

21353

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable James R. Barber, III, Circuit Court Judge

Case No. 2013-CP-40-02159

Frieda H. Dortch, ... Appellant,
v.

City of Columbia Planning & Development Services/Zoning Division, ... Respondent.

RECORD ON APPEAL
(Including Certificate of Counsel and Stipulation)

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RECEIVED

OCT 15 2014

SC Court of Appeals

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**Order Dismissing Appeal to Circuit Court
on the Basis of Res Judicata, dated Aug. 19, 2013**

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Frieda H. Dortch,)

Petitioner,)

vs.)

City of Columbia, Planning &
Development Services/Zoning
Division,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-40-02159

ORDER

RICHLAND COUNTY
FILED
2013 SEP 10 AM 9:31
JEANETTE W. McBRIDE
C.C.P. & G.S.

I. Background

This action concerns an appeal from the denial of a variance request. This matter came before the Court on July 29, 2013, for a hearing on the Respondent's Motion to Dismiss. The Court hereby grants the Respondent's motion for the reasons stated herein.

In 2008, the Petitioner herein twice appeared before the City of Columbia Board of Zoning Appeals ("BOZA"). In the first instance, heard by BOZA on July 8, 2008, the Petitioner sought a variance to the zoning ordinance's lot size requirement. The Petitioner's application for a variance stated that she desired to "re-establish a duplex." In order to do so, a variance was required because the lot size was not large enough to accommodate a duplex. BOZA issued a written decision on January 16, 2009, denying the request for a variance to the lot size requirement to re-establish a duplex on the property.

In the second instance, the Petitioner sought administrative review of the Zoning Administrator's decision regarding the nonconformity of the duplex on the subject property. On May 15, 2008, the Petitioner had submitted an Application for a Certification of Zoning Compliance - Nonconforming. This application requested "grandfather" status for the

nonconforming use of a duplex in the subject zoning district. The Zoning Administrator denied this request. Subsequently, the Petitioner filed an Appeal for Administrative Review by BOZA. In this appeal document, the Petitioner alleged that the Zoning Administrator erred by denying the application seeking grandfather status as a duplex (nonconforming use). After a hearing, ~~BOZA issued a written decision on January 16, 2009, and agreed with the Zoning Administrator~~ that the legal nonconforming use had been lost and could not be reestablished because the property had been vacant for more than 12 months.

Over three years after the previous events described above, the Petitioner filed another application for a variance. Again, the application sought a variance to the lot size requirement to maintain a duplex on the property. BOZA denied the variance by written decision on March 12, 2013. BOZA characterized the issue as a "request for a variance from the lot area requirements to establish a duplex within the RG-1 district." BOZA noted that the property had lost its legal nonconforming status.

II. Findings of Fact and Conclusions of Law

The Respondent asserts that the present action should be dismissed on the grounds of res judicata. The Respondent contends that the Petitioner's previous request for a variance should bar the Petitioner's present request.

Res judicata applies to administrative zoning decisions in order to promote finality of decisions unless it is shown that there has been a substantial change of circumstances since the earlier ruling. 83 Am.Jur.2d Zoning and Planning § 741. Absent an ordinance allowing a property owner to bring successive zoning requests, changed circumstances are required to grant a variance previously denied. Price v. City of Georgetown, 297 S.C. 185, 375 S.E.2d 335 (Ct. App. 1988) (discussing the application of the doctrine of res judicata in the zoning context); see

Kreisberg v. Scheyer, 808 N.Y.S.2d 889 (N.Y. Sup. Ct. 2006) (holding the doctrine of res judicata applies to zoning board determinations and a second application for identical relief by the same person would be barred); Callowhill Center Assocs., LLC v. Zoning Bd. of Adjustment, 2 A.3d 802 (Pa. Commw. Ct. 2010) (holding res judicata will bar relitigation of a request for variance if four elements are present); Rossow v. City of Ravenna, 2002 WL 480061 (Ohio Ct. App. 2002) (holding a second application for variance was barred by res judicata where it did not substantially differ from the first application).

This Court finds that the most recent application for a variance is the same in all material respects to the previous application for a variance and that the Petitioner has not demonstrated a change of circumstances that would have allowed a successive application for a variance. The Petitioner's current submission to BOZA states that she "made the same or similar application some years ago" Upon comparison of the two applications, it appears that the lot size is still the same, if not smaller than originally represented.¹ In each application, the Petitioner asserts that the home is a duplex and that she desires a variance in order to continue such use. The zoning district has not changed during the time from one application to the next.

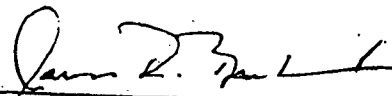
In support of the Petitioner's most recent application for a variance, she provided to BOZA a document entitled "Expected Submitted Testimony." Upon analysis, this document is identical in almost all respects to the facts presented in support of the original application for variance. For example, in support of the 2008 and 2012 requests, the Petitioner identically states that it would be an "extreme hardship" to convert the home from a duplex into a single family residence and that she "want[s] to continue it in the form it has always been and preserve its design as it is."

¹ The original application for variance stated the lot size was 7,644 square feet. The most recent application states that the lot size is 6,786 square feet. At least 5,000 square feet per dwelling unit is required in the subject zoning district.

It is also clear from a review of the 2008 and 2012 meeting minutes that the grounds alleged in support of the variance do not differ in any material respects. In support of each application, the Petitioner outlines the past history of the home as a duplex and expresses her desire that its use be allowed to continue as a duplex. The Petitioner argues in support of each application that it would be an economic hardship to convert the use from a duplex into a single-family residence. The Petitioner also argued in each application that she had made provisions for parking in the rear of the property.

This Court finds that the Petitioner's most recent application for a variance is identical in all material respects to the earlier application that was denied. The Petitioner did not show a change of circumstances that are required to grant a variance which has previously been denied. Price, supra.

Therefore, for the reasons stated herein, this Court grants the Respondent's Motion to Dismiss and finds that the Petitioner's appeal is barred by the doctrine of res judicata.



The Honorable James R. Barber, III
Fifth Circuit Court of Common Pleas

8/19, 2013

Form Order Denying Motion to Reconsider, dated Oct. 15, 2013

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2013CP4002159**

Freida H Dortch

City Of Columbia Board Of Zoning Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

Plaintiff's Motion to Reconsider has been DENIED without Oral Argument.

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code **2110**Date **October 15, 2013**

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this **28** day of **Oct**, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

M. Baron Stanton

Peter M Balthazor

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Transcript of July 29, 2013 Hearing of City's Motion to
Dismiss Circuit Court Appeal of Second BOZA Proceeding, dated Feb. 23, 2014

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

County of Richland

2013-CP-40-02159

Frieda H. Dortch,

Appellant,

vs.

TRANSCRIPT OF RECORD

City of Columbia Planning and
Development Services/Zoning
Division,

Respondent.

July 29th, 2013
Columbia, South Carolina

BEFORE:

THE

BARBER, JUDGE.

APPEARANCES:

M. BARRY STANTON, ESQ.
Attorney for the Appellant

PETER M. BALTHAZOR, ESQ.
Attorney for the Respondent

AMINAH R. HARDY, RPR, CVR-CM
Official Court Reporter

EXHIBITS

No.

Description.

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(No exhibits were marked.)

P R O C E E D I N G S

1
2 MR. STANTON: We brought the appeal from the zoning
3 board, but Mr. Balthazor, after I filed the appeal, filed
4 a motion to dismiss based on res judicata. And when we
5 saw the electronic notice of the hearing, it said motion
6 to dismiss up for hearing. So just a few minutes ago, we
7 were saying we weren't sure whether the Court wanted to
8 hear the appeal itself and his motion to dismiss as part
9 of that, or whether you want to hear the motion the
10 dismiss. I didn't know -- I forgotten actually what kind
11 of docketing priority, whether the appeal --

12 THE COURT: What was filed first?

13 MR. STANTON: The appeal was filed first.

14 THE COURT: I guess we'd have to hear the motion to
15 dismiss then.

16 MR. BALTHAZOR: Right. The petition for appeal from
17 BOZA I filed -- in the same document I filed a motion to
18 dismiss based on res judicata --

19 THE COURT: You saw the zoning change and you lost
20 and you appealed it and...

21 MR. STANTON: Right. And then in response to that,
22 he filed a return, and the motion to dismiss, and then we
23 got a notice of hearing of the motion of dismiss.

24 THE COURT: Let's hear the motion to dismiss, and...

25 MR. BALTHAZOR: Right. Sort of just filing a motion

1 to dismiss and an answer to complaint, same -- all within
2 the same thing docket.

3 MR. STANTON: I didn't know who you want to go first.

4 THE COURT: He's the one, so tell me what we got
5 here.

6 MR. BALTHAZOR: I'm moving -- Your Honor, if I may
7 approach, I've got a couple things to hand up. I've got a
8 memorandum in support of our motion to dismiss. And I've
9 got some documents that's are Bates stamped BOZA 1 through
10 46. I believe these documents were already submitted
11 with --

12 THE COURT: Let me ask you this something. When this
13 was heard, Toby Ward (phonetic) at one time was on the
14 zoning board. Was he on the zoning board at that time?

15 MR. BALTHAZOR: No, Your Honor, he was not. This
16 matter was heard in -- this matter was just heard this
17 year, 2013. And Toby was not on the zoning board. I've
18 got some other cases to hand up as well, some out-of-state
19 cases that were cited in the BOZA memorandum here in front
20 of you.

21 THE COURT: Whose memorandum?

22 MR. BALTHAZOR: BOZA. Board of Zoning Appeals.

23 THE COURT: Is that what you call it?

24 MR. BALTHAZOR: That's what I call it. Some others
25 say BZA. But I'll refer to as BOZA for today's purposes.

1 What we have here is -- well, first of all was a request
2 for a variance from Frieda Dortch, which she made in 2012,
3 late 2012. BOZA heard that matter for the variance.

4 THE COURT: What was she seeking?

5 MR. BALTHAZOR: She was seeking a variance of the lot
6 size to -- according to the application to reestablish or
7 maintain a duplex. Apparently there is a duplex on the
8 property. For some years it was a duplex or maintained as
9 a duplex, but -- and I believe this is undisputed, and
10 this is some background on the case also. In 2008 and
11 2009, Ms. Dortch made the same applications, first for a
12 variance to alter the lot size so that a duplex could
13 exist on this property. In 2008, she also appealed and
14 administrative decision by the zoning administrator which
15 found that the duplex on the site lost its legal
16 nonconforming use, both of those in 2009. Those decisions
17 of BOZA were appealed to this court. And at that time --
18 I think it was in 2009, or maybe the hearing came up in
19 2010, Your Honor heard that matter in 2010.

20 I filed a motion to dismiss in that matter on behalf
21 of BOZA, which motion to dismiss was granted by Your
22 Honor. So here we are again in 2012, a subsequent
23 successive --

24 THE COURT: Did Mr. Stanton represent her at that
25 time?

1 MR. BALTHAZOR: Mr. Stanton did not represent her at
2 the time of her applications in 2008, 2009. I believe he
3 took over representation at the time she made her appeal
4 in 2010. My motion to dismiss just real quick in 2010 was
5 based on the time limits of the appeal. Ms. Dortch didn't
6 timely appeal. And Your Honor agreed with that and
7 granted that motion to dismiss in 2010.

8 So here we are again, fast forward to 2012 when a
9 successive application for variance was made. The
10 variance was based on the identical grounds as the 2008
11 application for variance was made; namely, that the
12 property on -- this piece of property on Heidt Street was
13 a duplex at some time in the past; that a duplex -- well,
14 in this zoning district, 5,000 square feet of lot area is
15 required for each dwelling unit.

16 THE COURT: Well, was it continuously operated as a
17 duplex, or was that use interrupted at some point?

18 MR. BALTHAZOR: That use was interrupted, and that
19 use was interrupted in -- there's a tortured history as
20 far as how that use was interrupted and what was going on,
21 but basically this property has been vacant for many years
22 now, maybe since 2005, 2007, somewhere in that area. But
23 I think it's undisputed and it's established now that it
24 is a nonconforming use it. It's no longer a legal,
25 nonconforming use for that property. So here we are in --

1 and not to get into the merits yet, but here we are in
2 2012 asking for a variance for that lot size --

3 THE COURT: So your position is he can't reapply for
4 that and then start the process over again. If he wants
5 to change the use, he has to get it rezoned to another
6 classification.

7 MR. BALTHAZOR: Well, yes, it can be rezoned, I
8 guess, to a single-family residence.

9 THE COURT: You don't have the right every year or
10 every -- periodically to seek a new variance. You're
11 given your one shot, and if you lose it --

12 MR. BALTHAZOR: That's correct. I think there are
13 some exceptions to that, Your Honor, which I do recognize.
14 And Mr. Stanton cites a case -- I think it's from Rhode
15 Island -- in his brief that says that res judicata is not
16 applicable to zoning decisions. I think that case doesn't
17 really apply in this instance because that case said that
18 BOZA -- the Rhode Island case said the Board of Zoning
19 Appeal didn't even have subject matter jurisdiction in
20 that case or what -- didn't even get into the res
21 judicata. But there is a case from the Court of appeals
22 in 1988, South Carolina Court of Appeals which
23 recognizes -- it didn't hit it head on, but it recognized
24 that res judicata is applicable to zoning determinations.
25 In that case, the statement was that absent an ordinance

1 allowing a property owner to bring successive zoning
2 requests, changed circumstances are required to grant a
3 variance previously denied.

4 The City of Columbia does not have an ordinance that
5 allows you to bring successive application for variance,
6 and my argument here is there are no changed circumstances
7 from 2008 to 2012 when the new application was made. Both
8 applications are trying to do the same thing. They're
9 trying to maintain or continue a duplex, something that
10 was lost years ago. We wouldn't be here if Ms. Dortch
11 hadn't ever lost that legal nonconforming use. She lost
12 it. Now she's using the variance in 2008 and now in 2012
13 to try to reestablish something that she lost.

14 The main arguments in the 2008 and the 2012
15 applications are that economic hardship that Ms. Dortch
16 alleges she would face having to convert this to a
17 single-family residence combined with the -- her other
18 argument of this grandfather status of the duplex, which
19 there is no grandfather status of the duplex anymore.
20 That has been lost. She's trying to regain that through
21 the use of a variance, but that has been lost.

22 And I should point out on there is -- in Ms. Dortch's
23 most recent application and in some of the submissions
24 made to BOZA for the most recent application for variance,
25 and this is on page 41 of -- well Bates marked BOZA 41.

1 It is Ms. Dortch's amended application to the Board of
2 Zoning Appeals. Ms. Dortch even acknowledges on page 2 of
3 that application that she made quote, the same or similar
4 application some years ago. So again, demonstrating
5 there's no changed circumstances with this most recent
6 application.

7 And then in the most recent application Bates marked
8 BOZA 17 through 21, Ms. Dortch submitted a document
9 entitled "Expected submitted testimony," and that -- which
10 is almost identical to various paragraphs in an affidavit
11 Ms. Dortch filed in the 2009 civil action, the appeal from
12 the variance. So it's just some examples of the identical
13 nature of the two requests, that there's been no changed
14 circumstances from one application to the next, and BOZA's
15 position then is that this matter should be dismissed
16 unless Ms. Dortch can show those changed circumstances. I
17 mean, there's got to be some finality to these zoning
18 decisions at some point.

19 The City recognizes certainly if the owner changes
20 or -- yeah, there are some changed circumstances that an
21 application can be taken up again, but BOZA's time
22 shouldn't be taken up with successive applications
23 after -- maybe the members of the board change at some
24 point. Someone thinks there's a more favorable board for
25 them at that point, that they can make a successive

1 application. That's the City's position on the motion to
2 dismiss.

3 MR. STANTON: Thank you. May it please the Court.

4 I'm Barry Stanton representing Ms. Dortch. And speaking

5 of representing Ms. Dortch, Mr. Balthazar got that
6 correct. The earlier application that she did, if memory
7 serves, she did all that pro se and filed her appeal pro
8 se, and then I was retained to get in on her appeal. And
9 that appeal among other things pointed out the fact that
10 the zoning board's whole decision was completely wrong.
11 The order said the reason she couldn't the reason -- let
12 me back up. Different levels of appeal.

13 The initial decision she got that wouldn't give her a
14 permit to do anything gave as a reason she was in a
15 single-family zoning district, and the zoning board on the
16 appeal part of that, the zoning board simply voted that
17 they wanted to affirm that. They didn't give any
18 reasoning or anything, so if you look at -- in that
19 initial controversy, she was appealing the reason given
20 that her duplex couldn't be a duplex was because it was
21 supposed to be single family --

22 THE COURT: All right. So whatever the reason --

23 MR. STANTON: Well -- I'll tie it up short.

24 THE COURT: She appealed it to this court, and
25 according to counsel, I denied her motion based on

1 timeliness?

2 MR. STANTON: That's what I was getting to was the
3 fact that the -- it's actually zoned in a multifamily
4 zone. They were actually wrong, and the way that appeal
5 ended up was the City instead of opposing it on the merits
6 contended that she was one or two days late filing her pro
7 se appeal --

8 THE COURT: All right.

9 MR. STANTON: -- to the circuit court. So that we
10 argued --

11 THE COURT: But if it's a bad decision, she's still
12 stuck with it, isn't she?

13 MR. STANTON: Not necessarily, Your Honor, I contend,
14 but I'll get to that. I just want to make sure I got the
15 procedural --

16 THE COURT: I understand all that.

17 MR. STANTON: So with that appeal, we then argued
18 before Your Honor and did a lot of briefing on a lot of
19 esoteric stuff, even looking at the legislative history,
20 of the different statutes dealing with the timing and how
21 it related to rules of civil procedure and jurisdiction,
22 and Your Honor ruled against her on that, and we filed a
23 motion to reconsider.

24 At about this time -- and I need this to be clear so
25 you understand. At about this time, the City is

1 simultaneously giving her criminal citations for not
2 fixing the house, but they won't give her a permit to fix
3 it. So she is in city court being summoned periodically
4 to appear to respond to criminal charges and the city

5 court finally says as long as there's anything pending on
6 this that's not resolved, we're not dealing with these
7 tickets. As far as I know, that's still the case. And
8 the motion to reconsider has never been determined.

9 THE COURT: I can't -- you served the motion to
10 reconsider on me?

11 MR. STANTON: I filed one on this court.

12 THE COURT: Well, you got to serve it on the judge
13 within 10 days. Did you serve it on me? I can't imagine
14 that a motion to reconsider was served on me and I had
15 notice of it and I didn't address it.

16 MR. STANTON: I'd have to look in my file to see
17 whether I sent it directly to Your Honor or if I filed
18 with the Clerk of the Court.

19 THE COURT: Well, if you didn't send it to me, it
20 defective.

21 MR. STANTON: Well, I'll have to deal with that.

22 THE COURT: I would have no way of knowing unless --
23 and that's why the rule specifically says the Court has to
24 be served.

25 MR. STANTON: If that's the case, I would have to

1 deal with that. I just want to make sure the context is
2 understood before I give you -- all the many reasons why
3 the res judicata is argument is wrong.

4 The reason the res judicata argument is wrong is
5 first of all res judicata was not raised at the zoning
6 board hearing. It's a defense, if you will, of the party
7 that wants to raise it. They have to raise it. It's not
8 a self-executing thing. It's not an element of her
9 application. It has to be raised at the zoning board. No
10 objection was made at the zoning board. That's Number 1.

11 Number 2, it was affirmatively waived at the zoning
12 board by the zoning board and we quoted in our brief where
13 they actually had a pre-hearing brief that we weren't even
14 privy to that was prepared by the zoning people, sent to
15 the zoning board, and was right there in front of them
16 when we walked in for the zoning board hearing, and it
17 says, "We know of no reason why this can't be heard again,
18 although there's another similar one in the past," and
19 I've quoted in the brief. It basically say there is no
20 reason why this can't be done again, so it was
21 affirmatively waived.

22 The third reason res judicata argument loses is in
23 accordance with that Rhode Island case we cited and some
24 others, res judicata is not applicable at a zoning board
25 hearing level. Res judicata as a doctrine legally

1 generally relates to things that are handled in an
2 important judicial forum and are fully and fairly
3 litigated and are determined to a conclusion. The zoning
4 board is not a judicial body. They're quasi-judicial.

5 They don't follow rules of evidence. They have -- they
6 invite people from the neighborhood or the audience just
7 to get up and make comments. It's not a formal judicial
8 proceeding.

9 THE COURT: Mr. Stanton, would it be your position
10 you can file, lose, appeal, lose, file the next day after
11 the appeal is ended on the same basis that you just filed
12 and lost? You can do that every time the case -- the
13 previous zoning application is ultimately resolved
14 detrimentally to a person, that that person can then the
15 next day file on the same basis that they filed before,
16 and it has to have a hearing on the merits and everything
17 has to continue to go forward, and we can never end those
18 things by saying hey, that decision was final. Is that
19 your position?

20 MR. STANTON: I'm not sure it's not my position, Your
21 Honor. Because of the way these things are handled,
22 they're an informal thing, and this is a terrible case.
23 When somebody goes down there to the City of Columbia and
24 they're denied a permit -- and this is in our papers --
25 when they go down there and they're denied a permit to fix

1 a family home that's been in their family since the 1930s,
2 that's been a duplex since the 1930s which physically
3 can't be changed into a single-family residence without
4 just spending an ungodly amount of money, when they go
5 down there for a permit to do that when the City is
6 simultaneously prosecuting themselves for not fixing it,
7 but won't give themselves a permit to do it, and when they
8 tell them, "You can't do it," and they say, "Well, what I
9 do from here?" The City has two forms, I found out.
10 There's one that has do with --

11 THE COURT: Look, look, look, look, look. You can't
12 tell me enough here today that would make me think any
13 different than how I think this city is managed from the
14 top to the bottom. City attorney's office excluded.

15 MR. STANTON: They do a pretty good job, Your Honor.

16 THE COURT: Some of them. But that's not something
17 that I can take into consideration. I mean, it doesn't --
18 makes no sense to me they would give this lady a ticket,
19 and maybe the City has a different interpretation -- give
20 her a ticket because she's not fixing up her house and yet
21 not give her a permit to fix up her house. That makes no
22 sense to me. But, you know, that really is not the issue
23 I have to decide. That is not something I can take into
24 consideration.

25 MR. STANTON: I understand, and I wasn't trying too

1 hard to jaundice you on that. What I was trying to
2 respond to -- and I did get a little distracted on the
3 other stuff -- is that your question is, "Can this be done
4 repetitively?"

5 THE COURT: And you seem to indicate that that would
6 be the case.

7 MR. STANTON: And I think when you're dealing on an
8 informal basis with informal people pro se, that I think
9 you wouldn't have that much of that going on and you
10 could --

11 THE COURT: But the problem is at some point in
12 time -- pro se has nothing to do with it. Somebody elects
13 that, to represent themselves has nothing to do with it.
14 We have that all the time in this court and people --
15 because they file pro se, they're not held to a different
16 standard. We may be a little more lenient with them in
17 terms of our patience and things like that, but they still
18 have to follow the same rules that you as an attorney have
19 to follow.

20 MR. STANTON: Let's say --

21 THE COURT: So that has nothing to do with it.

22 MR. STANTON: But let's say that someone with or
23 without an attorney goes in what I'm saying --

24 THE COURT: But at some point in time it's no longer
25 even a quasi. It gets to this court and this court has to

1 deal it. And if we keep -- I mean, I don't think this
2 court has to every year deal with the same issue because
3 someone got turned down one time before. I think at some
4 point in time, this court can say it's res judicata,
5 because we ruled on it and our ruling is enforced.

6 What is the problem with this property?

7 MR. STANTON: Can I just give you the nutshell of
8 that? Because this is a terrible case, and I loved what
9 you did with one before where you talked about them
10 getting together and working it out. Ms. Dortch --

11 THE COURT: This property is where?

12 MR. STANTON: It's in -- it's on Heidt Street about
13 block up from King Park. Actually, it's right around the
14 corner from King park on Heidt Street. And it was built
15 in the 30s. It appears to have been an up-and-down duplex
16 since then, or at least since before Ms. Dortch's mother
17 bought it in the 60s --

18 THE COURT: Well, at some point in time, it was
19 damaged by a fire.

20 MR. STANTON: Right. A small portion of it was
21 damaged by a fire while her brother lived there. He was
22 out of the service and frankly think he had some mental
23 disability issues. But he was living there -- he didn't
24 set the fire, by the way. It was, I think a psychotic
25 woman he was seeing set the fire. He was -- Ms. Dortch

1 and her brother inherited the house, so the title was tied
2 up between the two of them. She was having to paying the
3 mortgage and taxes and whatnot, so before she could get in
4 position to fix that little bit of damage to this house,
5 she had to get all the stuff worked out with her brother
6 to get his interest. When she did --

7 THE COURT: Time had run.

8 MR. STANTON: Then she goes down and says, "I'd like
9 to fix this," and they said --

10 THE COURT: What do the neighbors think about this?
11 They opposed to it?

12 MR. STANTON: One neighbor appears to be opposed to
13 it, but I'm not sure he's a neighbor. I'm not sure
14 whether he actually lives there or whether he owns a
15 rental house in the neighborhood. One fellow showed and
16 spoke at the hearing.

17 THE COURT: So there's some opposition somewhere.

18 MR. BALTHAZOR: There is. In the 2009 case, we
19 submitted as part of the BOZA record letters and all the
20 minutes from anybody that appeared in the neighborhood
21 against reestablishing this as a duplex. And one of the
22 same neighbors did appear at this most recent hearing that
23 appeared in the earlier ones. It's my recollection there
24 was no one from the neighborhood that appeared in favor of
25 keeping this as a duplex.

1 MR. STANTON: But --

2 THE COURT: Well, generally my experience -- it's
3 kind of like the silent majority. The people that -- the
4 proponents generally don't come down there and...

5 MR. BALTHAZOR: Right.

6 MR. STANTON: And the thing is, Your Honor, speaking
7 to neighbors --

8 THE COURT: Does it really destroy the character of
9 the neighborhood by having a duplex in there if it were in
10 good shape? I mean, I'm sort of a familiar with that
11 neighborhood. I can't imagine a duplex -- I don't know
12 who would be the tenants. Is this something that students
13 would rent or --

14 MR. STANTON: She wants to fix it for her -- to have
15 as her house to for her relatives to live in the way they
16 have since the 60s. Occasionally they've had a
17 daughter --

18 THE COURT: Apparently, she wants a duplex, so it's
19 more than just a house.

20 MR. STANTON: She grew up it in as a duplex.

21 THE COURT: I understand that.

22 MR. STANTON: She wants to keep it the way it was,
23 and sometimes they would have one family member live
24 upstairs and somebody who wasn't in that exact nuclear
25 family live downstairs. So they don't necessarily all

1 want to be using the same bathroom and the same kitchen.

2 But the thing about the neighbors is like letting
3 king numbers run all over the law. The thing about the
4 neighbors is the zoning board was wrong --

5 THE COURT: But neighbors count.

6 MR. STANTON: They do, but the problem is --

7 THE COURT: In those bodies, they count. Having
8 served on a local government, they count when people show
9 up, either opposed or pro.

10 MR. STANTON: But my problem is lot of those
11 neighbors are working on supposition and they don't know
12 what's been going on. They see a house that hasn't been
13 fixed. They don't know the City hasn't let her fix the
14 house.

15 THE COURT: Well, that may be somebody's fault for
16 not informing the neighbors. In my experience, you know
17 people went around and said, "Let me tell you what we're
18 trying to do over here."

19 MR. BALTHAZOR: I will add, Your Honor, that on BOZA
20 36, which was submitted, is the most recent letter from
21 Derrick Riley who lives at 810 Heidt Street, and he kind
22 of get to the merits of the issue as well. But as far as
23 the res judicata issue, he also makes it clear that
24 there's no changed circumstances since the earlier
25 application. He says that nothing has changed with the

1 house. I mean, there's been no repairs, been nothing
2 happened to the house since the --

3 THE COURT: Mr. Stanton is saying that they don't
4 need to -- that's not an issue, that this is not res
5 judicata because it wasn't raised by your group at the
6 latter hearing, the last hearing, and, in fact, was
7 specifically waived.

8 MR. BALTHAZOR: And I don't necessarily agree with
9 that, Your Honor. I think we got a completely different
10 situation when we're down at BOZA. Yes, I think it's --
11 BOZA is a quasi-judicial body is how it's been termed, but
12 these BOZA officials don't necessarily present a case to
13 BOZA. It's sort of a ministerial duty. When someone
14 comes in and fill out an application for a variance, it is
15 not up to BOZA staff or BOZA members to look at that
16 application and make some legal determination of how to go
17 about dealing with that or whether it should be denied,
18 whether it should be granted. That is a decision for
19 BOZA, for the board. So that's -- there's no legal staff
20 on --

21 THE COURT: Does the board have the authority to say,
22 "Hey, we've already heard this. We don't -- we don't hear
23 it again."

24 MR. BALTHAZOR: I don't know if they do, Your Honor.
25 I've encountered other situations with BOZA where I don't

1 know if they can make legal determinations of that kind.
2 I think their authority is limited to just --

3 THE COURT: So they got to hear everything put in
4 front of them?

5 MR. BALTHAZOR: I think if everything is okay on its
6 face, has everything it needs, I think that they at that
7 point have to hear it. Mr. Stanton, just -- when he was
8 referring to I guess that Rhode Island case or talking
9 about this res judicata issue, he said -- Mr. Stanton just
10 said that res judicata is really not applicable at the
11 BOZA level. That's correct. That's really what I'm
12 saying as well. It's really not applicable at the BOZA
13 level. But here in this case, at the first place where
14 anyone can make some legal termination on that res
15 judicata issue, I raised that issue at the first
16 opportunity.

17 I think there's a lot of differences in, you know, a
18 BOZA hearing which, like I say, an application is made.
19 They hear it based on that application, and then here when
20 we got a -- you know, an ability to make some legal
21 determination over what has been -- what is being applied
22 for now and what has been applied for in the past.

23 MR. STANTON: Your Honor --

24 THE COURT: All right. No, I think I understand it.

25 MR. STANTON: Just to be clear, though, on that

1 point, we filed a brief several weeks ago.

2 THE COURT: You got the brief?

3 When y'all filed the brief, where did you send it?

4 MR. STANTON: To the Richland County Clerk of the
5 Court, June 14th.

6 THE COURT: Let me give you some -- not only is the
7 City somewhat derelict in its management, but when you
8 file something in the Richland County Clerk of Court, it
9 may be weeks and weeks and weeks and weeks before it will
10 get into a file. So it's always best to send a copy to
11 the judge.

12 MR. STANTON: And thank you, Your Honor. That was
13 when this was previously scheduled, and I probably would
14 have followed with an e-mail, but then it got rescheduled
15 and I didn't follow with e-mail. I'm thinking after two,
16 three weeks it would be in file.

17 THE COURT: After how many weeks?

18 MR. STANTON: I think it was June 14th I filed the
19 brief.

20 THE COURT: Well, I would tell you -- the earliest
21 you might get it in the file would be six.

22 MR. STANTON: Okay.

23 THE COURT: All right.

24 MR. STANTON: But in our brief, Your Honor, it's just
25 a quick reference that at the BOZA hearing, the board was

1 provided a brief prepared by -- I guess the zoning
2 department, and that's in the record.

3 THE COURT: Here's what I want y'all to do. I want
4 both of you to submit me proposed orders.

5 MR. BALTHAZOR: Yes, sir. On the motion to dismiss
6 issue?

7 THE COURT: Well, is there something else?

8 MR. BALTHAZOR: Not today, there's not.

9 MR. STANTON: Just limit it to that, and depending on
10 how that goes, then at least if there's no res judicata,
11 we come back and hear the appeal.

12 THE COURT: Either appeal it if that's what you think
13 you want to do, or you'll have a hearing on your denial.

14 MR. STANTON: Very well, Your Honor. Thank you.

15 (Whereupon, the proceedings were concluded.)
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Dortch's Appendix to Petition of Appeal (Seeking review by Circuit Court
in Case No. 13-CP-40-2159 of decision of Columbia Board of
Zoning Appeals in its case numbered 12-081-V), dated Apr. 16, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Frieda H. Dortch,
Petitioner,

v.

City of Columbia, Planning &
Development Services/Zoning
Division,
Respondent.

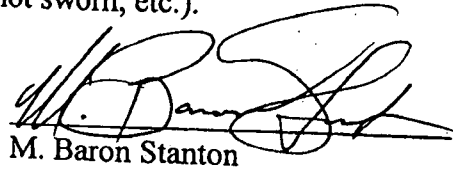
IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 13-CP-40-02159

APPENDIX TO
PETITION OF APPEAL
(For Review of Decision of
Columbia Board of Zoning Appeals
Case No. 12-081-V)

Attached are documents of record referred to in Dortch's previously filed Petition of Appeal, to wit:

1. Order;
2. Amended Application of Dortch (including initial application);
3. Testimony of Dortch (affirmed at hearing);
4. Assessor's Data, 2/8/13;
5. Map of block from Richland County GIS, 2/8/13;
6. Agenda and four-page Case Summary not made available to Dortch until hearing;
7. Agenda and 17-page Case Summary (counting various attachments) in possession of Board at hearing; and
8. Minutes of January 8, 2013 meeting of Board (including minutes of Dortch hearing, with various limitations as to accuracy, e.g., negatives stated as positives, comments incorrectly attributed as to person speaking, failure to reflect each person sworn and fact that Board is not sworn, etc.).



M. Baron Stanton
STANTON LAW OFFICES, P.A.
1728 Main Street
P. O. Box 245
Columbia, South Carolina 29202
803-929-1484
ATTORNEY FOR PETITIONER
Freida H. Dortch

Date: 4-16-13

Board of Zoning Appeals)
)
City of Columbia) **ORDER**
) **ON A VARIANCE**

Date Heard: February 12, 2013

Case Number: 12-081-V

Property: 825 & 825 ½ Heidt Street (TMS# 11409-15-03)

Zoning District: RG-1, -DP (General Residential in a Design Preservation Overlay)

Applicant: Frieda S. Hatten Dortch

Other Parties in Interest: Derek Riley, 810 Heidt St, Columbia, SC 29205

The City of Columbia Board of Zoning Appeals held a public hearing on February 12, 2013 to consider a variance request Frieda S. Hatten Dortch, Applicant, pursuant to §17-112 City of Columbia Code of Ordinances; and in accordance with the requirements of §17-275, which states that a minimum area of 5,000 square feet is required for each dwelling unit within the RG-1 district.

After consideration of the application and case summary, the Board decides as follows:

Findings of Fact:

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

The subject property is located 825 Heidt Street in Columbia, South Carolina. The applicant requested a variance to the lot size requirements in order to establish a duplex in a structure that had been vacant for more than 12 months, since at least November 7, 2005, and had lost any claim to legal nonconforming status. The RG-1 district requires 5,000 square feet of lot area per unit, and 10,000 square feet of lot area would normally be required in order to establish a duplex. This lot contains approximately 7,644 sq. ft. and thus the applicant is requesting a variance of approximately 2,356 sq. ft. to the lot size requirement for a duplex in an RG-1 district. The applicant has submitted a site plan showing that four off-street parking spaces can be provided to the rear of the house, and has testified that to the best of her knowledge, the building was constructed as a duplex in or around 1930.

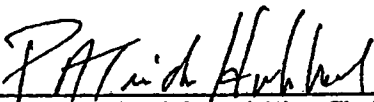
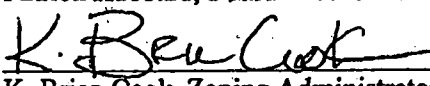
Conclusions of Law:

Pursuant to the Standard of Review in granting a Variance (§17-112), we have reviewed the applicant's request for a variance from the lot area requirements to establish a duplex within the RG-1 district. Based on the foregoing, we conclude as a matter of law that the Applicant has failed to meet all of the requirements for a variance, and make a ruling as to the requirements considering the following:

1. Extraordinary and exceptional conditions do not exist for the property. While the house was likely utilized as a duplex in the past, it became non-conforming and lost its legal non-conforming status following a period of vacancy of greater than 12 months. There are many other non-conforming duplexes in the area and former duplexes that have been converted to single-family dwellings, including a conversion of a duplex across King Park reviewed by the Board at the January 2013 meeting.
2. The conditions do generally apply to other property in the vicinity as there are several non-conforming or former duplexes in the area.
3. The application of this division to the particular piece of property would not effectively prohibit or unreasonably restrict the use of the property in that the property may be utilized instead as a single-family residence and the applicant has not substantiated her testimony that the cost of conversion to a single-family residence would be unreasonable; and
4. Authorizing this variance would be of substantial detriment to adjacent property or the public good, and the character of the district would be harmed in that additional density would be added to the block that had not been present at least since this property had gone vacant and the district allows for additional density based upon lot size.
5. Further, the reasons set forth within the application do not justify the granting of the variance, and the requested relief to decrease the lot size requirements in order to establish a duplex is not the minimum necessary to make reasonable use of the land, building, and structure; and
6. The granting of the variance would not be in harmony with the general purpose and intent of the Zoning Ordinance as the Ordinance has declared that *"It is the intent of this article to permit these nonconformities to continue until they are removed, but not to encourage their survival. Nonconforming uses are declared by this article to be incompatible with permitted uses in the districts involved"*, and it would be injurious to the neighborhood and otherwise detrimental to the public welfare.
7. The fact that a property may be utilized more profitably should a variance be granted, may not be considered grounds for a variance.

Therefore, based on the foregoing, the Applicant's request for a Variance to the lot area requirements in order to establish a duplex is hereby **DENIED**.

AND IT IS SO ORDERED!

	March 12, 2013
Patrick Hubbard, Board Vice-Chairman, Presiding	Date
	3/12/13
K. Brian Cook, Zoning Administrator	Date

Date Mailed to Applicant
and Other Parties of Interest:

3/12/2013 A+L

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

STANTON LAW OFFICES, P.A.

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COLUMBIA, SOUTH CAROLINA 29202

1728 MAIN STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE 803-929-1484
TELECOPIER/FAX 803-929-0534

February 8, 2013

M. BARON STANTON
ATTORNEY AT LAW

HAND DELIVERED

Mr. Andrew T. Livengood
Deputy Zoning Administrator
City of Columbia Planning & Development Services
Zoning Division
1136 Washington Street
Columbia, SC 29201

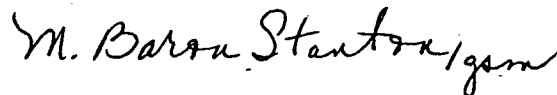
Re: **Frieda H. Dortch**
Appeal to City of Columbia Board of Zoning Appeals
Expected Hearing: February 12, 2013

Dear Mr. Livengood:

Enclosed is the amended application of Ms. Dortch, for the hearing expected next Tuesday, February 12, 2013.

With kind regards,

Yours very truly,



M. Baron Stanton

MBS:gsm

Enclosure

BEFORE THE BOARD OF
ZONING APPEALS

**AMENDED APPLICATION OF
DORTCH TO
ZONING BOARD OF APPEALS**

Petitioner.

Frieda Dortch amends her November 14, 2012 application for review by the Zoning Board. In that application, the form was geared to a variance application. To the extent not superseded by matters in this amendment, Ms. Dortch's attached earlier pro se application is carried forward and repeated.

Actually, before asking for a variance, Dortch wishes to respectfully challenge the applicability of the asserted restriction on her ability to do inside work on the house, such as repairing and recovering flooring, repairing and painting sheet rock, possibly replacing countertops or incidental cabinetry, replacing bathroom fixtures, etc. The history of the building and its ownership is highly pertinent to the application presented. First, however, Dortch would like to point out the procedural difficulties with which she has been presented in trying to simply do some repairs and minor renovations to this family home.

Ms. Dortch does not live in the home. She has been informed, when applying for a building permit (to the extent that one is needed), that she may not do the work herself and employ other people or subcontractors to help with the work. She has been informed that the only person who may apply for a permit is a licensed contractor. To a certain extent, this situation limits Ms. Dortch's ability to get a straight line of communication regarding the actual issues involved. That

is, her contractor tends to fill out the permit application under the direction of people at the permit desk, and then Ms. Dortch is faced with dealing with the denial of the permit based on verbal information related to her second-hand from the contractor.

In this case, Ms. Dortch's contractor went to the permitting desk and applied to do exterior repairs and interior repairs and renovation. He was granted a permit only to do the exterior repairs. Ms. Dortch has only whatever was provided to him in writing, as the basis for the denial. It appears to be a requirement that more parking be provided, and possibly that the lot be bigger. She did go back down to the permitting desk to see if it was possible to go through the whole process on a hypothetical basis, as if she was applying for the permit herself. It was explained to her that the Building Department did not have a problem with issuing the permit, but that she would have to go over to zoning before she could proceed any further with the Building Department. Upon walking ten feet over to the zoning desk, she was informed that the official in charge was not available and that no one else could speak authoritatively to the question. There was an offer to page or text the zoning official, so Ms. Dortch waited for approximately an hour and then had to leave. This was a day of vacation that she had to take from work in order to make the trip.

In dealing with the lack of specific notice of the asserted restrictions, Ms. Dortch can only assume that the restrictions lie somewhere in areas previously averted to. When she made the same or similar application some years ago, the reason given for not allowing her to repair this family home was that it was zoned for single-family use only. She was told that she could not make any repairs or renovations without converting this duplex into a single-family home.

Ms. Dortch, before asking for a variance, respectfully asserts that there is no valid legal restriction on repairing or doing minor renovations to this historic up-and-down duplex. The

grounds for the appeal are, without limitation, the following:

1. The property is actually zoned "RG-1." This is not single-family residential. It is two-family residential.
2. To the extent that any restriction is asserted, the structure and the use are "grandfathered." Namely, to prevent an after-adopted restriction on an existing use from being deemed an unconstitutional taking and other violation of constitutional rights, the pre-existing use is constitutionally allowed to continue, even if it does not conform to standards or laws adopted after it came into existence. Namely, it is a "grandfathered nonconforming use."
3. Any restriction on the issuance of a permit should be limited to the reasons reasonably given to Ms. Dortch in a timely manner, with reasonable specificity of the provisions in question.
4. Any restrictions in the building code, zoning ordinance, or any other ordinance asserted to govern or restrict the grandfathering of this pre-existing use is so vaguely and incongruently written as to either lead to nonsense, or to a completely arbitrary and capricious application, both on the face of the ordinance and as applied to Ms. Dortch.

In essence, Ms. Dortch respectfully asserts it was error to deny her a permit to fix the house and that no variance is needed.

In the event that the foregoing appeal is not sustained (and in the event that the Building Department is not directed to issue a permit), Ms. Dortch applies for a variance, but reserves all of her rights to contest the validity or applicability of any asserted restrictions. Assuming, for the sake

of argument, that some valid and enforceable restriction prevents the repair of this historical family home as a duplex and requires it to be changed into a single-family residence, Ms. Dortch respectfully requests a variance from such restriction.

