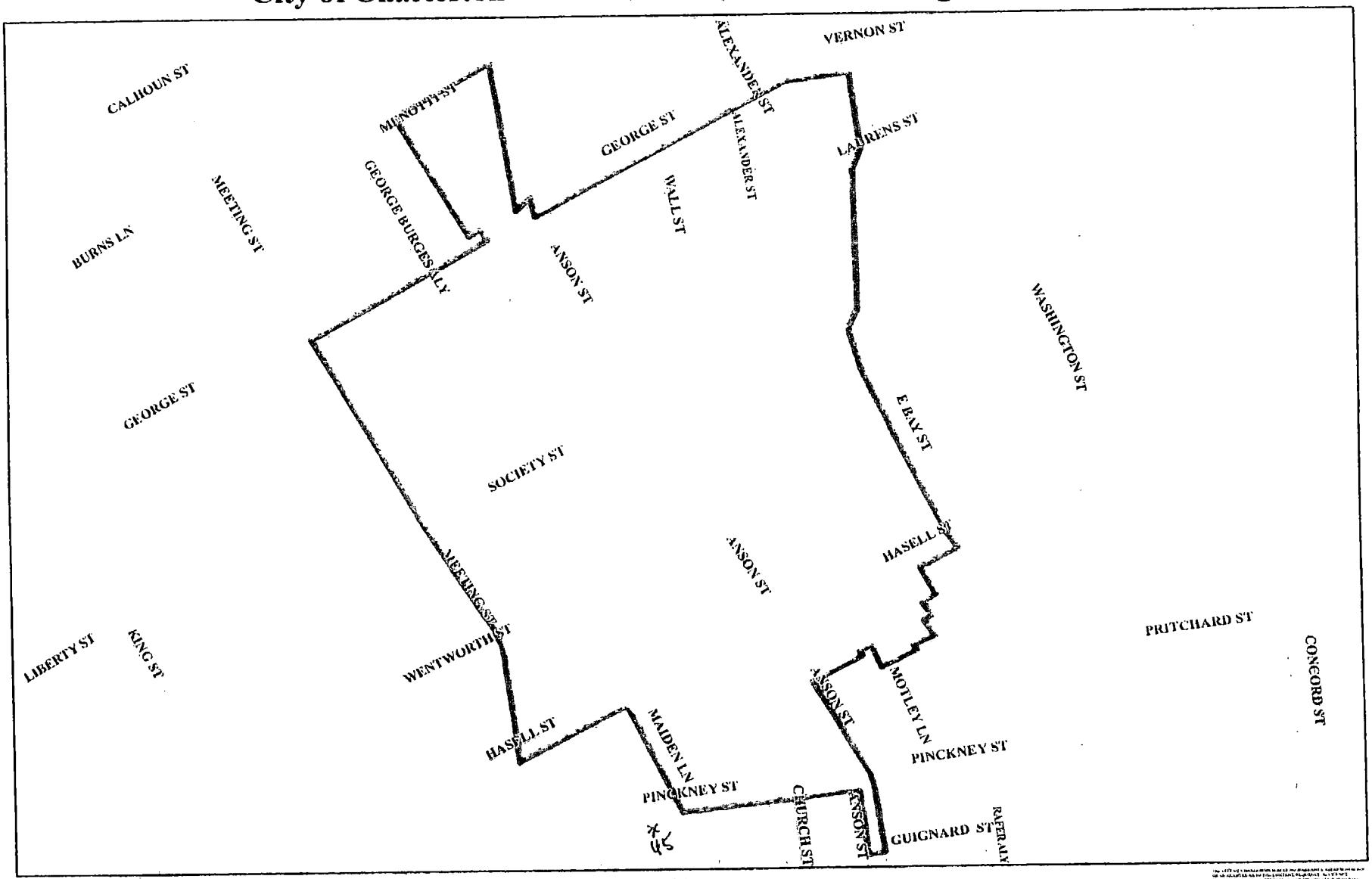
7 Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted.

q. Electric substation or gas regulator station. Such station shall be permitted within the Conservation District, all residential districts, the CT district, and the RO district only as an exception where the Board, after review, finds that such station is essential for service of the immediate area, will be enclosed within an appropriate woven wire or solid fence, will be suitably landscaped and no storage of vehicles or equipment will occur.

r. Storage yards, junk yards, scrap yards or auto salvage yards.

1. Outdoor storage yards, which are used for storage of materials and equipment, other than vehicles, boats or shipping containers, are permitted within the LI (Light Industrial) and HI (Heavy Industrial) districts as an exception where the Board, after review, finds that adequate provision and maintenance of visual screening by fences, planting or other means, from public streets, roads, residences and adjacent residential zone districts will be provided.

City of Charleston - Peninsula Residential Parking District E



City of Charleston

Department of Traffic and Transportation

Department of Revenue Collections - Parking

180 Lockwood Extension - Charleston, SC 29407

District E Boundary

0 50 100 200 Feet

Created 01/03/2012

The City of Charleston makes no representations or warranties as to the accuracy, completeness, timeliness, suitability or adequacy of the information and assumes no liability for any errors, omissions, or inaccuracies in the information provided regardless of how caused. The City of Charleston assumes no liability for any decisions made or actions taken or not taken by any person in reliance upon any information or data furnished hereunder. The City of Charleston makes no representation of any kind, including but not limited to, the warranties of merchantability or fitness for a particular use, nor are any such warranties to be implied with respect to the information or data furnished hereunder.

South Carolina Statutes
Title 27. Property and Conveyances
Chapter 31. HORIZONTAL PROPERTY ACT
Article 1. GENERAL PROVISIONS

Current through 2013 Act No. 4

§ 27-31-10. Short title

This chapter shall be known as the "Horizontal Property Act."

Cite as S.C. Code § 27-31-10

---

§ 27-31-20. Definitions

Unless it is plainly evident from the context that a different meaning is intended, as used herein:

(a) "Apartment" means a part of the property intended for any type of independent use (whether it be for residential, recreational, storage, or business) including one or more rooms or enclosed spaces located on one or more floors (or parts thereof) in a building or if not in a building in a separately delineated place whether open or enclosed and whether for the storage of an automobile, moorage of a boat, or other lawful use, and with a direct exit to a public street or highway, or to a common area leading to such street or highway;

(b) "Building" means an existing or proposed structure or structures, containing in the aggregate two or more apartments, comprising a part of the property;

(c) "Condominium ownership" means the individual ownership of a particular apartment in a building and the common right to a share, with other co-owners, in the general and limited common elements of the property;

(d) "Co-owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns an apartment within the building;

(e) "Council of co-owners" means all the co-owners as defined in subsection (d) of this section; but a majority, as defined in subsection (h) of this section, shall, except as otherwise provided in this chapter, constitute a quorum for the adoption of decisions;

(f) "General common elements" means and includes:

(1) The land whether leased or in fee simple and whether or not submerged on which the apartment or building stands; provided, however, that submerged land developed or used under this chapter is subject to any law enacted relating to the leasing of submerged lands by the State for the benefit of the public;

(2) The foundations, main walls, roofs, halls, lobbies, stairways, moorages, walkway docks, and entrance and exit or communication ways in existence or to be constructed or installed;

(3) The basements, flat roofs, yards, and gardens, in existence or to be constructed or installed, except as otherwise provided or stipulated;

(4) The premises for the lodging of janitors or persons in charge of the property, in existence or to be constructed or installed, except as otherwise provided or stipulated;

(5) The compartments or installations of central services such as power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks and pumps, and the like, in existence or to be constructed or installed;

(6) The elevators, garbage incinerators, and, in general, all devices or installations existing or to be constructed or installed for common use;

(7) All other elements of the property, in existence or to be constructed or installed, rationally of common use or necessary to its existence, upkeep, and safety;

(g) "Limited common elements" means and includes those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, such as special corridors, stairways, elevators, finger piers, sanitary services common to the apartments of a particular floor, and the like;

(h) "Majority of co-owners" means fifty-one percent or more of the basic value of the property as a whole, in accordance with the percentages computed in accordance with the provisions of Section **27-31-60**.

(i) "Master deed" or "master lease" means the deed or lease establishing and recording the property of the horizontal property regime;

(j) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof;

(k) "Property" means and includes (1) the land whether leasehold or in fee simple and whether or not submerged, (2) the building, all improvements, and structures on the land, in existence or to be constructed, and (3) all easements, rights, and appurtenances belonging thereto;

(l) "To record" means to record in accordance with the provisions of Sections **30-5-30** through **30-5-200**, **30-7-10** through **30-7-90** and **30-9-10** through **30-9-80**, or other applicable recording statutes.

Cite as S.C. Code § 27-31-20

---

§ 27-31-30. Establishment of horizontal property regime

Whenever a lessee, sole owner, or the co-owners of property expressly declare, through the recordation of a master deed or lease, which shall set forth the particulars enumerated in Section **27-31-100**, their desire to submit their property to the regime established by this chapter, there shall thereby be established a horizontal property regime. Property may be submitted to a horizontal property regime prior to construction or the completion of any building or apartment, improvements, or structures on the property if all proceeds from its sale are deposited into an escrow account with an independent escrow agent until construction or completion of the proposed property as evidenced by issuance of a certificate of occupancy from the appropriate municipal or county authority. In lieu of any escrow required by this section, the escrow agent may accept a surety bond issued by a company licensed to do business in this State as surety in an amount equal to or in excess of the funds that would otherwise be placed in the escrow account with the South Carolina Real Estate Commission designated as beneficiary of any such surety bond.

Cite as S.C. Code § 27-31-30

---

§ 27-31-40. Apartments may be purchased, owned, and the like

Once the property is submitted to the horizontal property regime, an apartment in the property may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other apartments in the property of which it forms a part, and the corresponding individual titles and interests shall be recordable.

Cite as S.C. Code § 27-31-40

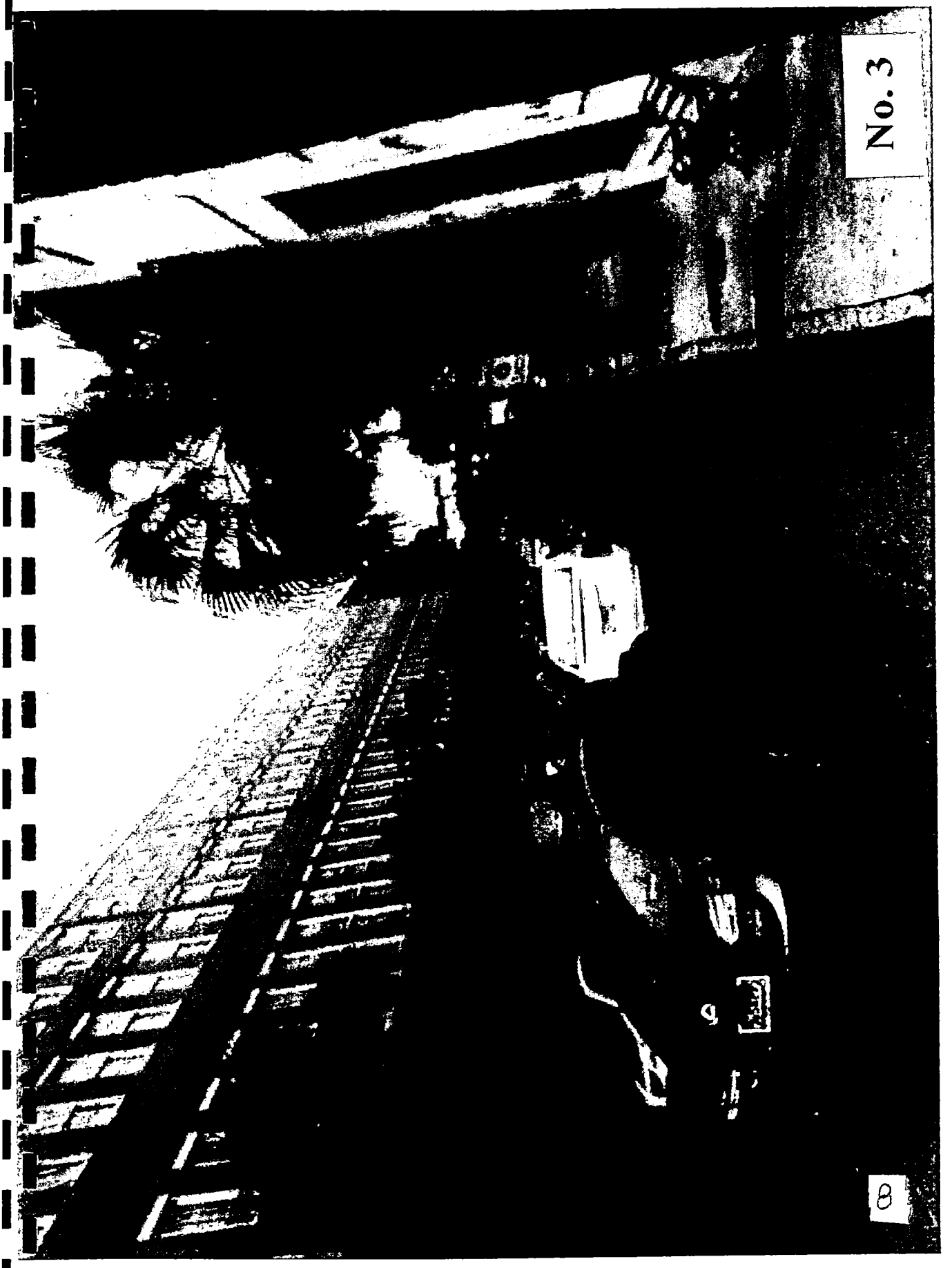
---

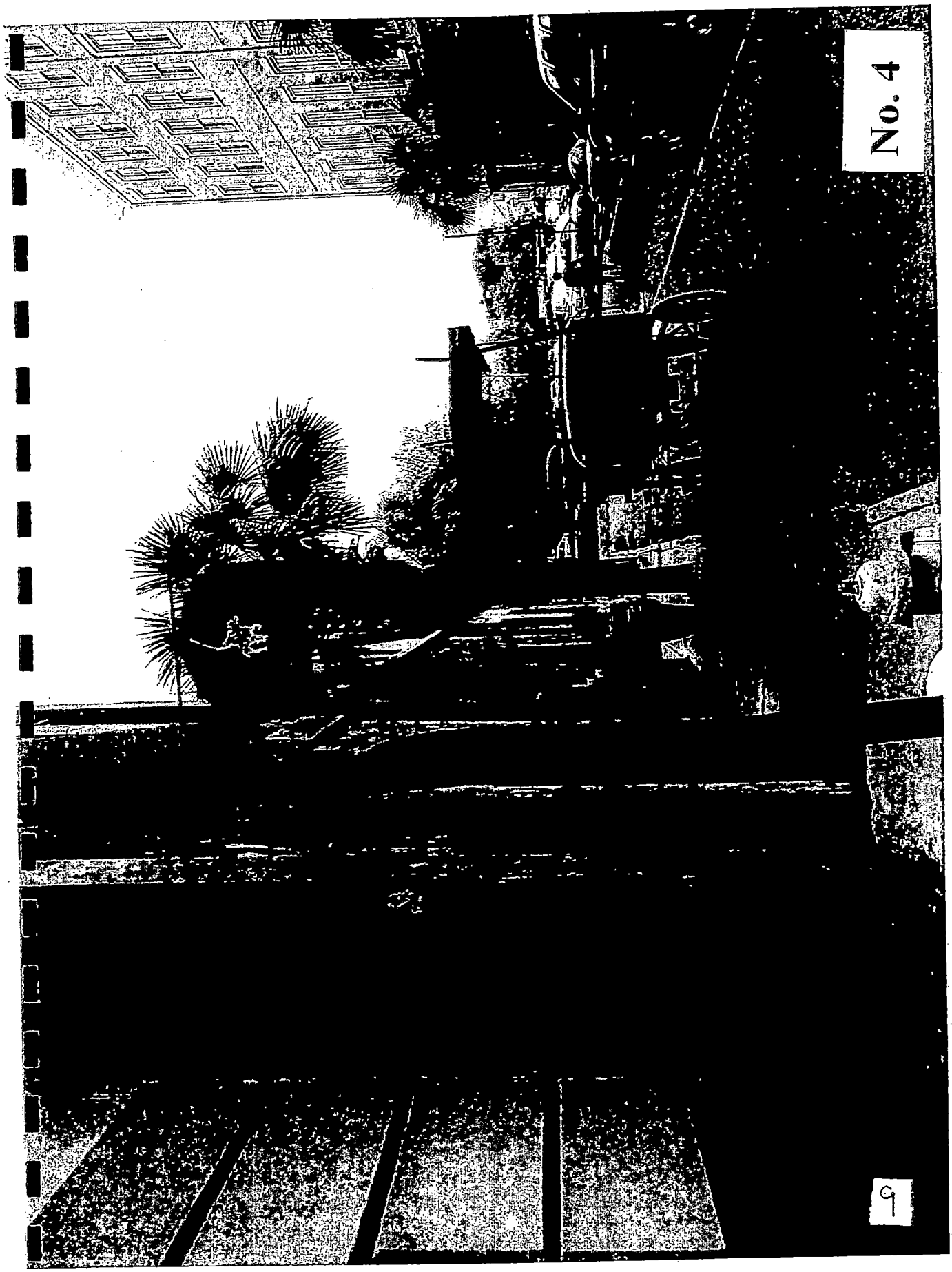
§ 27-31-50. More than one person may own apartment