The grounds for the variance are that such restrictions, whatever they are, would produce an unduly harsh result for Ms. Dortch, and the characteristics of this particular piece of property are unique, extraordinary, and exceptional in creating this hardship. Further, the conditions noted do not generally apply to other property in the area. Most of the surrounding property is already single-family and functioning that way; there are only about five duplex units in the area (and even those may not have the same conditions). Further, the restrictions effectively prohibit or unreasonably restrict the use of the property – as it already exists and is already improved, and cannot feasibly be changed. Further, a variance would not be a substantial detriment to the adjacent property or public good and the character of the district would not be harmed. The property has been a duplex since it was built in 1930 and all adjacent property has been acquired and used with notice of this fact; the public good favors repair and preservation of historical uses and Dortch has the ability to provide additional off-street parking which is behind the building – letting her fix it won't hurt the public or anyone else; and the character of the district is already two-family – she does not seek to exceed this.

The facts supporting this variance are that the house has a reasonable size lot, but it is not possible to make the lot any bigger. To the extent that parking concerns are an issue, Ms. Dortch has a reasonable plan to set aside an additional parking area in the backyard of the premises. This parking would not only be adequate, but it would also be away from the street, and away from view.

There is no evidence that the building has ever been anything other than an up-and-down duplex. Heating is handled separately upstairs and down. The electrical wiring is handled separately upstairs and down. There are two electric meters. There are no internal stairs. Access to the second story is achieved by external stairs on the front of the house and external stairs on the back of the house. It would be extremely expensive to structurally alter the house and add internal stairs, destroying the historical usage and configuration of the house. However, this issue can barely be reached, in that there does not appear to be any practical way that interior stairs could be added without wholesale changes to the structure. Namely, there is a bedroom over the downstairs living room. There is a living room over a downstairs bedroom. There is no way to put stairs in a living room leading to another family area upstairs, without destroying an entire bedroom or changing the whole house around.

The same considerations that militate so strongly toward grandfathering an existing use become compelling factors for granting a variance even if the use is not legally grandfathered. That is, the present situation does not involve newly constructing a house. It does not involve substantially demolishing an existing house and virtually rebuilding it. It does even involve making substantial repairs to a single-family home which was later changed into a duplex by modification or addition. This is a situation where the existing configuration of the house itself presents a unique difficulty and would create an exceptional hardship on Ms. Dortch to change. She is not made out of money and she has done her best to preserve this historic structure.

The history of the house is as follows. Back in the early 1960s, her mother rented the house. Then she entered an agreement to buy it. She worked very hard as a single parent to establish enough credit to get a loan. She worked as a maid and a babysitter and a nurse's aid at low wages to

make payments on the mortgage for decades.

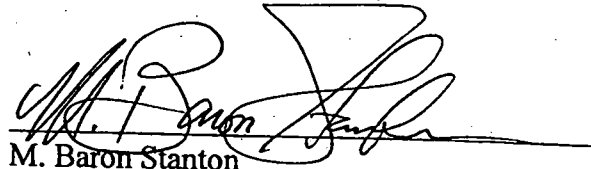
From the beginning, the house was an up-and-down duplex. Ms. Dortch's mother lived in one portion of the house, and kept the other portion available for the needs of family members. When Ms. Dortch's mother died some years ago, Ms. Dortch and her brother inherited the house. While Ms. Dortch's brother was living in the house, a small fire occurred at the back of the house, causing some damage to the back stairwell and a bathroom. Ms. Dortch's brother was not in good financial condition. It took Ms. Dortch a small period of time in which to negotiate and arrange to buy her brother's portion of the house, so that she would be the complete owner, and could invest her money in making the repairs and continuing to pay the mortgage.

To say the least, Ms. Dortch has had considerable difficulty navigating through all of the problems just to make these simple repairs to an historical family home which has always been a duplex. She eventually was able to secure sufficient help to repair the damaged areas in the back. By the time these matters were addressed, there was also some rot at the front of the house, specifically concerning the exterior stairs and a portion of the porch. Ms. Dortch was permitted to repair these areas as well. She has finally gotten all the work done on the exterior, including having to match the windows historically, use the historically correct profile of wood, be subject to numerous inspections, etc. Ms. Dortch lives in Winnsboro which is a good distance away. She has had to take many days off from work in order to deal with the house. She has had to do the work sparingly, because of financial limitations. However, she has always determined to have the repairs and renovations done to a good standard.

We respectfully request that her appeal be allowed, and that it be determined that there is no obstacle to her proceeding to simply do some interior repairs and renovations without being required

to somehow transform the house into a single-family dwelling. In the alternative, we respectfully request a variance of any perceived restriction, so that she may keep the house as it is, i.e., a duplex, and make some moderate repairs and renovations to fix it up. This is a uniquely situated property, and historical use of the property, and to require such a far-reaching – if not impossible – change would create a unique and undue hardship on Ms. Dortch.

Attached are the original application of Ms. Dortch, the expected testimony of Ms. Dortch, assessor's information on the property, and a map.



M. Baron Stanton
STANTON LAW OFFICES, P.A.
1728 Main Street
P. O. Box 245
Columbia, South Carolina 29202
803-929-1484

Date:

2/8/13

ATTORNEY FOR PETITIONER



CITY OF COLUMBIA

BOARD OF ZONING APPEALS

APPLICATION for VARIANCE

OFFICE USE ONLY:

Date Received _____

By _____

Case Number _____

Fee (CODE 05) \$ _____

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

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

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

In addition, City staff recommends that you:

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

THE APPLICANT MUST BE PRESENT AT THE PUBLIC HEARING!

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

Location/Subject Property: 825 / 825 1/2 HEIDT STREET Columbia, S.C.
 Tax Map Number (Sheet, Block, and Lot(s)): R11409-15-03 / 52.2 X 130
 Zoning District: II RG-2, -DP

Describe your proposal in detail:

Duplex 825 / 825 1/2 - The inside of both units repair walls, floors, repair light fixtures, replace bathroom fixtures, maintain water and sewer for 2 units. Maintain property as it has been
(S.C. 3814.2)
 The Zoning Ordinance classifies this use as a (include SIC Code Number): Two Family Dwelling

Area Attributed to Your Proposal (in square feet): 2211 total - 1790 BASE
 Are other uses located upon the subject property? (if YES, list each use and the square feet attributed to each use):

Total Number of Parking Spaces Upon the Subject Property: 1099 Now - will expand 4 additional in the back.

This proposal does not conform to the Zoning Ordinance in the following way:	
Zoning Ordinance Section & Requirement	Proposed Instead
1. <u>Sec 17-553 215</u>	
2. <u>5,000 Sq Ft per unit</u>	<u>6786 Sq Ft for Two Units</u>
3.	
4.	

Please demonstrate how you satisfy the following **CRITERIA FOR VARIANCE** (see §17-112 (3) b. of the Zoning Ordinance). Please note that the members of the Board of Zoning Appeals will use your answers, among other things, as they evaluate your application:

1. Extraordinary and exceptional conditions pertain to the subject property: This house has been a duplex over 50 years. House is in a unique & continuous property and residential area
 2. The conditions noted above do not generally apply to other property in the area: This is one of few duplex units in this area
 3. Because of the conditions noted above, the requirements of the Zoning Ordinance effectively prohibit or unreasonably restrict the use of the property: unreasonable restrictions for the usage of property
 4. Approval of the variance would not be of substantial detriment to adjacent property or to the public good, and the character of the district would not be harmed: improvements additional parking space, repair floors, walls and overall appearance of structure
- Section 17-112 (3) b.6. asks, "Is the variance the minimum necessary?" YES

And §17-112 (2) b.7. asks, "Is your proposal in harmony with the purpose and intent of the Zoning Ordinance, and will it not be injurious to the neighborhood or otherwise detrimental to the public welfare?" YES

Applicant (PLEASE PRINT CLEARLY): FRIEDA S. DORTCH

Name of Company: _____

Address: P.O. Box 10083

City, State, ZIP: FT JACKSON, SC 29207

Office Telephone Number: _____

Home Telephone Number: 803-635-1434

Cellular Telephone Number: _____

Fax Number: _____

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

Email Address: _____

Relationship to Property Owner: SELF

☐ Same;

☐ Lessee;

☐ Agent of property owner;

☐ Contract lessee;

☐ Contract purchaser;

☐ Other _____

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

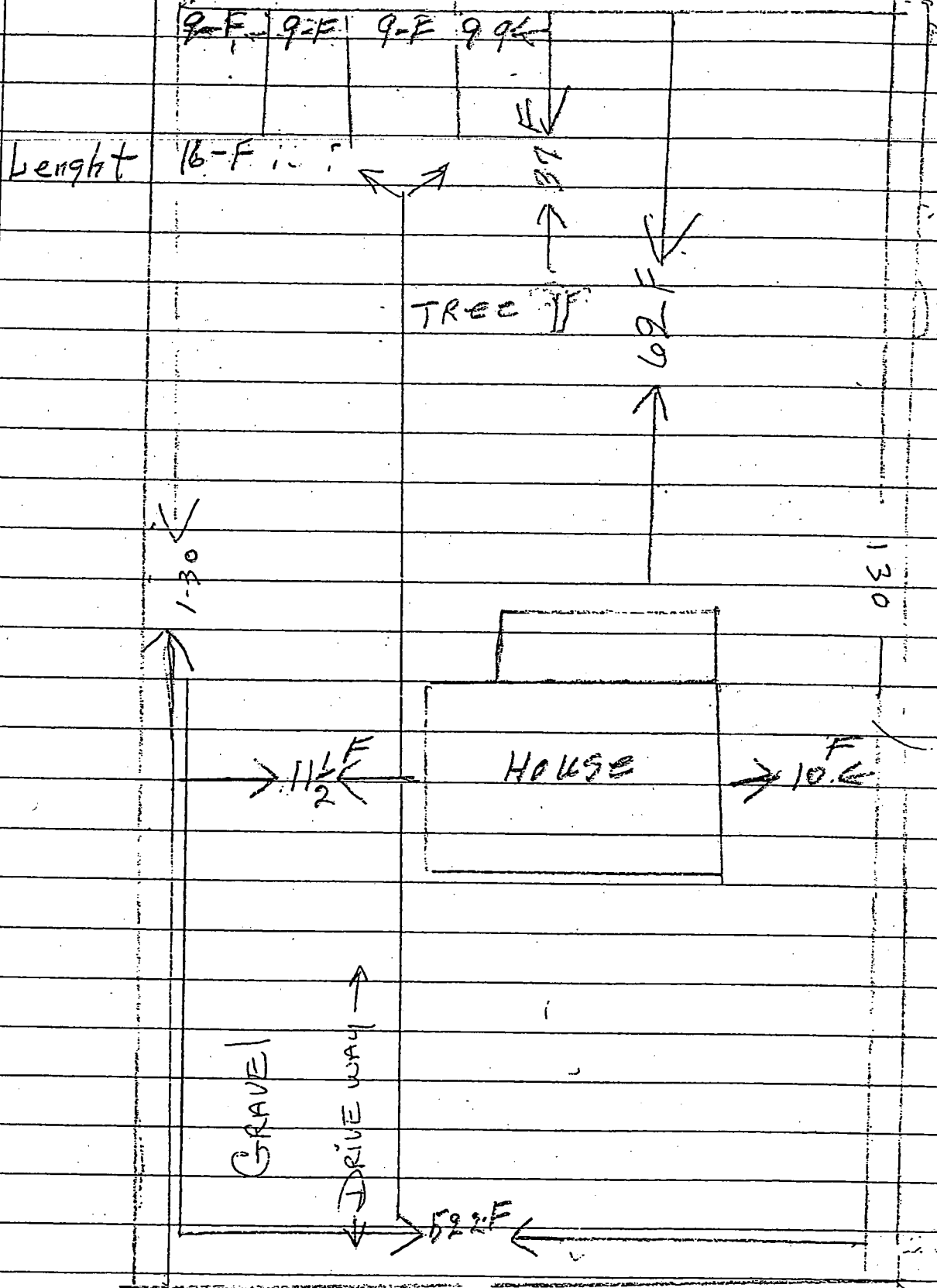
By signing below, I, the applicant, understand and/or acknowledge that:

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

Signature Frieda S. Dortch

Date 11/14/12

Parking Place 52-9 F



STATE OF SOUTH CAROLINA
CITY OF COLUMBIA

BEFORE THE BOARD OF
ZONING APPEALS

Frieda H. Dortch,

Petitioner.

**EXPECTED SUBMITTED TESTIMONY
OF FRIEDA H. DORTCH**

The testimony of Frieda Dortch is expected to include the following, which is hereby submitted.

1. I am personally familiar with the matters set forth here, am competent to give this testimony, and give this testimony in support of my appeal (and in the alternative, variance application) and in support of any other matter to which it becomes pertinent.
2. The property in question is 825 and 825½ Heidt Street, Columbia. The building is over 2,000 square feet in size, and includes substantial porches. It has been a two-family structure for as long as I have known about it, and probably since it was first built back in the 1930s.
3. My mother, a woman of modest means and a single mother, rented the upstairs unit of the structure in the 1960s. She worked as a maid and kept other people's kids to earn a living. She also worked as a nurse's aide.

4. A separate, unrelated family rented the downstairs unit during this time. Although we seldom had money for Christmas dinner or toys, my mother established credit by borrowing small amounts of money from "finance companies" on Sumter Street for these and other things, and always making sure she paid it back. After a couple of years, around 1969, my mother obtained a 30-year mortgage loan and purchased the entire house, consisting of upstairs and downstairs residential dwelling units.

5. My brother and I both eventually joined the military, and sent money home to help out when we could.

6. My family has owned the house continuously as a two-family structure for the more than forty years since my mother purchased it. My mother continued to live in the upstairs unit, allowing nieces and nephews to rent or otherwise reside in the downstairs unit, until old age forced her to move downstairs.

7. In the 1990s, my brother returned from Virginia, where he was working for the Navy, and moved into the downstairs unit with my mother, who passed in 1995 from a stroke. My brother continued to live in the downstairs unit after my mother's death until about April or May of 2005. My daughter, Alexis Dortch, also resided at the house for approximately two years starting in 1999, while she attended school at Midlands Tech.

8. The house, like many others on the block and in the surrounding area, was structured and has been used as a duplex since before my family purchased it in the 60s. According to the Assessor's information, it is in an area zoned RG-1, which is General Residential. I understand this to be an area under the zoning ordinance intended as medium and high density residential areas characterized by two-family detached structures, among other dwelling structures. It is not RS-1,

single family residential. My understanding is that it is in some sort of design preservation district. That is exactly what I want to do – preserve its design. I do not think it has ever been a single family residence. I believe it has been a duplex since about 1930. The upstairs unit is separate from the downstairs, with a separate entrance and no internal connecting stairs. The sizes and locations of the upstairs and downstairs rooms make it virtually impossible to install interior stairs without a tremendously expensive wholesale redesign and and restructuring of the building. Over the downstairs living room is a bedroom. Over the front downstairs bedroom is a living room. The upstairs and downstairs separate dwelling units are on separate power meters with separate wiring and distribution panels. Each has its own porch. Each unit has its own, separate, recognized mailing address. Each has its own, built-in gas heater, piped separately. The lot is a little over 52x130. It has a bigger backyard than some neighboring houses. There is ample extra room for parking in the backyard. In the 1930s and even in the 1960s, few families had two cars and some had no cars. The house is just up from the Five Points/King Park area and is walking distance to public transit routes. It is bicycling distance to grocery shopping and other amenities in Five Points – and not a bad walk either. The house is over 2000 square feet and in my opinion, it would cost over \$200,000 to replace it.

9. In or around April of 2004, a non-family visitor caused a fire that damaged the back of the house, damaging both the upstairs and downstairs units' bathrooms, the nearby walls, and the stairs, although the stairs remained useable. Most of the damage occurred in the downstairs bathroom, where the fire originated. The damage affected approximately 500 square feet of the house.

10. My brother continued to live in the house, which was still habitable.

11. At this point my mother was deceased, I had been paying the last of the mortgage and the taxes, I did not live in the house and had other living expenses, and I only owned fifty percent of the house. The City eventually directed me alone to fix the damage.

12. Between September and the end of December of 2007, I was able to get full ownership of the house from my brother. I applied for a permit to repair the bathroom damage, and do other updating. The City initially denied my application for a repair permit to fix and update damage to the property because I did not reside in the house.

13. I persisted in my application to repair the damage, and eventually, the Building Department approved my permit, and then sent me to "Zoning" for other approval. I was then told I could not just fix the damage to the bathrooms, but must restructure the entire house into one large, single family house. For a house of over 2,000 square feet, this would cost perhaps hundreds of thousands of dollars and would be an extreme hardship. It would also make the house harder to rent. It would also make the house harder to use in the ways we have used it as a family. It would also destroy the historical use and configuration of the house and the history of my mother's industry and thrift.

14. What ensued was a struggle of many years in which the City demanded that I proceed with repairs, while denying me a permit to do so other than in the course of changing the house to a single family dwelling. The City finally agreed that I could do the repairs piecemeal, proceeding only with the outside repairs only. The City then demanded that I do so. When my contractor applied to proceed with nonsubstantial interior renovations (which I am not even sure would require a permit), he was denied.

15. No "special exception" or variance should be needed. The property is zoned RG-1-DP, which is General Residential (not RS Single Family Residential) with a Design and

Preservation overlay. RG-1 is a medium or high density area characterized by, among others, two-family detached structures. This is an historical two-family detached structure. The use as a duplex is not prohibited by the zoning. Even if it were, it would be a prior, legal, nonconforming use at worst – that is, a use commenced legally in the past and grandfathered. All I want to do is fix my property which my mother acquired at great effort and which I have also spent money on, and I want to continue it in the form it has always been and preserve its design as it is. For the City to require me to transform it into something completely different with limits on its use and at great expense, as a condition of allowing the repair of relatively minor damage appears to me to be illegal, unfair, arbitrary, capricious, and in violation of due process of law.

Frieda H. Dortch

Assessed Property Inquiry

February 8, 2013

- Elected Officials
- County Holidays
- GIS & Mapping
- Procurement
- Forms
- Ordinances
- Grants
- Employment
- Online Services
- Top 10 Pages
- Departments
- Education
- Tourism
- Links
- Meetings
- News/Press Releases
- Emergency Preparedness

Helpful Tools



Information presented on the Assessor's Database is collected, organized and provided for the user and is intended solely for informational purposes. **ANY USER THEREOF OR REL AT THE SOLE DISCRETION, RISK AND RESPONSIBILITY OF THE USER.** While every provide information that is accurate at the date of publication, portions of such informatic not current. **RICHLAND COUNTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES, IMPLIED, AS TO ITS ACCURACY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR** official records of the County and the countywide elected officials are on file in their respe be viewed by the public at those offices.

Owner Information

Tax Map Number:	R11409-15-03
Owner:	DORTCH FRIEDA S HATTEN
Address 1:	PO BOX 10083
Address 2:	
Address 3:	
City/State/Zip:	FT JACKSON SC 29207
Property Location/Code:	825 HEIDT ST

Tax Information

Year:	2012
Property Tax Relief:	\$0.00
Local Option Sales Tax Credit:	(\$204.63)
Tax Amount:	\$1,769.41
Paid:	Yes
Homestead:	No
Assessed:	\$3,930.00

Assessment Information

Year Of Assessment:	2012	Legal Residence:	No
Tax District:	1CC	Sewer Connection:	CITY
Acreage Of Parcel:	0.00	Water Connection:	CITY
Non-Agriculture Value:	\$8,600.00	Agriculture Value:	\$0.0
Building Value:	\$56,900.00	Improvements:	\$0.0
Taxable Value:	\$65,500.00		
Zoning:	RG-1	RESIDENTIAL-GENERAL	

Property Information

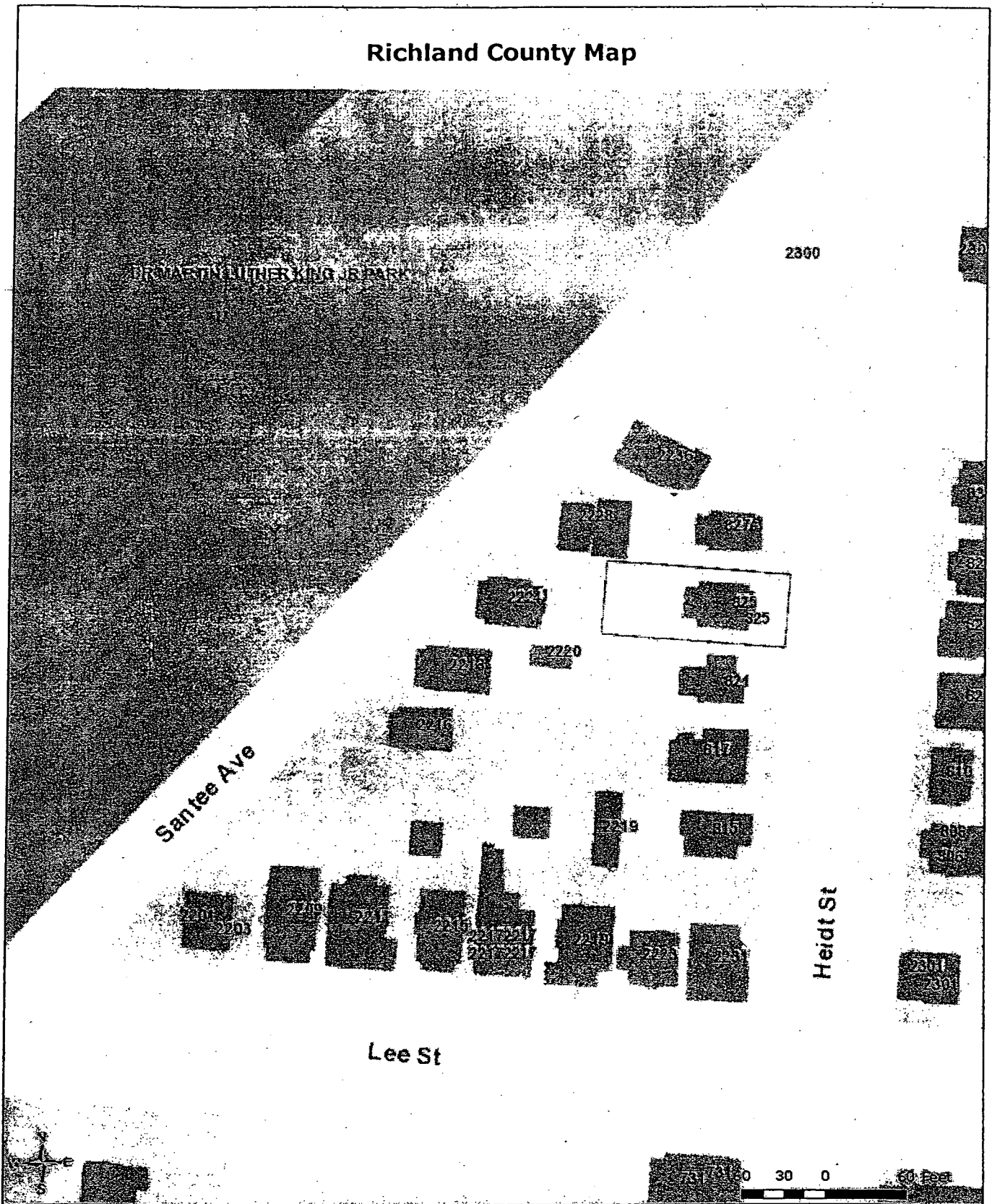
Legal Description:	52.2X130	#PR C-132
Land Type:	RESIDENTIAL LAND	

Sales History

Current Owner Name	Sale Date	V/I	Book/Page	Sale Pri
DORTCH FRIEDA S HATTEN	12/20/2007	I	R1386/ 1346	\$65,50
DORTCH FRIEDA S HATTEN &	03/23/1999		R0290/ 2018	\$

Qualification Code Definitions

Richland County Map



CITY OF COLUMBIA
BOARD OF ZONING APPEALS AGENDA

FEBRUARY 12, 2013 - 10:00 AM
EAU CLAIRE PRINT BUILDING
3907 ENSOR AVENUE (N. MAIN STREET AND MONTICELLO ROAD)
COLUMBIA, SOUTH CAROLINA

ERNEST W. CROMARTIE, III • PATRICK HUBBARD • CALHOUN McMEEKIN, III • PRESTON YOUNG
PATRICIA DURKIN • REGGIE MCKNIGHT • CHUCK SALLEY

PRIOR TO ENTERING COUNCIL CHAMBERS, PLEASE TURN ALL ELECTRONIC DEVICES
(CELL PHONES, PAGERS, ETC.) TO THE SILENT, VIBRATE, OR OFF POSITION.

I. CALL TO ORDER and DETERMINATION OF QUORUM

II. CONSENT AGENDA

A. OLD BUSINESS

None.

B. NEW BUSINESS

1. 13-004-SE Dist. 3 2507 Devine Street (TMS# 11316-15-12) Special Exception to establish a residential dwelling unit in a commercial district (Penelope M. Noble)(C-2).
2. 13-006-SE Dist. 2 3122 B Beltline Boulevard (TMS# 14004-03-51) Special Exception to establish a non-emergency medical transportation service (Martin L. Smith, Midlands Transportation Service, LLC)(C-3).

III. REGULAR AGENDA

A. OLD BUSINESS

3. 12-081-V Dist. 3 825 and 825 ½ Heidt Street (TMS# 11409-15-03) Variance to the minimum lot size requirements to reestablish a duplex (Freida S. Hatten Dortch) (RG-1, -DP).

B. NEW BUSINESS

4. 13-003-SE Dist. 2 1206 Heidt Street (TMS# 11410-02-17) Special Exception to expand a religious organization (Willie Williams, First Nazareth Baptist Church)(RG-2, -DP).
5. 13-005-SE Dist. 1 4913 N. Main Street (TMS# 11604-03-12) Special Exception to establish drinking establishment (Ravinder Thiara)(MX-1, -NC).
6. 13-007-SE Dist. 2 3922 W. Beltline Boulevard (TMS# 11609-08-02) Special Exception to establish service station (Krunal Parmar, Jay Hanuman LLC)(C-3).

Deferred

7. 13-008-SE Dist. 3 2604 Devine Street, Unit A (TMS# 11316-11-02) Special Exception to establish a retail store (Andrew Johnson, Johnson's Products LLC)(C-2). **Withdrawn**
8. 13-009-V Dist. 2 Block Bounded by Whaley, Wayne, and Heyward Streets (TMS# 08913-16-05) Variance to height and parking requirements for an apartment complex (Gary W. Morris, Haynesworth Sinkler Boyd, P.A.)(M-1, -PD (MX-1 pending)).
9. 13-010-SE Dist. 1 4498 Broad River Road (TMS# 06300-01-01) Special Exception to erect a wireless communications facility (Mike Feigenbaum, PTA-FLA, Inc., dba Cleartalk)(C-1).

IV. OTHER BUSINESS

Approve January 8, 2013 Minutes

V. ADJOURNMENT

Note: City Council Representation

Dist. 1	Sam Davis	At-Large	Tameika Isaac Devine
Dist. 2	Brian DeQuincey Newman	At-Large	Cameron Runyon
Dist. 3	Moe Baddourah	Mayor	Steve Benjamin
Dist. 4	Leona K. Plough		

CONSENT AGENDA

The Board of Zoning Appeals uses the consent agenda to approve non-controversial or routine matters by a single motion and vote. If a member of the Board or the general public wants to discuss an item on the consent agenda (at the beginning of the meeting), that item is removed from the consent agenda and considered during the meeting. The Board then approves the remaining consent agenda items. If an item is removed from the consent agenda, that item will be heard after old business on the regular agenda.

MEETING FORMAT

Applicants with requests before the Board of Zoning Appeals are allotted a presentation time of 10 minutes. This time should include but is not limited to an overview of the project, case history, and any pertinent meetings held regarding the request. This time also includes all persons presenting information on behalf of the applicant such as attorneys, engineers, and architects. This time limit does not include any questions asked by the Board of Zoning Appeals or staff regarding requests. Zoning staff may make a 10 minute presentation.

Any member of the general public may address the Board in intervals of 3 minutes; or 5 minutes if by a spokesperson for an established body or for a group of three or more. The applicant will then have 5 minutes for rebuttal.

The Board reserves the right to amend these procedures on a case-by-case basis.

ORDERS OF THE BOARD

In accordance with S.C. Code §6-29-800 and §17-113(b) of the City of Columbia Zoning Ordinance all final decisions and orders of the board shall be in writing and permanently filed in the office of the board as a public record. All findings of fact and conclusions of law shall be separately stated in final decisions or orders of the board which must be delivered by certified mail to parties of interest. Generally, final decisions of the board are mailed to the applicant and parties of interest prior the following board meeting.



**BOARD OF ZONING APPEALS
CASE SUMMARY FOR
APPLICATION FOR VARIANCE**

825 & 825 ½ Heidt Street

February 12, 2013 at 10:00 A.M.
Eau Claire Print Building, 3907 Ensor Avenue (N. Main Street and Monticello Road)
Columbia, South Carolina

Case Number:	12-081-V
Subject Property:	825 & 825 ½ Heidt Street (TMS# 11409-15-03)
Zoning District:	RG-1, -DP (General Residential in a Design Preservation Overlay)
Applicant:	Frieda S. Hatten Dortch
Property Owner:	Frieda S. Hatten Dortch
Council District:	3
Summary Prepared:	05 February 2013

Requested Action: Variance to the minimum lot size requirements to reestablish a duplex (7,644 sq. ft. where 10,000 sq. ft. required).

Applicable Sections of Zoning Ordinance:

§17-275	5,000 square feet of lot area required for each dwelling unit.
§17-112	Standard criteria for variances

Case History:

7/8/2008	Board denies variance request to re-establish duplex upon the property (08-051-V).
9/9/2008	Board upholds Zoning Administrator's determination regarding non-conformity of a duplex (08-060-AA).
4/6/2009	Planning Commission recommends (9-0) denial of request for Map Amendment to PUD-R. As the requested PUD-R is less than 2 acres, a 2/3 majority approval of the Planning Commission is required in order to sponsor the amendment request; Map Amendment request dies.
9/1/2010	The Court of Common Pleas, Fifth Judicial Circuit, issues order granting the City's request to dismiss applicant's appeal of 08-051-V and 08-060-V.
12/11/2012	Applicant's request to be deferred to the January 2013 Board of Zoning Appeals meeting granted by the Board.
1/8/2013	Applicant's request to be deferred to the February 2013 Board of Zoning Appeals meeting granted by the Board.

Staff Comments: This application is a request for a variance to the lot size requirements in order to re-establish a duplex that has been vacant since at least November 7, 2005. The RG-1 district requires 5,000 square feet of lot area per unit, and so 10,000 square feet would normally be required. This lot contains 7,644 sq. ft. and thus the applicant is requesting a variance of 2,356 sq. ft. to the lot size requirement for a duplex. The applicant has submitted a site plan showing that four off-street parking spaces can be provided to the rear of the house.

Though the applicant has previously appeared before this Board for essentially the same request, neither the Zoning Ordinance nor the Board Rules and Procedures prohibit this reapplication. As such, the application should be considered upon its merits.

The Zoning Ordinance's intent regarding nonconforming structures and uses is contained within §17-201, which states that, *"It is the intent of this article to permit these nonconformities to continue until they are removed, but not to encourage their survival. Nonconforming uses are declared by this article to be incompatible with permitted uses in the districts involved"*.

Should the Board be inclined to approve the Variance request, you may wish to consider placing a time limitation upon completing improvements to the property- including, but not limited to, resolving any and all outstanding property maintenance code violations and providing off-street parking for all units upon the property.

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

Derek Riley- Letters dated December 11, 2012 and July 3, 2008.



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Zoning Map

Department of Planning &
Development Services

Variance

825 & 825 1/2 Heidt Street
TMS# 11409-15-03



Legend

INTERSTATES CITY LIMITS
RAILROADS FEMA FP

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

1 inch = 100 feet

ORIGINAL PREPARATION/DATE:

This map was prepared by:
Andrew Lovengood
for
December 11, 2012
BoZA meeting

DISCLAIMER

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







CITY OF COLUMBIA

BOARD OF ZONING APPEALS

APPLICATION for VARIANCE

OFFICE USE ONLY:Date Received 11/14/2012By ATL

Case Number _____

Fee (CODE 05) \$ 50.00

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

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

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

In addition, City staff recommends that you:

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

THE APPLICANT MUST BE PRESENT AT THE PUBLIC HEARING!

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

Location/Subject Property:

825 / 825 1/2 HEIDT STREET Columbia, SC

Tax Map Number (Sheet, Block, and Lot(s)):

R11-409-15-03 / 52.2 X 130

Zoning District:

II RG-2, - DP

Describe your proposal in detail:

Duplex 825 / 825 1/2 - The inside of both
units repair walls, floors, repair light fixtures,
replace bathroom fixtures, maintain water and
sewer for 2 units. Maintain property as it has been
in the past.

The Zoning Ordinance classifies this use as a (include SIC Code Number):

Two family dwelling
(SIC 8811.2)

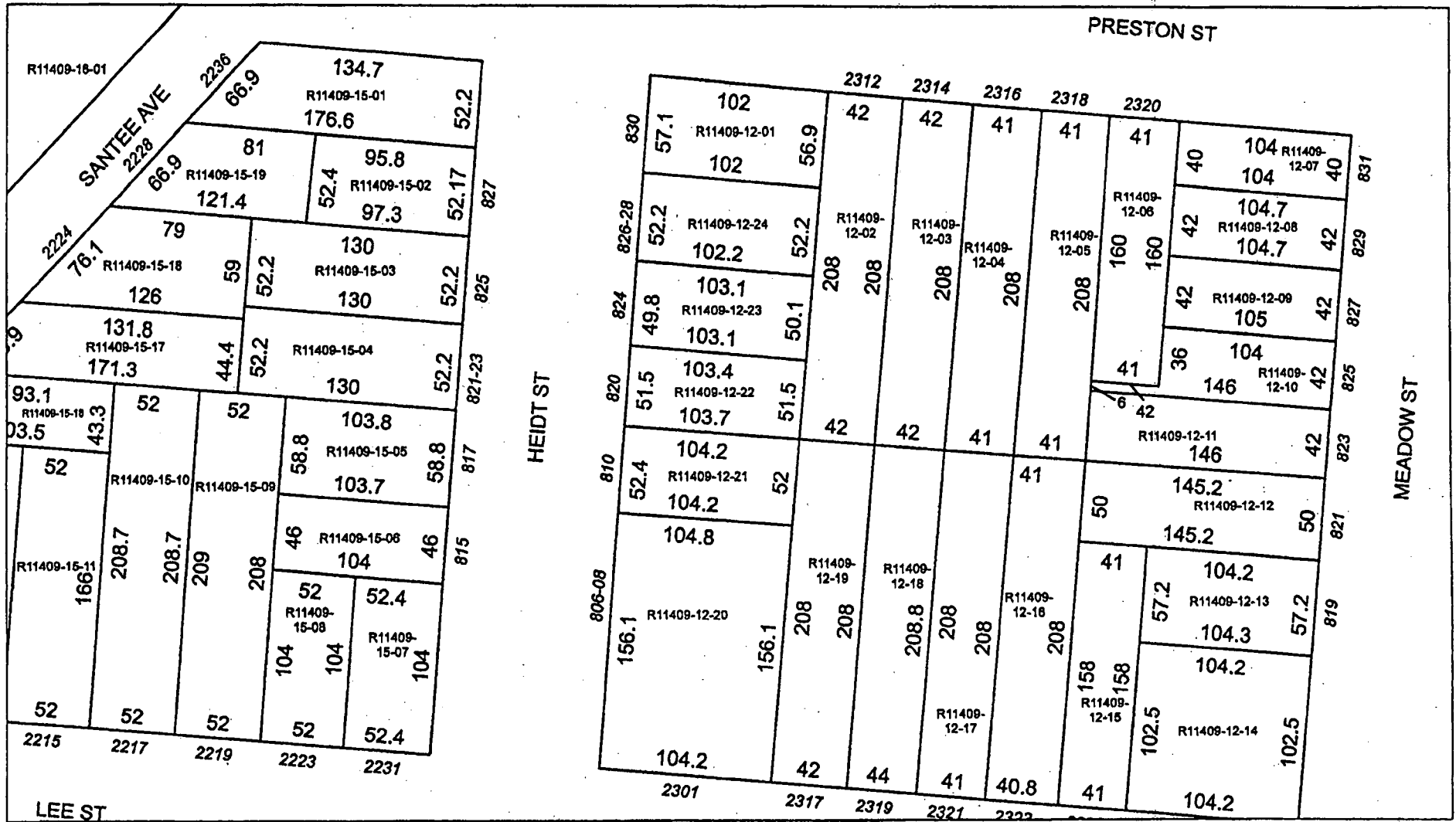
Area Attributed to Your Proposal (in square feet):

2211 Total - 1790 Base

Are other uses located upon the subject property? (if YES, list each use and the square feet attributed to each use):

Total Number of Parking Spaces Upon the Subject Property:

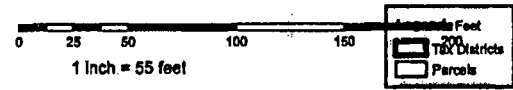
Two, now - will expand
4 additional in the back.



TAX YEAR 2013

THIS MAP IS FOR GENERAL REFERENCE ONLY. RICHLAND COUNTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO ITS ACCURACY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE.

RICHLAND COUNTY
ASSESSOR'S OFFICE

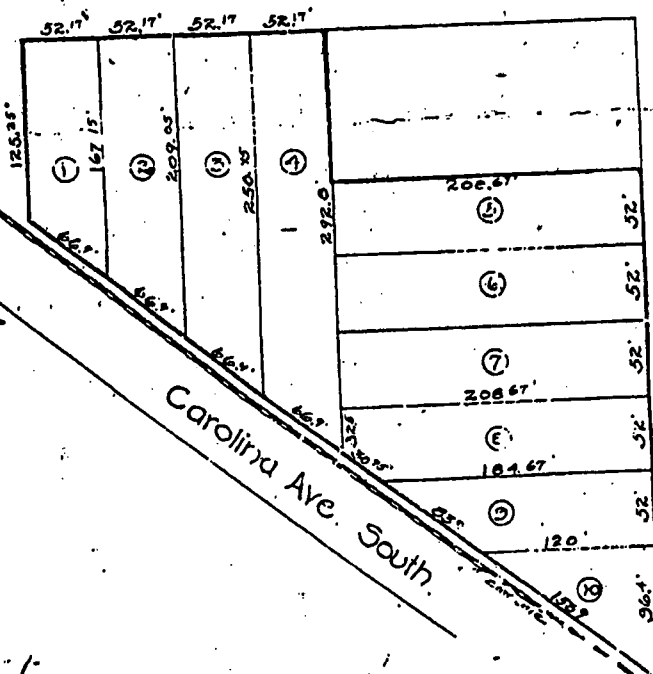


NOTE: THIS COPY HAS BEEN

89

Preston St.

High St.



Plat Of The Property

of
J.C. Moore & W.S. Moore
Shandon - Columbia SC.

Scale: 1" = 50' Aug. 26-1913

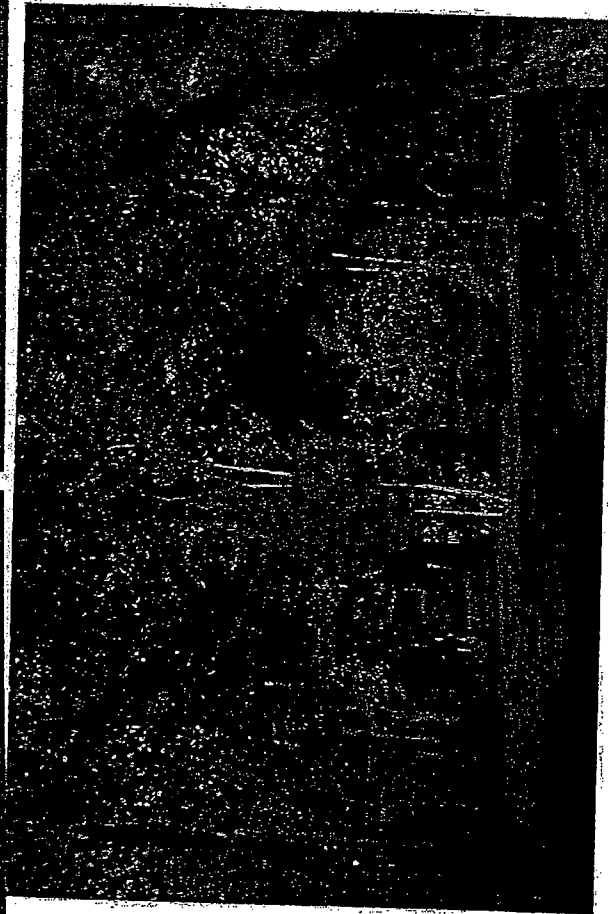
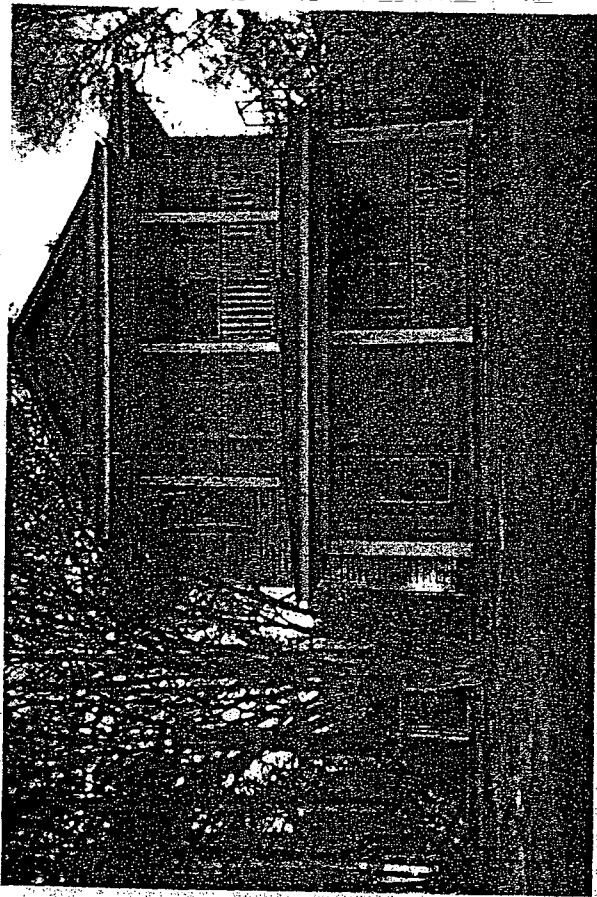
Shand Engr. Co.
Columbia SC.

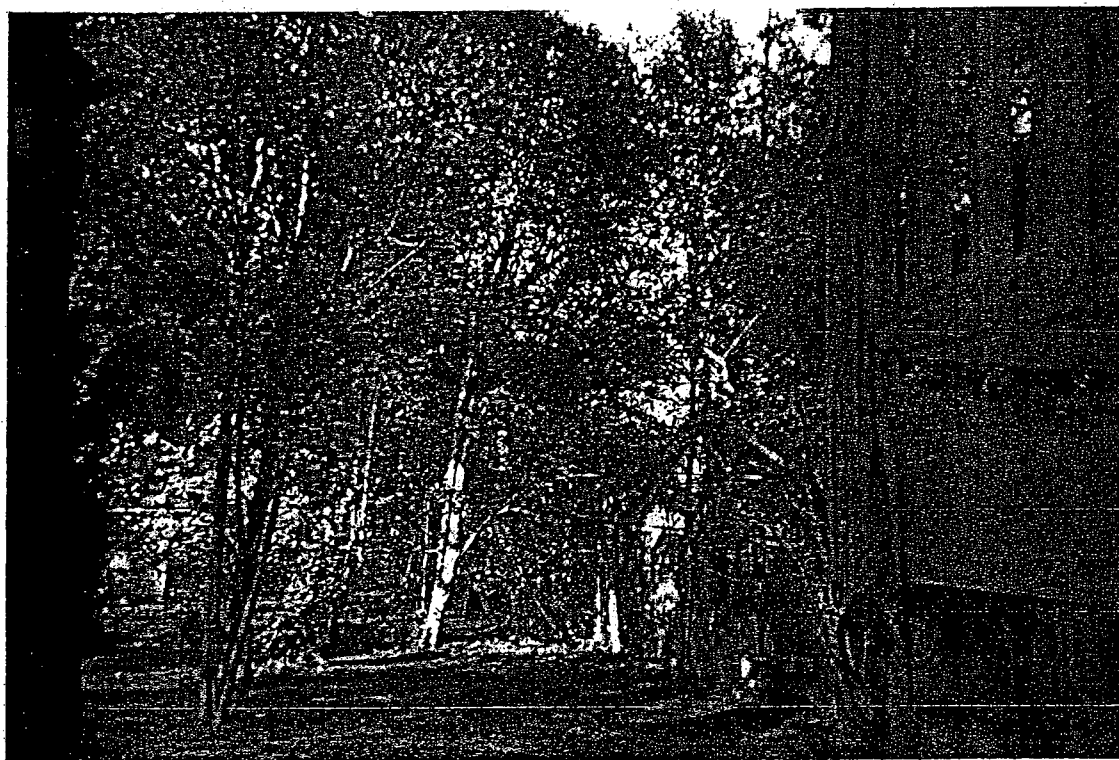
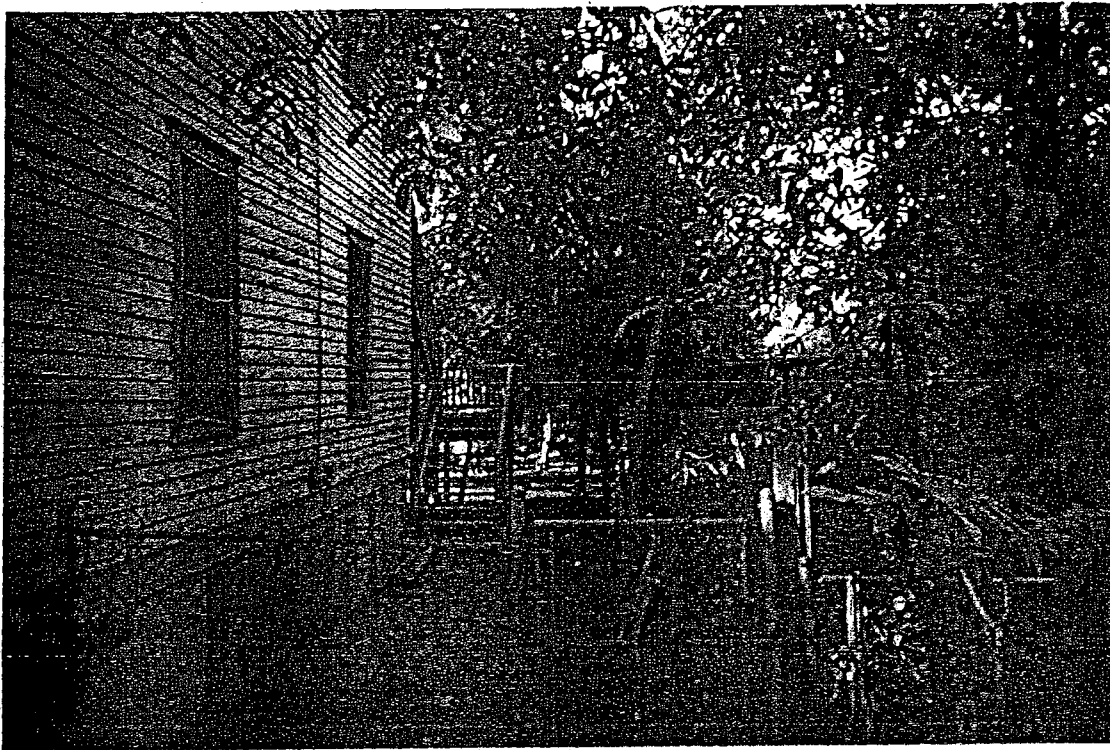
Lee St.

Carolina Ave. South.

C-132







PRSUT449035OCT1212 1210

ATI-P

NO CURR-YR APPRS

A P P R A I S A L I N F O R M A T I O N S U M M A R Y

KEY:00303488

OWNER:DORTCH FRIEDA S HATTEN

ACCT:R11409-15-03

LEGAL:

LOC: 825 HEIDT ST

52.2X130

TYPE: TAXABLE VALUE: 60167

CURRENT PREVIOUS

AREA CODE: 015.99-B INCOME:

LAND: 7800 8600

#STRUCTURES: 1 MARKET: 60167

STRUCTURE: 52367 56900

APPAISAL: 60167

MISC IMPR:

USE: 60167

MARKET: 60167 A 65500

LAND TYPE: 100L CENSUS TRACT: 21000000000

LAND USE:

ACRES: WATER: 2 SEWER: 2

PCT-COMMON:

LAST INSPECTION DATE: 2012/09/21

STR# TYPE

CL ACT EFF Q LOC COND

BASE TOTAL

VALUE

FEATURES

1 1200-2

1 1930 1930 3

1790 2211

51595

772

CONTINUE(X):

ASSMT CODE

LAST ACTIVITY: 2012/09/24

FUNC:

DATA:

SUB:

YR: 2012

MESSAGE: * * * END OF LISTING * * *

@

STARET449028OCT1212 1210

NO CURR-YR APPRS

STRUCTURE PLOT AREA VIEW

KEY:00303488

YR:2012 ACCT:R11409-15-03

STRUC: 1 OF 1

BAS 810
FUS 980
UST 60
FOP 100
FOP 189
FOP 72

N

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BAS

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S

FUNC:

DATA:

SUB:

YR: 2012 @

Derek Riley
810 Heidt Street
Columbia, SC 29205

December 11, 2012

City of Columbia
Board of Zoning Appeals
Columbia, SC 29217

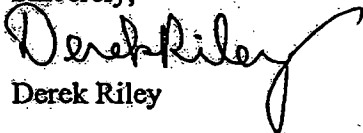
Members of the Board:

I am submitting this letter in opposition to the application for the property at 825 Heidt Street to receive a zoning variance to the minimum lot size to reestablish a duplex. I have owned my house and lived on this block for almost 20 years and thus have an interest in the types of homes contributing to the character of our neighborhood. A similar variance was requested on July, 2008 and I am attaching a copy of the opposition letter I provided at that time. All of my original concerns remain valid and I offer the following items in additional support of opposition:

1. In the four years since the variance denial of July, 2008, no effort has been made to improve the property or to bring it up to code. Improvements began to be made in 2012 although according to the application, the improvements appear to have been made in a way consistent with maintaining two separate residences.
2. Flaws exist in the scale of the proposed parking diagram provided as part of the application (copy attached). Notice the 11.5-foot driveway width seems to encompass more than two of the proposed 9-foot wide parking spaces. Also not displayed properly is the true 16-foot depth of each parking space and the corresponding amount of yard space which would be required for a vehicle to utilize the far spaces. Were the parking spaces drawn to scale, one would see the parking spaces taking up a minimum 70% of the back fence line (more, if any room was to be provided between each space). This plan essentially would turn the entire back yard into a parking lot.
3. The application fails to acknowledge the nature of the short lot behind it (2224 Preston) and its structure with a back door within a car length of the back fence of 825 Heidt. Those residents would be constantly subjected to the sound, fumes, and headlights of any vehicles regularly using the proposed new parking spaces.
4. The make-up of our 13 parcel block remains the same as explained in 2008, with 4 owner-occupied units, 4 rental multi-units, 3 rental single units and the same 2 vacant properties (including 825 Heidt Street). Allowing 825 Heidt to operate as a duplex would further contribute to the majority of renters on the block.

Thank you so much for the protections you implement and monitor. Thank you also for reviewing my request and please contact me if I may provide any further information.

Sincerely,


Derek Riley

Derek Riley
810 Heidt Street
Columbia, SC 29205

July 3, 2008

City of Columbia
Board of Zoning Appeals
c/o Jonathan Chambers
PO Box 147
Columbia, SC 29217

Mr. Chambers:

This letter is in opposition to the request from the owner of the property at 825 Heidt Street to have the dwelling officially recognized as a duplex. As a long-time resident of this block of Heidt Street (16 years), I have concerns over 825 Heidt Street becoming a legitimately recognized duplex for the following reasons:

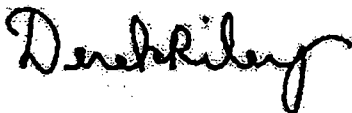
1. The current make-up of our 13 parcel block is as follows:
 - a. 2 vacant (including 825 Heidt St.)
 - b. 4 owner occupied
 - c. 4 rental multi-units (duplex and quadplex)
 - d. 3 rental single units

This represents a mere 31% rate of owner-occupancy for the block. Listing one of the current vacant units as a duplex would virtually insure that it never would become an owner-occupied unit

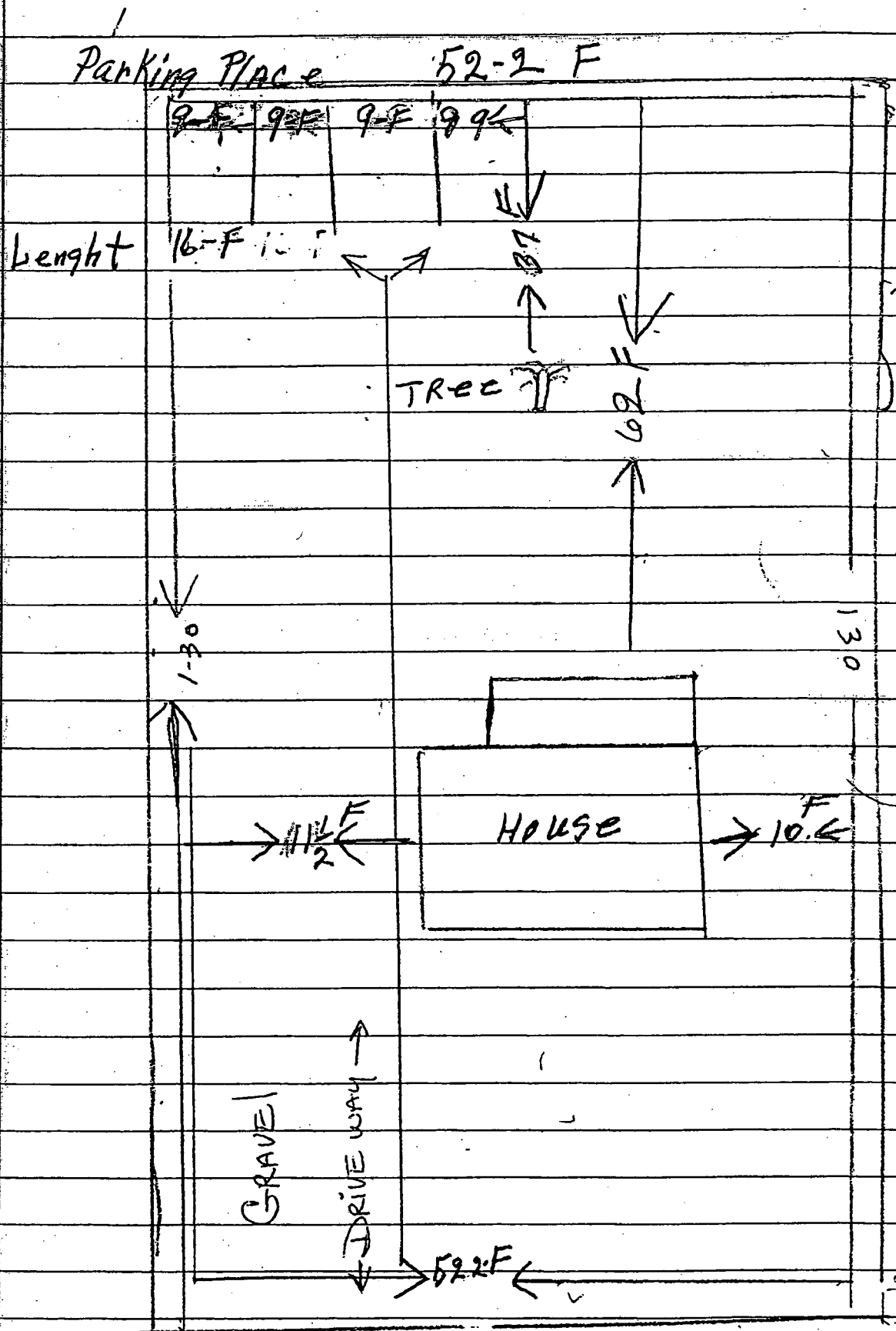
2. Another duplex would be detrimental to the neighborhood's welfare by adding to the glut of rental housing stock in a neighborhood that traditionally has been single family homes
3. Traffic and parking already are issues on this block due to the oversupply of rental units and the multiple car owners occupying them
4. The dwelling at 825 Heidt Street was condemned in November, 2006 and has been unoccupied since then with no effort made towards any improvements. For this reason, the property should lose claim to any grandfather status it may otherwise have had

Please heed my request to keep this property from being recognized as a duplex. You may contact me if I may offer any other information.

Sincerely,



Derek Riley



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CITY OF COLUMBIA
BOARD OF ZONING APPEALS MINUTES
JANUARY 8, 2013 - 10:00 AM

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

In attendance: Patricia Durkin, Pat Hubbard, Reggie McKnight, Calhoun McMeekin, and Chuck Salley
Absent: Ernest Cromartie, III; Preston Young
Staff: Brian Cook, Andrew Livengood, Andrea Wolfe

I. CALL TO ORDER and DETERMINATION OF QUORUM

Pat Hubbard, Vice-chair, called the meeting to order at 10:03 AM, and introduced the members of the Board of Zoning Appeals (BOZA). Mr. Hubbard explained the purpose and role of the Board of Zoning Appeals.

Brian Cook, Zoning Administrator, Planning and Development Services Department, reviewed general housekeeping rules and noted changes to the agenda since publication. On the Regular Agenda, Item 6, 3922 W. Beltline Boulevard, special exception to establish a gasoline service station has been deferred to the March 12th meeting; and item 7, 2604 Devine Street, special exception to establish a beer and wine store has been withdrawn by the applicant. Mr. Cook proceeded with review of Consent Agenda items.

II. CONSENT AGENDA

A. OLD BUSINESS

None.

B. NEW BUSINESS

1. 13-004-SE Dist. 3 2507 Devine Street (TMS# 11316-15-12) Special Exception to establish a residential dwelling unit in a commercial district (Penelope M. Noble)(C-2).
2. 13-006-SE Dist. 2 3122 B Beltline Boulevard (TMS# 14004-03-51) Special Exception to establish a non-emergency medical transportation service (Martin L. Smith, Midlands Transportation Service, LLC)(C-3).

Motion by Mr. McKnight to approve Consent Agenda items subject to any exhibits and conditions that may be found within the case summary for that application and to adopt as the findings of the Board, those findings in each case prepared by Staff, also found within each case summary; *seconded by Mr. Salley*.
Consent Agenda items approved 5-0.

III. REGULAR AGENDA

A. OLD BUSINESS

Barry Stanton, attorney for the applicant, was involved late in the process when Ms. Dortch filed her application. An amended application was sent to the Deputy Zoning Administrator requesting an appeal. He stated his belief that the applicant has a lawful non-conforming use and therefore does not need a variance, however as an alternative would like to request a variance.

Mr. Hubbard stated if the applicant wished to appeal, it must be an appeal. There are notice provisions and the property has been noted as a variance. Nothing has been advertised as an appeal.

Mr. Stanton said he wanted the appeal process to be an option for his client, Ms. Dortch because when going through the process for a variance, she was not made aware there could be an appeal. If the Ordinance does not apply or prohibit the request, a variance is not required for something that does not apply.

Mr. Hubbard reminded if there is a lapse of a certain amount of time with a non-conforming use, it is no longer a legal non-conforming use. Mr. Stanton stated he is familiar with provisions in the Ordinance to that effect.

Mr. Cook stated the Board of Zoning Appeals determined the non-conforming status as a duplex was lost in 2008.

Mr. Stanton did not want to waive any right already lost by going forward with the variance and not mentioning the request for appeal. He said they wished to go forward with the request for variance, but wanted to preserve any rights they still had in that regard including any that would have afforded Ms. Dortch's ability to get a timely appeal based on proper notice to her on the basis of which she is prohibited from doing this. Additional papers were submitted on February 8th for review by the Board.

He proceeded with review of the criteria for a request for variance.

- 1) *Extraordinary and exceptional conditions pertain to the subject property* because it is an existing use and structure in its present configuration. The structure has separate utilities and no internal stairs. The structure was built as a duplex built in 1930 and to convert into a single family unit would require substantial alteration, and it would be very costly and time consuming. It would change the entire structure which is considered historic.

Mr. Hubbard asked if a contractor had been spoken to or if quotes for reconstruction had been given.

Mr. Stanton said he would let Ms. Dortch speak to that effect and on what she has invested. The property is next to a park area, so she did not feel it is a density issue. Because of the way the house is situated on the lot, it leaves a very large back yard which will allow for some of the yard to be used for parking.

- 2) *These conditions do not generally apply to other properties or duplexes in the area* because there not many other duplexes in the area
- 3) *Because of these conditions, the requirements of the Zoning Ordinance effectively or unreasonably restrict the use of the property* because the property cannot be used. The character of the district is to have two family dwellings. Everyone knows this was a duplex since 1930 and that it was always used that way.
- 4) *Approval of the variance would not be of substantial detriment to adjacent property or to the public good, and the character of the district would not be harmed.* Public good would be better served by having the house repaired and occupied, than having the house demolished, condemned, or vacant.

The variance is the *minimum necessary* to be in harmony with everything. *Approval 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* - Ms. Dortch wants to provide additional parking which will be in the back. She will continue using something as a duplex that has been a duplex. It will not hurt the public.

Mr. Hubbard questioned additional criterion – *if the proposal is in harmony with the purpose and intent of the Zoning Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare*. He referred to the provision of the Ordinance that refers to the purpose and intent of non-conforming uses is that they not be encouraged to go on; it is not desired they continue, but to be what zoning is and asked Mr. Stanton to comment on that with intent to the Ordinance.

Mr. Stanton responded it is in the way the criterion is stated within the Zoning Ordinance that the property is largely zoned for two-family residential structures. He feels she is doing the utmost to comply with the Ordinance and meet the spirit and intent of it. Mr. Stanton said with regard to the provision, *“the intent of the Ordinance has to first be balanced with the intent of the Constitution and people’s vested property right. It is a trade-off.”*

Mr. Hubbard stated without having an Executive Session and city attorney present, the Board will not ‘wander’ into questions of constitutionality. He asked Mr. Stanton if he wanted a ruling made by the Board, or if this case needed to be moved to the end of the meeting to allow discussion with the city attorney on constitutionality of the Ordinance.

Mr. Stanton clarified his response that he *did not want a ruling on what is constitutional, but did want recognition that is the whole purpose of a variance which is to avoid the level of unfairness that would lead to that*. With regard to the stated intent of the Ordinance, *that is the people who pass the Ordinance who say here is our intent, we do not want to encourage this*. He does not feel it is encouraging the continuance of a non-conforming use, he feels it is allowing through those that need to be allowed through, especially where they are making an effort to comply to the utmost intent with the spirit of the Ordinance.

Mr. Stanton asked Ms. Dortch some questions regarding the basic aspects of her application.

- 1) A document was submitted on the applicant’s behalf entitled “expected testimony of Freida Dortch” and asked if everything in that document was true to her best belief, information and knowledge. Ms. Dortch stated it was.
- 2) He had explained the history of the house; that it had been in the family for decades and probably built in 1930 as a duplex, asking Ms. Dortch if that was correct. She stated it was.
- 3) He asked if it was true because the way it was configured that it could hardly be turned into a single-family residence without substantially altering the structure at current grade expense and changing the design of the building. She stated that was correct.

Mr. Hubbard asked what efforts had been made to get the expenses for alterations, and what various alternatives were. He referred to a previous case on the other side of King Park where the owners wanted to convert a similar duplex into single-family, and came up with some ‘very creative ways’ to do so. He was puzzled how they found it economically feasible and she does not.

Ms. Dortch stated she had a fire at the back of the house in 2009 which cost \$23,000 to repair. She did some work at the front of the house that cost \$12,000. She has not been able to do interior work or any additional repairs because she was denied entry.

Mr. Livengood said Ms. Dortch came to get permits for a duplex, which could not be issued. Permits could be issued for a single-family residence instead. He could not speak to the inspector issues.

Mr. McMeekin said she was denied a permit for a duplex because non-conforming use of the property was lost. He asked if the property was now insured. Ms. Dortch said it was not, but was insured until the mortgage was paid. It was her brother's responsibility to pay for insurance which he did not do, and she did not find out until the fire occurred. Her brother lived there the entire time after the fire but she cannot prove that he lived there, so she lost non-conforming status.

Ms. Durkin asked who paid the utility bills while the brother lived there. Ms. Dortch stated she paid utility bills off and on while he lived there, but she did not pay insurance. She has old records of water bills, but no utility bills. When her brother had money, he paid the utility bill but he lived there entire time.

Mr. Hubbard stated if only one occupant lived in the duplex, it was not being used as a duplex. He asked if Ms. Dortch spoke to the contractor or got estimates to convert to single-family while doing repairs. Ms. Dortch did speak to the contractor who said it would cost over \$100,000 to convert. She received two estimates. He asked what the \$100,000 would cover. Ms. Dortch said there are two entrances, a living room upstairs and a bedroom downstairs. The house would need to be 'taken apart' to make it a single-family home. Each apartment has its own kitchen and separate utilities.

Mr. Hubbard stated he lives in a home that was a duplex which had interior stairs, but does not feel stairs will cost \$100,000. Ms. Dortch said it was not necessarily the stairs that would cost \$100,000, it would be interior repairs. Interior stairs would need to be added, flooring added, sheetrock, paneling, redo the hardwood floors; there would be labor costs and painting. That is what would cost and it is a financial burden. The house is a duplex which her mother initially rented, they lived upstairs and another family lived downstairs. She grew up there. The house is constantly referred to as a single-family house, it is a duplex already. Because each unit has a separate kitchen, she would need to remove a kitchen to make it single-family residence, which is costly. She paid \$7,000 to have stairs installed on the back of the unit when it burned. She has had all changes approved by the historical society. Ms. Dortch used a certified contractor for repairs already made.

Mr. McMeekin questioned the loss of use as a duplex and the maintenance of the unit as a duplex. No one took away Ms. Dortch's right to have a duplex and to have it exist. She had that status and somehow lost it. In his mind, a decision was made by the applicant.

Mr. Hubbard reminded that was not the issue presented today, it a request for a variance only. He said the reason the structure does not comply with zoning is a density problem. There must be 5,000 sq. ft. per unit. To have a duplex there, is a little over 7,500 sq. ft. It seems the request is almost to rezone to the next category which is 7,500. It is a very substantial variance that is being requested. He asked the applicant to stay focused on the criteria for a variance.

Mr. Salley said the Board was interested in Ms. Dortch's experience and the basis of her estimation of why the cost would be that much. She has explained that she has had contractors and has had other relatively minor aspects of the repairs. Based on those repairs and approvals by the historical society, she has determined the substantial costs for renovation would be an economic hardship. Ms. Dortch agreed.

Mr. Salley asked Ms. Dortch if, besides this house, she had any other personal background in the building, repair or renovation industry dealing with contractors or doing any work herself. Ms. Dortch stated she did as she has renovated other houses, gotten contract estimates, and renovated the house she currently lives in.

Mr. Salley referenced the density question and asked where the house is located, what proximity it is to the park, where the proposed parking will be, and why allowing this to be a duplex would not create a density issue in this neighborhood.

Ms. Dortch said it would not be a density problem because the house is one house from the corner of Heidt and Preston Street. There is an empty lot directly across the street and next to the lot is Kings Park. The backyard is open, the park is visible from the yard, and it is a direct path to the park so there is not a density

issue. With the diagram provided last month, four parking spaces can be added in the back yard if parking in the front is an issue; and still leave a substantial backyard area. When one walks out the front door, you walk down a sidewalk straight to a parking area. Each unit has a porch downstairs and upstairs is enclosed. The staircase on the top of the house is on the outside.

Mr. Salley asked why she felt the restriction would be unreasonable.

Ms. Dortch said the restriction is unreasonable because this house is an existing duplex. It was mentioned by one of the Board members that only one person was living in the house; however she failed to say it has been a family home through the years. Her daughter lived in the upstairs while attending Midlands Tech. Other people have lived in the house. She just did not list everyone who lived there. It is important to her and her family to share the house and have a decent living space for everyone. It is important to maintain the history of the house. They are not a burden to anyone or to the neighborhood. They have lived there for over 40 years. Ms. Dortch has complied with everything and kept up the house as well as she can. She now needs to do interior work. It is an expense on her and her family. It is not rental property, it is her family home. She wants to repair a home that was damaged so that her family can continue to live there. She wants to take care of her property. Because it stayed there for so long, it deteriorated.

Mr. Hubbard stated if Ms. Dortch wanted it for a family home, it will be single-family; and she is not asking for it to be a family home but two family units. Ms. Dortch said two separate units in her home. She has children and her brother has children. Her children live upstairs and her brother lives downstairs.

Mr. Hubbard stated that zoning cannot be done individually for her; this is about the land use. If the family wanted to live there, the kitchen can be removed without being very costly. It may be the home she thinks of as her family home. As a duplex, she will have the option to rent out. Even though she may live in one unit and her brother may live in another, a variance cannot be granted on only having the members of her family living there forever.

Ms. Dortch said she "understands that, and continued to state that this is already a duplex". She continued to say, "with all due respect to the Board, this house is zoned in a duplex zoning area". She is asking for consideration because she would like to maintain what she already has.

Mr. Stanton stated to Ms. Dortch for clarification that regardless of whether it is used as a family home or used as duplex in some other way, the criteria needs to be addressed in that respect. Why is an unreasonable restriction regardless of using it as a family home, or having the right to rent it out, or the right to even sell it as a duplex.

Mr. Salley asked Ms. Dortch if regardless of the use of the property if this restriction would leave any economically viable way to deal with this property. Does forcing her to change it to a single-family dwelling deprive her of reasonably economically viable use of the property? Ms. Dortch stated it does.

Mr. Stanton repeated discussion regarding the fire and history of the duplex, and the loss of non-conforming status. Mr. Hubbard stated that was not for discussion today, and if the applicant can factual non-conclusory testimony that could be offered in an expedited manner, to do so. Mr. Stanton felt all the criteria for request for a variance had been addressed, and asked that the Board consider approval of the request.

Derek Riley, neighborhood resident, lives across the street from the property. Mr. Riley said the house was basically a squatter house; water and electricity have been "banked" from other residents. The house has been in a state of blight for about three years, but cannot be demolished because it is in a historic protective overlay district which is the only reason the house remains standing today. Mr. Riley is opposed to the variance request, as the neighborhood is dense enough already and increased density will hinder the further improvement of the block.

The testimony was closed for Board discussion.

Ms. Durkin voiced concerns with parking, and the potential for six cars behind the unit which would create noise, lights, and fumes. Parking on the street, which looks fairly narrow, for up to six cars would be a detriment. She feels the money already spent to keep this as a duplex would be have been better spent in the establishment of a single-family home if Ms. Dortch wants to have her family continue to live there because there is no guarantee down the road that the property will not be rented out.

Mr. Hubbard does not feel there are extraordinary and exceptional conditions for this case. It is an area that was developed well before zoning was adopted in Columbia, thus there are a lot of non-conforming uses in terms of density and other requirements throughout the area. By granting this area RG-1, City Council obviously desired a drop in density in this area, while also allowing some duplexes and similar things. Many other properties in the area have kept their non-conforming status or if lost, have managed to obtain another type of use that satisfies the statute. He does not feel it effectively prohibits, it may not provide as much return as one could get with a duplex, but would get a reasonable return in value. It is not the minimum necessary. This is an area that has been 'pulling itself up' and keeping this duplex would not enhance the area.

Mr. McMeekin echoed Ms. Durkin and Mr. Hubbard's comments and does not feel the variance should be approved.

Mr. Salley asked staff if the house is considered condemned and not habitable; and asked if a stairwell is required for a two-story single-family home.

David Hatcher, City Housing Official, stated as far as property maintenance concerns, it is mostly exterior violations that need to be brought up to code. He does not feel it is unfeasible to occupy the structure but has not been inside, and does not know what needs to be done to bring it up to single-family residence. The homeowner has been made aware of these issues. There has been an open case on this property since 2004. Several improvements have been made on the property but there are still several property maintenance issues on the exterior that need to be done to bring it up to code. Mr. Hatcher is not sure what has been done on the inside. There has not been a point of notice at this time that the property has been completely brought up to code during this time.

Michael Goodlet, Housing Inspector, added that an interior stairwell is required for a two-story single-family home.

Motion by Mr. McMeekin to deny the variance for 825 and 825 ½ Heidt to the minimum lot size requirements to reestablish a duplex.

There are not any extraordinary and exceptional conditions that pertain to the subject property; there are no unreasonable restrictions for the use of the property.

It is his opinion that approval of the variance would be a detriment to the adjacent property and the public good.

He referenced to the testimony given by Mr. Riley with regard to the character of the district.

To allow this variance is not in harmony with the intent and purpose of the Zoning Ordinance.

It is injurious to the neighborhood and detrimental to the public welfare.

Motion seconded by Ms. Durkin. Request denied 5-0.

B. NEW BUSINESS

4. 13-003-SE Dist. 2 1206 Heidt Street (TMS# 11410-02-17) Special Exception to expand a religious organization (Willie Williams, First Nazareth Baptist Church)(RG-2, -DP).

Willie Williams, representing First Nazareth Church, said the church already has a PUD. This property is located between the childcare center and the parking lot of the church. Plans are to use the property as office for training and other benefits for the church. This property is not part of the original PUD.

Mr. Hubbard reviewed the criteria for special exception with Mr. Williams:

Impact of the proposed use upon traffic in the area – no impact.

Impact of the proposal upon vehicular and pedestrian traffic – none. All ingress/egress will be through the church parking lot.

Impact on aesthetic character of the environs – there will be no change, only improvement

Impact in terms of orientation and spacing of improvements or buildings – none, will be an improvement

Adverse impact on public interest – in his opinion, it should not have any affect as nothing will be changed and it is for a religious activity.

Any changes in the exterior of the building – no changes to the exterior; some interior rewiring to be done

Mr. Cook stated that any changes or additions to the exterior (stairwell, railings, handicapped accessible ramp, etc.) will need to be reviewed by the Design Development Review Commission and/or D/DRC staff.

Dr. William Rutherford, member of the Historic Waverly Neighborhood Improvement and Protection Association, spoke on behalf of the Association. Dr. Rutherford stated they are against the now changing use of the property as the property is a residential structure. Once it is used as office, it may become a commercial piece property. He questioned if this would cause the zoning code to change from residential to commercial. The church has purchased a great deal of property in the Waverly neighborhood, and the church has is changing the historic nature of the neighborhood. The church has presented to this Board and the Planning Commission to have the zoning code changed from residential to a C-3, unrestricted commercial use, which can mean a lot of things. It is felt if the zoning it changed, it may be sold to someone in the future who will change the use of the property to a less desirable use.

Mr. Salley said that is not the case in this situation. Mr. Hubbard asked staff to respond to the applicant's request and clarify how the zoning code works.

Mr. Cook said a religious organization with a special exception can basically go into all of the residential districts. It will not change the zoning of the property; zoning will remain as is which is still residential. If a zoning change is to be made, the request will present to Planning Commission and City Council, the neighborhood must be informed, and posting must be done. This particular request is to use the existing residential structure for the use of the church for offices or for meeting space. It will not change the zoning of the property. This meeting does not have authority to do that.

Dr. Rutherford voiced concerns that this may be the beginning of a series of changes.

Mr. Hubbard said he unsure of what plans they have for the future. The neighborhood still has the historic overlay which limits the church use of the building. If they would want to demolish the building or substantially change it, the church would need to present to the D/DRC. The bottom line is there is no zoning change, church use only, and any major exterior changes will require D/DRC review and approval.

Dr. Rutherford thanked the Board and said that is the type of information he was looking for.

Sylvie Deseo, neighborhood resident, is opposed to the request. Ms. Deseo said the church owns many lots that are already zoned commercial and can have a new building built that will be designed for office and training spaces. Converting residential into office space does not seem optimal. In addition, the church owns residential properties across the street from the property presented today which they have boarded up and are not taken care of, and then demolished. She voiced concerns with the church and said the church is not very

neighborly, and not had any conversations with residents. She is concerned with future zoning change if the building is used as an office for a long time. They want to live as residents in a neighborhood.

Mr. McMeekin asked Ms. Deseo if it is her testimony that the church owns other property and has a history of removing structures around it.

Ms. Deseo confirmed and referred to the map and pointed out church property with houses where several have been boarded up because they are not being used. That is not good for the neighborhood. She said the neighborhood has a long history of not being a good neighborhood and has improved tremendously over years.

Mr. Hubbard said many Board members are personally sympathetic toward the point of view but the BoZA is constrained by what is being presented and requested today.

Ms. Deseo understood and felt the proposal will not adversely affect traffic and parking because there will not be any additional cars; however there is the possibility it will adversely affect the public interest.

John Sherer, director of cultural resources for Historic Columbia, is opposed to the request. He gave a history of the Waverly Neighborhood and renowned African Americans, referred to the demolition of the historic Elmore store, and said the church has little to no appreciation of historic Waverly. Historic Columbia Foundation encourages the Board deny the church's request.

Mr. Hubbard reminded Mr. Sherer that the Board is constrained the criteria for special exception. Mr. Sherer understood saying there are a couple of things such as the aesthetics which must be reviewed by the D/DRC. He commented most on *no adversity to public interest*.

Mr. Hubbard sympathized and said the house being reviewed is landlocked on three sides by institutional development. It could be used as a residence, but there are some difficulties to that. Mr. Sherer said there are residential options. There are individuals who represent the church who live in close proximity.

Mr. Salley added that Mr. Sherer failed to mention in his neighborhood history that the church has been a cornerstone in that community since 1877.

Mr. Sherer said it is "*A little church with a big heart*" and it is hoped that it will continue to be a part of this community for a long time. Responding to Mr. McMeekin's question regarding the demolition of the Elmore Store, Mr. Sherer said it came out of a historic district that fronts Gervais Street and Gervais Street was not part of the included zone. He feels with greater oversight and looking at all of the historic assets within neighborhoods, it could be prevented in the future. That was one building that did not benefit from either local landmark designation or fall within the historic district. It was a very important civil rights site.

Mr. Williams said the City of Columbia went to Dr. Scott, the church's pastor requesting help in the blighted area of Waverly. The church purchased 'bad' houses in the area and torn them down. The area between Oak and Heidt Streets is commercially zoned. It had a building on the property that had been empty for five years. The church bought the property and requested a demolition permit by Ms. Moore. Six months prior, the historic society made a request for a marker to be placed but the property no longer belonged to Elmore.

Mr. Hubbard said that is not being dealt with today, he questioned the testimony made by a neighborhood resident that "the church does not even talk to the neighborhood".

Mr. Williams said "*it is not to their liking that we don't do everything the neighborhood wants us to do*". He said they have agreed to some things with the neighborhood but "*cannot stop what vision that God has given our pastor in developing our activities*". They will be very happy to continue to do what they can, but have a

mission to fulfill, and his job is to implement his mission as received. There is dialogue but not necessarily agreement.

Doris Hildebrand, Historic Waverly Community president was sworn in to speak. Ms. Hildebrand said the church does not talk to the community. She was unaware of the historic sign request for the Elmore Store, and feels that someone in the community should have known about it. The neighborhood has struggled to keep the community historic. Ms. Hildebrand feels communication must be made between the church and the community, "*no communication is not good*". They do not want the community broken up into different pieces.

Pastor Scott was sworn in and said the church made a '*gentleman's agreement*' with the neighborhood. He grew up in the area and the neighborhood is very important to him. The church has spoken with the neighborhood regarding certain things but does not feel they need to talk to them about every minor thing. They have adhered to the agreement made a long time ago.

Testimony closed for Board discussion:

Mr. McMeekin said the church bought the property before a use was defined. If special exception is not approved, they still have the property anyway. Of his concern is the neighborhood opposition.

Mr. Hubbard said the question is if the intended use of the property would be of detriment to the neighborhood. Reviewing the criteria for special exception, he does not see any grounds for denying the request. The building must be used for church uses only.

Motion by Mr. Salley to approve the request for special exception for 1206 Heidt Street to expand a religious organization. The applicant has proven it will not have an impact on traffic, it will have no impact on vehicular or pedestrian safety, the proposed use in terms of noise/lights/fumes/or obstruction of air flow will not impact the area, the proposal will not impact the aesthetic character of the environs to include the possible need for screening from view there will be no impact in terms of orientation and spacing of improvements or buildings, and it does not adversely affect the public interest; *seconded by Mr. McKnight.*
Special Exception granted 5-0.

Brief recess at 11:48 AM; meeting resumed at 11:56 AM

5. 13-005-SE Dist. 1 4913 N. Main Street (TMS# 11604-03-12) Special Exception to establish drinking establishment (Ravinder Thiara) (MX-1, -NC).

David Sidens, local attorney, was available to assist the applicants Ravinder and Heidi Thiara.

Heidi Thiara, property owner, said they initially purchased the property to open a convenience store. Once the property was updated, they decided it would be better investment as a restaurant and sports bar because there are so many convenience stores in the area already.

Mr. Hubbard asked if there were any additional criteria besides the regular criteria for special exception that needed to be considered.

Mr. Livengood said there four additional criteria that must be considered. These are:

1. Spacing requirements. Lots used as drinking places shall not be located closer than 400 feet to any other lot used as a drinking place and shall not be closer than 600 feet to any lot which contains a school or place of worship.
2. Hours of operation. The hours of operation shall be subject to approval by the board of zoning appeals when such establishment is located adjacent to a residential zone.

3. Parking requirements. Off-street parking requirements shall be 12 per each 1,000 square feet of gross floor area. In the North Columbia overlay, parking is reduced by 20%.
4. Ingress and egress. Adequate ingress and egress shall be provided.

These provisions have met staff approval but are subject to the Board's discretion.

Mr. Hubbard reviewed the criteria for special exception with the applicant.

Impact of the proposal upon traffic – there will be no impact on traffic because this is already in a commercially zoned area. Ms. Thiara added that they have already applied for a retail and liquor license because it would have been a convenience store. There is plenty of parking for the building.

Impact on vehicular and pedestrian safety – none, there is plenty of room around the building and it is already commercially zoned.

Impact of proposal in terms of noise/lights/fumes/or obstruction of air flow – no impact because it will be all indoor.

Impact of proposal on aesthetic character of the environs - no changes on outside at all, just some indoor changes.

Will the proposal adversely affect the public interest? People will enjoy it because it will be a fun place. Economically it will benefit because they will provide jobs. Hours of operation have not yet been decided.

Ingress and egress – Ravinder Thiara said there are 50 parking spaces on the left side of the building, and he will employ someone to handle traffic and parking. There should be no problems with people turning into the property or exiting the property.

Impact of proposal in terms of orientation / spacing - none

Testimony closed for Board discussion.

Mr. Salley questioned the four requirements set for drinking establishments asking if the requirements were met, did not have to be met, or if the Board needed to require any needed to be met specifically. He asked if there were residential houses across the street.

Mr. Livengood said as with any motion, criteria needs to be addressed and these are just additional criteria. They have been reviewed as best as possible by staff and appear to be met. The criteria says residential district and it is not a residential district.

Motion by Mr. McKnight to approve the request for special exception for 4913 N. Main Street to establish drinking establishment. There is no adverse impact of the proposal upon traffic, no adverse impact upon vehicular and pedestrian safety, the proposal does not adversely impact in terms of noise/lights/fumes or obstruction of air flow upon adjoining properties, the proposal will not impact the aesthetic character of the environs.

Mr. McMeekin asked that the motion be amended to include that the four provisions required for a drinking establishment - Spacing requirements, Hours of operation, Parking requirements, and Ingress and egress are also met.

Mr. McKnight acknowledged and noted the amendment to his motion; seconded by Mr. Salley. Request granted 5-0.

6. 13-007-SE Dist. 2 3922 W. Beltline Boulevard (TMS# 1609-08-02) Special Exception to establish a gas station (Krunal Parmar, Jay Hanuman LLC)(C-3).

Deferred

7. 13-008-SE Dist. 3 2604 Devine Street, Unit A (TMS# 11316-11-02) Special Exception for a fine retail store (Andrew Johnson, Johnson's Products LLC)(C-2).

Withdrawn

8. 13-009-VDist. 2

Block Bounded by Whaley, Wayne, and Heyward Streets (TMS# 08913-16-05) Variance to height and parking requirements for an apartment complex (Gary W. Morris, Haynesworth Sinkler Boyd, P.A.)(M-1, -PD (MX-1 pending)).

Gary Morris of the Haynesworth Sinkler Boyd law firm; Scott Garvin of Garvin Design Group; and Daniel Rothchild, principal for the project, presented. Individuals from the neighborhood were present to speak.

The applicant previously presented to the Planning Commission for rezoning to MX-1. The proposed project is a four-story apartment complex, with some store front. The site plan presented to the Planning Commission and was approved with staff recommendations to be met. The developer is seeking a variance on the height of 9', and for parking of 258 spaces instead of 344. From the beginning, meetings have been held by the developer with the neighborhood and input has been received from the neighborhood to get a structure that is liked by both.