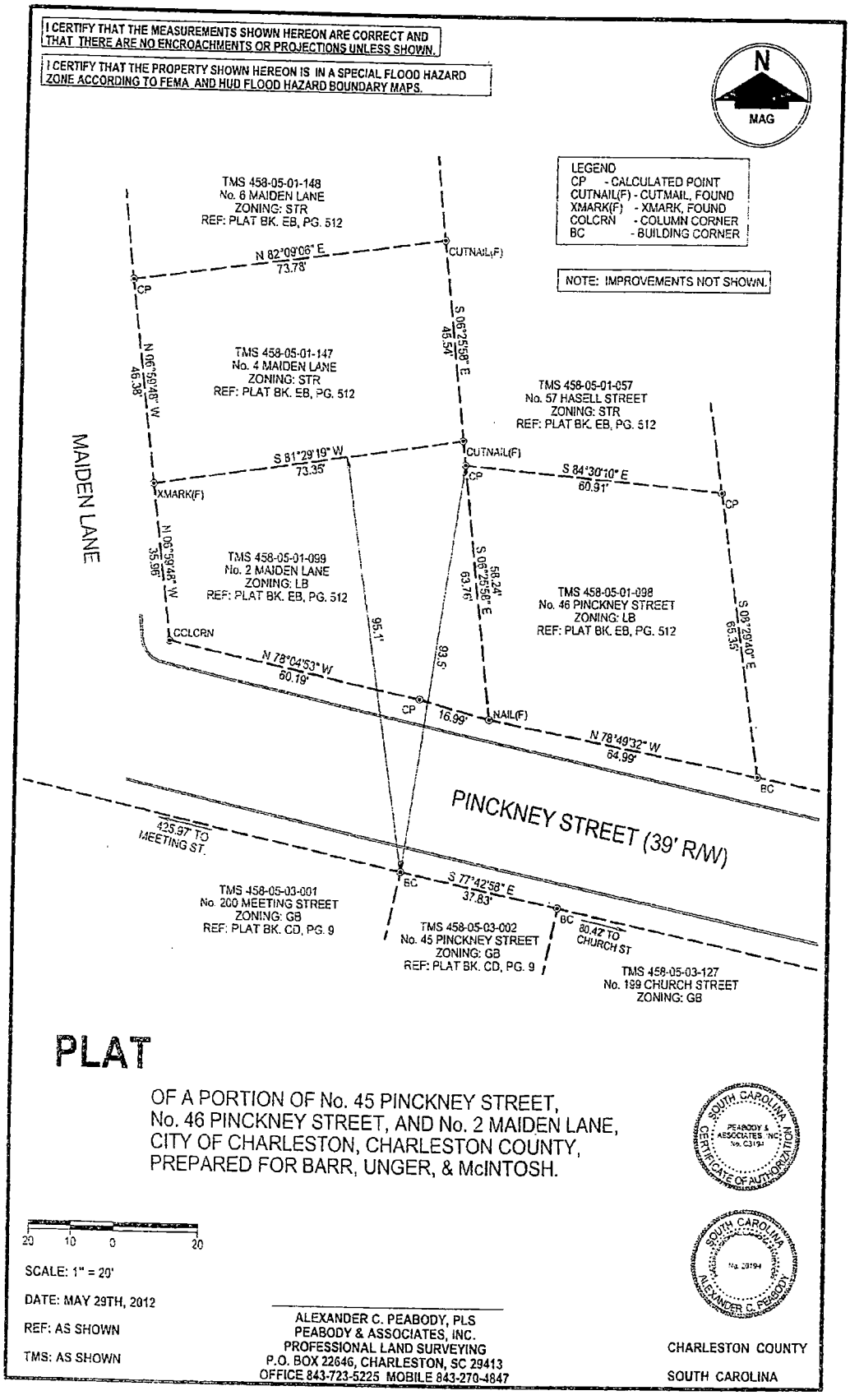
5

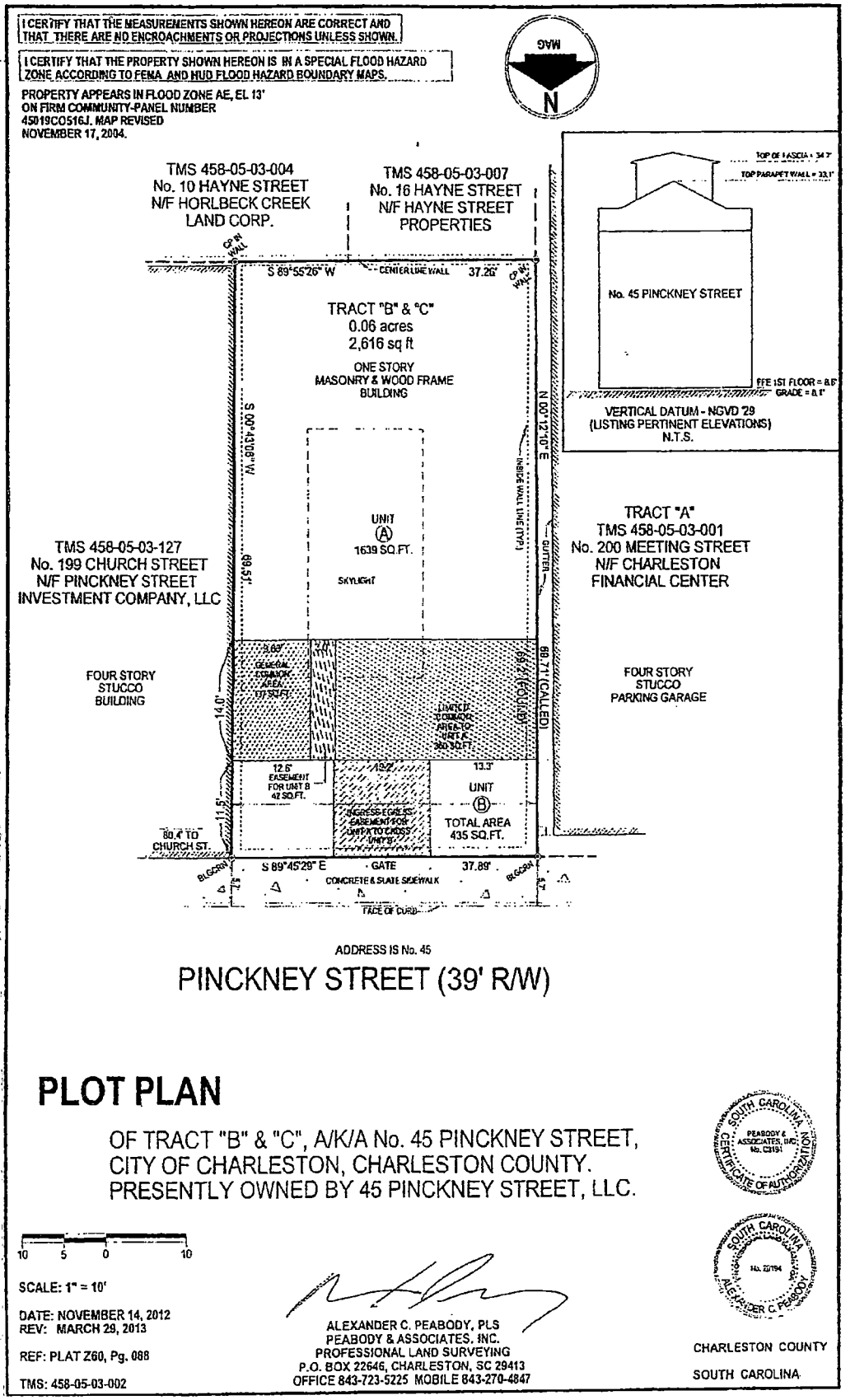
6
No. 1

PUBLIC
AHEAD
ON RIGHT
7
No. 2


No. 3
8


No. 4
9


I CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT AND THAT THERE ARE NO ENCROACHMENTS OR PROJECTIONS UNLESS SHOWN.
I CERTIFY THAT THE PROPERTY SHOWN HEREON IS IN A SPECIAL FLOOD HAZARD ZONE ACCORDING TO FEMA AND HUD FLOOD HAZARD BOUNDARY MAPS.
N
MAG
LEGEND
CP - CALCULATED POINT
CUTNAIL(F) - CUTNAIL, FOUND
XMARK(F) - XMARK, FOUND
COLCRN - COLUMN CORNER
BC - BUILDING CORNER
NOTE: IMPROVEMENTS NOT SHOWN.
TMS 458-05-01-148
No. 6 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
N 82°09'06" E
73.78'
CUTNAIL(F)
CP
N 06°59'48" W
46.36'
S 06°25'58" E
45.54'
TMS 458-05-01-147
No. 4 MAIDEN LANE
ZONING: STR
REF: PLAT BK. EB, PG. 512
TMS 458-05-01-057
No. 57 HASELL STREET
ZONING: STR
REF: PLAT BK. EB, PG. 512
MAIDEN LANE
S 81°29'19" W
73.35'
CUTNAIL(F)
CP
S 84°30'10" E
60.91'
XMARK(F)
CP
N 06°59'48" W
35.96'
TMS 458-05-01-099
No. 2 MAIDEN LANE
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 06°25'58" E
63.76'
58.24'
TMS 458-05-01-098
No. 46 PINCKNEY STREET
ZONING: LB
REF: PLAT BK. EB, PG. 512
S 08°29'40" E
65.35'
COLCRN
95.1'
N 78°04'53" W
60.19'
93.5'
CP
16.99'
NAIL(F)
N 78°49'32" W
64.99'
BC
PINCKNEY STREET (39' R/W)
425.97' TO MEETING ST.
BC
S 77°42'58" E
37.83'
BC
80.42' TO CHURCH ST
TMS 458-05-03-001
No. 200 MEETING STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-002
No. 45 PINCKNEY STREET
ZONING: GB
REF: PLAT BK. CD, PG. 9
TMS 458-05-03-127
No. 199 CHURCH STREET
ZONING: GB
PLAT
OF A PORTION OF No. 45 PINCKNEY STREET,
No. 46 PINCKNEY STREET, AND No. 2 MAIDEN LANE,
CITY OF CHARLESTON, CHARLESTON COUNTY,
PREPARED FOR BARR, UNGER, & McINTOSH.
SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C3194
CERTIFICATE OF AUTHORIZATION
20 10 0 20
SCALE: 1" = 20'
DATE: MAY 29TH, 2012
REF: AS SHOWN
TMS: AS SHOWN
SOUTH CAROLINA
No. 29194
ALEXANDER C. PEABODY
ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847
CHARLESTON COUNTY
SOUTH CAROLINA



PLOT PLAN

OF TRACT "B" & "C", A/K/A No. 45 PINCKNEY STREET,
CITY OF CHARLESTON, CHARLESTON COUNTY.
PRESENTLY OWNED BY 45 PINCKNEY STREET, LLC.

10 5 0 10

SCALE: 1" = 10'

DATE: NOVEMBER 14, 2012
REV: MARCH 29, 2013

REF: PLAT Z60, Pg. 088

TMS: 458-05-03-002

ALEXANDER C. PEABODY, PLS
PEABODY & ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYING
P.O. BOX 22646, CHARLESTON, SC 29413
OFFICE 843-723-5225 MOBILE 843-270-4847

SOUTH CAROLINA
PEABODY & ASSOCIATES, INC.
No. C0191
CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA
No. 22194
ALEXANDER C. PEABODY

CHARLESTON COUNTY
SOUTH CAROLINA

Separation Requirements of the Zoning Ordinance For Uses

Adult uses, located within 1,000 feet of any school, public or private park, church, or residential area or within 1,000 feet of any other such establishment [illegible] Such distance shall be measured from the nearest point of the parcel of land so used to the nearest property line of another establishment or zoning line in the case of a residential area.

no building or parking lot thereof will be closer than one hundred (100) feet to an adjoining lot.

it will not be closer than twenty-five (25) feet to an adjoining property line

1. Buildings or equipment will not be within one hundred (100) feet of any existing day care, school, church, hospital, or public library.
2. Buildings or equipment will not be within fifty (50) feet of any residential zone district or existing dwellings.
3. Buildings or functionary facilities other than signs relating to the principal use will not be closer than twenty (20) feet to street abutting lot lines.

a. Stations within LB will restrict hours of operation to between 7 a.m. and 11 p.m.

o. *Stables* shall be permitted within the GB and LI District as an exception where the Board, after review, finds that:

1. The stable is not located within 100 feet of any residential zone district.
2. The City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable.
3. The stable complies with all city, county and state regulations for stables.
4. A site plan is provided showing that the loading/unloading/stacking area shall not impede traffic flow in the public right-of-way.
5. A written explanation is submitted detailing how refuse will be handled in accordance with city, county, state and federal regulations. This shall be reviewed by the Department of Public Service.
6. A plan is submitted showing how drainage will be collected in accordance with city, county, state and federal regulations. This shall be reviewed by the Commissioner of Public Works and the Director of Planning & Zoning.
7. Buildings are designed utilizing architectural features that are consistent with the applicable goals from being emitted.

p. *Mining* for the purpose of extracting materials from a property shall be permitted as an exception in all districts if the total size of the area to be mined does not exceed two (2) acres. For larger operations, Dirt Mining/Resource Extraction shall be permitted as an exception only in the Light Industrial (LI) and Heavy Industrial (HI) zone districts.

1. Mining operations not exceeding two (2) acres in total mining area and meeting all of the following conditions shall be permitted in any zone district as an exception where the Board, after review of documentation submitted by the applicant, finds that:
   a. The total mining area, work zone and construction access road is shown on a scaled site plan of the property and is intended as preparation for residential use, recreational use or agricultural use.
   b. The mining use will not last more than one (1) year from the date of approval.
   c. **The mining work zone, as shown on the scaled site plan, will be located at least fifty (50) feet from any property boundary and at least one hundred (100) feet from any dwelling.**
   d. A mining operation has not occurred on the subject property within three (3) years prior to the date of the application.
   e. Variances and/or special exceptions, if any, from Article 3, Part 10, Area Regulation Requirements, if required, have been approved.
   f. Existing vegetation will be maintained and adequately protected as a natural buffer between adjacent dwellings, existing water bodies or wetlands and the mining work zone.
   g. The applicant agrees in writing to restrict the hours of operation for mining operations to between 8:00 a.m. and 7:00 p.m., Monday through Saturday.
   h. The applicant will not use any mining machines at the mining work zone except in the LI and HI zone districts.

[illegible] access road for mining activities will be constructed and maintained to the [illegible] Engineer and in accordance with [illegible] feet from the public [illegible]

[illegible] operations extending [illegible] acres in area shall be allowed in the Light Industrial [illegible] Board of Supervisors may grant an exception to allow the Subject site to be [illegible]

[illegible] Board of Supervisors may grant an exception to allow the Subject site to be [illegible]

[illegible] shall be [illegible] [illegible] [illegible]

[illegible] shall be [illegible] [illegible] [illegible]

[illegible] shall be [illegible] [illegible]

Sec. 54-207 - Conditional uses.

[illegible] Amusement parks (outdoor) or other similar outdoor entertainment except shooting ranges, such as carnivals, circuses or motor vehicle races are allowed within the GB, GO, LI or HI districts only when the property, or part thereof, upon which such activity is to occur is not within one thousand feet (1,000') of a residential district. If the property, or part thereof, upon which such activity is to occur is within one thousand feet (1,000') of a residential district, approval for such activity shall require approval of the Board after review as an exception unless the same is sponsored by a church or school and is to be held on church or school property. For purposes hereof, a carnival is deemed to be any traveling enterprise offering amusements which include rides, games or concessions and such activities are hereby prohibited.

The Board of Zoning Appeals shall only permit such outdoor amusement park or other similar outdoor entertainment as a special exception upon a finding that the potential impacts of such activity on the surrounding residential neighborhood in terms of noise, traffic and lighting are not unduly disruptive. The Board shall consider among other things the size of the amusement park, including the number of employees, the number, type and hours of rides and of exhibition booths, the number of vehicles to be utilized by the public, the ratio of employees and the duration of the event.

[illegible] Communication towers shall be approved by the GB, BP, LI, SP and HI districts subject to a finding that a tower satisfies the staff approval criteria listed below. Towers not meeting the staff approval criteria may be approved by the Board of Zoning Appeals as an exception subject to a finding that the tower satisfies the special exception criteria listed below. Towers which are no longer used for communication purposes must be dismantled and removed within 120 days of the date the tower is taken out of service.

[illegible] Staff approval criteria. The Zoning Administrator may approve construction of a communication tower upon a finding that each of the following criteria is met:

[illegible] The height of the proposed tower may not exceed 120 feet or the height limits of the Old City Height District, if applicable; and

(b) The tower must be located no closer to residential or conservation zoned property than a distance equal to the height of the proposed tower, except that flush mount monopole towers and stealth monopole towers may be located as close to a residential or conservation zoned property as a distance equal to one-half the height of the proposed tower. For the purposes of this section, a flush mount monopole shall be a monopole communication tower on which the antennas are flush mounted against the monopole with no outside arms, and a stealth monopole shall be a monopole communication tower with no visible antennas, wires or transmitters; and

(c) The proposed tower must be located no closer than 2,500 feet to another communication tower, unless the applicant certifies that the existing tower does not meet the applicant's structural specifications and the applicant's technical design requirements, or that a lease on such existing tower could not be obtained at a reasonable market rate.

[illegible] Day care centers, and overnight may not be permitted within the GO, LB, GB, BP, LI, SP and HI districts if the proposed center or facility satisfies the following conditions:

[illegible] the proposed facility must meet the applicable licensing requirements for a child care facility, if applicable;

[illegible] proof of application for the required license must be submitted prior to the issuance of a building permit, and proof of such license must be submitted

(3) any play area, if located within fifty feet (50') of a residential structure or zone, [illegible].