Scott Garvin of the Garvin Design Group is the architect for the project. Garvin Design Group was also the architects for the renovation of Olympia and Granby Mills as well as 701 Whaley in the neighborhood. A number of meetings were held with the neighborhood who had a lot of input into the design. One of the main priorities of the neighborhood was to protect the park at the corner of Whaley and Olympia which anchored the neighborhood and Mill Village, and to maintain the view corridor from that corner. The developer has committed to leaving the park alone which has limited some of the buildable area. The initial scheme ran parallel to Olympia along Heyward and was a much more efficient design from the standpoint of the layout which allowed for more parking spaces to be developed on site, but would have blocked the view corridor.

The result of shifting the building caused it to be built on the slope instead of parallel to it. The change in grade from Heyward to Whaley Street is about 11'. It is desired to maintain level floor plates for each of the four floors and locate retail on Whaley. Setting the elevation at Whaley to allow ingress and egress for pedestrians and carrying that elevation all the way around necessitated the need for a variance. The height at Whaley is under 50', and the extreme height at Heyward is 59'; so the average is about 55'. There is one main entrance into the facility at the center facing out toward the parking lot, and the height at that point is about 54'.

The third request of the neighbors goes back to a study done before the Mills were renovated, to provide retail in Olympia that was Olympia-oriented retail. That is a component of the project that was included and actually necessitated the need for a variance for parking. The retail will be located on Whaley for pedestrian access to the retail. There is an existing curbcut as one enters the site off of Whaley Street for parking to access the retail.

There will be 158 one-bedroom units and 24 two-bedroom units for a total of 206 beds. The one bed-room units are predominant and comprise over 90% of the units. The request for a variance is based on the fact that the developer feels that 1.75 cars per unit for a one-bedroom unit is excessive. Conversations were held with city staff, and if this project was zoned as a private or public dormitory, one parking space per bed would be required for a total of 206 parking spaces when there are 258 on-site.

There are two reasons this was not requested: 1) the proposed project is within 600' of a RD-2 zoning, Olympia and Granby Mill, and 2) MX-1 zoning is being requested to provide retail for the neighbors. 6,500 sq. ft. is allocated for retail with three bays proposed; a coffee shop, sandwich shop. There is no tenant at this time.

Mr. Garvin addressed the criteria for a variance saying there will be no impact on traffic; it will actually be less because of the reduction in parking, the elimination of curbcuts on Heyward and Whaley. This will be an improvement on safety because with retail, students and residents will be encouraged to walk back and forth to retail instead of driving their cars elsewhere. The developer has provided new sidewalks all the way around the site which is improved safety. Overall, it is felt the aesthetics have been improved with the development.

To focus on the main criteria, the 1.75 parking for a single bedroom unit is excessive. From a city standpoint, they are aware the Ordinance will be changed in the future, but it is unknown when; and that is the reason for the request for variance.

Mr. Salley commented that *"this is how development should occur and is case study for doing it the right way"*.

Bob Guild of the Granby Mill Village Neighborhood Association spoke in support of both variances, for the height of the project and for parking. Mr. Guild thanked the developers for working very closely with the neighborhood and asking for input. They gave up buildable space and parking to honor the neighborhood requests. It is felt the proposed parking will serve adequately for the retail and residents of the new apartment project. The neighborhood is very excited about having neighborhood retail. He applauded the developers for a good design and very cooperative commitment to working with the neighborhood.

Ryan Nevius, executive director of Sustainable Midlands, Granby resident and member on the Granby Board, said this is a great sustainable use of the property and spoke in support of the project. From the Rocky Branch Watershed Alliance point of view, the fact the green space has been retained and the fact the developer is using low impact development and retaining the water underground is an exciting opportunity for them to have a display in the Rocky Branch neighborhood where good development can be used and low impact development can be celebrated. The developer worked with all the surrounding neighborhoods which was greatly appreciated. She feels having retail for students will cut down on in and out traffic. It is a great design and asset to promoting connectivity and walkability to the city.

Testimony closed for Board discussion. Mr. Hubbard and Mr. McKnight agreed with Mr. Salley's earlier comments regarding the proposed project.

Motion by Mr. Hubbard to approve the request for variance for the Block Bounded by Whaley, Wayne, and Heyward Streets to height and parking requirements for an apartment complex. Testimony indicates there are extraordinary and exceptional conditions that do not generally apply, this is the minimum that would allow reasonable development and otherwise, would unreasonably restrict use of the property and force bad things to have to happen, it would not be of substantial detriment, and it will be in harmony with the public interest and improve the area, and it is the minimum necessary; *seconded by Mr. Salley. Request granted 5-0.*

Mr. McMeekin left at this time.

9. 13-010-SE Dist. 1 4498 Broad River Road (TMS# 06300-01-01) Special Exception to erect a wireless communications facility (Mike Feigenbaum, PTA-FLA, Inc., dba Cleartalk)(C-1).

Applicant proposes to construct a 160' tower within a 1,600 sq. ft. compound. The proposed location is within the Harbison State Forest adjacent to a City of Columbia water tower, but not on City of Columbia property. The subject and surrounding parcels are zoned C-1 which allows for a new monopole communication tower as a permitted use provided it is a minimum of 300' from a single-family residential or general residential district, and a minimum of 50' from public ROW.

In addition to the standard criteria for special exception, the BoZA must apply additional standards for a cellular tower.

Mr. Cook visited the site and it meets the separation from the residential district and the ROW, and also meets the 1,000' separation from another cell communication tower, which is one of the requirements.

Mike Feigenbaum, development manager for PTA-FLA, Inc. dba Cleartalk Wireless, is a proponent for the company.

Tom Persons, owner of Cleartalk and South Carolina resident, provided a brief history of Cleartalk which has been in SC for over four years. Cleartalk is in the cell phone business. It is an employee-owned business with the call center at N. Main Street and Elmwood. He commended staff for their assistance with this request.

Mr. Feigenbaum reviewed the criteria for special exception, and the additional criteria for a monopole:

Impact of the proposal upon traffic – none, this is an unmanned facility that will only have monthly maintenance visits.

Impact of proposal upon vehicular and pedestrian traffic – none, only monthly maintenance visits

Impact in terms of noise/lights/fumes/or obstruction of air flow upon adjoining property – this tower is below the FAA threshold for lighting a tower, no strobe or flashing light on top. The towers emit no noise or impediment of air flow.

Impact of proposal on aesthetic character of the environs – the equipment for the towers is screened with a wooden privacy fence. This particular tower is in a wooded area and only the top of the tower will be visible from the tree line.

Impact of proposal in terms of orientation and spacing of improvements or buildings – none, adjacent to a city water tank facility.

It will not adversely affect public interest. It is felt it will benefit public interest because cellular communication has become very important over the last ten years. It will benefit mobile 911 and the ability to communicate with work and similar things. Cleartalk is working closely with the City of Columbia to offer some space on the facility for some sort of deployment of the national first responder network that is mandated that needs to be on the air in the next couple of years.

The proposed wireless facility will not endanger the safety of residents, employees, or travelers, including but not limited to the likelihood of the failure of such structure because these structures are engineered specifically for the environment in which they are built. The towers are manufactured in the US. As part of the process to apply for a building permit, signed and sealed engineering will be submitted that show the tower is in compliance with Revision G of the structural code that is currently in effect. That takes into account factors like earth, wind probability, and things of that nature. The foundations for these things are also engineered by the state of SC and a registered professional engineer.

There are 54 sites in the Columbia area that are on the market; 48 are co-location. This tower is designed for four carriers, and others will be allowed to relocate. *The nearest tower to this one is 3,600' away.*

Mr. Cook asked if the Board should be inclined to grant the special exception, staff asks that any other requirements of §17-283 code or ordinances related to specific landscaping, illumination, signage, abandonment, requirement to obtain permits, color of the tower, and fall zone, and any other requirements of that section be considered as well. Mr. Feigenbaum agreed to comply.

Mr. Cook added that should be noted that the communication tower be located outside of the existing compound for the City of Columbia water tank facility, basically the 600' area the applicants are

looking to build be outside the fenced area of what is currently existing onsite. *Mr. Feigenbaum said they plan to be immediately adjacent to that site.*

Testimony closed for Board discussion.

Motion by Mr. Hubbard to approve the request for special exception for 4498 Broad River Road to erect a wireless communications facility as the testimony has indicated there is little, if any impact, on traffic, or vehicular or pedestrian safety; noise/lights/fumes/or air flow will not be affected negatively; the aesthetic character, given the fact of this location, will be very minimal; the orientation and spacing will not be a problem; it will not adversely affect the public interest; in addition, the structure itself will not endanger safety, nor will it detract from aesthetics. It will not be within 1,000' of another tower. They had thought of not co-locating but that will not work; and they are willing to co-locate with others.

In addition, as part of the motion as agreed upon by the applicant, it will be located outside the fence compound of the City of Columbia, and they will be complying with all the other requirements in the Ordinance concerning this tower. *Motion seconded by Mr. Salley. Request granted 4-0*

IV. OTHER BUSINESS

Approve February 12, 2013 Minutes

Motion to approve the February 12, 2013 minutes by Mr. Salley, seconded by Mr. McKnight. Minutes approved 4-0.

There being no further business, motion to adjourn at 12:42 p.m. by Mr. Hubbard.

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Frieda H. Dortch,

Petitioner,

v.

City of Columbia, Planning &
Development Services/Zoning
Division,

Respondent.

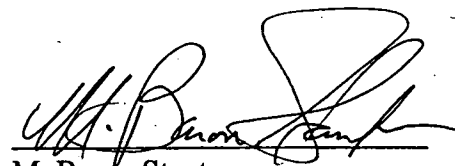
IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 13-CP-40-02159

CERTIFICATE OF MAILING

The undersigned does hereby certify that the undersigned caused a copy of the foregoing to be deposited in the United States mail, postage prepaid, on the date indicated below addressed as follows:

Mr. Ernest W. Crowmartie, III, Chair
City of Columbia Board of Zoning Appeals
Zoning Division
P. O. Box 147
Columbia, SC 29217


M. Baron Stanton

Date: _____

4-16-13

**“Copy of the Proceedings” in the Second BOZA Proceeding
Feb. 12, 2013 Filed By City, dated Apr. 30, 2013
(Exhibit D to City Motion and Return)**

EXHIBIT D

Board of Zoning Appeals)
)
City of Columbia) **ORDER**
) **ON A VARIANCE**

Date Heard: February 12, 2013
Case Number: 12-081-V
Property: 825 & 825 ½ Heidt Street (TMS# 11409-15-03)
Zoning District: RG-1, -DP (General Residential in a Design Preservation Overlay)
Applicant: Frieda S. Hatten Dortch
Other Parties in Interest: Derek Riley, 810 Heidt St, Columbia, SC 29205

The City of Columbia Board of Zoning Appeals held a public hearing on February 12, 2013 to consider a variance request Frieda S. Hatten Dortch, Applicant, pursuant to §17-112 City of Columbia Code of Ordinances; and in accordance with the requirements of §17-275, which states that a minimum area of 5,000 square feet is required for each dwelling unit within the RG-1 district.

After consideration of the application and case summary, the Board decides as follows:

Findings of Fact:

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

The subject property is located 825 Heidt Street in Columbia, South Carolina. The applicant requested a variance to the lot size requirements in order to establish a duplex in a structure that had been vacant for more than 12 months, since at least November 7, 2005, and had lost any claim to legal nonconforming status. The RG-1 district requires 5,000 square feet of lot area per unit, and 10,000 square feet of lot area would normally be required in order to establish a duplex. This lot contains approximately 7,644 sq. ft. and thus the applicant is requesting a variance of approximately 2,356 sq. ft. to the lot size requirement for a duplex in an RG-1 district. The applicant has submitted a site plan showing that four off-street parking spaces can be provided to the rear of the house, and has testified that to the best of her knowledge, the building was constructed as a duplex in or around 1930.

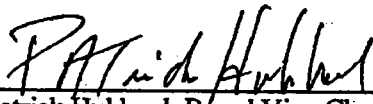
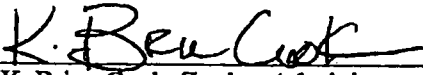
Conclusions of Law:

Pursuant to the Standard of Review in granting a Variance (§17-112), we have reviewed the applicant's request for a variance from the lot area requirements to establish a duplex within the RG-1 district. Based on the foregoing, we conclude as a matter of law that the Applicant has failed to meet all of the requirements for a variance, and make a ruling as to the requirements considering the following:

1. Extraordinary and exceptional conditions do not exist for the property. While the house was likely utilized as a duplex in the past, it became non-conforming and lost its legal non-conforming status following a period of vacancy of greater than 12 months. There are many other non-conforming duplexes in the area and former duplexes that have been converted to single-family dwellings, including a conversion of a duplex across King Park reviewed by the Board at the January 2013 meeting.
2. The conditions do generally apply to other property in the vicinity as there are several non-conforming or former duplexes in the area.
3. The application of this division to the particular piece of property would not effectively prohibit or unreasonably restrict the use of the property in that the property may be utilized instead as a single-family residence and the applicant has not substantiated her testimony that the cost of conversion to a single-family residence would be unreasonable; and
4. Authorizing this variance would be of substantial detriment to adjacent property or the public good, and the character of the district would be harmed in that additional density would be added to the block that had not been present at least since this property had gone vacant and the district allows for additional density based upon lot size.
5. Further, the reasons set forth within the application do not justify the granting of the variance, and the requested relief to decrease the lot size requirements in order to establish a duplex is not the minimum necessary to make reasonable use of the land, building, and structure; and
6. The granting of the variance would not be in harmony with the general purpose and intent of the Zoning Ordinance as the Ordinance has declared that *"It is the intent of this article to permit these nonconformities to continue until they are removed, but not to encourage their survival. Nonconforming uses are declared by this article to be incompatible with permitted uses in the districts involved"*, and it would be injurious to the neighborhood and otherwise detrimental to the public welfare.
7. The fact that a property may be utilized more profitably should a variance be granted, may not be considered grounds for a variance.

Therefore, based on the foregoing, the Applicant's request for a Variance to the lot area requirements in order to establish a duplex is hereby **DENIED**.

AND IT IS SO ORDERED!

	March 12, 2013
Patrick Hubbard, Board Vice-Chairman, Presiding	Date
	3/12/13
K. Brian Cook, Zoning Administrator	Date

Date Mailed to Applicant
and Other Parties of Interest:

3/12/2013 AHC

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

CITY OF COLUMBIA
BOARD OF ZONING APPEALS MINUTES
JANUARY 8, 2013 10:00 AM

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

In attendance: Patricia Durkin, Pat Hubbard, Reggie McKnight, Calhoun McMeekin, and Chuck Salley

Absent: Ernest Cromartie, III; Preston Young

Staff: Brian Cook, Andrew Livengood, Andrea Wolfe

I. CALL TO ORDER and DETERMINATION OF QUORUM

Pat Hubbard, Vice-chair, called the meeting to order at 10:03 AM, and introduced the members of the Board of Zoning Appeals (BOZA). Mr. Hubbard explained the purpose and role of the Board of Zoning Appeals.

Brian Cook, Zoning Administrator, Planning and Development Services Department, reviewed general housekeeping rules and noted changes to the agenda since publication. On the Regular Agenda, Item 6, 3922 W. Beltline Boulevard, special exception to establish a gasoline service station has been deferred to the March 12th meeting; and item 7, 2604 Devine Street, special exception to establish a beer and wine store has been withdrawn by the applicant. Mr. Cook proceeded with review of Consent Agenda items.

II. CONSENT AGENDA

A. OLD BUSINESS

None.

B. NEW BUSINESS

- | | | |
|--------------|---------|--|
| 1. 13-004-SE | Dist. 3 | 2507 Devine Street (TMS# 11316-15-12) Special Exception to establish a residential dwelling unit in a commercial district (Penelope M. Noble)(C-2). |
| 2. 13-006-SE | Dist. 2 | 3122 B Beltline Boulevard (TMS# 14004-03-51) Special Exception to establish a non-emergency medical transportation service (Martin L. Smith, Midlands Transportation Service, LLC)(C-3). |

Motion by Mr. McKnight to approve Consent Agenda items subject to any exhibits and conditions that may be found within the case summary for that application and to adopt as the findings of the Board, those findings in each case prepared by Staff, also found within each case summary; *seconded by Mr. Salley*.
Consent Agenda items approved 5-0.

III. REGULAR AGENDA

A. OLD BUSINESS

Barry Stanton, attorney for the applicant, was involved late in the process when Ms. Dortch filed her application. An amended application was sent to the Deputy Zoning Administrator requesting an appeal. He stated his belief that the applicant has a lawful non-conforming use and therefore does not need a variance, however as an alternative would like to request a variance.

Mr. Hubbard stated if the applicant wished to appeal, it must be an appeal. There are notice provisions and the property has been noted as a variance. ~~Nothing has been advertised as an appeal.~~

Mr. Stanton said he wanted the appeal process to be an option for his client, Ms. Dortch because when going through the process for a variance, she was not made aware there could be an appeal. If the Ordinance does not apply or prohibit the request, a variance is not required for something that does not apply.

Mr. Hubbard reminded if there is a lapse of a certain amount of time with a non-conforming use, it is no longer a legal non-conforming use. Mr. Stanton stated he is familiar with provisions in the Ordinance to that effect.

Mr. Cook stated the Board of Zoning Appeals determined the non-conforming status as a duplex was lost in 2008.

Mr. Stanton did not want to waive any right already lost by going forward with the variance and not mentioning the request for appeal. He said they wished to go forward with the request for variance, but wanted to preserve any rights they still had in that regard including any that would have afforded Ms. Dortch's ability to get a timely appeal based on proper notice to her on the basis of which she is prohibited from doing this. Additional papers were submitted on February 8th for review by the Board.

He proceeded with review of the criteria for a request for variance.

- 1) *Extraordinary and exceptional conditions pertain to the subject property* because it is an existing use and structure in its present configuration. The structure has separate utilities and no internal stairs. The structure was built as a duplex built in 1930 and to convert into a single family unit would require substantial alteration, and it would be very costly and time consuming. It would change the entire structure which is considered historic.

Mr. Hubbard asked if a contractor had been spoken to or if quotes for reconstruction had been given.

Mr. Stanton said he would let Ms. Dortch speak to that effect and on what she has invested. The property is next to a park area, so she did not feel it is a density issue. Because of the way the house is situated on the lot, it leaves a very large back yard which will allow for some of the yard to be used for parking.

- 2) *These conditions do not generally apply to other properties or duplexes in the area* because there not many other duplexes in the area
- 3) *Because of these conditions, the requirements of the Zoning Ordinance effectively or unreasonably restrict the use of the property* because the property cannot be used. The character of the district is to have two family dwellings. Everyone knows this was a duplex since 1930 and that it was always used that way.
- 4) *Approval of the variance would not be of substantial detriment to adjacent property or to the public good, and the character of the district would not be harmed.* Public good would be better served by having the house repaired and occupied, than having the house demolished, condemned, or vacant.

The variance is the *minimum necessary* to be in harmony with everything. *Approval 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* - Ms. Dortch wants to provide additional parking which will be in the back. She will continue using something as a duplex that has been a duplex. It will not hurt the public.

Mr. Hubbard questioned additional criterion – *if the proposal is in harmony with the purpose and intent of the Zoning Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare*. He referred to the provision of the Ordinance that refers to the purpose and intent of non-conforming uses is that they not be encouraged to go on; it is not desired they continue, but to be what zoning is and asked Mr. Stanton to comment on that with intent to the Ordinance.

Mr. Stanton responded it is in the way the criterion is stated within the Zoning Ordinance that the property is largely zoned for two-family residential structures. He feels she is doing the utmost to comply with the Ordinance and meet the spirit and intent of it. Mr. Stanton said with regard to the provision, *"the intent of the Ordinance has to first be balanced with the intent of the Constitution and people's vested property right. It is a trade-off."*

Mr. Hubbard stated without having an Executive Session and city attorney present, the Board will not 'wander' into questions of constitutionality. He asked Mr. Stanton if he wanted a ruling made by the Board, or if this case needed to be moved to the end of the meeting to allow discussion with the city attorney on constitutionality of the Ordinance.

Mr. Stanton clarified his response that he *did not want a ruling on what is constitutional, but did want recognition that is the whole purpose of a variance which is to avoid the level of unfairness that would lead to that*. With regard to the stated intent of the Ordinance, *that is the people who pass the Ordinance who say here is our intent, we do not want to encourage this*. He does not feel it is encouraging the continuance of a non-conforming use, *he feels it is allowing through those that need to be allowed through, especially where they are making an effort to comply to the utmost intent with the spirit of the Ordinance*.

Mr. Stanton asked Ms. Dortch some questions regarding the basic aspects of her application.

- 1) A document was submitted on the applicant's behalf entitled "expected testimony of Freida Dortch" and asked if everything in that document was true to her best belief, information and knowledge. Ms. Dortch stated it was.
- 2) He had explained the history of the house; that it had been in the family for decades and probably built in 1930 as a duplex, asking Ms. Dortch if that was correct. She stated it was.
- 3) He asked if it was true because the way it was configured that it could hardly be turned into a single-family residence without substantially altering the structure at current grade expense and changing the design of the building. She stated that was correct.

Mr. Hubbard asked what efforts had been made to get the expenses for alterations, and what various alternatives were. He referred to a previous case on the other side of King Park where the owners wanted to convert a similar duplex into single-family, and came up with some 'very creative ways' to do so. He was puzzled how they found it economically feasible and she does not.

Ms. Dortch stated she had a fire at the back of the house in 2009 which cost \$23,000 to repair. She did some work at the front of the house that cost \$12,000. She has not been able to do interior work or any additional repairs because she was denied entry.

Mr. Livengood said Ms. Dortch came to get permits for a duplex, which could not be issued. Permits could be issued for a single-family residence instead. He could not speak to the inspector issues.

Mr. McMeekin said she was denied a permit for a duplex because non-conforming use of the property was lost. He asked if the property was now insured. Ms. Dortch said it was not, but was insured until the mortgage was paid. It was her brother's responsibility to pay for insurance which he did not do, and she did not find out until the fire occurred. Her brother lived there the entire time after the fire but she cannot prove that he lived there, so she lost non-conforming status.

Ms. Durkin asked who paid the utility bills while the brother lived there. Ms. Dortch stated she paid utility bills off and on while he lived there, but she did not pay insurance. She has old records of water bills, but no utility bills. When her brother had money, he paid the utility bill but he lived there entire time.

Mr. Hubbard stated if only one occupant lived in the duplex, it was not being used as a duplex. He asked if Ms. Dortch spoke to the contractor or got estimates to convert to single-family while doing repairs. Ms. Dortch did speak to the contractor who said it would cost over \$100,000 to convert. She received two estimates. He asked what the \$100,000 would cover. Ms. Dortch said there are two entrances, a living room upstairs and a bedroom downstairs. The house would need to be 'taken apart' to make it a single-family home. Each apartment has its own kitchen and separate utilities.

Mr. Hubbard stated he lives in a home that was a duplex which had interior stairs, but does not feel stairs will cost \$100,000. Ms. Dortch said it was not necessarily the stairs that would cost \$100,000, it would be interior repairs. Interior stairs would need to be added, flooring added, sheetrock, paneling, redo the hardwood floors; there would be labor costs and painting. That is what would cost and it is a financial burden. The house is a duplex which her mother initially rented, they lived upstairs and another family lived downstairs. She grew up there. The house is constantly referred to as a single-family house, it is a duplex already. Because each unit has a separate kitchen, she would need to remove a kitchen to make it single-family residence, which is costly. She paid \$7,000 to have stairs installed on the back of the unit when it burned. She has had all changes approved by the historical society. Ms. Dortch used a certified contractor for repairs already made.

Mr. McMeekin questioned the loss of use as a duplex and the maintenance of the unit as a duplex. No one took away Ms. Dortch's right to have a duplex and to have it exist. She had that status and somehow lost it. In his mind, a decision was made by the applicant.

Mr. Hubbard reminded that was not the issue presented today, it a request for a variance only. He said the reason the structure does not comply with zoning is a density problem. There must be 5,000 sq. ft. per unit. To have a duplex there, is a little over 7,500 sq. ft. It seems the request is almost to rezone to the next category which is 7,500. It is a very substantial variance that is being requested. He asked the applicant to stay focused on the criteria for a variance.

Mr. Salley said the Board was interested in Ms. Dortch's experience and the basis of her estimation of why the cost would be that much. She has explained that she has had contractors and has had other relatively minor aspects of the repairs. Based on those repairs and approvals by the historical society, she has determined the substantial costs for renovation would be an economic hardship. Ms. Dortch agreed.

Mr. Salley asked Ms. Dortch if, besides this house, she had any other personal background in the building, repair or renovation industry dealing with contractors or doing any work herself. Ms. Dortch stated she did as she has renovated other houses, gotten contract estimates, and renovated the house she currently lives in.

Mr. Salley referenced the density question and asked where the house is located, what proximity it is to the park, where the proposed parking will be, and why allowing this to be a duplex would not create a density issue in this neighborhood.

Ms. Dortch said it would not be a density problem because the house is one house from the corner of Heidt and Preston Street. There is an empty lot directly across the street and next to the lot is Kings Park. The backyard is open, the park is visible from the yard, and it is a direct path to the park so there is not a density

issue. With the diagram provided last month, four parking spaces can be added in the back yard if parking in the front is an issue; and still leave a substantial backyard area. When one walks out the front door, you walk down a sidewalk straight to a parking area. Each unit has a porch downstairs and upstairs is enclosed. The staircase on the top of the house is on the outside.

Mr. Salley asked why she felt the restriction would be unreasonable.

Ms. Dortch said the restriction is unreasonable because this house is an existing duplex. It was mentioned by one of the Board members that only one person was living in the house; however she failed to say it has been a family home through the years. Her daughter lived in the upstairs while attending Midlands Tech. Other people have lived in the house. She just did not list everyone who lived there. It is important to her and her family to share the house and have a decent living space for everyone. It is important to maintain the history of the house. They are not a burden to anyone or to the neighborhood. They have lived there for over 40 years. Ms. Dortch has complied with everything and kept up the house as well as she can. She now needs to do interior work. It is an expense on her and her family. It is not rental property, it is her family home. She wants to repair a home that was damaged so that her family can continue to live there. She wants to take care of her property. Because it stayed there for so long, it deteriorated.

Mr. Hubbard stated if Ms. Dortch wanted it for a family home, it will be single-family; and she is not asking for it to be a family home but two family units. Ms. Dortch said two separate units in her home. She has children and her brother has children. Her children live upstairs and her brother lives downstairs.

Mr. Hubbard stated that zoning cannot be done individually for her; this is about the land use. If the family wanted to live there, the kitchen can be removed without being very costly. It may be the home she thinks of as her family home. As a duplex, she will have the option to rent out. Even though she may live in one unit and her brother may live in another, a variance cannot be granted on only having the members of her family living there forever.

Ms. Dortch said she "understands that, and continued to state that this is already a duplex". She continued to say, "with all due respect to the Board, this house is zoned in a duplex zoning area". She is asking for consideration because she would like to maintain what she already has.

Mr. Stanton stated to Ms. Dortch for clarification that regardless of whether it is used as a family home or used as duplex in some other way, the criteria needs to be addressed in that respect. Why is an unreasonable restriction regardless of using it as a family home, or having the right to rent it out, or the right to even sell it as a duplex.

Mr. Salley asked Ms. Dortch if regardless of the use of the property if this restriction would leave any economically viable way to deal with this property. Does forcing her to change it to a single-family dwelling deprive her of reasonably economically viable use of the property? Ms. Dortch stated it does.

Mr. Stanton repeated discussion regarding the fire and history of the duplex, and the loss of non-conforming status. Mr. Hubbard stated that was not for discussion today, and if the applicant can factual non-conclusory testimony that could be offered in an expedited manner, to do so. Mr. Stanton felt all the criteria for request for a variance had been addressed, and asked that the Board consider approval of the request.

Derek Riley, neighborhood resident, lives across the street from the property. Mr. Riley said the house was basically a squatter house; water and electricity have been "banked" from other residents. The house has been in a state of blight for about three years, but cannot be demolished because it is in a historic protective overlay district which is the only reason the house remains standing today. Mr. Riley is opposed to the variance request, as the neighborhood is dense enough already and increased density will hinder the further improvement of the block.

The testimony was closed for Board discussion.

Ms. Durkin voiced concerns with parking, and the potential for six cars behind the unit which would create noise, lights, and fumes. Parking on the street, which looks fairly narrow, for up to six cars would be a detriment. She feels the money already spent to keep this as a duplex would be have been better spent in the establishment of a single-family home if Ms. Dortch wants to have her family continue to live there because there is no guarantee down the road that the property will not be rented out.

Mr. Hubbard does not feel there are extraordinary and exceptional conditions for this case. It is an area that was developed well before zoning was adopted in Columbia, thus there are a lot of non-conforming uses in terms of density and other requirements throughout the area. By granting this area RG-1, City Council obviously desired a drop in density in this area, while also allowing some duplexes and similar things. Many other properties in the area have kept their non-conforming status or if lost, have managed to obtain another type of use that satisfies the statute. He does not feel it effectively prohibits, it may not provide as much return as one could get with a duplex, but would get a reasonable return in value. It is not the minimum necessary. This is an area that has been 'pulling itself up' and keeping this duplex would not enhance the area.

Mr. McMeekin echoed Ms. Durkin and Mr. Hubbard's comments and does not feel the variance should be approved.

Mr. Salley asked staff if the house is considered condemned and not habitable; and asked if a stairwell is required for a two-story single-family home.

David Hatcher, City Housing Official, stated as far as property maintenance concerns, it is mostly exterior violations that need to be brought up to code. He does not feel it is unfeasible to occupy the structure but has not been inside, and does not know what needs to be done to bring it up to single-family residence. The homeowner has been made aware of these issues. There has been an open case on this property since 2004. Several improvements have been made on the property but there are still several property maintenance issues on the exterior that need to be done to bring it up to code. Mr. Hatcher is not sure what has been done on the inside. There has not been a point of notice at this time that the property has been completely brought up to code during this time.

Michael Goodlet, Housing Inspector, added that an interior stairwell is required for a two-story single-family home.

Motion by Mr. McMeekin to deny the variance for 825 and 825 ½ Heidt to the minimum lot size requirements to reestablish a duplex.

There are not any extraordinary and exceptional conditions that pertain to the subject property; there are no unreasonable restrictions for the use of the property.

It is his opinion that approval of the variance would be a detriment to the adjacent property and the public good.

He referenced to the testimony given by Mr. Riley with regard to the character of the district.

To allow this variance is not in harmony with the intent and purpose of the Zoning Ordinance.

It is injurious to the neighborhood and detrimental to the public welfare.

Motion seconded by Ms. Durkin. Request denied 5-0.

B. NEW BUSINESS

4. 13-003-SE Dist. 2 1206 Heidt Street (TMS# 11410-02-17) Special Exception to expand a religious organization (Willie Williams, First Nazareth Baptist Church)(RG-2, -DP).

Willie Williams, representing First Nazareth Church, said the church already has a PUD. This property is located between the childcare center and the parking lot of the church. Plans are to use the property as office for training and other benefits for the church. This property is not part of the original PUD.

Mr. Hubbard reviewed the criteria for special exception with Mr. Williams:

Impact of the proposed use upon traffic in the area – no impact.

Impact of the proposal upon vehicular and pedestrian traffic – none. All ingress/egress will be through the church parking lot.

Impact on aesthetic character of the environs – there will be no change, only improvement

Impact in terms of orientation and spacing of improvements or buildings – none, will be an improvement

Adverse impact on public interest – in his opinion, it should not have any affect as nothing will be changed and it is for a religious activity.

Any changes in the exterior of the building – no changes to the exterior; some interior rewiring to be done

Mr. Cook stated that any changes or additions to the exterior (stairwell, railings, handicapped accessible ramp, etc.) will need to be reviewed by the Design Development Review Commission and/or D/DRC staff.

Dr. William Rutherford, member of the Historic Waverly Neighborhood Improvement and Protection Association, spoke on behalf of the Association. Dr. Rutherford stated they are against the now changing use of the property as the property is a residential structure. Once it is used as office, it may become a commercial piece property. He questioned if this would cause the zoning code to change from residential to commercial. The church has purchased a great deal of property in the Waverly neighborhood, and the church has is changing the historic nature of the neighborhood. The church has presented to this Board and the Planning Commission to have the zoning code changed from residential to a C-3, unrestricted commercial use, which can mean a lot of things. It is felt if the zoning it changed, it may be sold to someone in the future who will change the use of the property to a less desirable use.

Mr. Salley said that is not the case in this situation. Mr. Hubbard asked staff to respond to the applicant's request and clarify how the zoning code works.

Mr. Cook said a religious organization with a special exception can basically go into all of the residential districts. It will not change the zoning of the property; zoning will remain as is which is still residential. If a zoning change is to be made, the request will present to Planning Commission and City Council, the neighborhood must be informed, and posting must be done. This particular request is to use the existing residential structure for the use of the church for offices or for meeting space. It will not change the zoning of the property. This meeting does not have authority to do that.

Dr. Rutherford voiced concerns that this may be the beginning of a series of changes.

Mr. Hubbard said he unsure of what plans they have for the future. The neighborhood still has the historic overlay which limits the church use of the building. If they would want to demolish the building or substantially change it, the church would need to present to the D/DRC. The bottom line is there is no zoning change, church use only, and any major exterior changes will require D/DRC review and approval.

Dr. Rutherford thanked the Board and said that is the type of information he was looking for.

Sylvie Deseo, neighborhood resident, is opposed to the request. Ms. Deseo said the church owns many lots that are already zoned commercial and can have a new building built that will be designed for office and training spaces. Converting residential into office space does not seem optimal. In addition, the church owns residential properties across the street from the property presented today which they have boarded up and are not taken care of, and then demolished. She voiced concerns with the church and said the church is not very

neighborly, and not had any conversations with residents. She is concerned with future zoning change if the building is used as an office for a long time. They want to live as residents in a neighborhood.

Mr. McMeekin asked Ms. Deseo if it is her testimony that the church owns other property and has a history of removing structures around it.

Ms. Deseo confirmed and referred to the map and pointed out church property with houses where several have been boarded up because they are not being used. That is not good for the neighborhood. She said the neighborhood has a long history of not being a good neighborhood and has improved tremendously over years.

Mr. Hubbard said many Board members are personally sympathetic toward the point of view but the BoZA is constrained by what is being presented and requested today.

Ms. Deseo understood and felt the proposal will not adversely affect traffic and parking because there will not be any additional cars; however there is the possibility it will adversely affect the public interest.

John Sherer, director of cultural resources for Historic Columbia, is opposed to the request. He gave a history of the Waverly Neighborhood and renowned African Americans, referred to the demolition of the historic Elmore store, and said the church has little to no appreciation of historic Waverly. Historic Columbia Foundation encourages the Board deny the church's request.

Mr. Hubbard reminded Mr. Sherer that the Board is constrained the criteria for special exception. Mr. Sherer understood saying there are a couple of things such as the aesthetics which must be reviewed by the D/DRC. He commented most on *no adversity to public interest*.

Mr. Hubbard sympathized and said the house being reviewed is landlocked on three sides by institutional development. It could be used as a residence, but there are some difficulties to that. Mr. Sherer said there are residential options. There are individuals who represent the church who live in close proximity.

Mr. Salley added that Mr. Sherer failed to mention in his neighborhood history that the church has been a cornerstone in that community since 1877.

Mr. Sherer said it is *"A little church with a big heart"* and it is hoped that it will continue to be a part of this community for a long time. Responding to Mr. McMeekin's question regarding the demolition of the Elmore Store, Mr. Sherer said it came out of a historic district that fronts Gervais Street and Gervais Street was not part of the included zone. He feels with greater oversight and looking at all of the historic assets within neighborhoods, it could be prevented in the future. That was one building that did not benefit from either local landmark designation or fall within the historic district. It was a very important civil rights site.

Mr. Williams said the City of Columbia went to Dr. Scott, the church's pastor requesting help in the blighted area of Waverly. The church purchased 'bad' houses in the area and torn them down. The area between Oak and Heidt Streets is commercially zoned. It had a building on the property that had been empty for five years. The church bought the property and requested a demolition permit by Ms. Moore. Six months prior, the historic society made a request for a marker to be placed but the property no longer belonged to Elmore.

Mr. Hubbard said that is not being dealt with today, he questioned the testimony made by a neighborhood resident that "the church does not even talk to the neighborhood".

Mr. Williams said *"it is not to their liking that we don't do everything the neighborhood wants us to do"*. He said they have agreed to some things with the neighborhood but *"cannot stop what vision that God has given our pastor in developing our activities"*. They will be very happy to continue to do what they can, but have a

mission to fulfill, and his job is to implement his mission as received. There is dialogue but not necessarily agreement.

Doris Hildebrand, Historic Waverly Community president was sworn in to speak. Ms. Hildebrand said the church does not talk to the community. She was unaware of the historic sign request for the Elmore Store, and feels that someone in the community should have known about it. The neighborhood has struggled to keep the community historic. Ms. Hildebrand feels communication must be made between the church and the community, "*no communication is not good*". They do not want the community broken up into different pieces.

Pastor Scott was sworn in and said the church made a '*gentleman's agreement*' with the neighborhood. He grew up in the area and the neighborhood is very important to him. The church has spoken with the neighborhood regarding certain things but does not feel they need to talk to them about every minor thing. They have adhered to the agreement made a long time ago.

Testimony closed for Board discussion:

Mr. McMeekin said the church bought the property before a use was defined. If special exception is not approved, they still have the property anyway. Of his concern is the neighborhood opposition.

Mr. Hubbard said the question is if the intended use of the property would be of detriment to the neighborhood. Reviewing the criteria for special exception, he does not see any grounds for denying the request. The building must be used for church uses only.

Motion by Mr. Salley to approve the request for special exception for 1206 Heidt Street to expand a religious organization. The applicant has proven it will not have an impact on traffic, it will have no impact on vehicular or pedestrian safety, the proposed use in terms of noise/lights/fumes/or obstruction of air flow will not impact the area, the proposal will not impact the aesthetic character of the environs to include the possible need for screening from view there will be no impact in terms of orientation and spacing of improvements or buildings, and it does not adversely affect the public interest; *seconded by Mr. McKnight.* **Special Exception granted 5-0.**

Brief recess at 11:48 AM; meeting resumed at 11:56 AM

5. 13-005-SE Dist. 1 4913 N. Main Street (TMS# 11604-03-12) Special Exception to establish drinking establishment (Ravinder Thiara) (MX-1, -NC):

David Sidens, local attorney, was available to assist the applicants Ravinder and Heidi Thiara.

Heidi Thiara, property owner, said they initially purchased the property to open a convenience store. Once the property was updated, they decided it would be better investment as a restaurant and sports bar because there are so many convenience stores in the area already.

Mr. Hubbard asked if there were any additional criteria besides the regular criteria for special exception that needed to be considered.

Mr. Livengood said there four additional criteria that must be considered. These are:

1. Spacing requirements. Lots used as drinking places shall not be located closer than 400 feet to any other lot used as a drinking place and shall not be closer than 600 feet to any lot which contains a school or place of worship.
2. Hours of operation. The hours of operation shall be subject to approval by the board of zoning appeals when such establishment is located adjacent to a residential zone.

3. Parking requirements. Off-street parking requirements shall be 12 per each 1,000 square feet of gross floor area. In the North Columbia overlay, parking is reduced by 20%.
4. Ingress and egress. Adequate ingress and egress shall be provided.

These provisions have met staff approval but are subject to the Board's discretion.

Mr. Hubbard reviewed the criteria for special exception with the applicant.

Impact of the proposal upon traffic – there will be no impact on traffic because this is already in a commercially zoned area. Ms. Thiara added that they have already applied for a retail and liquor license because it would have been a convenience store. There is plenty of parking for the building.

Impact on vehicular and pedestrian safety – none, there is plenty of room around the building and it is already commercially zoned.

Impact of proposal in terms of noise/lights/fumes/or obstruction of air flow – no impact because it will be all indoor.

Impact of proposal on aesthetic character of the environs - no changes on outside at all, just some indoor changes.

Will the proposal adversely affect the public interest? People will enjoy it because it will be a fun place. Economically it will benefit because they will provide jobs. Hours of operation have not yet been decided.

Ingress and egress – Ravinder Thiara said there are 50 parking spaces on the left side of the building, and he will employ someone to handle traffic and parking. There should be no problems with people turning into the property or exiting the property.

Impact of proposal in terms of orientation / spacing - none

Testimony closed for Board discussion.

Mr. Salley questioned the four requirements set for drinking establishments asking if the requirements were met, did not have to be met, or if the Board needed to require any needed to be met specifically. He asked if there were residential houses across the street.

Mr. Livengood said as with any motion, criteria needs to be addressed and these are just additional criteria. They have been reviewed as best as possible by staff and appear to be met. The criteria says residential district and it is not a residential district.

Motion by Mr. McKnight to approve the request for special exception for 4913 N. Main Street to establish drinking establishment. There is no adverse impact of the proposal upon traffic, no adverse impact upon vehicular and pedestrian safety, the proposal does not adversely impact in terms of noise/lights/fumes or obstruction of air flow upon adjoining properties, the proposal will not impact the aesthetic character of the environs.

Mr. McMeekin asked that the motion be amended to include that the four provisions required for a drinking establishment - Spacing requirements, Hours of operation, Parking requirements, and Ingress and egress are also met.

Mr. McKnight acknowledged and noted the amendment to his motion; seconded by Mr. Salley. Request granted 5-0.

6. 13-007-SE Dist. 2 3922 W. Beltline Boulevard (TMS# 1609-08-02) Special Exception to establish a gas station (Krunal Parmar, Jay Hanuman LLC)(C-3).

7. 13-008-SE Dist. 3

2604 Devon Street, Unit A (TMS# 11316-11-02) Special
Exception to use as a fine retail store (Andrew Johnson,
Johnson's Products LLC)(C-2).

Withdrawn

8. 13-009-VDist. 2

**Block Bounded by Whaley, Wayne, and Heyward Streets
(TMS# 08913-16-05) Variance to height and parking requirements
for an apartment complex (Gary W. Morris, Haynesworth Sinkler
Boyd, P.A.)(M-1, -PD (MX-1 pending)).**

Gary Morris of the Haynesworth Sinkler Boyd law firm; Scott Garvin of Garvin Design Group; and Daniel Rothchild, principal for the project, presented. Individuals from the neighborhood were present to speak.

The applicant previously presented to the Planning Commission for rezoning to MX-1. The proposed project is a four-story apartment complex, with some store front. The site plan presented to the Planning Commission and was approved with staff recommendations to be met. The developer is seeking a variance on the height of 9', and for parking of 258 spaces instead of 344. From the beginning, meetings have been held by the developer with the neighborhood and input has been received from the neighborhood to get a structure that is liked by both.