[illegible] at least one (1) parking space per employee, including the largest [illegible] the facility at one time, plus one (1) space for every ten (10) days, or part thereof, [illegible]

[illegible] ingress/egress loading, unloading and the location of the parking and circulation [illegible] approved by the appropriate City department;

[illegible] located adjacent to a residence or outdoor eating area, [illegible]

casinos, as herein defined, shall only be permitted in the I and MU zone districts if the lot on which they are located is not within 1,000 feet of any residential zone district, church, school or the highwater mark of a navigable stream. Provided, however, casinos [illegible] City buildings that [illegible] adopted prior to January 29, 2013, shall not [illegible] [illegible] permitted by the treatment and processing uses.

[illegible] shipping containers shall only be permitted [illegible] zone district where the staff determines [illegible] the building [illegible] the location of the proposed shipping container storage area, stacking limitations [illegible] requirements of subsection [illegible] have been met. The applicant for such [illegible]

[illegible] zone district, no stacking or shipping containers shall be permitted [illegible] zone district. no stacking of shipping containers shall be permitted within 300 feet of any residential zoning district. A survey may be required to verify that an area or parcel to be used to stack shipping containers is more than 300 feet from a residential zoning district.

Where stacking of shipping containers is permitted, the height of the stack shall not be permitted to exceed three (3) containers.

Shipping container storage areas shall be [illegible] from all streets and sidewalks by a minimum [illegible] (Type C) [illegible] and shall be [illegible] a planting area [illegible] fifteen (15) feet, and shall [illegible] Section 8-5.

[illegible] Air-conditioned machine shops and freight handling facilities for commercial users shipping containers are stored temporarily awaiting [illegible] shall be exempt from these requirements.

[illegible] nonconforming uses. Existing occupancy [illegible] shipping containers used [illegible] shall be [illegible] with subsection [illegible] shall not exceed [illegible] zone district.

[illegible] shall be permitted [illegible] zone district, [illegible] conditional use where the applicant [illegible] demonstrate that the [illegible] on the premises with the following criteria:

1. Buildings will not be within one hundred (100) feet of any existing school, church, hospital, or public library.
2. Buildings will not be within fifty (50) feet of any residential zone district.

3. Exposed repair facilities will not be on the front portion of the lot.

s. Indoor shooting ranges shall only be permitted in the LI and HI zone districts as a conditional use if the lot on which the range is located is not within (1,000) feet of any school, public or private park, church, or residentially zoned area. Such distance shall be measured from the nearest point of the parcel of land so used to the nearest property line of the other use or zoning line in the case of a residentially zoned area. Nothing contained herein shall be construed to apply to (1) marksmanship centers in existence at the time of the passage of Ordinance 81-213 that are used for practice and training by the South Carolina National Guard and other military organizations and military instructions and (2) special events, including action rifle shoots, which have received a special events permit issued by the Special Events Committee of the City of Charleston pursuant to Section 21-193 of the Code of the City of Charleston and the written approval of the mayor or chief of police.

See page 9

Sec. 29-212. - General health care and management requirements.

(a)

Findings of fact. City council hereby makes the following findings of fact:

(1)

The City of Charleston, carriage company operators, residents, and visitors to the City of cHarleston have sought to take a proactive approach to protect and ensure the health, safety and welfare of animals used in the tourism industry;

(2)

A study was conducted to develop and recommend animal welfare policies to the tourism commission. In response to the study, the tourism commission formed the ad hoc committee on animal-drawn carriages which committee was comprised of representatives from the tourism commission, animal control, the carriage industry, the Society for the Prevention of Cruelty to Animals ("SPCA"), and an independent veterinarian;

(3)

The ad hoc committee on animal-drawn carriages has now reviewed and updated the previously recommended policies after much deliberation and with input from the general public, Carriage Operators of North America ("CONA"), and the veterinarian community; and

(4)

The codification of the ad hoc committee on animal-drawn carriages recommended regulations is in the best interest of protecting the health, safety, and welfare of the animals used in the tourism industry and protects the health, safety, and welfare of motorists and pedestrians using the public right-of-ways along with the residents and tourists of the City of Charleston.

(b)

Definitions. Except where the context clearly indicates otherwise, the following terms and phrases as used in this section shall have the following meanings:

(1)

Animal shall mean any horse or mule used for touring purposes and operated under a franchise agreement as outlined in section 29-202

(2)

Contamination shall mean the introduction of unwholesome or undesirable elements, including but not limited to, bedding, mold, bugs, and rodent droppings.

(3)

Director of tourism shall mean the director of tourism or his or her designee.

(4)

Equine sanitation flag shall mean the marker used to identify animal excreta and is generally recognized as a two and one-half-inch rubber ball cut in half with an eight-inch surveyor's flag attached.

(5)

Farrier shall mean a specialist in horse care who addresses the hooves, feet and legs of the animal.

(7)

Inspection shall mean to permit the director of tourism, the police department, or a city contracted veterinarian to enter upon the premises of any carriage company subject to this ordinance to make inspections and to examine and audit required records.

(8)

Old and Historic District shall mean that portion of the city that is so designated from time to time on the official zoning map of the city.

(9)

Out of service shall mean when the animal is unhitched from a carriage and out of its harness.

(10)

Police department shall mean the chief of police or his or her designee.

(11)

Rest shall mean the time when the animal is in service but not performing work as defined herein.

(12)

Stable shall mean the barn where the animals are kept.

(13)

Stall shall mean individual space within the barn where each animal is kept.

(14)

Tour or *touring* shall mean the conducting of or the participation in sightseeing in the districts for hire or in exchange for a donation.

(15)

Touring stock shall mean all animals used for touring pursuant to this section.

(16)

Vintage carriage shall mean any carriage built before 1900.

(17)

Work and *working* shall mean the act of pulling a carriage.

(18)

Reserved.

(19)

Reserved.

(20)

Free choice shall mean that water shall be ready and in front of a horse for 15 minutes after a tour is conducted so that a horse is free to choose to drink or not to drink water.

(c)

Equipment.

(1)

Every carriage used for touring purposes and operated under a franchise agreement as outlined in section 29-202 shall be equipped with the following:

a.

Head lights or lanterns and tail lights or lanterns which are visible for a distance of (500) feet when the carriage is operated from a half hour after sunset to a half hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred feet ahead;

b.

A slow moving vehicle emblem attached to the rear of the carriage;

c.

A diapering apparatus that prevents the droppings of the animal used to pull the carriage from being deposited on the ground or the right-of-way;

d.

A fifth wheel or cut under turning mechanism on the front axle with the exception of vintage carriages;

e.

Reflective ankle cuffs or another reflective device approved by the tourism committee shall be used on at least two (2) of the animal's legs if one (1) animal is pulling a carriage, or if two (2) animals are pulling a carriage reflective ankle cuffs or another reflective device approved by the tourism committee shall be used on at least one (1) of the outside legs of each animal when the carriage is operated from a half (½) hour after sunset to a half (½) hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred (500) feet ahead;

f.

A two-way electronic communication system; and

g.

A minimum of two (2) equine sanitation flags to mark animal excreta droppings.

(2)

Carriages must be properly lubricated and the carriage wheels shall spin freely.

(3)

Each carriage shall be maintained in a safe condition so as to not endanger any person or property.

(4)

Each carriage shall be maintained in a clean and sanitary condition, free of liter and debris and at all times suitable for public transportation of passengers.

(5)

No carriage shall be operated having more passengers than what is permitted by its certificate of appropriateness or having a combined weight of carriage, passengers, and drivers that is more than three (3) times the weight of the animal(s) pulling the vehicle.

(d)

Carriage stands, client pick-up locations, staging areas, and barns.

(1)

Carriages queuing in the medallion booth line shall move and circle the block during equine sanitation cleaning.

(2)

Each carriage company shall ensure that their animals in the queue line at the medallion booth shall have a fresh water source every hour.

(3)

Each carriage company shall post at their barns in a conspicuous place signage as required under applicable federal, state, and local laws, including but not limited to, the Equine Activity Liability Act (S.C. Code 47-9-730), along with providing brochures outlining the City's ordinances governing the general health and welfare of the animals used in the tourism industry of Charleston.

(e)

Care and shelter of animals.

(1)

No animal shall be used to draw a carriage unless the animal is in good health and the following standards are met:

a.

The animal shall not have open sores, open wounds, diarrhea, nor shall the animal be lame or have any other ailments unless the city tourism office as well as the individual company's stable has a current written statement by a veterinarian on file that the animal is fit for such work not withstanding such condition. Further, the written statement by the veterinarian must have a required expiration date;

b. The hooves of all animals while engaged in work on pavement, brick, concrete or other like hard surfaces shall have rubber or elastomer shoes, boots or pads to prevent slipping and shall be evenly trimmed and shod. However, steel shoes can be used upon introduction to the touring stock during an initial two-week trial period. Also, if a farrier determines that the horse's hooves will not accommodate the use of rubber pads, metal shoes can be used on the rear legs of the animal;

c. The animal shall be properly and appropriately groomed;

d. The animal shall have adequate flesh and muscle tone as determined by the Body Condition Scale of the Henneke Chart and shall average between 4 and 7;

e. The animal is kept in good working condition;

f. At introduction into the touring stock then bi-annually thereafter, the animal shall have had a physical inspection completed by and a certificate of serviceability for carriage work signed by a licensed veterinarian, with the results thereof provided to the City of Charleston Tourism Director and made available for inspection on site;

g. All animals upon reasonable notice by the tourism director or police department shall be made available for an annual physical inspection to be conducted by the tourism director or police department's veterinarian with the results thereof being maintained by the office of tourism with a copy being provided to the carriage company operator;

h. At introduction into the touring stock then quarterly thereafter, the animal shall have been de-wormed; and

i.