Scott Garvin of the Garvin Design Group is the architect for the project. Garvin Design Group was also the architects for the renovation of Olympia and Granby Mills as well as 701 Whaley in the neighborhood. A number of meetings were held with the neighborhood who had a lot of input into the design. One of the main priorities of the neighborhood was to protect the park at the corner of Whaley and Olympia which anchored the neighborhood and Mill Village, and to maintain the view corridor from that corner. The developer has committed to leaving the park alone which has limited some of the buildable area. The initial scheme ran parallel to Olympia along Heyward and was a much more efficient design from the standpoint of the layout which allowed for more parking spaces to be developed on site, but would have blocked the view corridor.

The result of shifting the building caused it to be built on the slope instead of parallel to it. The change in grade from Heyward to Whaley Street is about 11'. It is desired to maintain level floor plates for each of the four floors and locate retail on Whaley. Setting the elevation at Whaley to allow ingress and egress for pedestrians and carrying that elevation all the way around necessitated the need for a variance. The height at Whaley is under 50', and the extreme height at Heyward is 59'; so the average is about 55'. There is one main entrance into the facility at the center facing out toward the parking lot, and the height at that point is about 54'.

The third request of the neighbors goes back to a study done before the Mills were renovated, to provide retail in Olympia that was Olympia-oriented retail. That is a component of the project that was included and actually necessitated the need for a variance for parking. The retail will be located on Whaley for pedestrian access to the retail. There is an existing curbcut as one enters the site off of Whaley Street for parking to access the retail.

There will be 158 one-bedroom units and 24 two-bedroom units for a total of 206 beds. The one bed-room units are predominant and comprise over 90% of the units. The request for a variance is based on the fact that the developer feels that 1.75 cars per unit for a one-bedroom unit is excessive. Conversations were held with city staff, and if this project was zoned as a private or public dormitory, one parking space per bed would be required for a total of 206 parking spaces when there are 258 on-site.

There are two reasons this was not requested: 1) the proposed project is within 600' of a RD-2 zoning, Olympia and Granby Mill, and 2) MX-1 zoning is being requested to provide retail for the neighbors. 6,500 sq. ft. is allocated for retail with three bays proposed; a coffee shop, sandwich shop. There is no tenant at this time.

Mr. Garvin addressed the criteria for a variance saying there will be no impact on traffic; it will actually be less because of the reduction in parking, the elimination of curbcuts on Heyward and Whaley. This will be an improvement on safety because with retail, students and residents will be encouraged to walk back and forth to retail instead of driving their cars elsewhere. The developer has provided new sidewalks all the way around the site which is improved safety. Overall, it is felt the aesthetics have been improved with the development.

To focus on the main criteria, the 1.75 parking for a single bedroom unit is excessive. From a city standpoint, they are aware the Ordinance will be changed in the future, but it is unknown when; and that is the reason for the request for variance.

Mr. Salley commented that *"this is how development should occur and is case study for doing it the right way"*.

Bob Guild of the Granby Mill Village Neighborhood Association spoke in support of both variances, for the height of the project and for parking. Mr. Guild thanked the developers for working very closely with the neighborhood and asking for input. They gave up buildable space and parking to honor the neighborhood requests. It is felt the proposed parking will serve adequately for the retail and residents of the new apartment project. The neighborhood is very excited about having neighborhood retail. He applauded the developers for a good design and very cooperative commitment to working with the neighborhood.

Ryan Nevius, executive director of Sustainable Midlands, Granby resident and member on the Granby Board, said this is a great sustainable use of the property and spoke in support of the project. From the Rocky Branch Watershed Alliance point of view, the fact the green space has been retained and the fact the developer is using low impact development and retaining the water underground is an exciting opportunity for them to have a display in the Rocky Branch neighborhood where good development can be used and low impact development can be celebrated. The developer worked with all the surrounding neighborhoods which was greatly appreciated. She feels having retail for students will cut down on in and out traffic. It is a great design and asset to promoting connectivity and walkability to the city.

Testimony closed for Board discussion. Mr. Hubbard and Mr. McKnight agreed with Mr. Salley's earlier comments regarding the proposed project.

Motion by Mr. Hubbard to approve the request for variance for the Block Bounded by Whaley, Wayne, and Heyward Streets to height and parking requirements for an apartment complex. Testimony indicates there are extraordinary and exceptional conditions that do not generally apply, this is the minimum that would allow reasonable development and otherwise, would unreasonably restrict use of the property and force bad things to have to happen, it would not be of substantial detriment, and it will be in harmony with the public interest and improve the area, and it is the minimum necessary; *seconded by Mr. Salley. Request granted 5-0.*

Mr. McMeekin left at this time.

9. 13-010-SE Dist. 1 4498 Broad River Road (TMS# 06300-01-01) Special Exception to erect a wireless communications facility (Mike Feigenbaum, PTA-FLA, Inc., dba ClearTalk)(C-1).

Applicant proposes to construct a 160' tower within a 1,600 sq. ft. compound. The proposed location is within the Harbison State Forest adjacent to a City of Columbia water tower, but not on City of Columbia property. The subject and surrounding parcels are zoned C-1 which allows for a new monopole communication tower as a permitted use provided it is a minimum of 300' from a single-family residential or general residential district, and a minimum of 50' from public ROW.

In addition to the standard criteria for special exception, the BoZA must apply additional standards for a cellular tower.

Mr. Cook visited the site and it meets the separation from the residential district and the ROW, and also meets the 1,000' separation from another cell communication tower, which is one of the requirements.

Mike Feigenbaum, development manager for PTA-FLA, Inc. dba Cleartalk Wireless, is a proponent for the company.

Tom Persons, owner of Cleartalk and South Carolina resident, provided a brief history of Cleartalk which has been in SC for over four years. Cleartalk is in the cell phone business. It is an employee-owned business with the call center at N. Main Street and Elmwood. He commended staff for their assistance with this request.

Mr. Feigenbaum reviewed the criteria for special exception, and the additional criteria for a monopole:

Impact of the proposal upon traffic – none, this is an unmanned facility that will only have monthly maintenance visits.

Impact of proposal upon vehicular and pedestrian traffic – none, only monthly maintenance visits

Impact in terms of noise/lights/fumes/or obstruction of air flow upon adjoining property – this tower is below the FAA threshold for lighting a tower, no strobe or flashing light on top. The towers emit no noise or impediment of air flow.

Impact of proposal on aesthetic character of the environs – the equipment for the towers is screened with a wooden privacy fence. This particular tower is in a wooded area and only the top of the tower will be visible from the tree line.

Impact of proposal in terms of orientation and spacing of improvements or buildings – none, adjacent to a city water tank facility.

It will not adversely affect public interest. It is felt it will benefit public interest because cellular communication has become very important over the last ten years. It will benefit mobile 911 and the ability to communicate with work and similar things. Cleartalk is working closely with the City of Columbia to offer some space on the facility for some sort of deployment of the national first responder network that is mandated that needs to be on the air in the next couple of years.

The proposed wireless facility will not endanger the safety of residents, employees, or travelers, including but not limited to the likelihood of the failure of such structure because these structures are engineered specifically for the environment in which they are built. The towers are manufactured in the US. As part of the process to apply for a building permit, signed and sealed engineering will be submitted that show the tower is in compliance with Revision G of the structural code that is currently in effect. That takes into account factors like earth, wind probability, and things of that nature. The foundations for these things are also engineered by the state of SC and a registered professional engineer.

There are 54 sites in the Columbia area that are on the market; 48 are co-location. This tower is designed for four carriers, and others will be allowed to relocate. *The nearest tower to this one is 3,600' away.*

Mr. Cook asked if the Board should be inclined to grant the special exception, staff asks that any other requirements of §17-283 code or ordinances related to specific landscaping, illumination, signage, abandonment, requirement to obtain permits, color of the tower, and fall zone, and any other requirements of that section be considered as well. Mr. Feigenbaum agreed to comply.

Mr. Cook added that should be noted that the communication tower be located outside of the existing compound for the City of Columbia water tank facility, basically the 600' area the applicants are

looking to build be outside the fenced area of what is currently existing onsite. *Mr. Feigenbaum said they plan to be immediately adjacent to that site.*

Testimony closed for Board discussion.

Motion by Mr. Hubbard to approve the request for special exception for 4498 Broad River Road to erect a wireless communications facility as the testimony has indicated there is little, if any impact, on traffic, or vehicular or pedestrian safety; noise/lights/fumes/or air flow will not be affected negatively; the aesthetic character, given the fact of this location, will be very minimal; the orientation and spacing will not be a problem; it will not adversely affect the public interest; in addition, the structure itself will not endanger safety, nor will it detract from aesthetics. It will not be within 1,000' of another tower. They had thought of not co-locating but that will not work; and they are willing to co-locate with others.

In addition, as part of the motion as agreed upon by the applicant, it will be located outside the fence compound of the City of Columbia, and they will be complying with all the other requirements in the Ordinance concerning this tower. *Motion seconded by Mr. Salley. Request granted 4-0*

IV. OTHER BUSINESS

Approve February 12, 2013 Minutes

Motion to approve the February 12, 2013 minutes by Mr. Salley, seconded by Mr. McKnight. Minutes approved 4-0.

There being no further business, motion to adjourn at 12:42 p.m. by Mr. Hubbard.

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

STATE OF SOUTH CAROLINA
CITY OF COLUMBIA

BEFORE THE BOARD OF
ZONING APPEALS

Frieda H. Dortch,

Petitioner.

EXPECTED SUBMITTED TESTIMONY
OF FRIEDA H. DORTCH

The testimony of Frieda Dortch is expected to include the following, which is hereby submitted.

1. I am personally familiar with the matters set forth here, am competent to give this testimony, and give this testimony in support of my appeal (and in the alternative, variance application) and in support of any other matter to which it becomes pertinent.

2. The property in question is 825 and 825½ Heidt Street, Columbia. The building is over 2,000 square feet in size, and includes substantial porches. It has been a two-family structure for as long as I have known about it, and probably since it was first built back in the 1930s.

3. My mother, a woman of modest means and a single mother, rented the upstairs unit of the structure in the 1960s. She worked as a maid and kept other people's kids to earn a living. She also worked as a nurse's aide.

4. A separate, unrelated family rented the downstairs unit during this time. Although we seldom had money for Christmas dinner or toys, my mother established credit by borrowing small amounts of money from "finance companies" on Sumter Street for these and other things, and always making sure she paid it back. After a couple of years, around 1969, my mother obtained a 30-year mortgage loan and purchased the entire house, consisting of upstairs and downstairs residential dwelling units.

5. My brother and I both eventually joined the military, and sent money home to help out when we could.

6. My family has owned the house continuously as a two-family structure for the more than forty years since my mother purchased it. My mother continued to live in the upstairs unit, allowing nieces and nephews to rent or otherwise reside in the downstairs unit, until old age forced her to move downstairs.

7. In the 1990s, my brother returned from Virginia, where he was working for the Navy, and moved into the downstairs unit with my mother, who passed in 1995 from a stroke. My brother continued to live in the downstairs unit after my mother's death until about April or May of 2005. My daughter, Alexis Dortch, also resided at the house for approximately two years starting in 1999, while she attended school at Midlands Tech.

8. The house, like many others on the block and in the surrounding area, was structured and has been used as a duplex since before my family purchased it in the 60s. According to the Assessor's information, it is in an area zoned RG-1, which is General Residential. I understand this to be an area under the zoning ordinance intended as medium and high density residential areas characterized by two-family detached structures, among other dwelling structures. It is not RS-1,

single family residential. My understanding is that it is in some sort of design preservation district. That is exactly what I want to do – preserve its design. I do not think it has ever been a single family residence. I believe it has been a duplex since about 1930. The upstairs unit is separate from the downstairs, with a separate entrance and no internal connecting stairs. The sizes and locations of the upstairs and downstairs rooms make it virtually impossible to install interior stairs without a tremendously expensive wholesale redesign and and restructuring of the building. Over the downstairs living room is a bedroom. Over the front downstairs bedroom is a living room. The upstairs and downstairs separate dwelling units are on separate power meters with separate wiring and distribution panels. Each has its own porch. Each unit has its own, separate, recognized mailing address. Each has its own, built-in gas heater, piped separately. The lot is a little over 52x130. It has a bigger backyard than some neighboring houses. There is ample extra room for parking in the backyard. In the 1930s and even in the 1960s, few families had two cars and some had no cars. The house is just up from the Five Points/King Park area and is walking distance to public transit routes. It is bicycling distance to grocery shopping and other amenities in Five Points – and not a bad walk either. The house is over 2000 square feet and in my opinion, it would cost over \$200,000 to replace it.

9. In or around April of 2004, a non-family visitor caused a fire that damaged the back of the house, damaging both the upstairs and downstairs units' bathrooms, the nearby walls, and the stairs, although the stairs remained useable. Most of the damage occurred in the downstairs bathroom, where the fire originated. The damage affected approximately 500 square feet of the house.

10. My brother continued to live in the house, which was still habitable.

11. At this point my mother was deceased, I had been paying the last of the mortgage and the taxes, I did not live in the house and had other living expenses, and I only owned fifty percent of the house. The City eventually directed me alone to fix the damage.

12. Between September and the end of December of 2007, I was able to get full ownership of the house from my brother. I applied for a permit to repair the bathroom damage, and do other updating. The City initially denied my application for a repair permit to fix and update damage to the property because I did not reside in the house.

13. I persisted in my application to repair the damage, and eventually, the Building Department approved my permit, and then sent me to "Zoning" for other approval. I was then told I could not just fix the damage to the bathrooms, but must restructure the entire house into one large, single family house. For a house of over 2,000 square feet, this would cost perhaps hundreds of thousands of dollars and would be an extreme hardship. It would also make the house harder to rent. It would also make the house harder to use in the ways we have used it as a family. It would also destroy the historical use and configuration of the house and the history of my mother's industry and thrift.

14. What ensued was a struggle of many years in which the City demanded that I proceed with repairs, while denying me a permit to do so other than in the course of changing the house to a single family dwelling. The City finally agreed that I could do the repairs piecemeal, proceeding only with the outside repairs only. The City then demanded that I do so. When my contractor applied to proceed with nonsubstantial interior renovations (which I am not even sure would require a permit), he was denied.

15. No "special exception" or variance should be needed. The property is zoned RG-1-DP, which is General Residential (not RS Single Family Residential) with a Design and

Preservation overlay. RG-1 is a medium or high density area characterized by, among others, two-family detached structures. This is an historical two-family detached structure. The use as a duplex is not prohibited by the zoning. Even if it were, it would be a prior, legal, nonconforming use at worst – that is, a use commenced legally in the past and grandfathered. All I want to do is fix my property which my mother acquired at great effort and which I have also spent money on, and I want to continue it in the form it has always been and preserve its design as it is. For the City to require me to transform it into something completely different with limits on its use and at great expense, as a condition of allowing the repair of relatively minor damage appears to me to be illegal, unfair, arbitrary, capricious, and in violation of due process of law.

Frieda H. Dortch



**BOARD OF ZONING APPEALS
CASE SUMMARY FOR
APPLICATION FOR VARIANCE**

825 & 825 ½ Heidt Street

February 12, 2013 at 10:00 A.M.
Eau Claire Print Building, 3907 Ensor Avenue (N. Main Street and Monticello Road)
Columbia, South Carolina

Case Number:	12-081-V
Subject Property:	825 & 825 ½ Heidt Street (TMS# 11409-15-03)
Zoning District:	RG-1, -DP (General Residential in a Design Preservation Overlay)
Applicant:	Frieda S. Hatten Dortch
Property Owner:	Frieda S. Hatten Dortch
Council District:	3
Summary Prepared:	05 February 2013

Requested Action: Variance to the minimum lot size requirements to reestablish a duplex (7,644 sq. ft. where 10,000 sq. ft. required).

Applicable Sections of Zoning Ordinance:

§17-275	5,000 square feet of lot area required for each dwelling unit.
§17-112	Standard criteria for variances

Case History:

7/8/2008	Board denies variance request to re-establish duplex upon the property (08-051-V).
9/9/2008	Board upholds Zoning Administrator's determination regarding non-conformity of a duplex (08-060-AA).
4/6/2009	Planning Commission recommends (9-0) denial of request for Map Amendment to PUD-R. As the requested PUD-R is less than 2 acres, a 2/3 majority approval of the Planning Commission is required in order to sponsor the amendment request; Map Amendment request dies.
9/1/2010	The Court of Common Pleas, Fifth Judicial Circuit, issues order granting the City's request to dismiss applicant's appeal of 08-051-V and 08-060-V.
12/11/2012	Applicant's request to be deferred to the January 2013 Board of Zoning Appeals meeting granted by the Board.
1/8/2013	Applicant's request to be deferred to the February 2013 Board of Zoning Appeals meeting granted by the Board.

Staff Comments: This application is a request for a variance to the lot size requirements in order to re-establish a duplex that has been vacant since at least November 7, 2005. The RG-1 district requires 5,000 square feet of lot area per unit, and so 10,000 square feet would normally be required. This lot contains 7,644 sq. ft. and thus the applicant is requesting a variance of 2,356 sq. ft. to the lot size requirement for a duplex. The applicant has submitted a site plan showing that four off-street parking spaces can be provided to the rear of the house.

Though the applicant has previously appeared before this Board for essentially the same request, neither the Zoning Ordinance nor the Board Rules and Procedures prohibit this reapplication. As such, the application should be considered upon its merits.

The Zoning Ordinance's intent regarding nonconforming structures and uses is contained within §17-201, which states that, *"It is the intent of this article to permit these nonconformities to continue until they are removed, but not to encourage their survival. Nonconforming uses are declared by this article to be incompatible with permitted uses in the districts involved"*.

Should the Board be inclined to approve the Variance request, you may wish to consider placing a time limitation upon completing improvements to the property- including, but not limited to, resolving any and all outstanding property maintenance code violations and providing off-street parking for all units upon the property.

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

Derek Riley- Letters dated December 11, 2012 and July 3, 2008.

Zoning Map

Department of Planning & Development Services

Variance

825 & 825 1/2 Heidt Street

TMS# 11409-15-03



Legend

— INTERSTATES — CITY LIMITS
— RAILROADS — FEMA FP

ZONING

	MX-2
	D-1
	RS-1
	RS-1A
	RS-1B
	RS-2
	RS-3
	RD
	RD-2
	RG-1
	RG-1A
	RG-2
	RG-3
	UTD
	MX-1
	DD DISTRICT
	OP DISTRICTS
	PD DISTRICT
	CC OVERLAY

1 inch = 100 feet

ORIGINAL PREPARATION/DATE:

This map was prepared by:

Andrew Livengood
for
December 11, 2012
BoZA meeting

DISCLAIMER:

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



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BOZA 024



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CITY OF COLUMBIA

BOARD OF ZONING APPEALS

APPLICATION for VARIANCE

OFFICE USE ONLY:Date Received 11/14/2012By ATL

Case Number _____

Fee (CODE 05) \$ 50.00*****VERY IMPORTANT - PLEASE READ THIS SECTION THOROUGHLY*******APPLICATION MUST BE SUBMITTED AND COMPLETE BY 12:00 NOON ON DEADLINE DATE!**

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

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

In addition, City staff recommends that you:

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

THE APPLICANT MUST BE PRESENT AT THE PUBLIC HEARING!

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

Location/Subject Property: 825 / 825 1/2 HEIDT STREET Columbia SCTax Map Number (Sheet, Block, and Lot(s)): R11409-15-03 / 52.2 X 130Zoning District: II RG-2 - DP

Describe your proposal in detail:

4 additional units repair walls, floors, repair light fixtures, replace bathroom fixtures, maintain water and sewer in 2 units. Maintain property as it has been in the past.

The Zoning Ordinance classifies this use as a (include SIC Code Number): Two Family Dwelling

(S.C. 3816.2)

Area Attributed to Your Proposal (in square feet): 2211 Total - 1790 Base

Are other uses located upon the subject property? (if YES, list each use and the square feet attributed to each use):

Total Number of Parking Spaces Upon the Subject Property: 1090 Now - will expand 4 additional in the back.

This proposal does not conform to the Zoning Ordinance in the following way:	
Zoning Ordinance Section & Requirement	Proposed Instead
1. <u>Sec 17-233 215</u>	
2. <u>5,000 Sq Ft per unit</u>	<u>6786 Sq Ft for Two Units</u>
3.	
4.	

Please demonstrate how you satisfy the following **CRITERIA FOR VARIANCE** (see §17-112 (3) b. of the Zoning Ordinance). Please note that the members of the Board of Zoning Appeals will use your answers, among other things, as they evaluate your application:

1. Extraordinary and exceptional conditions pertain to the subject property: This house has been a duplex over 50 years, house is two stories, unique to commercial property and residential area
 2. The conditions noted above do not generally apply to other property in the area: This is one of five duplex units in this area
 3. Because of the conditions noted above, the requirements of the Zoning Ordinance effectively prohibit or unreasonably restrict the use of the property: unreasonable restrictions for the usage of property
 4. Approval of the variance would not be of substantial detriment to adjacent property or to the public good, and the character of the district would not be harmed: Improvements additional parking, space, repair floors, walls and overall appearance of structure
- Section 17-112 (3) b.6. asks, "Is the variance the minimum necessary?" Yes

And §17-112 (2) b.7. asks, "Is your proposal in harmony with the purpose and intent of the Zoning Ordinance, and will it not be injurious to the neighborhood or otherwise detrimental to the public welfare?" Yes

Applicant (PLEASE PRINT CLEARLY): FRIEDA S. DORTCH

Name of Company: _____

Address: P.O. Box 10083

City, State, ZIP: FT Jackson, SC 29207

Office Telephone Number: _____

Home Telephone Number: 803-635-1434

Cellular Telephone Number: _____

Fax Number: _____

Do you check email at least once per day? () Y () N

Email Address: _____

Relationship to Property Owner: SELF

() Same;

() Lessee;

() Agent of property owner;

() Contract lessee;

() Contract purchaser;

() Other

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

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

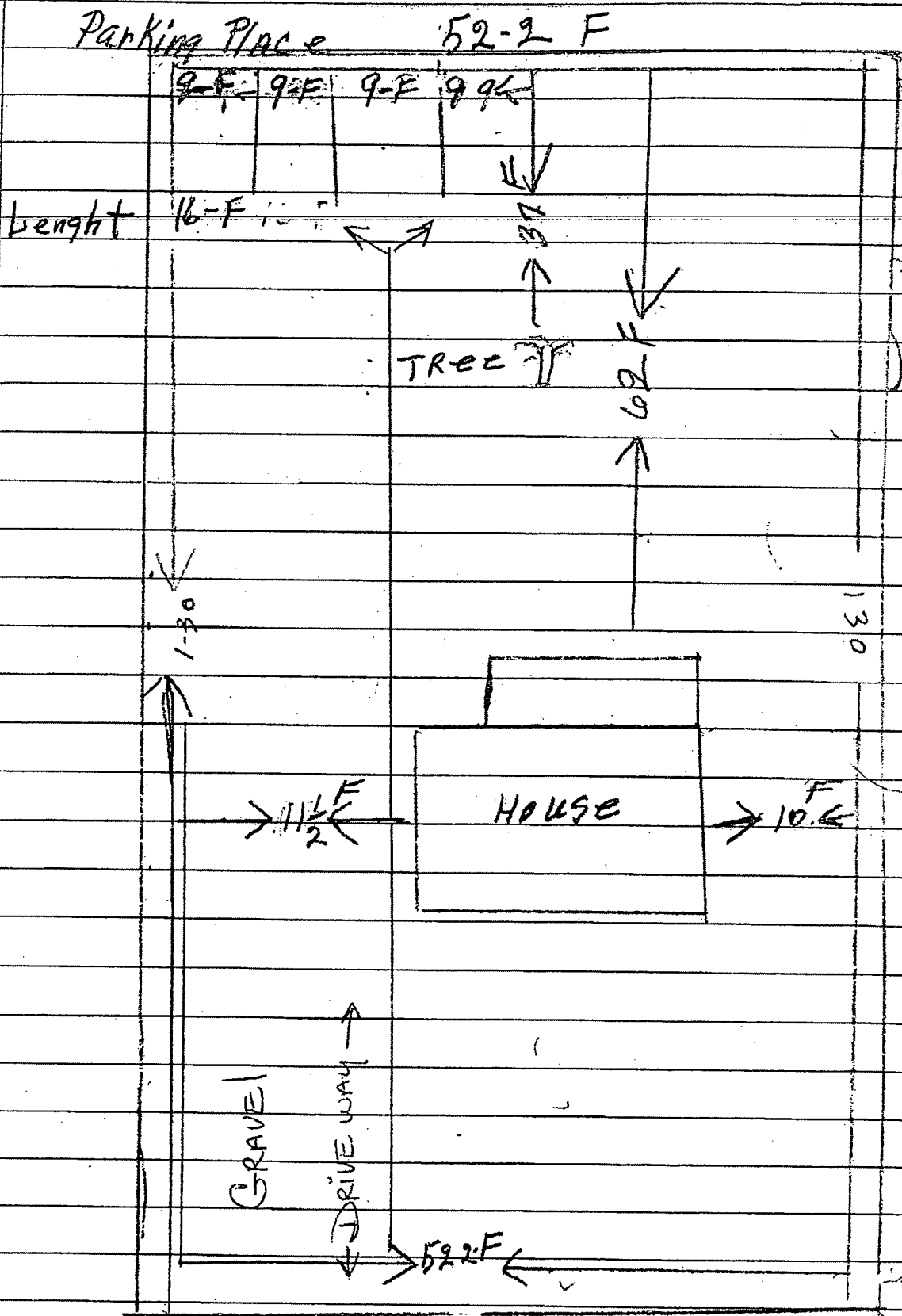
1. I have completely read this application and understand all that it includes;
2. While the members of the Board of Zoning Appeals will carefully review and consider this application, the burden of proving conformance with the criteria for grant of variance rests with me;
3. The proposed use and construction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

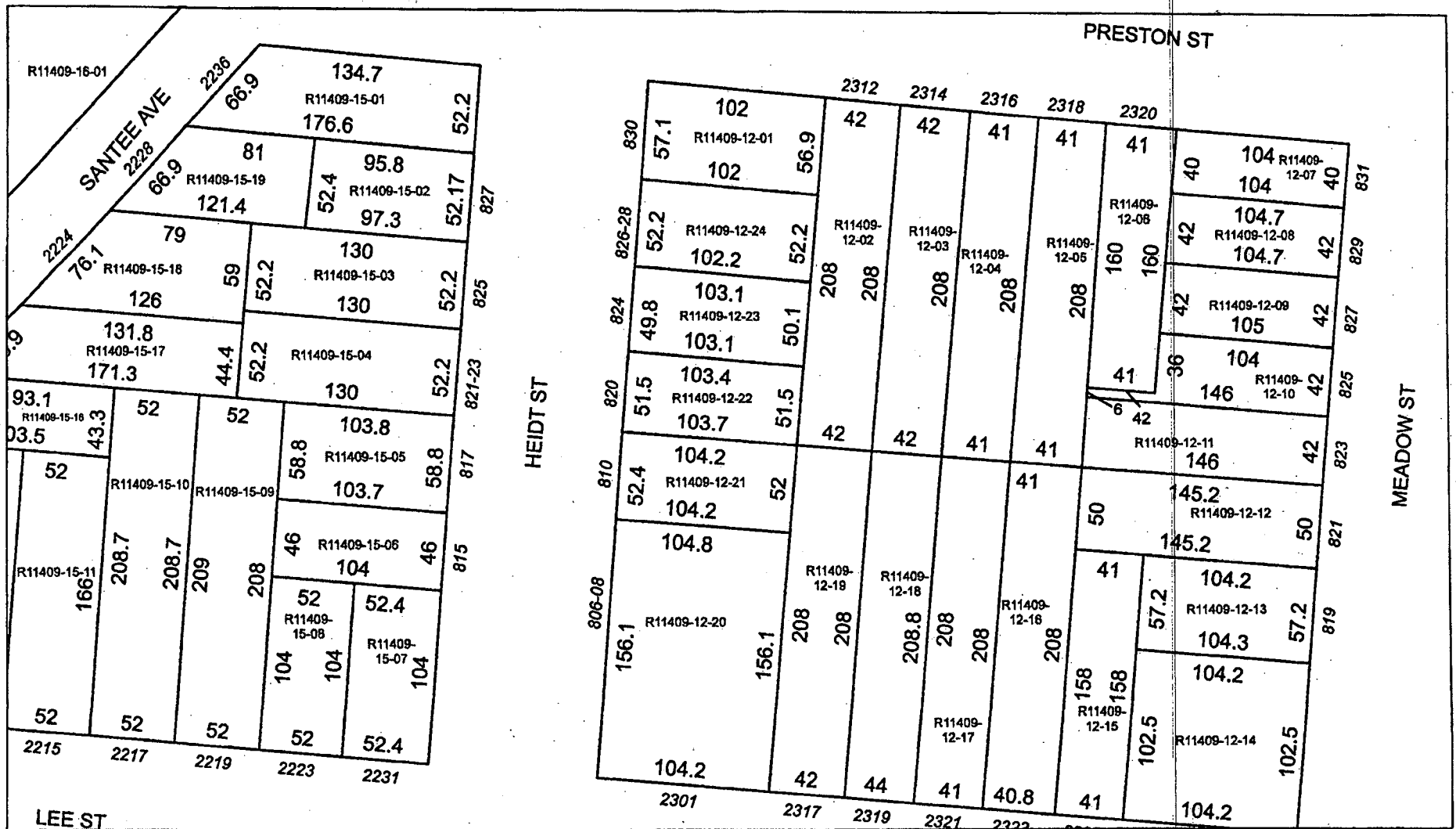
Signature

Frieda S. Dortch

Date

11/14/12

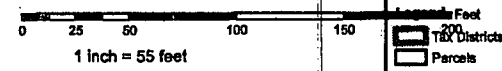




TAX YEAR 2013

THIS MAP IS FOR GENERAL REFERENCE ONLY. RICHLAND COUNTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO ITS ACCURACY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE.

RICHLAND COUNTY
ASSESSOR'S OFFICE



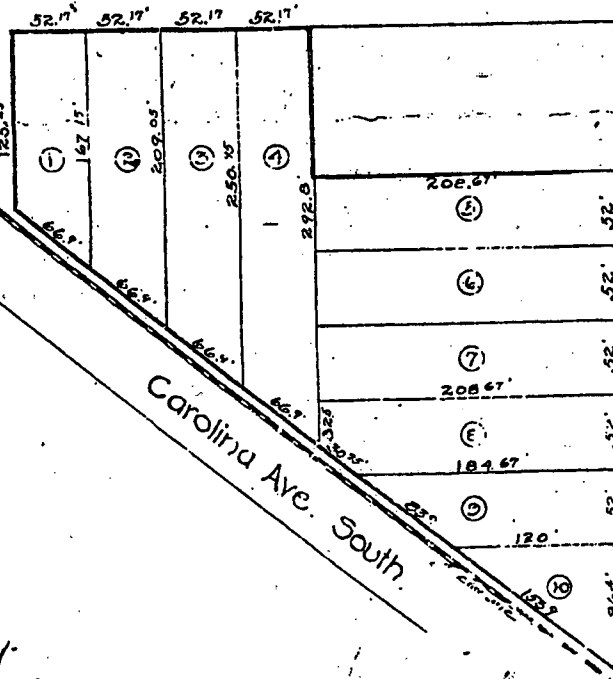
BOZA 029

NOTE: THIS COPY HAS BEEN

124

Preston St.

High St.



Plat Of The Property
of
J.C. Moore & W.S. Moore
Shandon - Columbia St.

Scale: 1" = 50' Aug. 20-1912
Shand Engr. Co.
Columbia, Sc.

Handwritten notes and signatures on the right side of the plat.



C-1321





BOZA 032



PRSUT449035OCT1212 1210 ATI-P **NO CURR-YR APPRS**
 APPRAISAL INFORMATION SUMMARY
 KEY:00303488 OWNER:DORTCH FRIEDA S HATTEN
 ACCT:R11409-15-03 LEGAL:

LOC: 825 HEIDT ST 52.2X130
 TYPE: TAXABLE VALUE: 60167 CURRENT PREVIOUS
 AREA CODE: 015.99-B INCOME: LAND: 7800 8600
 #STRUCTURES: 1 MARKET: 60167 STRUCTURE: 52367 56900
 APPRAISAL: 60167 MISC IMPR:
 USE: 60167 MARKET: 60167 A 65500
 LAND TYPE: 100L CENSUS TRACT: 210000000000 LAND USE:
 ACRES: WATER: 2 SEWER: 2
 PCT-COMMON: LAST INSPECTION DATE: 2012/09/21

STR#	TYPE	CL	ACT	EFF	Q	LOC	COND	BASE	TOTAL	VALUE	FEATURES
1	1200-2	1	1930	1930	3			1790	2211	51595	772

CONTINUE(X): ASSMT CODE LAST ACTIVITY: 2012/09/24
 FUNC: DATA: SUB: YR: 2012
 MESSAGE: * * * END OF LISTING * * * @

STARET449028OCT1212 1210

NO CURR-YR APPRS

STRUCTURE PLOT AREA VIEW

KEY:00303488

YR:2012 ACCT:R11409-15-03

STRUC: 1 OF 1

BAS 810
FUS 980
UST 60
FOP 100
FOP 189
FOP 72

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YR: 2012 @

BOZA 035

Derek Riley
810 Heidt Street
Columbia, SC 29205

December 11, 2012

City of Columbia
Board of Zoning Appeals
Columbia, SC 29217

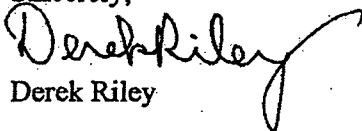
Members of the Board:

I am submitting this letter in opposition to the application for the property at 825 Heidt Street to receive a zoning variance to the minimum lot size to reestablish a duplex. I have owned my house and lived on this block for almost 20 years and thus have an interest in the types of homes contributing to the character of our neighborhood. A similar variance was requested on July, 2008 and I am attaching a copy of the opposition letter I provided at that time. All of my original concerns remain valid and I offer the following items in additional support of opposition:

1. In the four years since the variance denial of July, 2008, no effort has been made to improve the property or to bring it up to code. Improvements began to be made in 2012 although according to the application, the improvements appear to have been made in a way consistent with maintaining two separate residences.
2. Flaws exist in the scale of the proposed parking diagram provided as part of the application (copy attached). Notice the 11.5-foot driveway width seems to encompass more than two of the proposed 9-foot wide parking spaces. Also not displayed properly is the true 16-foot depth of each parking space and the corresponding amount of yard space which would be required for a vehicle to utilize the far spaces. Were the parking spaces drawn to scale, one would see the parking spaces taking up a minimum 70% of the back fence line (more, if any room was to be provided between each space). This plan essentially would turn the entire back yard into a parking lot.
3. The application fails to acknowledge the nature of the short lot behind it (2224 Preston) and its structure with a back door within a car length of the back fence of 825 Heidt. Those residents would be constantly subjected to the sound, fumes, and headlights of any vehicles regularly using the proposed new parking spaces.
4. The make-up of our 13 parcel block remains the same as explained in 2008, with 4 owner-occupied units, 4 rental multi-units, 3 rental single units and the same 2 vacant properties (including 825 Heidt Street). Allowing 825 Heidt to operate as a duplex would further contribute to the majority of renters on the block.

Thank you so much for the protections you implement and monitor. Thank you also for reviewing my request and please contact me if I may provide any further information.

Sincerely,


Derek Riley

BOZA 036

Derek Riley
810 Heidt Street
Columbia, SC 29205

July 3, 2008

City of Columbia
Board of Zoning Appeals
c/o Jonathan Chambers
PO Box 147
Columbia, SC 29217

Mr. Chambers:

This letter is in opposition to the request from the owner of the property at 825 Heidt Street to have the dwelling officially recognized as a duplex. As a long-time resident of this block of Heidt Street (16 years), I have concerns over 825 Heidt Street becoming a legitimately recognized duplex for the following reasons:

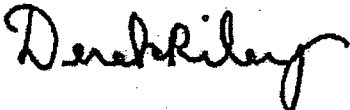
1. The current make-up of our 13 parcel block is as follows:
 - a. 2 vacant (including 825 Heidt St.)
 - b. 4 owner occupied
 - c. 4 rental multi-units (duplex and quadplex)
 - d. 3 rental single units

This represents a mere 31% rate of owner-occupancy for the block. Listing one of the current vacant units as a duplex would virtually insure that it never would become an owner-occupied unit

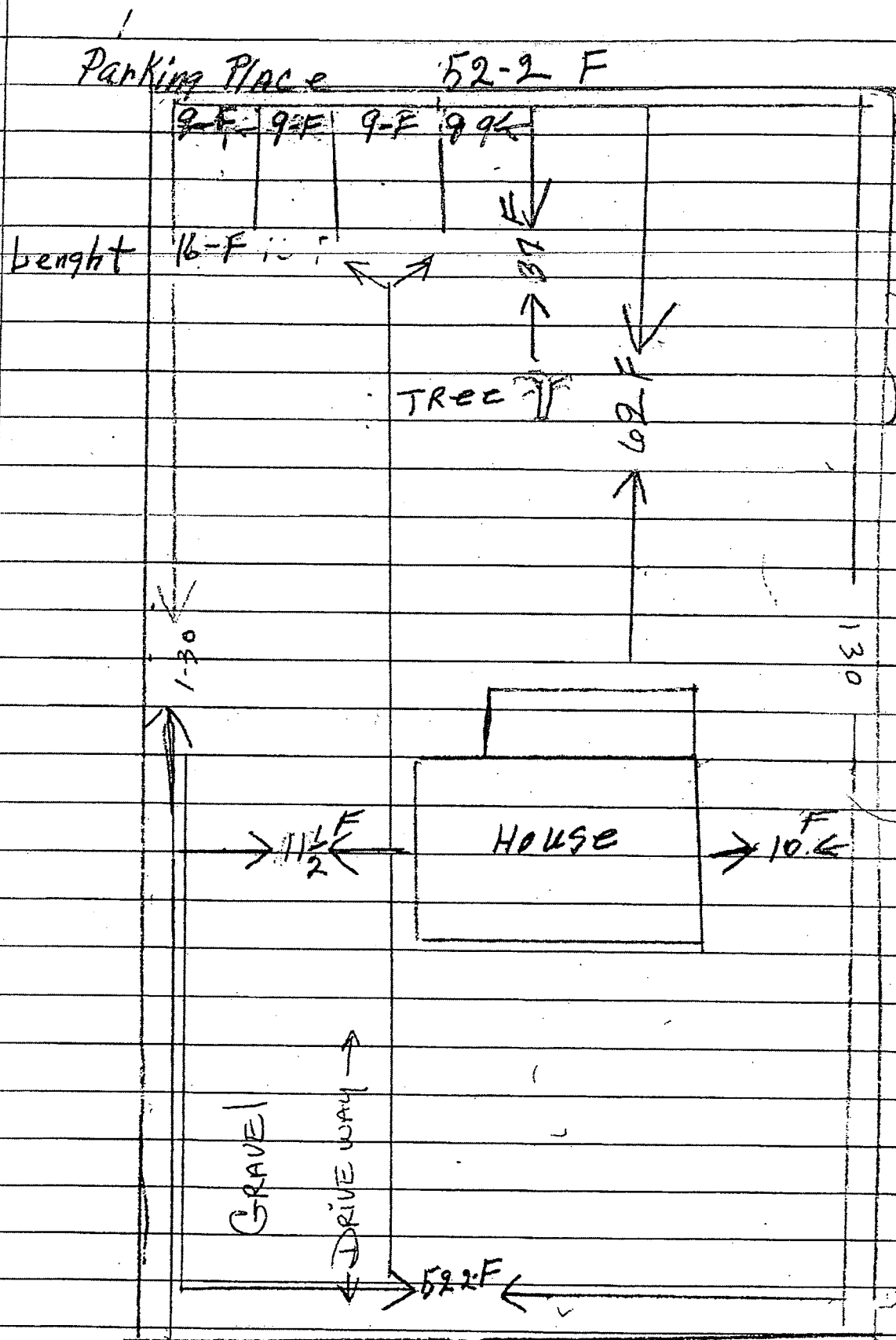
2. Another duplex would be detrimental to the neighborhood's welfare by adding to the glut of rental housing stock in a neighborhood that traditionally has been single family homes
3. Traffic and parking already are issues on this block due to the oversupply of rental units and the multiple car owners occupying them
4. The dwelling at 825 Heidt Street was condemned in November, 2006 and has been unoccupied since then with no effort made towards any improvements. For this reason, the property should lose claim to any grandfather status it may otherwise have had

Please heed my request to keep this property from being recognized as a duplex. You may contact me if I may offer any other information.

Sincerely,



Derek Riley



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**BEFORE THE BOARD OF
ZONING APPEALS**

Frieda Dortch amends her November 14, 2012 application for review by the Zoning Board. In that application, the form was geared to a variance application. To the extent not superseded by matters in this amendment, Ms. Dortch's attached earlier pro se application is carried forward and repeated.

Actually, before asking for a variance, Dortch wishes to respectfully challenge the applicability of the asserted restriction on her ability to do inside work on the house, such as repairing and recovering flooring, repairing and painting sheet rock, possibly replacing countertops or incidental cabinetry, replacing bathroom fixtures, etc. The history of the building and its ownership is highly pertinent to the application presented. First, however, Dortch would like to point out the procedural difficulties with which she has been presented in trying to simply do some repairs and minor renovations to this family home.

Ms. Dortch does not live in the home. She has been informed, when applying for a building permit (to the extent that one is needed), that she may not do the work herself and employ other people or subcontractors to help with the work. She has been informed that the only person who may apply for a permit is a licensed contractor. To a certain extent, this situation limits Ms. Dortch's ability to get a straight line of communication regarding the actual issues involved. That

is, her contractor tends to fill out the permit application under the direction of people at the permit desk, and then Ms. Dortch is faced with dealing with the denial of the permit based on verbal information related to her second-hand from the contractor.

In this case, Ms. Dortch's contractor went to the permitting desk and applied to do exterior repairs and interior repairs and renovation. He was granted a permit only to do the exterior repairs. Ms. Dortch has only whatever was provided to him in writing, as the basis for the denial. It appears to be a requirement that more parking be provided, and possibly that the lot be bigger. She did go back down to the permitting desk to see if it was possible to go through the whole process on a hypothetical basis, as if she was applying for the permit herself. It was explained to her that the Building Department did not have a problem with issuing the permit, but that she would have to go over to zoning before she could proceed any further with the Building Department. Upon walking ten feet over to the zoning desk, she was informed that the official in charge was not available and that no one else could speak authoritatively to the question. There was an offer to page or text the zoning official, so Ms. Dortch waited for approximately an hour and then had to leave. This was a day of vacation that she had to take from work in order to make the trip.

In dealing with the lack of specific notice of the asserted restrictions, Ms. Dortch can only assume that the restrictions lie somewhere in areas previously averted to. When she made the same or similar application some years ago, the reason given for not allowing her to repair this family home was that it was zoned for single-family use only. She was told that she could not make any repairs or renovations without converting this duplex into a single-family home.

Ms. Dortch, before asking for a variance, respectfully asserts that there is no valid legal restriction on repairing or doing minor renovations to this historic up-and-down duplex. The

grounds for the appeal are, without limitation, the following:

1. The property is actually zoned "RG-1." This is not single-family residential. It is two-family residential.
2. To the extent that any restriction is asserted, the structure and the use are "grandfathered." Namely, to prevent an after-adopted restriction on an existing use from being deemed an unconstitutional taking and other violation of constitutional rights, the pre-existing use is constitutionally allowed to continue, even if it does not conform to standards or laws adopted after it came into existence. Namely, it is a "grandfathered nonconforming use."
3. Any restriction on the issuance of a permit should be limited to the reasons reasonably given to Ms. Dortch in a timely manner, with reasonable specificity of the provisions in question.
4. Any restrictions in the building code, zoning ordinance, or any other ordinance asserted to govern or restrict the grandfathering of this pre-existing use is so vaguely and incongruently written as to either lead to nonsense, or to a completely arbitrary and capricious application, both on the face of the ordinance and as applied to Ms. Dortch.

In essence, Ms. Dortch respectfully asserts it was error to deny her a permit to fix the house and that no variance is needed.

In the event that the foregoing appeal is not sustained (and in the event that the Building Department is not directed to issue a permit), Ms. Dortch applies for a variance, but reserves all of her rights to contest the validity or applicability of any asserted restrictions. Assuming, for the sake

of argument, that some valid and enforceable restriction prevents the repair of this historical family home as a duplex and requires it to be changed into a single-family residence, Ms. Dortch respectfully requests a variance from such restriction.

The grounds for the variance are that such restrictions, whatever they are, would produce an unduly harsh result for Ms. Dortch, and the characteristics of this particular piece of property are unique, extraordinary, and exceptional in creating this hardship. Further, the conditions noted do not generally apply to other property in the area. Most of the surrounding property is already single-family and functioning that way; there are only about five duplex units in the area (and even those may not have the same conditions). Further, the restrictions effectively prohibit or unreasonably restrict the use of the property – as it already exists and is already improved, and cannot feasibly be changed. Further, a variance would not be a substantial detriment to the adjacent property or public good and the character of the district would not be harmed. The property has been a duplex since it was built in 1930 and all adjacent property has been acquired and used with notice of this fact; the public good favors repair and preservation of historical uses and Dortch has the ability to provide additional off-street parking which is behind the building – letting her fix it won't hurt the public or anyone else; and the character of the district is already two-family – she does not seek to exceed this.

The facts supporting this variance are that the house has a reasonable size lot, but it is not possible to make the lot any bigger. To the extent that parking concerns are an issue, Ms. Dortch has a reasonable plan to set aside an additional parking area in the backyard of the premises. This parking would not only be adequate, but it would also be away from the street, and away from view.

There is no evidence that the building has ever been anything other than an up-and-down duplex. Heating is handled separately upstairs and down. The electrical wiring is handled separately upstairs and down. There are two electric meters. There are no internal stairs. Access to the second story is achieved by external stairs on the front of the house and external stairs on the back of the house. It would be extremely expensive to structurally alter the house and add internal stairs, destroying the historical usage and configuration of the house. However, this issue can barely be reached, in that there does not appear to be any practical way that interior stairs could be added without wholesale changes to the structure. Namely, there is a bedroom over the downstairs living room. There is a living room over a downstairs bedroom. There is no way to put stairs in a living room leading to another family area upstairs, without destroying an entire bedroom or changing the whole house around.

The same considerations that militate so strongly toward grandfathering an existing use become compelling factors for granting a variance even if the use is not legally grandfathered. That is, the present situation does not involve newly constructing a house. It does not involve substantially demolishing an existing house and virtually rebuilding it. It does even involve making substantial repairs to a single-family home which was later changed into a duplex by modification or addition. This is a situation where the existing configuration of the house itself presents a unique difficulty and would create an exceptional hardship on Ms. Dortch to change. She is not made out of money and she has done her best to preserve this historic structure.

The history of the house is as follows. Back in the early 1960s, her mother rented the house. Then she entered an agreement to buy it. She worked very hard as a single parent to establish enough credit to get a loan. She worked as a maid and a babysitter and a nurse's aid at low wages to

make payments on the mortgage for decades.

From the beginning, the house was an up-and-down duplex. Ms. Dortch's mother lived in one portion of the house, and kept the other portion available for the needs of family members. When Ms. Dortch's mother died some years ago, Ms. Dortch and her brother inherited the house. While Ms. Dortch's brother was living in the house, a small fire occurred at the back of the house, causing some damage to the back stairwell and a bathroom. Ms. Dortch's brother was not in good financial condition. It took Ms. Dortch a small period of time in which to negotiate and arrange to buy her brother's portion of the house, so that she would be the complete owner, and could invest her money in making the repairs and continuing to pay the mortgage.

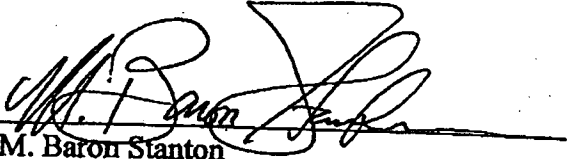
To say the least, Ms. Dortch has had considerable difficulty navigating through all of the problems just to make these simple repairs to an historical family home which has always been a duplex. She eventually was able to secure sufficient help to repair the damaged areas in the back. By the time these matters were addressed, there was also some rot at the front of the house, specifically concerning the exterior stairs and a portion of the porch. Ms. Dortch was permitted to repair these areas as well. She has finally gotten all the work done on the exterior, including having to match the windows historically, use the historically correct profile of wood, be subject to numerous inspections, etc. Ms. Dortch lives in Winnsboro which is a good distance away. She has had to take many days off from work in order to deal with the house. She has had to do the work sparingly, because of financial limitations. However, she has always determined to have the repairs and renovations done to a good standard.

We respectfully request that her appeal be allowed, and that it be determined that there is no obstacle to her proceeding to simply do some interior repairs and renovations without being required

Stanton Law Offices, P.A., 1728 Main Street, P.O. Box 245, Columbia, SC 29202 803-929-1484

to somehow transform the house into a single-family dwelling. In the alternative, we respectfully request a variance of any perceived restriction, so that she may keep the house as it is, i.e., a duplex, and make some moderate repairs and renovations to fix it up. This is a uniquely situated property, and historical use of the property, and to require such a far-reaching – if not impossible – change would create a unique and undue hardship on Ms. Dortch.

Attached are the original application of Ms. Dortch, the expected testimony of Ms. Dortch, assessor's information on the property, and a map.



M. Baron Stanton
STANTON LAW OFFICES, P.A.
1728 Main Street
P. O. Box 245
Columbia, South Carolina 29202
803-929-1484

Date:

2/8/13

ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-40-02159

Frieda H. Dortch,

Petitioner,

vs.

CERTIFICATE OF SERVICE

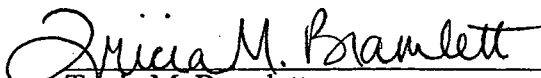
City of Columbia, Planning &
Development Services/Zoning
Division,

Respondent.

RICHLAND COUNTY
FILED
2013 APR 30 PM 3:12
JEANETTE W. McBRIDE
C.C.P. & G.S.

The undersigned hereby certifies that she served a copy of the *Motion to Dismiss and Return to Petition of Appeal on Behalf of City of Columbia Board of Zoning Appeals* along with its Certificate of Service, upon counsel listed below by placing a copy in the United States Mail, sufficient postage pre-paid and return address clearly indicated, to him at the address shown below on this 30th day of April 2013:

M. Baron Stanton
Stanton Law Offices, P.A.
Post Office Box 245
Columbia, SC 29202


Tricia M. Bramlett
Paralegal for City of Columbia

April 30, 2013
Columbia, South Carolina

Dortch's Petition of Appeal to Circuit Court,
dated Apr. 11, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Frieda H. Dortch,

Petitioner,

v.

City of Columbia, Planning &
Development Services/Zoning
Division,

Respondent.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 13-CP-40-02159

PETITION OF APPEAL

(For Review of Decision of
Columbia Board of Zoning Appeals
Case No. 12-081-V)

Reserving all rights to contend there is no valid, legal underlying restriction and to further appeal the same,¹ Petitioner Frieda H. Dortch appeals to the Court of Common Pleas that the March 12, 2013 decision of the Board of Appeals in denying a variance was clearly in error and unsupported by substantial evidence and constituted an abuse of discretion. Petitioner received written notice of entry of the decision on March 22, 2013.

This matter arises from Dortch seeking a variance allowing her to repair her up-and-down duplex without transforming it into a single-family structure.

The only findings of fact by the Board were:

1. There was notice of the hearing.
2. The property is at 825 Heidt Street.

¹The Board of Zoning Appeals declined to address as an issue at the hearing, and declined to allow Dortch to address as an issue at the hearing, the validity of the restriction at issue or any asserted lack of grandfathering or loss of grandfathering. To the extent the Board purported to then proceed to rule on these issues it stated it would not rule upon, Dortch stands ready, upon adequate notice, to take them up in this appeal or any later time, including presenting evidence necessary for proper consideration.

3. Dortch "has testified" that the building was constructed as a duplex in or around 1930.
4. The lot is about 7,644 square feet, but the now applicable RG-1 zoning requires 5,000 square feet of lot for each dwelling, which would be 10,000 square feet of lot for a duplex.
5. The structure had been vacant for more than 12 months, since at least November 7, 2005.
6. Dortch submitted a site plan offering to put four off-street parking spaces in the backyard if it would help the application.

That is all. On these factual "findings" alone, the Board "concluded as a matter of law," that Dortch did not meet all the requirements for a variance, and denied one. Order at 1.

There were no factual findings contrary to the actual facts adduced by Dortch. There was only a "conclusion of law" that her facts did not meet all the requirements for a variance. A conclusion of law is fully and freely reviewable – de novo.

Notably, there was not even a conclusion as to which requirements the property did meet. This was an arbitrary and capricious determination that she simply "should lose," while other applications the same day were granted over objections.² Because the facts Dortch presented

²It should be noted that the Board began the hearing with a "case summary" – a brief of sorts – provided to the board by the "staff" of an entity not disclosed, in which a purported "case history," applicable statutes, and various quotes and "comments," were made. The March 12, 2013 decision of the Board also bears the signature of the "Zoning Administrator," who heads the self-same division whose decision was being appealed and is not a member of the Board as described by statute. Why, in reality, any deference should be afforded to the "factual findings" of such a body on appeal is difficult to imagine.

were cogent, competent, credible, uncontested and unaddressed, they must therefore be viewed as the only facts. There is no substantial or any other evidence to the contrary. Dortch met every element.

The structure in question, located at 825 and 825 ½ Heidt Street in Columbia, South Carolina, is zoned as RG-1-DP, General Residential with a Design and Preservation Area Overlay. Under Section 17-235 and Section 17-258 of the Zoning Ordinance of the City of Columbia, areas zoned as RG-1 are intended as “medium and high density residential areas ... characterized by single-family detached, two-family detached, and multiple-family structures, and garden type apartments.” Further, RG-1 and the districts grouped with it allow as follows: “Certain structures and uses required to serve governmental, educational, religious, noncommercial recreational, and other needs of the areas are permitted outright or are permissible as special exceptions subject to restrictions and requirements intended to preserve and protect the residential character of the districts.”

So RG-1 districts are not single-family residential in their essential character; they are simply primarily residential in character, can be medium to high density, can include many sorts of things that are not even residential, specifically are contemplated to include two-family and multi-family uses, and have no factor or prohibition whatsoever concerning rental or owner-occupancy.

One of the Board members made his own unsworn observations about the characteristics of his own house, which was many blocks away, in a higher-value section, which is not zoned RG-1.

According to the table in Section 17-258, the structures in RG-1 districts may include detached one-family dwellings, attached one-family dwellings, multi-family dwellings and group development dwellings.

The structure is about 2,000 square feet in size. It is a two-family detached dwelling, commonly known as a duplex, consisting of one upstairs dwelling unit and one downstairs dwelling unit, not physically attached to any other principal structure. Each dwelling unit contains a full bath and a porch.

This structure has been constituted by two separate dwelling units since at least prior to 1967, and most probably, since it was built back in the 1930s many years before. Most of the neighboring buildings are single-family, but a number are also constituted by two or more separate dwelling units.

The house was already a duplex – physically. The real estate is composed of both the land and the house.

The ONLY testimony was that it required affirmative physical change to the tangible real estate itself to change the use from the existing physical use to the use now “allowed,” a two story single-family residence. The only testimony was that to make the change is either impossible or legally prohibited or so financially unfeasible as to effectively prohibit or unreasonably restrict the use of the property.

The City’s own official testified that the use to which the City wished to command Dortch to physically change the property was REQUIRED to have interior stairs. Namely, a two story, single-family residence is required to have internal stairs.

The City's own official testified or stated in the summary provided to the Board that the house could not be demolished because of its historical status.

It was undisputed, and supported by competent testimony, that the house was historically a duplex from the 1930s, was physically configured as one, and was impossible to use as a single family residence in its present historical existence.

Dortch testified that the upstairs dwelling of modest square footage was not aligned with the downstairs dwelling of modest square footage in a way which would allow installation of internal stairs. Dortch had extensive knowledge of the house, in that her mother had owned it, Dortch grew up in it, and Dortch now owned it after going through steps to acquire her brother's partial interest in the house, so that she could get it fixed.

Dortch testified without contradiction that the living room of the downstairs dwelling was beneath a bedroom of the upstairs dwelling, and that the living room of the upstairs dwelling was over a bedroom of the downstairs dwelling. This left no physical or practical way to install interior stairs.

In order to appease the City's constant demands for exterior repairs – under issuance and prosecution of criminal citations – while the City simultaneously denied Dortch a repair permit, Dortch had finally worked out an “exterior only” permission with the City. Dortch testified that the fairly limited repairs to the back exterior and front exterior of the house had cost her over \$35,000.

Dortch further testified that, even if a horribly dysfunctional, impractical, and space-wasting way to install interior stairs could be devised: (1) the change would destroy the historical configuration of the home, which is, itself, in a historical overlay district, and (2) the change

would cost over \$100,000, before accounting for the waste and possible removal of the front and rear exterior stairs, which Dortch had recently paid for under compulsion by the City.

Dortch testified that she had experience in home repair and remodeling, and in paying for it. The cost of transformation could be close to double the value of the structure.

There was comment at the hearing about the house being vacant for a time, and being in disrepair for a time. The other people, and perhaps the Board, did not know that for a period, Dortch did not own the property in full, and had to acquire her brother's interest, and that afterwards the disrepair and vacancy were caused by the City forbidding a permit.

Dortch's brother and niece did live there during some of the period the property was asserted to be vacant, and Dortch so testified.

There was no evidence that anything in the neighborhood or about the house changed since 1930 to make this house any more "offensive," except perhaps the decrease in density and increase in cars per household. This house has been in the neighborhood all the ensuing decades and has two relatively small two-bedroom dwellings which do not present a density problem. The street is just as wide as it has always been. There is also a park almost immediately adjacent, which has its own parking.

If the variance is not granted and the property is not affirmatively physically transformed into the now "allowed" use, it may sit vacant. It may not be demolished because of its historical character. The only detriment to the City or the neighborhood is in not granting the variance. Denying it is unwise, less than practical forward-thinking, and certainly unfair.

The Board's decision in light of no competent admissible evidence to support it must be viewed as based on caprice, conjecture, speculation, bias, and supposition. The Board may have

been distracted by the issue of the justice of the supposed "losing" of grandfathered status. For example, it was discussed that there were periods the house was unoccupied and that there was unperformed maintenance. However, the Board and its audience and participants failed to appreciate that for a period of years, the City of Columbia would not issue a repair permit and prohibited repairs, obviously making the house both hard to repair and hard to occupy.

Comments were made, with no evidence, and based purely on speculation and no qualification, about the "return" one could get on the property, and the "value" of the property, and what someone did on the other side of King Park, and what one of the board members did to his own dissimilar house many blocks away in a higher value, different character, part of the neighborhood, with different zoning.

The only observations made were either not germane or based on supposition, speculation or guesses not supported by any competent or admissible evidence or sworn testimony or made without benefit of the underlying truth in the matter.

The Board's recitation of the stated intent of the ordinance "to eliminate nonconforming uses," as the reason for not granting a variance is completely tautological and is null as any sort of cognizable or valid reasoning. See Order at 2, numbered item (6). The very purpose of a variance is to allow a nonconforming use; the Board's "reasoning" would require categorical denial of all variances.³ The ordinance itself provides for variances, and variances are therefore also the intent of the ordinance.

³This reasoning also appears in the "case summary" that the staff of the Zoning Division presented to the Board but did not serve on Dortch.

Curiously, although Dortch wishes to hold the house for use by her family, which is African American, the stated motivation behind the "neighbors" opposing the variance appears to be a distaste for and apprehension over "rental," rather than a concern with "density." Rental is an illegitimate factor to consider and is not in the ordinance or common law criteria. It is clear the Board's decision was merely caprice and arbitrariness, as there was outright denial, without even an attempt to explore conditions under which a variance might best be granted. The Zoning Ordinance clearly allows a variance to be granted on conditions.

At the hearing, before asking for a variance, Dortch asked to respectfully challenge the applicability of the asserted restriction on her ability to do inside work on the house, such as repairing and recovering flooring, repairing and painting sheet rock, possibly replacing countertops or incidental cabinetry, replacing bathroom fixtures, etc. First Dortch pointed out the procedural difficulties with which she had been presented in trying to simply do some repairs and minor renovations to this family home.

Dortch did not live in the home. She was informed, when applying for a building permit (to the extent that one was needed), that she could not do the work herself and employ other people or subcontractors to help her with the work. She was informed that the only person who may apply for a permit is a licensed contractor. To a certain extent, this situation limited Dortch's ability to get a straight line of communication regarding the actual issues involved. That is, her contractor would tend to fill out the permit application under the direction of people at the permit desk, and then Dortch would be faced with dealing with the denial of the permit based on verbal information related to her second-hand from the contractor.

In this case, in the last attempt to get a permit, Dortch's contractor went to the permitting desk and applied to do exterior repairs and interior repairs and renovation. He was granted a permit only to do the exterior repairs. Dortch had only whatever was provided to him in writing, as the basis for the denial. She had understood from time to time, a concern that more parking be provided, and she gathered on this occasion that there was an assertion her lot needed to be bigger. She did go back down to the permitting desk to see if it was possible to go through the whole process on a hypothetical basis, as if she was applying for the permit herself.

It was explained to her that the Building Department did not have a problem with issuing the permit, but that she would have to go over to zoning before she could proceed any further with the Building Department. Upon walking ten feet over to the zoning desk, she was informed that the official in charge was not available and that no one else could speak authoritatively to the question. There was an offer to page or text the zoning official, so Dortch waited for approximately an hour and then had to leave. This was a day of vacation that she had to take from work in order to make the trip.

In dealing with the lack of specific notice of the asserted restrictions, Dortch could only assume that the restrictions lay somewhere in areas previously adverted to. These were parking and square footage. When she made the same or similar application some years ago, the reason given for not allowing her to repair this family home was that it was zoned for single-family use only. She was told that she could not make any repairs or renovations without converting this duplex into a single-family home.

Dortch, before asking for a variance in the most recent hearing, respectfully asserted to the Board that there is no valid legal restriction on repairing or doing minor renovations to this

historic up-and-down duplex. The Board declined to hear an appeal, as opposed to a variance application. Nevertheless, the proffered grounds for the appeal were, without limitation, the following:

1. The property is actually zoned "RG-1." This is not single-family residential. It is two-family residential.

2. To the extent that any restriction is asserted, the structure and the use are "grandfathered." Namely, to prevent an after-adopted restriction on an existing use from being deemed an unconstitutional taking and other violation of constitutional rights, the pre-existing use is constitutionally allowed to continue, even if it does not conform to standards or laws adopted after it came into existence. Namely, it is a "grandfathered nonconforming use."
3. Any restriction on the issuance of a permit should be limited to the reasons reasonably given to Dortch in a timely manner, with reasonable specificity of the provisions in question.
4. Any restrictions in the building code, zoning ordinance, or any other ordinance asserted to govern or restrict the grandfathering of this pre-existing use is so vaguely and incongruently written as to either lead to nonsense, or to a completely arbitrary and capricious application, both on the face of the ordinance and as applied to Dortch.

In essence, in the most recent hearing, Dortch respectfully asserted it was error to deny her a permit to fix the house and that no variance was needed. The Board would not entertain the

appeal, because Dortch was advised by the Zoning office she needed to ask for a variance, and she did.

Dortch then proceeded with the variance application, reserving all her rights to appeal this or any later denial of a permit.

Assuming, for the sake of argument, that some valid and enforceable restriction prevents the repair of this historical family home as a duplex and requires it to be affirmatively physically changed into a single-family residence, Dortch respectfully requests a variance from such restriction.

The grounds for the variance are that such restrictions would produce unnecessary hardship and an unduly harsh result for Dortch, and the characteristics of this particular piece of property (a lot already improved with an historical structure which is physically a duplex) are unique, extraordinary, and exceptional in creating this hardship. Further, the conditions noted do not generally apply to other property in the area. Further, a variance would not be a "substantial" detriment to the property next door or the public good, and would not harm "the character of the district."

It is clear the restrictions effectively prohibit or unreasonably restrict the use of the property – as it already exists and is already improved, and cannot feasibly be changed. While it cannot be the sole grounds for a variance that the use sought (duplex) would simply be "more profitable" than the now prescribed use (single-family), the financial effect of the present restriction is not irrelevant. The Board again erred as a matter of law in simply excerpting a part of the ordinance without reasoning, as a justification of its vote. The explicitly listed grounds for

a variance include the "reasonableness" of the restriction that would be imposed on the use of the property without the variance.

Dortch adduced tax appraisal data valuing the structure at \$56,900 and the land at only \$8,600, and testified that, if not impossible and prohibited, changing the structure physically would cost over \$100,000. This is not a question of mere "profitability"; this is a question of unreasonableness and hardship. The Board committed legal error.

Most of the surrounding property is already single-family and functioning that way; there are only about five multi-family units in the area (and even those may not have the same conditions). This house is only two units, which are relatively small – two bedrooms each.

Further, a variance would not be a substantial detriment to the adjacent property or public good and the character of the district would not be harmed. The property has been a duplex since it was built in 1930 and all adjacent property has been acquired and used with notice of this fact; the public good favors repair and preservation of historical uses and Dortch has the ability to provide additional off-street parking (if necessary) which is behind the building – letting her fix it won't hurt the public or anyone else. The character of the district is residential. Specifically, the character is medium to high density residential which is single-family, two-family, multi-family, and other. A variance would not change or harm the already high density, multi-family residential character of the district.

As a matter of law, under the facts, the variance does no harm. The Board may simply be trying to discourage rental, which is not only an illegitimate consideration, but is also not Dortch's intent.

The facts supporting this variance are that the house has a reasonable size lot, but it is not possible to make the lot any bigger. To the extent that parking concerns are an issue, Ms. Dortch has a reasonable plan to set aside an additional parking area in the backyard of the premises. This parking would not only be adequate, but it would also be away from the street, and away from view. In the alternative, street parking has been allowed since 1930 and the width of the street has not changed. A car could park on the street, and another (or even two) could park in the driveway, if there were ever as many as two or three cars present.

Notably, the lot is larger than half of the lots in its block and larger than 9 out of 13 on either side of the street along the block it faces. See the map the City presented.

There is no evidence that the building has ever been anything other than an up-and-down duplex. Heating is handled separately upstairs and down. The electrical wiring is handled separately upstairs and down. There are two electric meters. There are no internal stairs. Access to the second story is achieved by external stairs on the front of the house and external stairs on the back of the house.

As noted, it would be extremely expensive to structurally alter the house and add internal stairs, destroying the historical usage and configuration of the house. A door opens to the upstairs porch from a living room. However, this issue can barely be reached, in that there does not appear to be any practical way that interior stairs could be added without wholesale changes to the structure. Namely, there is a bedroom over the downstairs living room. There is a living room over a downstairs bedroom. There is no way to put stairs in a living room leading to another family area upstairs, without destroying an entire bedroom or changing the whole house around.

A variance "saves the otherwise valid zoning ordinance from death at the hands of property owners with site-specific constitutional claims. It is the safety valve of the zoning ordinance." Grey Rocks Land Trust v. Town of Hebron, 136 N.H. 239, 246 (1992) (Horton, J., dissenting).

The same considerations that militate so strongly toward grandfathering an existing use become compelling factors for granting a variance even if the use is not legally grandfathered. That is, the present situation does not involve newly constructing a house. It does not involve substantially demolishing an existing house and virtually rebuilding it. It does not even involve making substantial repairs to a single-family home which was later changed into a duplex by modification or addition. This is a situation where the existing configuration of the house itself presents a unique difficulty and would create an exceptional hardship on Dortch to change. She is not made out of money and she has done her best to preserve this historic structure. She has never intended to abandon the use and has been hampered by external factors.

The history of the house is as follows. Back in the early 1960s, her mother rented the house. Then she entered an agreement to buy it. She worked very hard as a single parent to establish enough credit to get a loan. She worked as a maid and a babysitter and a nurse's aid at low wages to make payments on the mortgage for decades.

From the beginning, the house was an up-and-down duplex. Dortch's mother lived in one portion of the house, and kept the other portion available for the needs of family members. When Dortch's mother died some years ago, Dortch and her brother inherited the house. While Dortch's brother was living in the house, a small fire occurred at the back of the house, causing some damage to the back stairwell and a bathroom. Dortch's brother was not in good financial

condition. It took Dortch a small period of time in which to negotiate and arrange to buy her brother's portion of the house, so that she would be the complete owner, and could invest her money in making the repairs and continuing to pay the mortgage. Then the City would not grant a repair permit in 2008. The Board denied a variance and appeal in 2009, citing the wrong statutes. Dortch appealed to the Circuit Court. The City avoided the merits by arguing Dortch was a day or two late with her appeal. The Circuit Court dismissed. Dortch requested reconsideration, and no further appeal has yet occurred.

To say the least, Dortch has had considerable difficulty navigating through all of the problems just to make these simple repairs to an historical family home which has always been a duplex. She eventually was able to secure sufficient help to repair the damaged areas in the back. By the time these matters were addressed, there was also some rot at the front of the house, specifically concerning the exterior stairs and a portion of the porch. Dortch was permitted to repair these areas as well. She has finally gotten all the work done on the exterior, including having to match the windows historically, use the historically correct profile of wood, be subject to numerous inspections, etc. Dortch lives in Winnsboro which is a good distance away. She has had to take many days off from work in order to deal with the house. She has had to do the work sparingly, because of financial limitations. However, she has always determined to have the repairs and renovations done to a good standard.

When Dortch most recently applied, through a contractor, to repair the house and was still not allowed to do interior work. She was advised by the Zoning Office to seek a variance, which she sought on her own, before engaging an attorney.

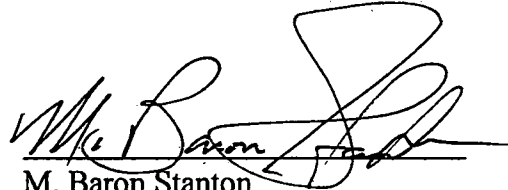
The fact still remains that requiring Petitioner Dortch to change the use and design of the property would place a hardship on Petitioner, and applying the Zoning Ordinance in this manner is fundamentally unfair and a violation of the due process of law, and is arbitrary, capricious and illegal. At a minimum, a variance should have been granted, as all the requirements are met, and the Board's legal conclusions are erroneous.

Attempting to preserve her rights to challenge the application of the ordinance itself, Dortch respectfully requests that it be determined there is no obstacle to her proceeding to simply do some interior repairs and renovations without being required to somehow transform the house into a single-family dwelling.

In the alternative, Dortch respectfully requests that this Court reverse the Board's denial of a variance. Dortch wishes to keep the house as it physically is, i.e., a duplex, and make some moderate repairs and renovations to fix it up. This is a uniquely situated property with a well-established historical use, and to require such a far-reaching – if not impossible – change would create a unique and undue hardship on Dortch.

Dortch will supply separately, the original application of Dortch, the testimony of Dortch (confirmed in person at the hearing), assessor's information on the property supplied to the Board, and a map supplied to the Board, and other materials the Board apparently already had on hand at the hearing.

WHEREFORE, Petitioner Dortch prays that this Court inquire into the matters hereinabove stated and reverse the decision of the Zoning Division and Zoning Board of Appeals so as to grant a variance and require the Zoning Division and the Building Department to permit Petitioner Dortch to do interior repair and renovation to the house and use it as an up-and-down duplex.



M. Baron Stanton
STANTON LAW OFFICES, P.A.
1728 Main Street
P. O. Box 245
Columbia, South Carolina 29202
803-929-1484

Date: April 11, 2013

ATTORNEY FOR PETITIONER

City's Motion to Dismiss Circuit Court Appeal
of Second BOZA Proceeding, and Return to Petition,
dated Apr. 30, 2013 (with remaining Exhibits A-C)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Frieda H. Dortch,)
)
 Petitioner,)
)
 vs.)
)
 City of Columbia, Planning &)
 Development Services/Zoning)
 Division,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 C/A NO.: 2013-CP-40-02159

**MOTION TO DISMISS AND RETURN
 TO PETITION OF APPEAL ON BEHALF
 OF CITY OF COLUMBIA BOARD OF
 ZONING APPEALS**

2013 APR 30 PM 3:32
 JEANETTE W. McBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

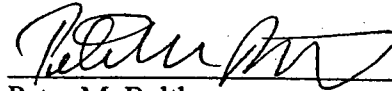
TO: FRIEDA H. DORTCH AND M. BARON STANTON, ESQ.:

YOU WILL PLEASE TAKE NOTICE that the Respondent City of Columbia Board of Zoning Appeals (hereinafter "BOZA"), incorrectly identified in the Petition of Appeal as City of Columbia, Planning & Development Services/Zoning Division, will move before the presiding judge for the Fifth Judicial Circuit, on the tenth day after service hereof or as soon thereafter as counsel may be heard, for an Order dismissing Petitioner's Petition filed on or about April 11, 2013, on the grounds that this action is barred by the doctrines of res judicata and/or collateral estoppel. BOZA will show that the Petitioner's requested relief, i.e., a variance, was denied by BOZA on January 16, 2009. (See Exhibits A, B, and C, attached hereto.) BOZA's previous denial of Petitioner's request for a variance should preclude this action.

In the alternative, and to the extent the court finds that the Petition of Appeal is properly before the court, the Respondent hereby makes its return, denies the substantive allegations, and denies the Petitioner is entitled to the requested relief. Attached as

Exhibit D, is a copy of the proceedings held before the board, including a DVD recording of the proceedings.

This motion will be based on the pleadings, the record of the BOZA proceedings, the attached exhibits, statutory and case law, and any other information that may be presented to the court at the hearing on this matter.



Peter M. Balthazor
Assistant City Attorney
Office of the City Attorney
P.O. Box 667
Columbia, SC 29202
(803)737-4242
(803)737-4250 Fax

April 30, 2013
Columbia, South Carolina

Attorney for Respondent

EXHIBIT A

COLUMBIA



Everybody Counts - Everybody Contributes - Everybody Benefits

January 16, 2009

Frieda H. Dortch
PO Box 10083
Columbia, SC 29207

RE: FINAL DECISION OF THE BOARD OF ZONING APPEALS IN
CASE NO. 08-051-V,
825 & 825 ½ HEIDT STREET,
TMS# 11409-15-03,
HEARD JULY 08, 2008.

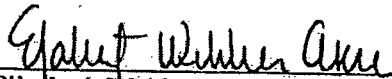
Pages: 2

In accordance with § 17-113(b) of the Zoning Ordinance of the City of Columbia, South Carolina, the Board of Zoning Appeals herein renders its final decision.

The subject property is commonly referred to as 825 & 825 ½ Heidt Street or, more specifically, by the Richland County Tax Map Sheet Number 11409-15-03. The subject property is located within the RG-1-DP General Residential District within the Design and Preservation Area.

Based upon the application, submitted documents, and testimony considered by the Board of Zoning Appeals at the July 8, 2008 public hearing, the Board of Zoning Appeals denies your Application for Variance to the lot requirement to re-establish a duplex on the subject property. In accordance with § 17-112 (2) c, the Board found that there is no extraordinary or exceptional conditions with this application.

Please be advised that § 17-114 of the Zoning Ordinance provides that any person who may have a substantial interest in any decision of the Board of Zoning Appeals, or any officer or bureau of the city having authority, may appeal from any decision of the Board to circuit court in and for the county by filing with the clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after the final decision of the Board is mailed.


Elizabeth Webber-Akre, Chair of the Board of Zoning Appeals

1.16.09
Date

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Upon a motion to deny the Application for Variance:

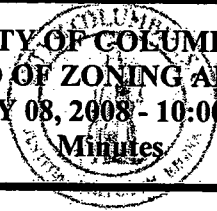
Voting Aye: Barczak, Gillespie, Watson and Webber-Akre.
Voting Nay: Cromartie.
Absent: McMeekin.
Abstained: Hinkle.

Cc: Brenda J. Kyzer, Business License Administrator

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EXHIBIT B

CITY OF COLUMBIA
BOARD OF ZONING APPEALS
JULY 08, 2008 - 10:00 AM



In attendance: Elizabeth Webber-Akre, Chris Barczak, Ernest W. Cromartie, III, Elaine Gillespie, Alvin Hinkle, and Charles Watson

Absent: Silas Calhoun McMeekin, III

Staff: Johnathan Chambers, C. Michael Conley, Marc Mylott, and Andrea Evans-Wolfe

I. CALL TO ORDER – 10:01 AM / Quorum established

Ms. Webber-Akre introduced the Board of Zoning Appeals members and City Staff, and explained the purpose and process of the Board of Zoning Appeals. The sworn testimony of those intending to speak was taken.

Mr. Chambers, City Staff, explained general housekeeping duties. He noted changes to the Agenda as follows: under the Consent Agenda – item #3, 1205 House Street (TMS#11411-19-11) is deferred by Staff request; under the Regular agenda – item #5, 3213 Farrow Road (TMS# 11504-30-11) is deferred by Staff request; and item #6, 815 Elmwood Avenue (TMS#09011-04-01) is deferred by Applicant request. Request to defer item #7, 3601 Heatherwood Road (TMS#13905-01-14) by the Applicant was received that morning.

Motion Ms. Gillespie to defer item 7, *second by Mr. Hinkle*. Motion approved 6-0.

II. CONSENT AGENDA

A. OLD BUSINESS

None.

B. NEW BUSINESS

- | | | |
|--------------|---------|--|
| 1. 08-041-SE | Dist. 2 | 810, 924, 934, 938 & 942 Broad River Road (TMS#07311-05-01, -09, -10, -11 & 07310-02-01). Special exception to operate an automotive repair facility (Richardson Plowden & Robinson, P.A.) (Zoned C-3). |
| 2. 08-046-SE | Dist. 1 | 6012 North Main Street (TMS#11711-10-04). Special exception to establish a drive-through automatic teller machine (ENG Builders, LLC) (Zoned C-3A). |
| 3. 08-048-SE | Dist. 2 | 1205 House Street (TMS#11411-19-11). Special exception to expand an existing religious organization (Bethel Holiness Church) (Zoned RG-2).
<i>Note: Staff requests deferral until August 12, 2008</i> |
| 4. 08-050-SE | Dist. 2 | 506 Gervais Street & 1118-1120 Huger Street (TMS#08912-10-21 & -02). Special exception for off-site leased parking (Vista Tanning LLC) (Zoned M-1-DD). |

Case #1 removed for discussion by Chairwoman Webber-Akre. Review of Consent Agenda cases 2 and 4 by Staff.

Motion by Ms. Gillespie to approve case 2 and 4 on the Consent Agenda subject to any conditions that may be found in the case summary for that application and to adopt as the findings of the Board those findings for each case prepared by Staff also found within each case number; second by Mr. Watson, motion approved 6-0.

810, 924, 934, 938 & 942 Broad River Road (TMS#07311-05-01, -09, -10, -11 & 07310-02-01). Special exception to operate an automotive repair facility. This is a special exception to operate an automotive repair facility in conjunction with an automobile dealership. This is a request to demolish existing houses and build a JP ByRider car dealership on the property. This is a permitted use of the property and only the automotive repair shop will require a special exception. Steve Hamm of Richardson/Plowden Law Firm, is the applicant. Ms. Webber-Akre stated she is aware that the existence of car sales is allowed in the area. Existing large car dealerships on Greystone Boulevard that back up to residential backyards are very noisy with loud speakers. She questioned if noise will be an issue for this project. Mr. Hamm stated that speakers will not be utilized at this dealership because of concerns with surrounding neighborhoods. The dealership will also have directional lighting to prevent lighting on the residential area. The repair facility – repairs adjacent or related to sale of vehicles/in house repairs – will be open for normal business hours. There may be an exception for customer service if someone arrives for a late repair. He presented a layout of the facility. There will have a showroom area and repair center. Landscaping will have plants in surrounding areas with a 6' wood screening fence on the back wall with the landscaping; and the directional lighting away from the neighborhood.

Motion by Mr. Hinkle to approve application for 810, 924, 934, 938 & 942 Broad River Road (TMS#07311-05-01, -09, -10, -11 & 07310-02-01) based on Staff findings along with the stipulation regarding noise control on the premises; second by Mr. Cromartie. Motion approved 6-0.

III. REGULAR AGENDA

A. OLD BUSINESS

5. 06-040-AA Dist. 3 3213 Farrow Road (TMS# 11504-30-11). Appeal of Zoning Administrator's decision regarding previous condition of Board of Zoning Appeals (Hot Spot) (Zoned C-3).

Note: Staff requests deferral until August 12, 2008.

6. 08-040-SE Dist. 1 815 Elmwood Avenue (TMS#09011-04-01). Special exception to expand an existing elementary school (Richland County School District 1) (Zoned RG-2-DP-PD).

Note: Applicant requests deferral until August 12, 2008.

B. NEW BUSINESS

7. 08-047-V Dist. 4 3601 Heatherwood Road (TMS#13905-01-14). Variance to the fence height requirements in the front yard (Zoned RS-1).

Note: Last minute Applicant requests deferral until August 12, 2008.

8. 08-049-V Dist. 1 2737 River Drive (TMS#09110-16-06). Variance to the parking requirement to establish an eating place (Neighborhood Pie, LLC) (Zoned C-3-DP).

2737 River Drive (TMS#09110-16-06). Variance to the parking requirement to establish an eating place that will be mainly carry out with some eat in and delivery. Staff comments address parking concerns; mainly on-street parking. Applicant, Bill May, presented. The proposing pizza/pasta restaurant will be mainly pick up and delivery to Earlewood, Cottontown, and downtown; with minimal dine-in of 3-4 tables. With the revitalization of Main Street, the restaurant will fit with C-3 zoning. The restaurant will help neighborhood of which he is a resident. Parking will consist of 3-4 spaces onsite. Property has been vacant about 20 years, and initially was a dry cleaning business, with an antique collection shop business on the weekend.

Mr. Hinkle asked for clarification on the request for a variance to parking requirements. Mr. Chambers said a restaurant must 8 parking spaces per 1000 sq.ft. If it were a drive thru facility, the requirements would be 12 parking spaces per 1000 sq.ft. and a special exception to the Board of Zoning Appeals. The parking requirement is actually less because it is a restaurant. The parking requirement is for 10 spaces, the site plan shows four spaces, and Staff determined there are only two spaces. Mr. Chambers stated that an onsite visit and actual size/location of the property will be difficult to provide 4 spaces. The site plan reflects the spaces are angled which would not allow entry/exit as needed; at best two spaces can be legally added. There is a single family residence to the east of the property with a shared driveway between the properties.

Mr. Barczak questioned if the use of the green space behind the building could be used for parking. Mr. May responded he met with the landscape planner, and there will be a fair amount of landscaping; it has more of a backyard appearance. Mr. Chambers said there is existing vegetation, the area may need a wood screening fence and buffer; and once the buffer is established the back of building area will be very limited. Mr. Mays could possibly obtain two spaces for delivery staff. Mr. Barczak said there are major concerns, based on letters [from the neighborhood], with parking. There is @12' between the side of the building and the property line that would allow a driveway. Mr. Mays said there is parking utilized by Church on Beaufort Street, he met with pastors and because he will not be open on Sunday or serve alcohol; they had no issues/conflicts of parking on the street with the church. There are three spaces on Beaufort Street, 5 spaces can be allowed on church side; for about 8 offsite, 2 behind building, 2 on side, and 2 in front. He can also lease additional parking from store downtown. Monday through Thursday there will be 3 employees, one delivery and two inside, in the restaurant. On Saturday, there will be an increase of one employee. Hours will be Monday through Thursday from 11:00 AM-9:00 PM; Friday and Saturday will be 11:00 AM-9:30 PM.

Ms. Webber-Akre asked if parking could consist of two in front and have some parking in the back; and suggested with the removal of the canopy that a fair amount of parking could be provided. Mr. Mays said he likes the look of building and would not like to alter design. The building was originally a dry cleaner and is a shell that can be remodeled inside. Mr. Cromartie questioned parking issues and where the required number of spaces would come from. Mr. Barczak asked if there are any concerns with the use of the property. Mr. Chambers said Staff is aware there are several uses that can be allowed and a variance will not be needed. Retail would require 3.5 spaces, restaurant allows 8. As far as it is know from calls received, there is no objection from neighborhood for the restaurant use, but there is objection to parking. Mr. Cromartie said that it seems parking is a major issue and it would help to have a lease in hand to state how the space in the rear or on the side could be utilized better. Ms. Webber-Akre clarified that the case is being presented only for a parking variance not the use of building. Mr. Hinkle said to keep parking at minimum required, which is 10. Ms. Webber-Akre stated the Board of Zoning Appeals is looking at set criteria to see if there are any exceptions that prevent the required parking, of if being in conformance will restrict the use of the property, and Mr. May is requesting the minimum required parking. Ms. Webber-Akre said none of the criteria is met for this application at this time. Mr. Chambers said there cannot be any other parking than allowed and it must conform to buffer (Ordinance). Ms. Webber-Akre still feels the rear of property could allow for some parking and the canopy area would provide some parking. Mr. Hinkle added it may be a good business for the community, but it is aware that the community is split on the decision. Further discussion on parking concerns, a review of a parking study, consideration for on-site parking, variance for parking, the impact on the surrounding area, and obtaining a lease agreement was held by Mr. Watson, Mr. Cromartie, Mr. Barczak, and Ms. Webber-Akre. Mr. Watson suggested the area be reviewed for # of spaces and how they could be allocated, and the applicant then return and present. Ms. Webber-Akre asked Mr. Mays if he would want to withdraw his case, or defer and work with staff to come to agreement, he can then bring information back to the Board of Zoning Appeals. Mr. Mays, the applicant, requested deferral to August 12 meeting.