At introduction into the touring stock, the animal has been vaccinated under the direction of a veterinarian for appropriate diseases and risk factors of the area, as outlined on the certificate of serviceability.

(2)

Free choice water shall be provided to each animal immediately after completing a tour for a minimum of fifteen (15) minutes.

(3)

Animals shall be provided electrolyte supplements at each feeding.

(4)

Animals shall have at least fifteen (15) minutes rest between back to back tours.

(5)

In a twenty-four-hour period, animals shall not engage in Work more than eight (8) consecutive hours or ten hours with out a one and one-half (1½) hour break being disconnected from the carriage, in a twenty-four-hour period.

(6)

Animals shall not engage in work more than six (6) days in a seven-day period.

(7)

Animals shall not engage in work with equipment causing an impairment of vision, other than normal blinders.

(8)

Animals shall not be driven at a speed faster than a slow trot.

(9)

Animals shall not be subject to any cruel or harassing treatment or equipment.

(10)

Animals shall not be sold or disposed of except in a humane manner in accordance with American Association of Equine Practitioners' guidelines.

(11)

Animals shall be at least three and one-half (3½ years of age and shall not weigh less than nine hundred fifty (950) pounds in fit condition.

(f)

Harnesses.

(1)

Animals shall not engage in work with harnesses or bits that harm or are unsafe to the animal.

(2)

Harnesses, bridles, bits and padding shall be properly fitted and kept in clean and good repair.

(3)

Harnesses shall be kept free of makeshifts like wire, rope, and rusty chain.

(4)

Trace chains shall not put pressure on the collar and shoulders of the animal when it starts pulling the carriage resulting in a jolting start versus a smooth start with a snug collar already in place.

(5)

Breeching shall fit so that it will not rub or hinder the hind leg movement of the animal.

(g)

Weather conditions.

(1)

Carriage company operators and drivers shall use caution when Working animals in adverse weather conditions such as high heat and humidity, snow, ice, heavy rain, and other slippery or reduced visibility situations.

(2)

When the ambient temperature reaches or exceeds eighty-five (85) degrees Fahrenheit at any point during the carriage company's hours of operation, the carriage company operators shall implement a mandatory system of taking the rectal temperature of each working animal immediately after completing a tour. In the event an animal's temperature reaches one hundred three (103) degrees Fahrenheit or above, the animal's temperature shall be taken every fifteen (15) minutes until the animal's temperature falls below one hundred three (103) degrees Fahrenheit before the animal is allowed to return to work.

(3)

When the rectal temperature of an animal reaches between 103—103.9 degrees Fahrenheit, the carriage company operator shall require the animal to be removed from service and be cooled down to a temperature of 101.5 degrees Fahrenheit before returning them to engage in Work.

(4)

In the event that an animal's rectal temperature reaches 104 degrees Fahrenheit or above the animal shall be taken out of service for the day and cooled down.

(5)

In the event an animal can not be cooled down to a rectal temperature of 101.5 degrees Fahrenheit within two (2) hours of the first 103 degree

Fahrenheit or above rectal temperature recording, a veterinarian shall be immediately contacted to inspect the animal.

(6)

At any time when an animal's rectal temperature reaches 105.0 or above, or if any animal shows signs of distress such as panting motions, thumping of the chest (synchronous diaphramic flutter), tying up, or stiffening of legs or back, muscle trembling, or colic, a veterinarian shall be immediately contacted to inspect the animal.

(7)

When either the ambient temperature reaches ninety-eight (98) degrees Fahrenheit or the Heat Index reaches one hundred twenty-five (125) degrees Fahrenheit, as determined by the director of tourism or the police department, the carriage company operators shall discontinue working their animals and pull them off the street until the temperature decreases below the above stated temperatures as authorized by the director of tourism or the police department.

(8)

The official thermometer used for determining the temperature and the heat index shall be located at 113 Calhoun Street, in the City and County of Charleston, South Carolina. In the event this thermometer is out of service, as determined by the director of tourism or the police department, the back-up thermometer shall be the thermometer located at 180 Lockwood Drive, in the City and County of Charleston, South Carolina.

(h)

Feeding.

(1)

Animals shall receive an adequate amount of equine feed daily, which is free from contamination, sufficient in quantity, having nutritional value, and be provided frequently enough to meet normal daily requirements for the animal's condition, special needs, environmental factors and size of the animal so as to maintain a healthy flesh.

(2)

Clean drinking water free from contamination shall be available to an out of service animal at all times.

(3)

Out of service animals shall at all times have access to salt in a block or loose form.

(i)

Stables and stalls.

(1)

Stables shall be safe, well lighted, ventilated, and provide protection from the weather as described herein;

a. Stables and stalls shall be kept clean and in good repair and excreta shall be removed daily;

b. The floors of the stalls shall be graded and raked to keep their surface dry; each stall shall have rubber mats under the shavings or shavings with a minimum depth of four (4) inches;

c. Fans shall be used to increase ventilation when the ambient temperature reaches eighty (80) degrees Fahrenheit;

d. Sharp surfaces and any other hazards shall not be permitted in any stable or stall where they can come in contact with the animals;

e. Stables and stalls shall be kept free of leaks, including but not limited to, leaks form roofs or from plumbing;

f. Stalls sizes shall be no less than five (5) feet nine (9) inches × eleven (11) feet unless a carriage company undertakes any remodeling or refurbishing of any sorts to their stable that equals fifty (50) percent of the market value of the stable or moves their stable. In the event a carriage company does remodel or refurbish their stable as stated in the previous sentence then they must implement a minimum stall size of twelve (12) feet × twelve (12) feet for every stall;

g. The practice of tethering the animal in a stall is permitted so long as the animal can lie down without the risk of entanglement or injury;

h. Occupied stalls shall have a minimum of three (3) inches of bedding or have a specialized surface so as to keep animals clean, dry and free of concussion, abrasion or pressure points;

i. Interior and exterior areas of the stable shall be kept clean, properly drained and free of nuisances including, but not limited to, unreasonable and excessive odors and unreasonable accumulation of refuse and excreta;

j.

There shall be no smoking at any time in stables; and

k.

Unless otherwise directed by a veterinarian, animals shall be given a pasture turn-out time of a minimum of four (4) consecutive days to total fourteen (14) days within four (4) months;

(2)

Stables shall be located within walking distance the medallion gate located at the corner of Church and North Market.

(3)

All stables shall have a yearly inspection by the fire department. Fire extinguishers must be kept in obvious places in every stable as required by law and as recommended by the fire department.

(j)

Recordkeeping.

(1)

Feeding, shoeing, medication, and treatment logs, bi-annual inspection records, certificate of serviceability, quarterly de-worming records, rectal temperature logs, work schedules, disposal documentation, and such other records as requested by the tourism director and police department shall be maintained for a three year period by each carriage company operator for every animal used in the touring stock.

(2)

These records shall be made available for inspection by the city and its designee.

(k)

Inspections. In addition to the annual inspection provided for herein, animals, facilities and records shall be subject to random or unannounced inspections at the discretion of the tourism director, police department, and/or the city designated veterinarian. The inspector is permitted to take notes, pictures and video if they deem appropriate. These inspections shall be brief in order to not interfere with the work flow of the business. The inspector should be allowed to enter the premises no longer than fifteen (15) minutes after arrival at the facility during business hours.

(Ord. No. 2007-90, § 1, 4-24-07; Ord. No. 2011-58, §§ 1—10, 8-16-11, Ord. No. 2011-59, § 1, 8-16-11; Ord. No. 2011-60, § 1, 8-16-11)

TAB 11

Aubry G. Alexander, II
District 9
City Council

April 15, 2013

Mr. Lee Batchelder, Zoning Administrator
City of Charleston
75 Calhoun Street
Charleston, SC 29401

Dear Lee,

I am writing in reference to a zoning application for 45 Pinckney Street. I've been contacted by several owners whose properties touch or are near the site, and they are asking that the City and BZA reject the application.

It appears that some creative mind has used Horizontal Property Regime (condominium) laws to compartmentalize and separate a building to avoid setbacks and protections to neighboring businesses and residences. To allow this variance surely will circumvent the intent and spirit of our ordinances.

While zoning defines business and residential areas, I submit to you that a hotel or inn is in fact a temporary residence enjoyed by visitors to our wonderful city. Should those residents not be protected from having to sleep without exposure to the noxious odor of animal waste? Should not the proprietors of these temporary residences for visitors also be protected from potential loss of business? Are we to be grateful that the owners of the barn have added extraction fans to the building to force the stench into the public realm?

I would hope that common sense and reasoning will triumph in consideration of this application. This city has worked diligently with all to insure that visitors are inspired to share their experiences with others and to return again and again. Let's not purposely place a blemish on a Charleston visitor's experience!

I look forward to working with the Zoning Department to close any loopholes in our ordinances that would allow for potential misuse of them. Please share my thoughts with the Board.

Respectfully,

Aubry Alexander
Charleston City Council
District 9

33 Broad Street Charleston, SC 29401 Phone (843) 723-2853 Fax (843) 852-0746 Email aalexander@daniellravenelsir.com

The
Historic Ansonborough Neighborhood Association



Charleston, S.C. 29401

April 12, 2013

City of Charleston
Board of Zoning Appeals
75 Calhoun Street
Charleston, SC 29401

Dear Sir:

On July 12, 2012, HANA wrote the following letter regarding the proposed stables at 45 Pinckney Street. The decision of the HANA Board still stands and we oppose the application for the reasons stated last year.

It has come to the attention of the Ansonborough neighborhood that an application has been made for a Special Exemption that would allow a stable/carriage tour operation at 45 Pinckney Street.

On July 11, 2012, at the monthly meeting of the Historic Ansonborough Neighborhood Association (HANA), the membership of HANA voted unanimously to oppose the issuance of this Special Exemption. HANA does not object to the use of this location for administrative purposes or equipment storage, but does oppose its use as a stable.

Among the reasons for this opposition are the health issues posed by livestock in such close proximity to houses, the negative impact on the traffic patterns on Pinckney and Church Streets and the fact that the operation is totally inconsistent with the residential character of the neighborhood.

While we acknowledge there are other carriage/stable operators adjacent to Ansonborough, none of the others are located directly across the street from residential domiciles.

We urge the Board to deny this request.

Sincerely,

/s/Stephen Hanson
President

TAB 12

Batchelder, Lee

From:	Pellenz, John M <PellenzJM@charlestoncpw.com>
Sent:	Friday, April 12, 2013 10:01 AM
To:	Batchelder, Lee
Cc:	aeb@barrungermcintosh.com
Subject:	45 Pinckney Street Drainage Plan
Follow Up Flag:	Follow up
Flag Status:	Flagged

Good Morning Lee Batchelder,

The Charleston Water System (CWS) accepts the letter, dated April 11, 2013, from Chip Davis with Ground Hog Utilities, as proof that the floor drains contained within the horse stalls do indeed drain into the gravity sewer line that is owned, operated, and maintained by the CWS.

Respectfully yours,

John M. Pellenz, P.E.
Wastewater Collection Engineering Manager
Charleston Water System
Office (843) 308-8205
Fax (843) 308-8215

TAB 13

Sec. 54-206. Special exception uses.

Uses designated in the Table of Permitted Uses and listed below, may be permitted in certain districts where the Board of Zoning Appeals—Zoning after review, finds that requirements listed below for such uses are met.

a. *Additional dwelling units in the SR zoning districts*. Additional dwelling units shall be permitted as an exception within all single-family residential, SR zoning districts, in dwellings constructed prior to August 17, 1966, where the Board, after review, finds that such existing dwelling contains such an amount of space available and suitable for residential purposes that it is unreasonable to require its use as single family dwelling.

b. *Cemeteries*. Cemeteries shall be permitted within the Conservation and all residential zones only as an exception where the Board, after review, finds that no building or parking lot thereof will be closer than one hundred (100) feet to an adjoining lot, and that all facilities will be adequately screened and landscaped in a manner appropriate to the character of the district.

c. *Church*. A church shall be permitted only as an exception within the Conservation and all residential zones where the Board, after review, finds that it will not be closer than twenty-five (25) feet to an adjoining property line and that the required off-street parking spaces, separated from property lines by an appropriate buffer strip, will be provided.

d. *Dairy farms & dairy products manufacture* shall be permitted only as an exception within the Conservation Zone where the Board, after review, determines that such uses are in accordance with the City's comprehensive land use plan.

e. *Day care centers*. A day care center, which is an accessory use to a church, school, park or other institution, shall be permitted as an exception within the Conservation District, all residential districts, and the CT District, where the Board, after review, determines that an application for such a use satisfies the following requirements:

1. proof of the application for the facility's licensing by the Department of Social Services is provided; and
2. the proposed facility satisfies the definition of a day care center; and
3. all signage is in conformity with that allowed for home occupations; and
4. outdoor play is allowed only between the hours of 8 a.m. and 6 p.m.; and
5. if a play area is within fifty feet (50') of a residential structure, it is appropriately buffered; and
6. there exist at least two (2) parking spaces per employee; and
7. plans for ingress/egress, loading/unloading and the location of the parking and play areas are approved for safety by the appropriate city department(s); and
8. the facility is compatible with the surrounding neighborhood based upon consideration of the number of persons cared for, potential traffic and noise impacts, location of the play, parking, loading and circulation areas and relation to other noise or traffic generating institutions (particularly if another non-residential facility is facing or abutting the same block face or is within three hundred feet (300') of the proposed site); and
9.

the proposed outdoor lighting of the facility does not unduly impact neighboring properties.

f. *Reserved.*

g. *Drive-thru or automated teller facilities for depository institutions, banks, savings and loans,* credit unions or similar depository institutions shall be permitted within the GO district only as an exception where the Board, after review, finds that the proposed teller facility satisfies the following requirements:

1. adequate off-street parking and traffic circulation is provided.
2. the vehicular access will not create a traffic hazard.

h. *Reserved.*

i. *Reserved.*

j. *Reserved.*

k. *Gasoline service stations* may be permitted within the LB, GB, UC, BP, LI, or HI districts as an exception where the Board, after review, finds that:

1. Buildings or equipment will not be within one hundred (100) feet of any existing day care, school, church, hospital, or public library.
2. Buildings or equipment will not be within fifty (50) feet of any residential zone district or existing dwellings.
3. Buildings or functionary facilities other than signs relating to the principal use will not be closer than twenty (20) feet to street abutting lot lines.
4. Any portion of an entrance or exit driveway leading to a public street will not be closer than three (3) feet to a fire hydrant.
5. Entrance and/or exit driveways will not be in excess of forty (40) feet wide or closer than fifteen (15) feet to the intersection of streets.
6. Stations within LB will restrict hours of operation to between 7 a.m. and 11 p.m.

l. *Homes for the elderly* which care for no more than twenty (20) persons shall be permitted within the DR-1, DR-1F, DR-2, DR-2F, DR-3, CT, LB, GB or UC zones as an exception where the Board, after review, finds that the proposed facility will be compatible with the character of the neighborhood, its population density, traffic patterns and parking facilities and not adversely impact the immediate neighborhood. The Board may, after review, permit larger facilities when it finds that the public interest will be served thereby.

m. *Logging camps and forestry activities* shall be permitted as an exception within the Conservation Zone where the Board determines that such uses are in accordance with the City's comprehensive land use plan.

n. *Museums* shall be permitted within the SR-3, SR-4, SR-5, SR-6, STR, and all diverse residential, DR districts where the Board, after review, finds the following:

1. That such museum is organized, that is, is a duly constituted body with expressed responsibilities.
2. That such museum is permanent, that is, expected to continue in perpetuity.
3. That such museum is a non-profit institution, that is, has documentary evidence of its tax-exempt status under the regulations of the U.S. Internal Revenue Service.
4. That such museum is essentially educational or aesthetic, that is, manifests its expressed responsibilities by knowledgeable utilization of its objects and exhibits them for elucidation and enjoyment.