Motion by Mr. Hinkle to defer 2737 River Drive (TMS#09110-16-06) to the August 12, 2008 Board of Zoning Appeals Meeting, second by Mr. Barczak. Motion approved 6-0.

9. 08-051-V Dist. 3 825 Heidt Street (TMS#11409-15-03). Variance to the lot requirement to re-establish a duplex (Zoned RG-1-DP).

Mr. Chambers stated the property contains 7644 sq.ft. zoned RG-1-DP and requires 10,000 sq.ft to accommodate a duplex. Applicant has had numerous conversations with Staff regarding the renovation to property. Property has been vacant for approximately two years and lost any claims to grandfather status.

Freida Dorsch (sp?), owner and applicant, want to re-establish her request for property at 825 Heidt Street because the property has been vacant for over 12 months; probably two years. Ms. Dorsch's brother lived in the building for about two years; without water and electricity. Application paperwork/fire report states there was a fire in the structure in 2004, applicant stated the fire was in April 2005 to her knowledge. Her brother still lived there for about one year after the fire. The property is secure and the fire was in back of the house. Ms. Dorsch said the house has been vacant about 12 months now and she is trying to get a permit for renovations. Mr. Barczak asked if estimates have been obtained and what type of renovations were planned. Ms. Dorsch responded she plans to totally upgrade property, remove burnt wood, paint and replace the wood, redo bathrooms, redo bathroom fixtures, redo back structure of the house, and redo windows; basic structural work.

The fire started on back porch, a kerosene can was set on fire by her brother's girlfriend. It is an older house with back porch, the back porch and back bathroom was damaged. Mr. Barczak said the house looks like it was a single family residence originally; and questioned if the upper level was one unit and the lower level was one unit. Ms. Dorsch stated it was a duplex and was not a combined unit. Ms. Gillespie looks like it is a single home that was converted possibly in the 1940's. The applicant has lived there since the 1960's and it was a duplex at that time. Mr. Watson said his understanding of grandfathering is to allow non-conforming use to continue its 'lifespan', and when that ends by fire or some other form for vacancy, it may be time for the property structure to conform to the applicable time frame and current neighborhood standards. He feels this is the situation with this structure.

Mr. Hinkle asked what states it cannot be used as a duplex any longer if it was built to be such. Mr. Chambers stated that it does not matter if it was built as a duplex, it does not have adequate lot area to accommodate the duplex. Ms. Gillespie said she does not feel, as a contractor, that it was originally built as a duplex. Mr. Cromartie echoed Mr. Watson's statement that if an applicant wanted the benefit of grandfathering, they must ensure the use is within the twelve month period; and if procedures had been followed property, this case would not be here for presentation. Mr. Chambers added this property is also in a design preservation district which has a provision that allows someone prior to three years to come to the Board of Zoning Appeals for a special exception. However, the only documentation available was from the prior fire report which states the fire occurred in 2004 and it cannot be established the structure was occupied. The current status of the site is vacant and boarded. The applicant wants to use the property as a duplex; there is inadequate lot area and the structure is non-conforming and the applicant must come for a variance to the lot area requirement.

Mr. Cromartie asked Ms. Dorsch if duplex use is not allowed, what use would be used and would she continue with plans to renovate and make a single family home. Ms. Dorsch responded there area duplexes across street, next door, down street, a lot of duplexes in area. It would be an economical hardship to rebuild home as single family. Mr. Hinkle asked why her duplex would not be allowed if there are duplexes all around area and this would be in character of the community. Mr. Barczak stated that out of 13 parcels in area, 4 are multi-units. Mr. Chambers stated that 825, 821 and 823 and 826 and 828 are duplexes as shown on property map. Mr. Watson said the City Ordinance states structures must be owner occupied. Mr. Barczak again stated this was probably a single family home and remodeled into a duplex; others may have been originally duplex. Ms. Webber-Akre stated as Mr. Cromartie has that the property should have been renovated within a 12 month period if the intention was to keep in the property in the family and in a non-conforming status; which is the responsibility of the property owner. Ms. Dorsch stated at that time she was only a 50% owner and had to buy out for other half, she acquired sole ownership with title record in December 2007. She said the fire was contained to the back of the house; she is not doing a total reconstruction. She is requesting to repair to bring up to standard as a duplex. Surrounding duplexes are a total renovation. Mr. Hinkle said he would personally like to know cost quotes to upgrade duplex versus renovating to a single family home in regard to economic hardship for the applicant. Mr.

Cromartie asked if the historic character of home will be maintained; Ms. Dorsch said it would. Ms. Webber-Akre stated that is not part of criteria to request cost of renovations and the property lost its non-conforming status because of time period and now must look at current Ordinance and conforming to Ordinance. She feels the application is not right for approval with bearings based on criteria.

Mr. Hinkle asked if there was communication with the neighborhood, letters in packets from neighborhood state opposition. Ms. Dorsch said the letters are in opposition because of street parking, not upgrade of home, she has made provisions for back yard parking. Ms. Webber-Akre responded that the letters in packets are in opposition to multi-use family dwellings; parking issues must also be satisfied. Mr. Cromartie asked Ms. Dorsch again if the home could be utilized as a single family unit. She said it could, but that would be an economical and emotional hardship for her. She want to restore the home to the 1960's style. Mr. Barczak feels an inspection should be done by City Staff to determine if the building was a duplex originally; and it should be restored to the 1940's / original style.

Motion by Mr. Barczak to deny request of 825 Heidt Street (TMS#11409-15-03) Variance to the lot requirement to re-establish a duplex, no extraordinary or exceptional instance, second by Ms. Gillespie. Motion approved 4-2. Opposed – Mr. Cromartie; Abstain from voting – Mr. Hinkle; in favor – Mr. Barczak, Ms. Gillespie, Mr. Watson, and Ms. Webber-Akre.

Mr. Mays returned for questions regarding 2737 River Drive (TMS#09110-16-06). Variance to the parking requirement to establish an eating place, and was referred to Staff by Board of Zoning Appeals Chairwoman Webber-Akre.

V. OTHER BUSINESS

Approve September 2007 Minutes.

Approve October 2007 Minutes.

Approve November 2007 Minutes.

Review of September, October, and November 2007 Minutes. Comments and corrections to minutes noted by Mr. Watson. **Motion by Mr. Barczak to approve September 2007, October 2007 and November 2007 Minutes with corrections; second by Ms. Gillespie. Motion approved 6-0.**

Mr. Mylott stated there has been a consolidation of certain departments within the City. Planning & Development Services have been combined and Andrea Wolfe, Senior Administrative Secretary, will be in charge of Board of Zoning Appeals Minutes from this point on.

VI. ADJOURNMENT

There being no other business, meeting adjourned at 10:25 a.m.

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

EXHIBIT C

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2009CP4001307

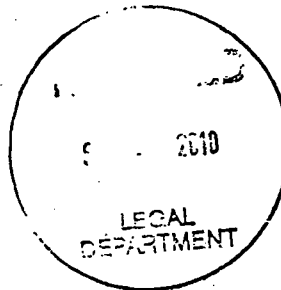
Frieda H Dortch

vs.

City Of Columbia Planning

Plaintiff

Defendant

CHECK ONE:

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

2010 SEP 2 AM 11:45
RICHLAND COUNTY
FILED
JEANETTE W. McBRIDE
CLERK OF COURT

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court;

Dated at Columbia, South Carolina, this _____ day of _____, 2010.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this _____ day of Sept, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Frieda H Dortch

Peter Michael Balthazor

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride

Clerk of Court

SCRPC APP-24/FORM 4

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A NO.: 2009-CP-40-1807

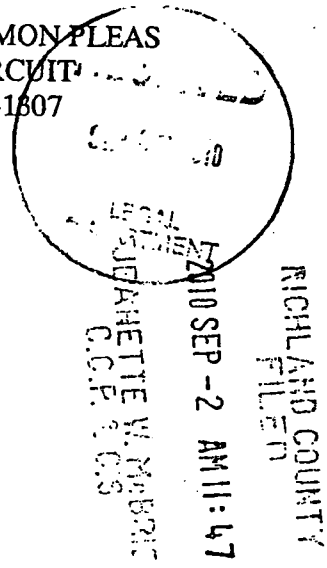
Frieda H. Dortch,
)
)
Petitioner,)

vs.)

City of Columbia, Planning &
Development Services/Zoning
Division,)

Respondent.)

ORDER



This matter came before the Court on August 11, 2010, for a hearing on the Respondent's Motion to Dismiss. The Court hereby grants the Respondent's motion for the reasons stated herein.

I. Facts/Background

In 2008, the Petitioner twice appeared before the City of Columbia Board of Zoning Appeals ("BOZA"). In the first instance, on July 8, 2008, the Petitioner sought a variance to the lot requirement to re-establish a duplex on her real property. BOZA denied this request by a vote of 4-1. In the second instance, on September 9, 2008, the Petitioner applied for administrative review of the Zoning Administrator's decision regarding the nonconformity of the duplex on the subject property. Again, BOZA voted 4-1 in favor of the Zoning Administrator's determination that the duplex had lost its "grandfather" status. BOZA issued a written decision in each of these matters on January 16, 2009. See City Code § 17-113(b) (stating all final decisions and orders of BOZA shall be in writing).

SCANNED

The Petitioner, pro se, filed a Petition/Appeal with the Circuit Court from both of the written decisions on February 24, 2009, more than thirty days after the written decisions were mailed. The Petitioner also filed an Amended Petition of Appeal along with a supporting affidavit on February 26, 2010. Thereafter, the Respondent filed its Motion to Dismiss on April 15, 2010.¹

II. Law/Analysis

The Respondent asserts that the Petitioner's appeal was untimely and must be dismissed. Appeals from local zoning boards "must be filed within thirty days after the decision of the board is mailed." S.C. Code Ann. § 6-29-820 (Supp. 2009); see Vulcan Materials Co. v. Greenville County Board of Zoning Appeals, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000) (stating that the statutory scheme concerning the "time period in which an appeal from a zoning board's decision must be raised to the circuit court . . . starts the clock after the decision has been 'mailed'"); see also City Code § 17-114 (stating an appeal to the circuit court must be filed within 30 days after the board's decision is mailed).

The Respondent asserts that the written decisions were sent to the Petitioner by certified mail on January 22, 2009. In support of its motion, the Respondent submitted an affidavit from the Deputy Zoning Administrator. The Administrator is responsible for mailing BOZA's written decisions. The uncontroverted evidence submitted by the Respondent shows that the written decisions were mailed on January 22, 2009.² Based

¹ The Respondent had not received notice of the appeal until being served with the amended petition.

² The Petitioner acknowledges that the decisions were postmarked on January 22, 2009.

on the evidence submitted by Respondent, I hereby find that the Respondent mailed the written decisions on January 22, 2009, thereby starting the clock.

However, this does not end the matter. The Petitioner argues that the appeal was not untimely because Rule 6(e), SCRCF, provides a five-day extension to act after a paper is served by mail. This court holds that Rule 6(e), SCRCF, does not provide for an extension in this situation.

This is an appellate matter and this court is sitting only in an appellate capacity. Austin v. Board of Zoning Appeals, 362 S.C. 29, 37, 606 S.E.2d 209, 213 (Ct. App. 2004) (“When reviewing a Board decision, the circuit court sits as an appellate court.”). BOZA conducted the fact-finding and this court may not take additional evidence. S.C. Code Ann. § 6-29-840 (Supp. 2009); cf. S.C. Code Ann. § 14-25-105 (Supp. 2009) (stating an appeal from municipal court shall be heard upon the return provided and there “shall be no trial de novo”). This court may only “hear and pass upon the appeal on the certified record of the board proceedings.” S.C. Code Ann. § 6-29-840 (Supp. 2009) (emphasis added). Section 6-29-820 states that an “appeal must be filed within thirty days after the decision of the board is mailed.” S.C. Code Ann. § 6-29-820 (Supp. 2009) (emphasis added).

Because this matter is an appeal, the time limits for an appeal to circuit court from BOZA are jurisdictional and cannot be enlarged by this court or by reference to the Rules of Civil Procedure. In Sadisco of Greenville, Inc. v. Greenville County Board of Zoning Appeals, 340 S.C. 57, 530 S.E.2d 383 (2000), the petitioner’s appeal from the zoning board to the circuit court was dismissed for failure to timely file the notice of appeal. The petitioner then moved for relief from the dismissal under Rule 60(b)(1), SCRCF. The

Supreme Court affirmed the denial of the Rule 60 motion and reiterated that “service of a Notice of Appeal is a jurisdictional requirement, and [a court] has no authority to extend or expand the time in which a Notice of Appeal must be served.” Id. at ___, 530 S.E.2d at 384; see Hill v. S.C. Dep’t of Health & Environmental Control, Op. No. 26873 (S.C. Sup. Ct. filed Aug. 23, 2010) (Shearouse Adv.Sh. No. 34 at 25) (“The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court.”); Vulcan Materials Co. v. Greenville County Board of Zoning Appeals, 342 S.C. 480, 489 n.7, 536 S.E.2d 892, 896 n.7 (Ct. App. 2000) (stating “the timeliness of an appeal from a zoning board’s decision is a jurisdictional requirement”). A court sitting in an appellate capacity has no authority or discretion to rescue a delinquent party by extending the deadline for service of a notice of appeal. USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008); see Rule 82(a), SCRCP (These rules shall not be construed to extend or limit the jurisdiction of any court of this State”); Rule 263(a), SCACR (“Rule 6(e), SCRCP, is not applicable to these rules, and no additional time shall be allowed by reason of service by mail”).

In Witzig v. Witzig, 325 S.C. 363, 479 S.E.2d 297 (Ct. App. 1996), the Court of Appeals recognized that Rule 6(e), SCRCP, does not apply in an appellate situation. In Witzig, the plaintiff commenced an action in probate court to remove the personal representative of her father’s estate. The probate court denied the removal and the plaintiff appealed to the master-in-equity, sitting as special circuit judge. The Court of Appeals held that the plaintiff did not timely appeal the probate court’s denial. Initially, the court held that a specific statute, § 62-1-308(a), which provided ten days for an appeal from probate court, controlled over the general provisions of Rule 74, SCRCP, which

provides thirty days for appeals to circuit court unless "no time is fixed by statute" Id. at 366, 479 S.E.2d at 299. The court also held that because "Rule 6(e), SCRCP, is a pleadings rule . . . [u]nlike Rule 74, SCRCP, and [the specific statute], which pertain to appeals . . . Rule 6(e), SCRCP, does not provide an additional five days to file a notice of intent to appeal." Id.

The statute governing appeals from zoning boards to the circuit court is more specific than the general pleading rules found in the Rules of Civil Procedure. "Generally, specific laws prevail over general laws" Langley v. Pierce, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993). Rule 6(e), SCRCP, does not have any application in an appellate situation where a statute specifically sets forth the procedure and the time limits for filing a notice of appeal. See Witzig, supra. The statute provides all of the procedure required and does not provide for a time extension.

It should also be recognized that the Rules of Civil Procedure acknowledge that a state statute may be more specific and will control if a statute provides for an appeal. See Rule 4(e), SCRCP ("Whenever a statute . . . provides for service . . . of a notice . . . service shall be made under the circumstances and in the manner prescribed by the statute"); Rule 74, SCRCP ("In all such appeals [to the circuit court from a decision of an administrative agency or tribunal] the notice of intention to appeal shall be filed with the clerk of court to which the appeal is taken . . . within the time provided by the statute"); see also Witzig, supra, (quoting Rule 74, SCRCP, and stating that "Rule 74 applies only 'when no time is fixed by statute.'").

The petitioner has not cited any cases where Rule 6(e), SCRCP has been used to extend a jurisdictional deadline to file a notice of appeal. The cases cited by the

petitioner deal only with the computation of the initial 30 days in which to respond or appeal, which is not the issue in the present case. See Walton v. Canal Ins. Co., 331 S.C. 636, 503 S.E.2d 727 (1998) (applying Rule 6(a), SCRCF); Lindsey v. S.C. Tax Comm'n, 323 S.C. 57, 448 S.E.2d 577 (Ct. App. 1994) (applying Rule 6(a), SCRCF, to compute the thirty day time limit). If the present appeal concerned simply the computation of time periods, this court would rely on Rule 263(a), SCACR. This rule is in most respects identical to Rule 6(a), SCRCF, except for one critical distinction that is important in appellate matters – Rule 263(a), SCACR, explicitly states that “Rule 6(e), SCRCF, is not applicable to these rules, and no additional time shall be allowed by reason of service by mail”

This court’s decision is also supported by DeLoach v. Georgia Firemen’s Pension Fund, 444 S.E.2d 137 (Ga. Ct. App. 1994). In DeLoach, the plaintiff challenged the denial by a pension fund of his application for disability benefits. The statute providing for judicial review of the pension fund’s decision stated that “[n]o action shall be brought contesting any determination of the board . . . for disability benefits . . . after the expiration of 60 days from the date on which written notice of the final determination of the board is mailed by first-class mail to the last known address of the fireman” Id. at 138. The trial court found that the complaint was untimely but the plaintiff argued that the 60-day period was extended by the application of a statute providing for a three-day extension where a notice or paper is served by mail. Id. at 139. The court held, however, that the extension statute applied “when *and only when* notice is effectuated by regular mail and the statutes prescribe that another method will ‘satisfy’ the notice requirement [It has] no application where transmittal by ordinary mail is the prescribed method of

giving notice and the statutes specify that such mailing . . . will 'satisfy the notice requirement." Id. The same analysis is applicable here. "Since [S.C. Code § 6-29-820] specifically prescribes that the notice be sent by first-class mail, [Rule 6(e), SCRCF] is not applicable here." Id.

For the reasons stated herein, this court grants BOZA's motion to dismiss.³

AND IT IS SO ORDERED.



The Honorable James R. Barber, III
Fifth Judicial Circuit

Columbia, South Carolina
9/1, 2010

³ In light of the court's disposition of this issue, the court is without jurisdiction to consider the Petitioner's Amended Petition.

**Dortch's Memorandum in Opposition
to City's Motion to Dismiss Circuit Court Appeal
of Second BOZA proceeding, dated June 14, 2013**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Frieda H. Dortch,

Petitioner,

v.

City of Columbia, Planning &
Development Services/Zoning
Division,

Respondent.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 13-CP-40-02159

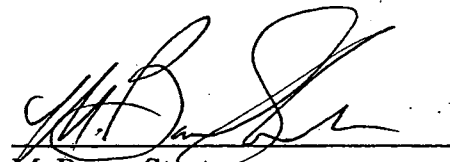
**PETITIONER'S MEMORANDUM IN
OPPOSITION TO CITY'S MOTION TO**

**DISMISS ON THE BASIS
OF RES JUDICATA**

1. The basis for Dortch's appeal and the errors of the Board are in the notice of appeal filed by Dortch.
2. The City's main opposition is an assertion that the current appeal is barred by the prior final determination of a previous appeal regarding the property. Thus, the City's primary opposition is not based on the merits.
3. The information presented by the City regarding the prior proceeding:
 - a. Pertains to a different, separate application, not the same application, by Ms. Dortch;
 - b. Pertains to an appeal which was, itself, opposed by the City in the Circuit Court, only on the non-merits, technical basis that it was allegedly filed pro se a day late, based on an anachronistic provision allowing the appeal time to run starting on the date the City internally alleges it sent the decision appealed from, rather than the date the affected party received it; and
 - c. Does not reveal the fact that even this prior proceeding has never been finally determined, as Dortch asked that the Circuit Court determination be reconsidered.

4. The doctrine of res judicata (bar or merger, and collateral estoppel) is not an element of a cause, is not self-executing, and is a matter to be raised or not, in the tribunal appealed from, by the party who would seek preclusion. Normandy Corporation v. S.C. Dept. Of Transportation, 386 S.C. 393 at 408, 688 S.E.2d 136 at 144 (Ct. App. 2009); Wagner v. Wagner, 286 S.C. 489, 491, 335 S.E.2d 246, 247 (Ct. App. 1985). The City itself not only researched the issue and concluded there was no preclusion from pursuing a second application, but waived the issue. In the record of the board hearing, the City's case briefing stated: "Though the applicant has previously appeared before this Board for essentially the same request, neither the Zoning Ordinance nor the Board Rules and Procedures prohibit this reapplication. As such, the application should be considered on its merits." A technical argument of preclusion cannot be raised for the first time on appeal. Id. If the matter can be heard, it can be appealed.
5. A zoning board is not a court. It is not even a lower court. It is a panel of nonjudicial appointees who conduct hearings of often pro se applications, in which "public input" (with no rules of evidence) is solicited, in which there is no right to cross examination of witnesses, and in which board members often base their decisions on initially ex parte "briefings" by City employees, and on facts outside the record, such as what they did with their own house or what they did in some other hearing the instant proponent did not attend. Res judicata is reserved for fully and fairly litigated determinations on the merits of issues in a judicial forum, usually at least at the level of a court of general jurisdiction. Res judicata generally does not apply to variance applications before town zoning boards. RICO Corporation v. Town of Exeter, 787 A.2d 1136 at 1143-44 (R.I. 2001); see also

Lamar Outdoor Advertising v. City of Dayton Board of Zoning Appeals 2002 Ohio 3159, 02 LW 2325 (2d) (Ct. App. 2002) (zoning inspector's determination of violation, being a purely administrative determination, could not operate as res judicata); and see S.C. Atty. Gen. Op. d. February 17, 2009 (decision of zoning administrator, whose authority is limited to administering and enforcing provisions of the zoning ordinance, has no preclusive effect).


M. Baron Stanton
STANTON LAW OFFICES, P.A.
1728 Main Street
P. O. Box 245
Columbia, South Carolina 29202
803-929-1484

ATTORNEY FOR PETITIONER
Freida H. Dortch

Date: June 14, 2013

City's Memorandum in Support of Motion to Dismiss,
dated July 29, 2013 (with all attachments,
including May 14, 2008 Application for
Certification of Zoning Compliance)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Frieda H. Dortch,

Petitioner,

vs.

City of Columbia, Planning &
Development Services/Zoning
Division,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-40-02159

RESPONDENT'S MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS

JENNIFER M. HARRIS
CLERK, C.S.

2013 JUL 29 AM 9:10

RICHLAND COUNTY
FILED

I. Facts/Background

In 2008, the Petitioner twice appeared before the City of Columbia Board of Zoning Appeals ("BOZA"). In the first instance, heard by BOZA on July 8, 2008, the Petitioner sought a variance to the lot requirement to re-establish a duplex on her real property. BOZA denied the request for a variance. The Petitioner's application for a variance stated that she desired to "re-establish a duplex." (Exhibit A) In order to do so, a variance was required because the lot size was not large enough to accommodate a duplex. BOZA issued a written decision on January 16, 2009, denying the request for a variance to the lot size requirement to re-establish a duplex on the property.

In the second instance, heard on September 9, 2008, the Petitioner sought administrative review of the Zoning Administrator's decision regarding the nonconformity of the duplex on the subject property. On May 15, 2008, the Petitioner had submitted an Application for a Certification of Zoning Compliance – Nonconforming. (Exhibit B) This application requested "grandfather" status for the nonconforming use of a duplex in the subject zoning district. The Zoning Administrator denied this request. (Exhibit C) Subsequently, the Petitioner filed an

Appeal for Administrative Review. (Exhibit D) In this appeal document, the Petitioner alleged that the Zoning Administrator erred by denying an application granting the property grandfather status as a duplex (nonconforming use). After a hearing, BOZA agreed with the Zoning Administrator that the legal nonconforming use had been lost and could not be reestablished because the property had been vacant for more than 12 months. (Exhibit E)

Over three years after the previous events described above, the Petitioner filed another application for a variance. (R. at BOZA 026-7) Again, the application sought a variance to the lot size requirement to maintain a duplex on the property. The most recent application for a variance is the same in all respects to the previous application for a variance. BOZA denied the variance by written decision on March 12, 2013. BOZA characterized the issue as a "request for a variance from the lot area requirements to establish a duplex within the RG-1 district." BOZA noted that the property had lost its legal nonconforming status. (R. at BOZA 001-2)

II. Law/Analysis

BOZA asserts that the present action should be dismissed on the grounds of res judicata. The Petitioner's previous request for a variance should bar the Petitioner's present request.

Res judicata applies to administrative zoning decisions in order to promote finality of decisions unless it is shown that there has been a substantial change of circumstances since the earlier ruling. 83 Am.Jur.2d Zoning and Planning § 741. Absent an ordinance allowing a property owner to bring successive zoning requests, changed circumstances are required to grant a variance previously denied. Price v. City of Georgetown, 297 S.C. 185, 375 S.E.2d 335 (Ct. App. 1988); see Kreisberg v. Scheyer, 808 N.Y.S.2d 889 (N.Y. Sup. Ct. 2006) (holding the doctrine of res judicata applies to zoning board determinations and a second application for identical relief by the same person would be barred); Callowhill Center Assocs., LLC v. Zoning

Bd. of Adjustment, 2 A.3d 802 (Pa. Commw. Ct. 2010) (holding res judicata will bar relitigation of a request for variance if four elements are present); Rossow v. City of Ravenna, 2002 WL 480061 (Ohio Ct. App. 2002) (holding a second application for variance was barred by res judicata where it did not substantially differ from the first application).

~~The Petitioner has not demonstrated a change of circumstances that would have allowed a~~ successive application for a variance. In fact, the Petitioner's submission to BOZA states that she "made the same or similar application some years ago" (R. at BOZA 041) The lot size is still the same, if not smaller than originally represented,¹ and the home has not been repaired or remodeled since the original application. In both applications, the Petitioner asserts that the home is a duplex and that she wants a variance to continue such use. The zoning district has not changed during the time from one application to the next. In short, the applications do not express any changed circumstances. Each application seeks a variance to the lot size so that the property can "continue" as a duplex.

In support of the Petitioner's most recent application for a variance, she provided to BOZA a document entitled "Expected Submitted Testimony." (R. at BOZA 016 - 021) Upon analysis, this document is identical in almost all respects to the evidence presented in support of the original application for variance. Compare "Expected Submitted Testimony" with Affidavit of Frieda H. Dortch dated February 25, 2010 (filed with court in C/A No. 2009CP4001307 and attached hereto as Exhibit F).

According to the official minutes of the 2008 BOZA hearing, the Petitioner's main argument for the variance was the alleged economic hardship to convert the use from a duplex into a single-family residence. The Petitioner also argued that she had made provisions for

¹ The original application for variance stated the lot size was 7,644 square feet. The most recent application states that the lot size is 6,786 square feet.

EXHIBIT A

parking in the rear of the property. Minutes of the July 8, 2008 meeting, attached as Exhibit G. These are the identical arguments that were most recently made to BOZA in support of the application for variance. (R. at BOZA 019-021)

To the extent that a change in the character of the area could be deemed a change of circumstances allowing a successive application for variance, it is clear that the character of the area has not changed since the first application. In 2008, the Petitioner told BOZA that there were "a lot of duplexes in the area." Minutes of July 8, 2008, BOZA meeting. The Zoning Administrator also indicated that there were five properties with duplexes in the area. Id. Fast forward to 2013, and the Petitioner agrees that "there are only about five duplex units in the area." (R. at BOZA 043) In addition, a letter submitted by a nearby resident in opposition to the variance request attests to the fact that the character of the area has not changed. The letter indicates clearly that "[t]he make-up of our 13 parcel block remains the same as explained in 2008" (R. at BOZA 036) The letter also explains that nothing has changed with the subject home in the four years since the first variance denial other than some improvements aimed at maintaining a duplex. Id.



Peter M. Balthazor
Assistant City Attorney
Office of the City Attorney
P.O. Box 667
Columbia, SC 29202
(803)737-4242
(803)737-4250 Fax

July 24, 2013
Columbia, South Carolina

Attorney for Respondent



CITY OF COLUMBIA

BOARD OF ZONING APPEALS

APPLICATION for VARIANCE

OFFICE USE ONLY:

Date Received _____

Case Number _____

By _____

Fee (CODE 05) \$ _____

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

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

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

In addition, City staff recommends that you:

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

THE APPLICANT MUST BE PRESENT AT THE PUBLIC HEARING!

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

Location/Subject Property: 825 + 825 1/2 Heidt Street C/A, SC

Tax Map Number (Sheet, Block, and Lot(s)): 11409-15-03

Zoning District: RG-1-SP

Describe your proposal in detail: INTERIOR + EXTERIOR RENOVATIONS to re-establish a duplex

The Zoning Ordinance classifies this use as a (include SIC Code Number): _____

Area Attributed to Your Proposal (in square feet): 8811.2 Two Family 3400 sq

Are other uses located upon the subject property? (if YES, list each use and the square feet attributed to each use): N/A

Total Number of Parking Spaces Upon the Subject Property: 4

This proposal does not conform to the Zoning Ordinance in the following way:	
Zoning Ordinance Section & Requirement	Proposed Instead
1. 17-275. 10,000 sq ft A	7,644 sq ft
2. duplex	
3.	
4.	

Please demonstrate how you satisfy the following **CRITERIA FOR VARIANCE** (see §17-112 (3) b. of the Zoning Ordinance). Please note that the members of the Board of Zoning Appeals will use your answers, among other things, as they evaluate your application:

- Extraordinary and exceptional conditions pertain to the subject property:
Built AS duplex, maintained AS duplex
costly for conversion - economic distress
 - The conditions noted above do not generally apply to other property in the area: No
 - Because of the conditions noted above, the requirements of the Zoning Ordinance effectively prohibit or unreasonably restrict the use of the property: Convert to single family resident
 - Approval of the variance would not be of substantial detriment to adjacent property or to the public good, and the character of the district would not be harmed: No property built
And always maintained AS duplex, must restore
Natural character of property
- Section 17-112 (3) b.6. asks, "Is the variance the minimum necessary?" Yes
- And §17-112 (2) b.7. asks, "Is your proposal in harmony with the purpose and intent of the Zoning Ordinance, and will it not be injurious to the neighborhood or otherwise detrimental to the public welfare?" Yes

Applicant (PLEASE PRINT CLEARLY): FRIEDA H. DORTCH

Name of Company: N/A

Address: P.O. BOX 10083

City, State, ZIP: FT. SACKSON, S.C. 29207

Office Telephone Number: — Home Telephone Number: 803 635-1434

Cellular Telephone Number: 803 917 8633 Fax Number: —

Do you check email at least once per day? () Y () N N/A Email Address: —

Relationship to Property Owner:

☒ Same; () Lessee;

() Agent of property owner; () Contract lessee;

() Contract purchaser; () Other

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

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

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

Signature Frieda H. Dortch Date 06/11/08

EXHIBIT B



TO: Marc Mylott
City of Columbia Development Services
1136 Washington Street
Columbia, S.C. 29201

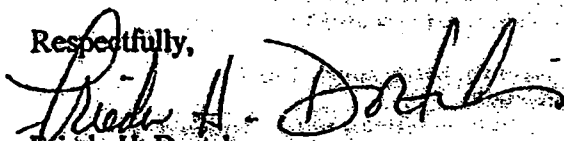
FROM: Frieda H. Dortch
P.O. Box 10083
Ft Jackson, S. C. 29207

SUBJECT: Application for a Certification of Zoning Compliance-Non-conforming

I am requesting to maintain grandfather status on the residents 825 & 825 1/2 Heidt
Columbia, S. C. 29205- RG1-DP. This property has been listed as 825 & 825 1/2 since
1968 that I can attest and has been occupied by family members (i.e. mother, brother).
I am currently in the process of up-grading this property, additional information
pertaining to this situation may be obtain from Billy Kennett, City Development Services.

Consideration on this Grandfather Status is greatly appreciated.

Respectfully,


Frieda H. Dortch
803-635-1434

encl
application - Certification of Zoning Compliance - Nonconforming
Polk page 2005
Polk page 2006
Polk page 2007

Certificate # _____

City of Columbia Development Services
Application for a Certificate of Zoning Compliance-Nonconforming

1. Location 825 - 825 1/2 Hail Street Columbia SC 29205
- Page 11409 Block 15 Lot 803 Zoning District RG-1
2. Is this a nonconforming: Lot _____ Structure _____ Building _____
3. Present use: No. & types of business Residence
- No. of dwelling units 2 No. of rooming units 4 Home each unit
4. Specifically, wherein does this building, structure, lot, premises or their use not conform to the Zoning Ordinance: Yes Request for a Variance
5. Sq. ft. for business use _____ Sq. ft. for residential use 6,615
6. No. of employees 0 No. and types of trucks 0
7. Off-street parking spaces 0 No. and size of signs _____
8. Are any signs on the structure illuminated? Yes _____ No X
- If "yes", describe: N/A
9. Year nonconformity created: _____ Any proof of date: _____
10. Was it legal on January 1, 1975? Yes 1 No _____
11. Show addresses of any adjacent lots owned 821/823 Hail, 817 Hail
12. If a building is involved, what is its replacement value? 200K 5.00 per sq ft
13. Has vacancy, abandonment, or discontinuance of the nonconforming use or characteristic of use occurred for any period of 12 consecutive months? Yes _____ No X
14. If this involves a nonconforming use, is that use presently being carried on? Yes _____ No _____ If "no" when was it discontinued? _____
15. Have you been informed and understand section 17-202 pertaining to continuance of nonconforming structures and uses? Yes _____ No _____

05/14/08
DATE

Friedrich H. Dorch
OWNER/AGENT

DO NOT WRITE BELOW THIS LINE

CERTIFICATE OF ZONING COMPLIANCE-NONCONFORMING

This is to certify that in reliance upon the above application and other inquiry, I find that the property shown above does not conform to the standards or provisions of the City of Columbia Zoning Ordinance in that:

further I find that as it existed and was used January 1, 1975, it was a legal lot, structure or building, being legally used and as such it is a legal nonconformity under the terms of the applicable Sections of Article 5.
This certificate is voidable if any misleading or false statements are found to exist in the application for this certificate.

DATE

ZONING ADMINISTRATOR

EXHIBIT C



BOARD OF ZONING APPEALS CASE SUMMARY FOR

APPLICATION FOR ADMINISTRATIVE APPEAL 825 HEIDT STREET

September 09, 2008 at 10:00 a.m.
City Council Chambers, 3rd Floor, City Hall, 1737 Main Street
Columbia, South Carolina

Case Number: 08-060-AA, Agenda Item #7
Subject Property: 825 Heidt Street, TMS#11409-15-03.
Zoning District: RG-1-DP, General Residential District within Design and Preservation Area.
Applicant: Frieda Dortch
Property Owner: Frieda Dortch
Council District: 3
Summary Prepared: 8/20/08

Requested Action: Administrative Appeal to the Zoning Administrator's decision regarding non-conformity of a duplex (Zoned RG-1-DP).

Applicable Sections of Zoning Ordinance: §17-202 (c) A nonconforming use or characteristic of use shall not be reestablished after vacancy, abandonment or discontinuance for any period of 12 consecutive months.

Case History: 7/8/2008 The Board denied a variance to the lot area requirements to renovate and reestablish a duplex that has been vacant for more than 3 years.

Staff Comments: In May of 2008, the applicant came into the zoning office in an attempt to obtain a zoning permit to renovate and reestablish a vacant duplex. At that time, we informed the applicant that since the structure had been vacant for a period of greater than 12 consecutive months our office would not be able to issue a zoning permit for the work until such time that a declaration of nonconforming use was filed.

The property is zoned RG-1 -DP (General Residential Design Preservation) zoning district and requires 10,000 sq. ft. to accommodate a duplex. This lot contains 7,644 sq. ft. and is deficient 2,356 sq. ft. In that the structure has been vacant for a period greater than 12 consecutive months, this structure has lost its non-conforming (grandfather) status.

After conducting research, we found that a fire occurred at this location on April 11, 2004, whereas the occupant at that time was Wayne Hatten. Ms. Dortch states that the property was occupied after the fire but has been unable to provide any documentation to confirm how long. In addition, at the July 8, 2008 BoZA meeting (minutes attached), Ms. Dortch gave testimony that the property had been vacant for about two years.

City of Columbia water records indicate that the last time that water was provided to this structure was on August 9, 2005. City of Columbia Inspection History indicates that on October 12, 2005, Mr. Hatten stated that he would vacate the house by November 1, 2005. On November 7, 2005, an inspection was conducted whereas the house had been

vacated. At that time, the house was posted with placards that indicate that the property as unsafe and occupancy is prohibited.

Currently, the house is vacant and remains posted with placards that indicate that the property as unsafe and occupancy is prohibited.

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

None.

EXHIBIT D

ipt # _____

al # _____

CITY OF COLUMBIA
ZONING BOARD OF ADJUSTMENT
APPEAL FOR ADMINISTRATIVE REVIEW

Location of affected property: 825 / 825 1/2 Heidt St, Columbia, SC 29205

TMS# Page: 11409 Block: 15 Lot: 03

I (we) allege that the Zoning Administrator did err by () granting ☒ denying an application.
() to use () to occupy () to alter () to erect () to add to () to move () to demolish
() for a temporary compliance certificate ☒ for a compliance certificate: nonconformity
() for a compliance certificate ☒ other GRANTING THIS PERMIT AS DUPLEX
affecting the above listed property.

The Zoning Administrator's decisions and reasons therefore were:

DENIED ZONING PERMIT TO RECONSTRUCT AS DUPLEX

I (we) contend that the Zoning Administrator was in error in that:

Grandfather status exist because this property was occupied after the fire.

I (we) have been aggrieved by this decision or are affected by it in that:

to convert into single family would completely alter the structure of the house - hardship / loss of property

DA H. Dortch
Appellant

FRIEDA H. Dortch
P.O. Box 10083
FT JACKSON, SC 29204
Appellant's Address

843-635-1134
Telephone Number

Frieda H. Dortch
Appellant's Signature

EXHIBIT E

COLUMBIA



Everybody Counts - Everybody Contributes - Everybody Benefits

FILE COPY

January 16, 2009

Frieda H. Dortch
PO Box 10083
Columbia, SC 29207

**RE: FINAL DECISION OF THE BOARD OF ZONING APPEALS IN
CASE NO. 08-060-AA,
825 HEIDT STREET,
TMS#11409-15-03,
HEARD SEPTEMBER 09, 2008.**

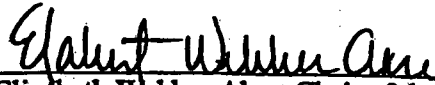
Pages: 2

In accordance with § 17-113(b) of the Zoning Ordinance of the City of Columbia, South Carolina, the Board of Zoning Appeals herein renders its final decision.

The subject property is commonly referred to as 825 Heidt Street or, more specifically, by the Richland County Tax Map Sheet Number 11409-15-03. The subject property is located within the RG-1-DP, General Residential District within the Design and Preservation Area.

Based upon the application, submitted documents, and testimony considered by the Board of Zoning Appeals at the September 09, 2008 public hearing, the Board of Zoning Appeals hereby denies your Application for Administrative Appeal and upholds the decision of the Zoning Administrator. Upon a motion to uphold the Zoning Administrator's decision regarding the nonconformity of a duplex, the Board voted 4-1. As a result, the decision of the Zoning Administrator regarding loss of the nonconformity of the duplex is upheld.

Please be advised that § 17-114 of the Zoning Ordinance provides that any person who may have a substantial interest in any decision of the Board of Zoning Appeals, or any officer or bureau of the city having authority, may appeal from any decision of the Board to circuit court in and for the county by filing with the clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after the final decision of the Board is mailed.



Elizabeth Webber-Akre, Chair of the Board of Zoning Appeals

1.16.09

Date

CONTINUED UPON NEXT PAGE

Upon a motion to uphold the Zoning Administrator's decision regarding non-conformity of a duplex:

Voting Aye: Barczak, Clomartie, McMeekin and Webber-Akre.

Voting Nay: Hinkle.

Absent: Gillespie and Watson.

That motion passed.

Cc: Brenda J. Kyzer, Business License Administrator

T:\DEVELOPMENT\SERVICES\ZONING\BOZA\2008\SEPTEMBER\HEDT_825_UPHELD.DOC

EXHIBIT F

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Frieda H. Dortch,

Petitioner,

v.

City of Columbia, Planning &
Development Services/Zoning
Division,

Respondent.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 09-CP-40-1307

**AFFIDAVIT OF
FRIEDA H. DORTCH**

RICHLAND COUNTY
FILED
2010 FEB 26 PM 12:25
JEANETTE W. McBRIDE
C.C.P. & G.S.

BEFORE ME, the undersigned notary public, in and for the State of South Carolina, on this day personally appeared Frieda H. Dortch, being by me duly sworn, and on her oath stated:

1. I am personally familiar with the matters set forth in this affidavit, am competent to make this affidavit, and make this affidavit in support of my appeal and in support of any other matter to which it becomes pertinent.

2. The property in question is 825 and 825½ Heidt Street, Columbia. The building is over 2,000 square feet in size, and includes substantial porches. It has been a two-family structure for as long as I have known about it, and probably since it was first built back in the 1930s.

3. My mother, a woman of modest means and a single mother, rented the upstairs unit of the structure in the 1960s. She worked as a maid and kept other people's kids to earn a living. She also worked as a nurse's aide.

4. A separate, unrelated family rented the downstairs unit during this time. Although we seldom had money for Christmas dinner or toys, my mother established credit by borrowing small amounts of money from "finance companies" on Sumter Street for these and other things, and always making sure she paid it back. After a couple of years, around 1969, my mother obtained a 30-year mortgage loan and purchased the entire house, consisting of upstairs and downstairs residential dwelling units.

5. My brother and I both eventually joined the military, and sent money home to help out when we could.

6. My family has owned the house continuously as a two-family structure for the more than forty years since my mother purchased it. My mother continued to live in the upstairs unit, allowing nieces and nephews to rent or otherwise reside in the downstairs unit, until old age forced her to move downstairs.

7. In the 1990s, my brother returned from Virginia, where he was working for the Navy, and moved into the downstairs unit with my mother, who passed in 1995 from a stroke. My brother continued to live in the downstairs unit after my mother's death until about April or May of 2005. My daughter, Alexis Dortch, also resided at the house for approximately two years starting in 1999, while she attended school at Midlands Tech.

8. The house, like many others on the block and in the surrounding area, was structured and has been used as a duplex since before my family purchased it. The upstairs unit is separate from the downstairs, with a separate entrance and no internal connecting stairs. The upstairs and downstairs separate dwelling units are on separate power meters with separate wiring and distribution panels. Each has its own porch. Each unit has its own, separate,

recognized mailing address. Each has its own, built-in gas heater, piped separately. There is ample extra room for parking in the backyard.

9. In or around April of 2004, a non-family visitor caused a fire that damaged the back of the house, damaging both the upstairs and downstairs units' bathrooms, the nearby walls, and the stairs, although the stairs remained useable. Most of the damage occurred in the downstairs bathroom, where the fire originated. The damage affected approximately 500 square feet of the house.

10. My brother continued to live in the house, which was still habitable.

11. At this point my mother was deceased, I had been paying the last of the mortgage and the taxes, I did not live in the house and had other living expenses, and I only owned fifty percent of the house. The City eventually directed me alone to fix the damage.