5. That such a museum maintains a professional staff, that is, has at least one paid employee who commands an appropriate body of special knowledge and the ability to reach museological decisions consonant with the experience of his or her peers, and who has access to and acquaintance with the literature of the field. The continuity of employment of at least one professional staff member, who must work sufficient hours to meet adequately the current demand of the institution for administration, record keeping and care of collections is essential.
6. That the tangible objects, animate and inanimate, forming the museum's collections must have intrinsic value to science, history, art or culture.
7. That such museum maintain regular and predictable hours which constitute substantially more than token opening, so that access is reasonably convenient to the public.
8. That such museum operate during normal business hours and does not inherently exhibit noise, light or traffic conditions clearly debilitating to neighboring residents.

o. *Sewage disposal facilities* shall be permitted as an exception within the Conservation Zone where the Board, after review, determines that such uses are in accordance with the City's comprehensive land use plan.

p. *Stables* shall be permitted within the GB and UC district as an exception where the Board, after review, finds that:
1. The stable is not located within 100 feet of any residential zone district.
2. The City of Charleston Tourism Commission has issued a Certificate of Appropriateness for the stable.
3. The stable complies with all city, county, and state regulations for stables.
4. A site plan is provided showing that the cleaning/loading/tacking area shall not impede traffic flow in the public right-of-way.
5. A written explanation is submitted detailing how refuse will be handled in accordance with city, county, state, and federal regulations. This shall be reviewed by the Department of Public Service.
6. A plan is submitted showing how drainage on the property is to be collected in accordance with city, county, state, and federal regulations. This shall be reviewed by the Commissioners of Public Works and the Department of Public Service.
7. Buildings are designed utilizing appropriate ventilation to prevent objectionable odors from being emitted.

q. *Electric substation or gas regulator station*. Such station shall be permitted within the Conservation District, all residential districts, the CT district, and the RO district only as an exception where the Board, after review, finds that such station is essential for service of the immediate area, will be enclosed within an appropriate woven wire or solid fence, will be suitably landscaped and no storage of vehicles or equipment will occur.

r. *Storage yards, junk yards, scrap yards or auto salvage yards.*
1. Outdoor storage yards, which are used for storage of materials and equipment, other than vehicles, boats or shipping containers, are permitted within the LI (Light Industrial) and HI (Heavy Industrial) districts as an exception where the Board, after review, finds that adequate provision and maintenance of visual

screening by fences, planting or other means, from public streets, roads, residences and adjacent residential zone districts will be provided.

2. Junk yards, scrap yards, or auto salvage yards are *prohibited within the LI district* but permitted within the HI district as an exception where the board, after review, finds that the same standards for visual screening listed in 54-206.r.1. are met.

s. *Reserved.*

t. *Golf courses and membership sports and recreation clubs*, private or for profit, or changes thereto, shall be permitted within the Conservation district as an exception where the Board, after review, finds that the location, lighting, hours of operation, type and size of the facility, or changes thereto, will not adversely affect any neighboring residentially zoned areas.

u. *Dwellings within the HI district* shall be permitted as an exception where the Board, after review, finds that there shall not be created any unsafe living conditions given the existing uses in the area.

v. *Mining* for the purpose of extracting materials from a property shall be permitted as an exception in all districts if the total size of the area to be mined does not exceed two (2) acres. For larger operations, Dirt Mining/Resource Extraction shall be permitted as an exception only in the Light Industrial (LI) and Heavy Industrial (HI) zone districts.

1. Mining operations not exceeding two (2) acres in total mining area and meeting all of the following conditions shall be permitted in any zone district as an exception where the Board, after review of documentation submitted by the applicant, finds that:

a. The total mining area, work zone and construction access road is shown on a scaled site plan of the property, and is intended as preparation for residential use, recreational use or agricultural use.

b. The mining use will not last more than one (1) year from the date of approval.

c. The mining work zone, as shown on the scaled site plan, will be located at least fifty (50) feet from any property boundary and at least one hundred (100) feet from any dwelling.

d. A mining operation has not occurred on the subject property within three (3) years prior to the date of the application.

e. Variances and/or special exceptions from Article 3, Part 6: Tree Protection Requirements, if required, have been approved.

f. Existing vegetation will be maintained and adequately protected as a natural buffer between adjacent dwellings, existing water bodies or wetlands and the mining work zone.

g. The applicant agrees in writing to restrict the hours of operation for mining operations to between 8:00 a.m. and 7:00 p.m., Monday through Saturday.

h. The applicant will not use any office facilities at the mining location except in the LI and HI zone districts.

i. A stabilized access road for mining vehicles will be constructed and maintained to the specifications of the City Engineer and to a minimum depth of 50 feet from the public right-of-way.

2.

Mining operations exceeding two (2) acres in area shall be allowed in the Light Industrial (LI) and Heavy Industrial (HI) zone districts as an exception where the Board, after review, finds that:

a. The applicant agrees in writing to restrict the hours of operation for mining operations to between 7 a.m. and 7 p.m., Monday through Saturday.

b. Variances and/or special exceptions from Article 3, Part 6: Tree Protection Requirements, if required, have been approved.

c. The size, shape and location of the area to be mined are such that it will allow for the conversion of the mining area into an amenity for the eventual use of the property. Evidence for this finding shall require the submittal of a plat of the property which 1) complies with the preliminary plat requirements of Section 54-810; 2) indicates the limits of clearing and excavation for the mining operation; 3) indicates the intended post-mining use of the mining area and other areas of the tract in conjunction with the Zoning Ordinance; and 4) indicates the depth of the mined area and the final slopes of the sides.

d. Vehicle access from a public road for the mining operations is shown on a plat of the tract where the mining will occur, will be located in a manner that minimizes or removes any adverse impacts on adjoining parcels, and will not be through any residential areas. The applicant shall:

   i. Submit a copy of the approved SCDOT or City encroachment permit for the proposed access road;

   ii. Construct and maintain a paved roadway from the access point on a public right of way prior to commencing mining operations. The paving shall extend a minimum of fifty (50) feet into the property from the right-of-way. When the vehicle access to the mining area is less than two-hundred and fifty (250) feet from a residential area, the Board may increase the distance the road must be paved or may require a maintenance plan for an unpaved road to eliminate dust and noise issues.

e. The mining work zone will have adequate separation from adjoining properties and all wetland areas or areas below the critical line. The minimum separation from adjoining non-residential property, which is not part of the proposed development the amenity is intended to serve, shall be one-hundred (100) feet. The minimum separation from an existing water body, wetland, area below the critical line, or adjoining property with a residential zoning or residential use, shall be two hundred fifty (250) feet. The Board may increase the required distance between the mining work zone and an existing water body, wetland, area below the critical line, or adjoining property to mitigate potential adverse impacts due to an insufficient existing vegetative buffer, an environmentally sensitive area, or an existing residential use.

f. Where vegetation exists along a property boundary, natural water body or wetland, the operator shall maintain sufficient existing vegetation to provide a buffer between the mining operation and property boundary, natural water body or wetland.

w.

Membership sports and recreation clubs and civic, social and fraternal clubs shall be permitted within the SR-3, SR-4, SR-5, SR-6, STR, DR-6, DR-9, DR-12, DR-1F, DR-1, DR-2F, DR-2 and DR-3 districts where the Board, after review, finds the following:

1. Required off-street parking spaces, separated from property lines by an appropriate buffer strip, will be provided.
2. The location of the facility will not significantly increase pedestrian traffic or automobile traffic and parking on minor and local streets within existing residential neighborhoods.
3. That such organization is a non-profit organization and has documentary evidence of its tax-exempt status under the regulations of the U.S. Internal Revenue Service.

x. *Sidewalk cafés for licensed businesses not meeting the requirements of Section 54-213 subsection k. paragraph 2. and/or subsection k. paragraph 3.* shall be permitted within residential areas as an exception where the Board, after review, finds the following:

1. A completed application for a sidewalk café permit has been submitted for review by the Zoning Administrator;
2. The applicant meets the requirements of section 54-213 with the sole exception of subsection k. paragraph 2. and/or subsection k. paragraph 3.
3. The sidewalk café can be operated in the proposed location without compromising public safety or the use of sidewalks for pedestrian travel and access.
4. The sidewalk café hours of operation will be restricted and be compatible with the surrounding area.
5. The business applying for the sidewalk café permit is not licensed to permit on premises consumption of alcoholic beverages and will not permit the consumption of alcoholic beverages in the sidewalk café.
6. The applicant has submitted a petition signed by twenty-five (25) or more residents of the neighborhood in which the sidewalk café is to be located and, if the location is within a neighborhood with a neighborhood association recognized by the City of Charleston, the applicant must provide proof of having presented the proposal for said sidewalk café to that neighborhood association.

(Ord. No. 1996-227, §§ 3—6, 11-26-96 ; Ord. No. 1997-279, § 1, 7-15-97; Ord. No. 1997-280, § 2, 7-15-97; Ord. No. 1998-147, § 3, 8-18-98; Ord. No. 1998-203, § 5, 11-24-98; Ord. No. 1999-01, § 3, 1-12-99; Ord. No. 1999-54, § 4, 4-27-99; Ord. No. 1999-137, § 4, 9-28-99; Ord. No. 2001-31, § 1, 3-14-01; Ord. No. 2002-92, § 2, 8-13-02; Ord. No. 2003-44, § 4, 4-22-03; Ord. No. 2004-68, § 1, 7-20-04; Ord. No. 2006-489. § 2, 10-24-06; Ord. No. 2007-59, § 7, 3-6-07; Ord. No. 2008-146, § 5, 11-25-08; Ord. No. 2009-55, § 2, 4-14-09; Ord. No. 2009-207, § 2, 10-13-09; Ord. No. 2009-208, § 1, 10-13-09; 2011-121, § 1, 9-13-11)

CERTIFICATE OF COUNSEL

I certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Charleston, South Carolina
2/11, 2015

Frances I Cantwell

Frances I. Cantwell
Assistant Corporation Counsel
Attorney for Appellants
City of Charleston and
City of Charleston Board of Zoning Appeals