12. Between September and the end of December of 2007, I was able to get full ownership of the house from my brother. I applied for a permit to repair the bathroom damage, and do other updating. The City initially denied my application for a repair permit to fix and update damage to the property because I did not reside in the house.

13. I persisted in my application to repair the damage, and eventually, the Building Department approved my permit, and then sent me to "Zoning" for other approval. I was then told I could not just fix the damage to the bathrooms, but must restructure the entire house into one large, single family house. For a house of over 2,000 square feet, this would cost perhaps hundreds of thousands of dollars and would be an extreme hardship. It would also make the house harder to rent. It would also make the house harder to use in the ways we have used it as a family. It would also destroy the historical use and configuration of the house and the history of

my mother's industry and thrift.

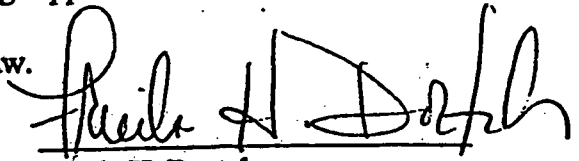
14. I sent a letter to Mr. Mylott, the head of zoning, which, I was told, was given to Jonathon Chambers. In May of 2008, I met with Jonathon Chambers and Inspector Goodlet to discuss my situation, and they instructed me that my options were to apply to the variance committee and if unsuccessful, to appeal to the Board of Zoning Appeals.

15. I submitted a variance application in July of 2008, which was denied. I appealed the committee's decision in September of 2008, and the Board of Zoning Appeals denied my appeal. The final decision letter, dated January 16, 2009, was mailed to me on January 22, 2009. The January 16, 2009 letter states that the reason the appeal is denied is that my request does not meet the requirements for a "special exception" under Section 17-112(2)© of the Zoning Ordinance of the City of Columbia.

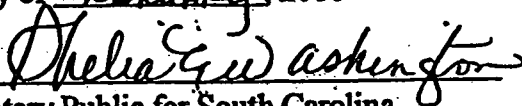
16. In accordance with the January 16, 2009 letter's instructions, I appealed to the Circuit Court of Richland County on February 24, 2009. I have submitted this Affidavit to accompany my appeal.

17. No "special exception" should be needed. The property is zoned RG-1-DP, which is General Residential (not RS Single Family Residential) with a Design and Preservation overlay. RG-1 is a medium or high density area characterized by, among others, two-family detached structures. This is an historical two-family detached structure. Attached are copies of pertinent ordinance sections and descriptions. The use as a duplex is not prohibited by the zoning. Even if it were, it would be a prior, legal, nonconforming use at worst – that is, a use commenced legally in the past and grandfathered. All I want to do is fix my property which my mother acquired at great effort and which I have also spent money on, and I want to continue it in the form it has always been and preserve its design as it is. For the City to require me to

transform it into something completely different with limits on its use and at great expense, as a condition of allowing the repair of relatively minor damage appears to me to be illegal, unfair, arbitrary, capricious, and in violation of due process of law.


Frieda H. Dortch

Sworn to before me this 25th
day of February, 2010


Notary Public for South Carolina
My commission expires 6-10-12

CITY OF COLUMBIA
BOARD OF ZONING APPEALS
JULY 08, 2008 - 10:00 AM
Minutes

In attendance: Elizabeth Webber-Akre, Chris Barczak, Ernest W. Cromartie, III, Elaine Gillespie, Alvin Hinkle, and Charles Watson

Absent: Silas Calhoun McMeekin, III

Staff: Johnathan Chambers, C. Michael Conley, Marc Mylott, and Andrea Evans-Wolfe

I. CALL TO ORDER – 10:01 AM / Quorum established

Ms. Webber-Akre introduced the Board of Zoning Appeals members and City Staff, and explained the purpose and process of the Board of Zoning Appeals. The sworn testimony of those intending to speak was taken.

Mr. Chambers, City Staff, explained general housekeeping duties. He noted changes to the Agenda as follows: under the Consent Agenda – item #3, 1205 House Street (TMS#11411-19-11) is deferred by Staff request; under the Regular agenda – item #5, 3213 Farrow Road (TMS# 11504-30-11) is deferred by Staff request; and item #6, 815 Elmwood Avenue (TMS#09011-04-01) is deferred by Applicant request. Request to defer item #7, 3601 Heatherwood Road (TMS#13905-01-14) by the Applicant was received that morning.

Motion Ms. Gillespie to defer item 7, *second by Mr. Hinkle*. Motion approved 6-0.

II. CONSENT AGENDA

A. OLD BUSINESS

None.

B. NEW BUSINESS

1. 08-041-SE Dist. 2 810, 924, 934, 938 & 942 Broad River Road (TMS#07311-05-01, -09, -10, -11 & 07310-02-01). Special exception to operate an automotive repair facility (Richardson Plowden & Robinson, P.A.) (Zoned C-3).
2. 08-046-SE Dist. 1 6012 North Main Street (TMS#11711-10-04). Special exception to establish a drive-through automatic teller machine (ENG Builders, LLC) (Zoned C-3A).
3. 08-048-SE Dist. 2 1205 House Street (TMS#11411-19-11). Special exception to expand an existing religious organization (Bethel Holiness Church) (Zoned RG-2).
Note: Staff requests deferral until August 12, 2008
4. 08-050-SE Dist. 2 506 Gervais Street & 1118-1120 Huger Street (TMS#08912-10-21 & -02). Special exception for off-site leased parking (Vista Tanning LLC) (Zoned M-1-DD).

Case #1 removed for discussion by Chairwoman Webber-Akre. Review of Consent Agenda cases 2 and 4 by Staff.

Mr. Hinkle asked for clarification on the request for a variance to parking requirements. Mr. Chambers said a restaurant must 8 parking spaces per 1000 sq.ft. If it were a drive thru facility, the requirements would be 12 parking spaces per 1000 sq.ft. and a special exception to the Board of Zoning Appeals. The parking requirement is actually less because it is a restaurant. The parking requirement is for 10 spaces, the site plan shows four spaces, and Staff determined there are only two spaces. Mr. Chambers stated that an onsite visit and actual size/location of the property will be difficult to provide 4 spaces. The site plan reflects the spaces are angled which would not allow entry/exit as needed; at best two spaces can be legally added. There is a single family residence to the east of the property with a shared driveway between the properties.

Mr. Barczak questioned if the use of the green space behind the building could be used for parking. Mr. May responded he met with the landscape planner, and there will be a fair amount of landscaping; it has more of a backyard appearance. Mr. Chambers said there is existing vegetation, the area may need a wood screening fence and buffer; and once the buffer is established the back of building area will be very limited. Mr. Mays could possibly obtain two spaces for delivery staff. Mr. Barczak said there are major concerns, based on letters [from the neighborhood], with parking. There is @12' between the side of the building and the property line that would allow a driveway. Mr. Mays said there is parking utilized by Church on Beaufort Street, he met with pastors and because he will not be open on Sunday or serve alcohol; they had no issues/conflicts of parking on the street with the church. There are three spaces on Beaufort Street, 5 spaces can be allowed on church side; for about 8 offsite, 2 behind building, 2 on side, and 2 in front. He can also lease additional parking from store downtown. Monday through Thursday there will be 3 employees, one delivery and two inside, in the restaurant. On Saturday, there will be an increase of one employee. Hours will be Monday through Thursday from 11:00 AM-9:00 PM; Friday and Saturday will be 11:00 AM-9:30 PM.

Ms. Webber-Akre asked if parking could consist of two in front and have some parking in the back; and suggested with the removal of the canopy that a fair amount of parking could be provided. Mr. Mays said he likes the look of building and would not like to alter design. The building was originally a dry cleaner and is a shell that can be remodeled inside. Mr. Cromartie questioned parking issues and where the required number of spaces would come from. Mr. Barczak asked if there are any concerns with the use of the property. Mr. Chambers said Staff is aware there are several uses that can be allowed and a variance will not be needed. Retail would require 3.5 spaces, restaurant allows 8. As far as it is know from calls received, there is no objection from neighborhood for the restaurant use, but there is objection to parking. Mr. Cromartie said that it seems parking is a major issue and it would help to have a lease in hand to state how the space in the rear or on the side could be utilized better. Ms. Webber-Akre clarified that the case is being presented only for a parking variance not the use of building. Mr. Hinkle said to keep parking at minimum required, which is 10. Ms. Webber-Akre stated the Board of Zoning Appeals is looking at set criteria to see if there are any exceptions that prevent the required parking, of if being in conformance will restrict the use of the property, and Mr. May is requesting the minimum required parking. Ms. Webber-Akre said none of the criteria is met for this application at this time. Mr. Chambers said there cannot be any other parking than allowed and it must conform to buffer (Ordinance). Ms. Webber-Akre still feels the rear of property could allow for some parking and the canopy area would provide some parking. Mr. Hinkle added it may be a good business for the community, but it is aware that the community is split on the decision. Further discussion on parking concerns, a review of a parking study, consideration for on-site parking, variance for parking, the impact on the surrounding area, and obtaining a lease agreement was held by Mr. Watson, Mr. Cromartie, Mr. Barczak, and Ms. Webber-Akre. Mr. Watson suggested the area be reviewed for # of spaces and how they could be allocated, and the applicant then return and present. Ms. Webber-Akre asked Mr. Mays if he would want to withdraw his case, or defer and work with staff to come to agreement, he can then bring information back to the Board of Zoning Appeals. Mr. Mays, the applicant, requested deferral to August 12 meeting.

Motion by Mr. Hinkle to defer 2737 River Drive (TMS#09110-16-06) to the August 12, 2008 Board of Zoning Appeals Meeting, second by Mr. Barczak. Motion approved 6-0.

9. 08-051-V Dist. 3 825 Heidt Street (TMS#11409-15-03). Variance to the lot requirement to re-establish a duplex (Zoned RG-1-DP).

Mr. Chambers stated the property contains 7644 sq.ft. zoned RG-1-DP and requires 10,000 sq.ft to accommodate a duplex. Applicant has had numerous conversations with Staff regarding the renovation to property. Property has been vacant for approximately two years and lost any claims to grandfather status.

Freida Dorsch (sp?), owner and applicant, want to re-establish her request for property at **825 Heidt Street** because the property has been vacant for over 12 months; probably two years. Ms. Dorsch's brother lived in the building for about two years; without water and electricity. Application paperwork/fire report states there was a fire in the structure in 2004, applicant stated the fire was in April 2005 to her knowledge. Her brother still lived there for about one year after the fire. The property is secure and the fire was in back of the house. Ms. Dorsch said the house has been vacant about 12 months now and she is trying to get a permit for renovations. Mr. Barczak asked if estimates have been obtained and what type of renovations were planned. Ms. Dorsch responded she plans to totally upgrade property, remove burnt wood, paint and replace the wood, redo bathrooms, redo bathroom fixtures, redo back structure of the house, and redo windows; basic structural work.

The fire started on back porch, a kerosene can was set on fire by her brother's girlfriend. It is an older house with back porch, the back porch and back bathroom was damaged. Mr. Barczak said the house looks like it was a single family residence originally; and questioned if the upper level was one unit and the lower level was one unit. Ms. Dorsch stated it was a duplex and was not a combined unit. Ms. Gillespie looks like it is a single home that was converted possibly in the 1940's. The applicant has lived there since the 1960's and it was a duplex at that time. Mr. Watson said his understanding of grandfathering is to allow non-conforming use to continue its 'lifespan', and when that ends by fire or some other form for vacancy, it may be time for the property structure to conform to the applicable time frame and current neighborhood standards. He feels this is the situation with this structure.

Mr. Hinkle asked what states it cannot be used as a duplex any longer if it was built to be such. Mr. Chambers stated that it does not matter if it was built as a duplex, it does not have adequate lot area to accommodate the duplex. Ms. Gillespie said she does not feel, as a contractor, that it was originally built as a duplex. Mr. Cromartie echoed Mr. Watson's statement that if an applicant wanted the benefit of grandfathering, they must ensure the use is within the twelve month period; and if procedures had been followed property, this case would not be here for presentation. Mr. Chambers added this property is also in a design preservation district which has a provision that allows someone prior to three years to come to the Board of Zoning Appeals for a special exception. However, the only documentation available was from the prior fire report which states the fire occurred in 2004 and it cannot be established the structure was occupied. The current status of the site is vacant and boarded. The applicant wants to use the property as a duplex; there is inadequate lot area and the structure is non-conforming and the applicant must come for a variance to the lot area requirement.

Mr. Cromartie asked Ms. Dorsch if duplex use is not allowed, what use would be used and would she continue with plans to renovate and make a single family home. Ms. Dorsch responded there area duplexes across street, next door, down street, a lot of duplexes in area. It would be an economical hardship to rebuild home as single family. Mr. Hinkle asked why her duplex would not be allowed if there are duplexes all around area and this would be in character of the community. Mr. Barczak stated that out of 13 parcels in area, 4 are multi-units. Mr. Chambers stated that 825, 821 and 823 and 826 and 828 are duplexes as shown on property map. Mr. Watson said the City Ordinance states structures must be owner occupied. Mr. Barczak again stated this was probably a single family home and remodeled into a duplex; others may have been originally duplex. Ms. Webber-Akre stated as Mr. Cromartie has that the property should have been renovated within a 12 month period if the intention was to keep in the property in the family and in a non-conforming status; which is the responsibility of the property owner. Ms. Dorsch stated at that time she was only a 50% owner and had to buy out for other half, she acquired sole ownership with title record in December 2007. She said the fire was contained to the back of the house; she is not doing a total reconstruction. She is requesting to repair to bring up to standard as a duplex. Surrounding duplexes are a total renovation. Mr. Hinkle said he would personally like to know cost quotes to upgrade duplex versus renovating to a single family home in regard to economic hardship for the applicant. Mr.

Cromartie asked if the historic character of home will be maintained; Ms. Dorsch said it would. Ms. Webber-Akre stated that is not part of criteria to request cost of renovations and the property lost its non-conforming status because of time period and now must look at current Ordinance and conforming to Ordinance. She feels the application is not right for approval with bearings based on criteria.

Mr. Hinkle asked if there was communication with the neighborhood, letters in packets from neighborhood state opposition. Ms. Dorsch said the letters are in opposition because of street parking, not upgrade of home, she has made provisions for back yard parking. Ms. Webber-Akre responded that the letters in packets are in opposition to multi-use family dwellings; parking issues must also be satisfied. Mr. Cromartie asked Ms. Dorsch again if the home could be utilized as a single family unit. She said it could, but that would be an economical and emotional hardship for her. She want to restore the home to the 1960's style. Mr. Barczak feels an inspection should be done by City Staff to determine if the building was a duplex originally; and it should be restored to the 1940's / original style.

Motion by Mr. Barczak to deny request of 825 Heidt Street (TMS#11409-15-03) Variance to the lot requirement to re-establish a duplex, no extraordinary or exceptional instance, *second by Ms. Gillespie. Motion approved 4-2. Opposed – Mr. Cromartie; Abstain from voting – Mr. Hinkle; in favor – Mr. Barczak, Ms. Gillespie, Mr. Watson, and Ms. Webber-Akre.*

Mr. Mays returned for questions regarding 2737 River Drive (TMS#09110-16-06). Variance to the parking requirement to establish an eating place, and was referred to Staff by Board of Zoning Appeals Chairwoman Webber-Akre.

V. OTHER BUSINESS

Approve September 2007 Minutes.

Approve October 2007 Minutes.

Approve November 2007 Minutes.

Review of September, October, and November 2007 Minutes. Comments and corrections to minutes noted by Mr. Watson. **Motion by Mr. Barczak to approve September 2007, October 2007 and November 2007 Minutes with corrections; *second by Ms. Gillespie. Motion approved 6-0.***

Mr. Mylott stated there has been a consolidation of certain departments within the City. Planning & Development Services have been combined and Andrea Wolfe, Senior Administrative Secretary, will be in charge of Board of Zoning Appeals Minutes from this point on.

VI. ADJOURNMENT

There being no other business, meeting adjourned at 10:25 a.m.

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

Proposed Order Granting Motion to Dismiss,
Submitted By City, circa Aug. 8, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A NO.: 2013-CP-40-02159

Frieda H. Dortch,

Petitioner,

vs.

ORDER

City of Columbia, Planning &
Development Services/Zoning
Division,
Respondent.

I. Background

This action concerns an appeal from the denial of a variance request. This matter came before the Court on July 29, 2013, for a hearing on the Respondent's Motion to Dismiss. The Court hereby grants the Respondent's motion for the reasons stated herein.

In 2008, the Petitioner herein twice appeared before the City of Columbia Board of Zoning Appeals ("BOZA"). In the first instance, heard by BOZA on July 8, 2008, the Petitioner sought a variance to the zoning ordinance's lot size requirement. The Petitioner's application for a variance stated that she desired to "re-establish a duplex." In order to do so, a variance was required because the lot size was not large enough to accommodate a duplex. BOZA issued a written decision on January 16, 2009, denying the request for a variance to the lot size requirement to re-establish a duplex on the property.

In the second instance, the Petitioner sought administrative review of the Zoning Administrator's decision regarding the nonconformity of the duplex on the subject property. On May 15, 2008, the Petitioner had submitted an Application for a Certification of Zoning Compliance – Nonconforming. This application requested "grandfather" status for the

nonconforming use of a duplex in the subject zoning district. The Zoning Administrator denied this request. Subsequently, the Petitioner filed an Appeal for Administrative Review by BOZA. In this appeal document, the Petitioner alleged that the Zoning Administrator erred by denying the application seeking grandfather status as a duplex (nonconforming use). After a hearing, BOZA issued a written decision on January 16, 2009, and agreed with the Zoning Administrator that the legal nonconforming use had been lost and could not be reestablished because the property had been vacant for more than 12 months.

Over three years after the previous events described above, the Petitioner filed another application for a variance. Again, the application sought a variance to the lot size requirement to maintain a duplex on the property. BOZA denied the variance by written decision on March 12, 2013. BOZA characterized the issue as a "request for a variance from the lot area requirements to establish a duplex within the RG-1 district." BOZA noted that the property had lost its legal nonconforming status.

II. Findings of Fact and Conclusions of Law

The Respondent asserts that the present action should be dismissed on the grounds of res judicata. The Respondent contends that the Petitioner's previous request for a variance should bar the Petitioner's present request.

Res judicata applies to administrative zoning decisions in order to promote finality of decisions unless it is shown that there has been a substantial change of circumstances since the earlier ruling. 83 Am.Jur.2d Zoning and Planning § 741. Absent an ordinance allowing a property owner to bring successive zoning requests, changed circumstances are required to grant a variance previously denied. Price v. City of Georgetown, 297 S.C. 185, 375 S.E.2d 335 (Ct. App. 1988) (discussing the application of the doctrine of res judicata in the zoning context); see

Kreisberg v. Scheyer, 808 N.Y.S.2d 889 (N.Y. Sup. Ct. 2006) (holding the doctrine of res judicata applies to zoning board determinations and a second application for identical relief by the same person would be barred); Callowhill Center Assocs., LLC v. Zoning Bd. of Adjustment, 2 A.3d 802 (Pa. Commw. Ct. 2010) (holding res judicata will bar relitigation of a request for variance if four elements are present); Rossow v. City of Ravenna, 2002 WL 480061 (Ohio Ct. App. 2002) (holding a second application for variance was barred by res judicata where it did not substantially differ from the first application).

This Court finds that the most recent application for a variance is the same in all material respects to the previous application for a variance and that the Petitioner has not demonstrated a change of circumstances that would have allowed a successive application for a variance. The Petitioner's current submission to BOZA states that she "made the same or similar application some years ago" Upon comparison of the two applications, it appears that the lot size is still the same, if not smaller than originally represented.¹ In each application, the Petitioner asserts that the home is a duplex and that she desires a variance in order to continue such use. The zoning district has not changed during the time from one application to the next.

In support of the Petitioner's most recent application for a variance, she provided to BOZA a document entitled "Expected Submitted Testimony." Upon analysis, this document is identical in almost all respects to the facts presented in support of the original application for variance. For example, in support of the 2008 and 2012 requests, the Petitioner identically states that it would be an "extreme hardship" to convert the home from a duplex into a single family residence and that she "want[s] to continue it in the form it has always been and preserve its design as it is."

¹ The original application for variance stated the lot size was 7,644 square feet. The most recent application states that the lot size is 6,786 square feet. At least 5,000 square feet per dwelling unit is required in the subject zoning district.

It is also clear from a review of the 2008 and 2012 meeting minutes that the grounds alleged in support of the variance do not differ in any material respects. In support of each application, the Petitioner outlines the past history of the home as a duplex and expresses her desire that its use be allowed to continue as a duplex. The Petitioner argues in support of each application that it would be an economic hardship to convert the use from a duplex into a single-family residence. The Petitioner also argued in each application that she had made provisions for parking in the rear of the property.

This Court finds that the Petitioner's most recent application for a variance is identical in all material respects to the earlier application that was denied. The Petitioner did not show a change of circumstances that are required to grant a variance which has previously been denied. Price, supra.

Therefore, for the reasons stated herein, this Court grants the Respondent's Motion to Dismiss and finds that the Petitioner's appeal is barred by the doctrine of res judicata.

The Honorable James R. Barber, III
Fifth Circuit Court of Common Pleas

_____, 2013

Proposed Orders Denying Motion to Dismiss,
Submitted by Dortch, circa Aug. 13, 2013
(with attached Sept. 17, 2010 letter, check, and receipt)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Frieda H. Dortch,

Petitioner,

v.

City of Columbia, Planning &
Development Services/Zoning
Division,

Respondent.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 13-CP-40-02159

**ORDER DENYING
CITY'S MOTION TO**

DISMISS

ON THE BASIS OF RES JUDICATA

Respondent's motion to dismiss on the basis of res judicata is hereby denied.

James R. Barber, III
Circuit Judge

Date: _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Frieda H. Dortch,

Petitioner,

v.

City of Columbia, Planning &
Development Services/Zoning
Division,

Respondent.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 13-CP-40-02159

**ORDER DENYING
CITY'S MOTION TO**

**DISMISS
ON THE BASIS OF RES JUDICATA**

**NATURE OF THE CASE AND
THE MATTER BEFORE THE COURT**

This matter relates to Petitioner's attempt over numerous years to repair minor fire damage to her family home on Heidt Street in Columbia. She also sought to update the interior. Petitioner provides extensive history. She describes the property as an up-and-down duplex in which she grew up. She recounts that she owns the entire house now, after having taken measures to acquire her brother's interest in it. She recounts that she does not reside in the house now, that over the years, various other family members have used one unit or the other, and that the house has been in her family since the 1960s. She further recounts that, as near as she can tell, the house has been structurally configured as an up-and-down duplex since it was built in the 1930s.

On the basis of res judicata, the City moves to dismiss Petitioner's instant appeal from a proceeding before the City of Columbia Board of Zoning Appeals ("BOZA"). In that proceeding, Petitioner was denied a variance allowing her to leave the home as an up-and-down

duplex, rather than change it, structurally, to a single family home. Petitioner also tried to challenge the applicability and validity of the zoning ordinance. The City now contends that the recent proceeding before BOZA was precluded by a previous BOZA proceeding.

As hereinafter discussed, for any of the following reasons, the motion is denied, and Petitioner's appeal shall be set for further hearing: (1) The issue of res judicata was waived and not asserted by the City in the proceeding below; (2) Flexibility, careful inquiry and caution should be used in applying the doctrine to variance proceedings before appointed municipal boards; (3) The attributes of the forum and the proceedings do not make application of the doctrine fair; (4) The record reveals a substantial likelihood of error by BOZA and that the use sought by Petitioner was never intended to be prohibited under the ordinance in question; and (5) The previous proceeding before BOZA was never finally determined on the merits.

THE INSTANT APPEAL

Petitioner appeals, to this Court, the decision of BOZA and the City of Columbia Zoning Administrator, who also signed the order Petitioner received. The BOZA proceeding was on February 12, 2013 and the order of BOZA and the Zoning Administrator is dated March 12, 2013.

THE MOST RECENT BOZA PROCEEDING AND SOME OF THE GROUNDS FOR APPEAL THEREFROM

In 2012, after making some "exterior-only" repairs to the home under an agreement with the City¹, Petitioner applied for a permit to proceed with other repairs and update the interior of

¹Petitioner recounts that, previously, the City denied a permit for any repairs whatsoever unless Petitioner transformed the house structurally into a single-family home. However, says Petitioner, the City prosecuted Petitioner in Municipal Court for not making repairs while she appealed the permit decision. The earlier denial of a permit is discussed in this order below.

the home. The Zoning Administrator determined that Petitioner was required to have a larger lot size before Petitioner could be permitted to proceed to repair the subject property as a duplex. He determined that she could not be allowed to repair or update the house, to any degree, unless she undertook to transform the house, structurally, into a single family home.

On the form provided to her, partially filled out by a zoning official, Petitioner filed a pro se application directed to BOZA. Therein, she sought a variance from the requirement that she transform the house structurally into a single family home before being allowed to repair it.²

In an amended application to BOZA filed by counsel she hired, Petitioner also stated her desire to appeal the applicability and validity of the restriction as applied by the Zoning Administrator to her property.

At the February 12, 2013 proceeding before BOZA, BOZA, refused to entertain or rule upon an appeal of the applicability and validity of the restrictions which were being enforced. BOZA's acting chairman stated that the matter was booked as a variance application, rather than an appeal, and that if the Petitioner wanted to appeal, there were procedures for that, which included different forms and notices and other matters. The matter proceeded without argument being permitted on the appeal. Petitioner's counsel stated that he wished to preserve the right to appeal the applicability and validity of the restriction.³

²According to Petitioner, the up-and-down duplex has two established addresses on City maps, has no internal stairs, has external front stairs, has newly built external rear stairs, has separate electric meters, has separate heating, and has different floor plans up and down. According to Petitioner and remarks at the BOZA proceeding, the house is in an historical overlay district and also cannot be torn down by Petitioner or the City. (January 8, 2013 Minutes at pp. BOZA007-BOZA008.)

³Petitioner suggests that the limitation of the BOZA hearing may necessitate either this Court considering the validity of the restriction or remanding the matter to BOZA to hear.

Apparently, it is the practice in BOZA proceedings, at some point at or before the public meeting, for the Zoning Administrator or “staff” to brief BOZA on the application.⁴ The “staff comments” in such briefing include “advice” on applicable statutes and other legal attributes, and

Alternatively, Petitioner indicates the necessity of re-applying for a permit, “not accepting the variance form handed to her by the building/planning/zoning staff” when she asks how to appeal, asking the staff to look for “the other form you must have back there somewhere, pertaining to appeals,” and filing a subsequent appeal on the other form.

‘See, e.g., “Case Summary” with “Staff Comments” prepared on 8/20/08 for September 9, 2008 BOZA hearing, attached to the City’s July 24, 2013 Memorandum as “Exhibit C.” And see “Case Summary” with “Staff Comments” prepared on 05 February 2013 for February 12, 2013 BOZA hearing, submitted in the City’s Return and marked with page numbers BOZA022 to BOZA039. A preliminary ex parte briefing and other administrative assistance by the adverse party ordinarily would not be allowed in a court of law. Although Petitioner is required to file her application by submitting it to the zoning official for transmittal to BOZA, there is no indication that these briefing papers were served upon or provided to Petitioner before the hearing or at the same time they were provided to BOZA. There is no evidence in the record as to whether additional in-person summarizing of the case to BOZA or its members is done in advance of the hearing. This court notes that the Zoning Administrator also signed the order which decided the application.

BOZA is a board appointed by the Columbia City Council. BOZA hearings, being municipal matters, are not governed by the procedural protections of the State Administrative Procedures Act. See S.C. Code Ann. §§1-23-10 (1) (defining “Agency” or “State agency”) and 1-23-310 (2) (defining “Agency”). It is unclear whether BOZA is an “agency” making “quasi-judicial” decisions within the purview of S.C. Const. art. I, §22, providing that “[n]o person ... shall be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly.” BOZA is also not a “court” subject to oversight under, or the rules of procedure promulgated for, the “unified judicial system” referenced in S.C. Const. art. V, §§1 and 4. Because there is no requirement that “staff” of the Zoning Administrator, the Zoning Administrator himself, or members of BOZA be lawyers, the Rules of Professional Conduct, Rule 407, SCACR, also do not uniformly apply in BOZA matters; they apply only to the extent they apply to particular participants who happen to be lawyers. Because BOZA is not a court and BOZA’s members are not considered “judges,” the Code of Judicial Conduct, Rule 501, SCACR also does not apply. The Code of Judicial Conduct does not define “judge,” but the context indicates this term refers to a member of “the judiciary,” as, for instance, in Canon 1(A), providing, “An independent and honorable judiciary is indispensable to justice in our society.” Petitioner submits that BOZA’s lack of readiness to hear an appeal as part of the variance application could be driven by, in addition to concerns regarding getting out public notice, “the lack of opportunity for ex parte briefing from the zoning officials as preparation beforehand.”

conclusions reached on factual matters and attributes. Apparently, if the applicant knows to ask for the briefing upon arriving at the public meeting, the briefing is available as a handout to the applicant and other persons attending the meeting for other matters.

In the "Case Summary," BOZA was advised: "Though the applicant has previously appeared before this Board for essentially the same request, neither the Zoning Ordinance nor the Board Rules and Procedures prohibit this reapplication. As such, the application should be considered on its merits."

Although BOZA would not allow argument on the applicability or validity of the restriction, the matter proceeded as a variance application. There was no res judicata objection by BOZA, the Zoning Administrator or any other City representative. The variance was denied in an order which was also signed by the Zoning Administrator himself. The instant appeal to this Court followed.

Petitioner advances numerous grounds for this appeal. As this order is limited to Respondent's motion to dismiss, space does not allow a complete recapitulation.

Among Petitioner's grounds is that it was a telling legal error for BOZA to base its decision upon a finding, foreshadowed in the "Case Summary,"⁵ that the "general purpose and intent of the Zoning Ordinance" was "to permit nonconforming uses to continue until they are removed, but not encourage their survival,"⁶ and that to grant a variance would be against this "general purpose and intent."

⁵It is also unknown who prepared the BOZA decision.

⁶See Ordinance Section 17-201 (stating specific intent with respect to nonconforming uses, but not stating any general purpose or general intent of the Ordinance or other sections of it).

The assigned error is that the zoning ordinance itself authorizes variances for nonconforming uses -- and BOZA's finding, that granting a variance would be against the intent of the ordinance to not grant variances, would be a tautological misinterpretation of what is meant by "general purpose and intent of the zoning ordinance." Petitioner explains that if recital of this excerpt of Section 17-201 were sufficient as grounds for denying a variance, every single variance application ever made could be denied simply by citing this excerpt. That is, if such a basis were consistently applied, rather than arbitrarily and capriciously applied only in the cases the City wanted to be denied, this basis would require categorical denial of **all** variance requests.

Petitioner submits that, rather, the general purpose and intent of the zoning ordinance is found in the attributes of the various zoning districts described in the ordinance and the recitals of why the zoning is imposed. For example, RS-1 districts are generally defined, even in the name given to them, as "single-family residential districts," Section 17-233. Duplexes do not conform to this designation.

Yet, RD districts are defined, by name, as "two-family residential districts," i.e., where duplexes are specifically contemplated and allowed, Section 17-234.

Each district also has desired density attributes, with residential-single (RS) districts generally being less dense, in terms of units per acre and lot size, than the residential-double (RD) districts. Even, so, in having "safety valves," the purpose and intent of the ordinance is to make variances and exceptions where departures make sense, or where they are needed in order to avoid gross unfairness or unconstitutionality.

Moving further along the spectrum toward greater numbers of units, higher occupancy, and still greater density, RG districts, "general residential districts" are expected to have

quadraplexes and other multifamily uses beyond mere duplexes, but certainly may contain duplexes and single-family uses as well. Section 17-235. Petitioner's property is not in a single-family (RS) district. It is not in a duplex (RD) district. It is in an RG-1, multifamily, district.

Section 17-231 speaks to the purposes and general intent of the ordinance as well as to other portions of the ordinance which express general intent; Section 17-201 is not referenced as part of the general overall purpose and intent:

(a) For the purpose of promoting the health, safety, morals and general welfare of the city, and for other purposes as enumerated in division 1 of this article, the city is hereby divided into districts, as enumerated in this division, within which are regulated and restricted the erection, construction, reconstruction, alteration, repair or use of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes.

(b) The regulations in this article have been made with reasonable consideration of, among other things, the character of each district and its peculiar suitability for particular uses and with a view to encouraging the most appropriate use of land throughout the city.

(c) The regulations of this division shall apply uniformly to each class or kind of structure or land located within any of the following district classifications

Similarly, Section 17-51 is general in stating overall purpose and intent:

Pursuant to authority conferred by S.C. Code 1976, § 6-29-70 et seq., and to promote the public health, safety, morals and general welfare, lessen congestion in the streets, secure safety from fire, panic and other dangers, provide adequate light and air, prevent the overcrowding of land, avoid undue concentration of population, and facilitate adequate provision of transportation, water, sewerage, schools, parks and other public requirements in accordance with a comprehensive plan, the city council does ordain and enact into law the regulations set out in this article.

Petitioner submits that it is absurd and indicative of an abuse of discretion, for BOZA, instead of considering health, morals, general welfare, congestion, reasonableness and practicality as reflected in the general scheme applied in imposing districts, to apply, as a

criterion for granting a variance, a requirement that she must first not be requesting a variance.

Also among the grounds advanced by Petitioner are that BOZA's finding that "the character of the district would be harmed" by granting the variance is legal error – a misunderstanding of what the ordinance means by such a term.

Petitioner submits that this term does not refer to the character of the actual neighborhood or "the block" (see order at 2, ¶4) or the character of the as-built, actual, existing zoning district in which the house lies.⁷ Rather, Petitioner contends the term applies to the character of the type of district described in the zoning ordinance and the attributes of such a district, as described in the zoning ordinance. Here, the character of the applicable district is expressly multi-family, regardless of whether it is presently actually composed that way. Thus, argues Petitioner, it is legal error and a complete display of caprice to base these decisions regarding Petitioner's property on various impressions of "how many duplexes there are in the neighborhood" or "on the street or around the corner from Petitioner's property." The proper question, says Petitioner, is whether Petitioner's proposed use is compatible with the character of an RG-1 zone as described in the zoning ordinance of the City of Columbia.

THE PREVIOUS BOZA PROCEEDING AND THE APPEAL THEREFROM

The previous appearances Petitioner had made before BOZA were in 2008.

In or around April of 2004, a non-family visitor caused the fire that damaged the back of the house, damaging both the upstairs and downstairs units' bathrooms, the nearby walls, and the stairs, although the stairs remained useable. Of the over 2,000 square foot structure, only

⁷See, e.g., Minutes of January 8, 2013 BOZA meeting at page BOZA008, basing "the character of the district" on "the testimony of Mr. Riley," a lay neighbor appearing at the meeting and describing the neighborhood.

approximately 500 square feet of it were damaged in the fire. According to Dortch, most of the damage occurred in the downstairs bathroom, where the fire originated. After the fire, Dortch's brother, an ex-military man, continued to live in the house, which was still otherwise habitable.

Between September and the end of December of 2007, Dortch was able to obtain her brother's 50% interest in the house and applied for a permit to repair the bathroom damage, and do other updating, which she estimated at about \$8,000.

Dortch, by herself, applied for a repair permit to fix the property and update it. According to Dortch, the Zoning Division first denied a repair permit to fix this non-major damage because Dortch did not reside in the house. After Dortch persisted in her application to repair the damage, the Building Department eventually approved her permit, and sent her to "Zoning" for other approval.

Dortch was then told she could not just fix the damage to the bathrooms, but instead must restructure the entire house into one large, single family house.

According to Dortch, she was simply informed that the house was no longer zoned for a duplex. According to Dortch, she objected that, because the house is over 2,000 square feet large, restructuring the house would cost a significant sum of money and be an extreme hardship. She also objected that it would make the house more difficult to use in the ways Dortch's family has used the house. She contended that it would also destroy the historical use and configuration of the house. She also contended that it would destroy the historical memorial of Dortch's mother's industry and thrift in buying the house on the wages of a maid, a nurse's aid, and a babysitter. According to Dortch, she asked if she could proceed with exterior repairs only, and was explicitly refused.

According to Dortch, she wrote Mr. Mylott, the head of zoning, and her letter was represented to have been forwarded to Jonathon Chambers. In May of 2008, Dortch met with Jonathon Chambers and Inspector Goodlet to discuss her situation. They instructed Dortch to apply to the variance committee and if unsuccessful, to appeal to the Board of Zoning Appeals. Dortch, pro se, submitted a variance application, partially completed by the zoning staff, dated June 11, 2008, which was heard and denied July 8, 2008.

Although the application partially prepared for Dortch referred to a lot size requirement, and Section 17-275 of the Zoning Ordinance (Exh.A, Resp. Mem.), the "Case Summary" did not cite Section 17-275 as an applicable section of the ordinance. (Exh.C, Resp. Mem.) Instead, the "Case Summary" referred to a statute addressed to extinguishing the grandfathered status of nonconforming uses, Section 17-202(e), and simply recited as advice, and fact, that the applicable RG-1 zoning district required a certain lot size which was not met by the property:

The property is zoned RG-1-DP (General Residential Design Preservation) zoning district and requires 10,000 sq. ft. to accommodate a duplex. This lot contains 7,644 sq. ft. and is deficient 2,356 sq.ft. In that the structure has been vacant for a period greater than 12 consecutive months, the structure has lost its non-conforming (grandfather) status.

In July or August, 2008, Dortch, pro se, appealed the denial of the permit. The appeal was heard at a September 9, 2008 meeting of BOZA, and denied.

BOZA sent Dortch two final decision letters, both dated January 16, 2009.⁸ Neither letter was postmarked. Neither letter contained a contemporaneous certificate of mailing. Neither contained any other statement of the date the letter was actually placed in a mailbox or delivered to the Post Office. The envelopes, rather, were metered by the City in its offices at some point

⁸It is unknown who prepared the decisions.

before mailing. Although the letters were dated January 16, 2009, the envelopes were not metered until January 22. Both advised that an appeal should be filed within thirty days after the decision was mailed.

Although Dortch had not applied for a special exception, one letter (re case 08-051-V) denied Dortch's application for variance on the stated basis that her variance request did not meet the requirements for a "special exception" under Section 17-112(2)(c) of the Zoning Ordinance of the City of Columbia.

The second letter (re case 08-060-AA) denied her application for administrative appeal on the sole stated basis that "upon a motion to uphold the Zoning Administrator's decision regarding the nonconformity of a duplex, the Board voted 4-1." (Exh. E, Resp. Mem.) Namely, BOZA gave no reason, and just took a vote.

Neither letter mentioned Section 17-275 of the ordinance, pertaining to lot size.

Dortch, pro se, filed an appeal of BOZA's decision with the Circuit Court of Richland County on February 24, 2009. After obtaining counsel, Dortch amended her appeal on February 26, 2010.

In her appeal, Dortch contended that BOZA erred in denying Dortch's permit and variance applications because both Section 17-235 and Section 17-258 of the City Zoning Ordinance expressly permit RG-1 districts to include two-family private dwelling structures, and even quadraplexes, multi-family buildings, and various non-residential uses. The house is in an area zoned RG-1. Therefore, contended Dortch, Dortch's two-family private dwelling is permitted. She contended the home was therefore not even a nonconforming use and that she should not need a variance.

Dortch further contended that the structure is not prohibited under Section 17-251 of the Zoning Ordinance (regarding design and preservation areas), because the structure, like in kind to many neighboring structures, does not contravene the intent, object, or purpose of the Design and Preservation Area Overlay. She contended the structure, rather, preserves the design and preserves the use which has been in place since at least the 1960s.

Dortch's appeal also contended that the Board erred in denying Dortch's variance application because the decision of BOZA was not supported by any facts, reasons, or code references sufficient to justify the action taken. She contended the application was not considered in light of the zoning of the property or in light of the proper criteria for variances under Section 17-112(3). Rather, the Board denied Dortch's variance application under the criteria for special exceptions included in Section 17-112(2).

Finally, Dortch contended that requiring her to change the use and design of the property would place a hardship on her. She contended that applying the Zoning Ordinance in this manner was fundamentally unfair and a violation of the due process of law, and is arbitrary, capricious, and illegal.

In response to this February, 2009 appeal to the Richland County Circuit Court, the City moved to dismiss on the grounds that the appeal to Circuit Court was one or two days late in being filed.

These grounds were based on a provision in the applicable ordinance which measures the time to appeal from the time the BOZA decision is asserted to have been mailed, rather than from date of receipt, date of receipt for certified mail, U.S. Post Office postmark date, contemporaneously prepared certificate of mailing, or other trigger. The motion was granted.

Petitioner timely filed with the Clerk of Court of this Court, a motion to reconsider under Rules 52 and 59, SCRCP. Under copy of the same cover letter dated September 17, 2010, Petitioner simultaneously sent a copy as well to the ruling judge.

OTHER MATTERS OCCURRING AND CHANGING

According to Petitioner's counsel, who invites review and judicial notice of Municipal Court records, while the foregoing proceedings were occurring and after Petitioner's motion to reconsider was filed, Petitioner remained, for some time, under criminal charges filed by the City in Municipal Court for not repairing the house.

According to Petitioner's counsel, those charges still have not been resolved.

According to Petitioner's counsel, the September 17, 2010 motion to reconsider has not been determined.

From the record of the most recent BOZA proceeding, it appears some other circumstances have changed, as there is reference to the fact that Petitioner later proceeded to spend approximately \$35,000 on exterior-only repairs, including constructing exterior back stairs to the upstairs unit and repairing rot around the exterior front stairs to the upstairs unit and roof of the front stoop, at the direction of the City.⁹ Petitioner testified that the repairs had to be done in consultation with an historical authority concerned with matching of period windows and matching of profiles on laps of wood siding.¹⁰

It appears from the Minutes and "Case Summaries" that some personnel in the Zoning office also changed between 2008 and 2012.

⁹See, e.g., Minutes of January 8, 2013 BOZA meeting at pages BOZA005-BOZA006.

¹⁰See id. at BOZA006.

THE CITY'S MOTION TO DISMISS ON THE GROUNDS OF RES JUDICATA

The City's instant motion to dismiss is based on an assertion that the most recent BOZA proceeding was barred by the prior final determination of the previous BOZA proceeding regarding the property. This Court disagrees.

Failure to Raise the Issue in the Proceeding Below and Affirmative Waiver of the Issue

The doctrine of res judicata (bar or merger, and collateral estoppel) is not an element of a cause, is not self-executing, and is a matter to be raised or not, in the tribunal appealed from, by the party who would seek preclusion. Normandy Corporation v. S.C. Dept. Of Transportation, 386 S.C. 393 at 408, 688 S.E.2d 136 at 144 (Ct. App. 2009); Wagner v. Wagner, 286 S.C. 489, 491, 335 S.E.2d 246, 247 (Ct. App. 1985).

The City itself researched the issue and concluded in the most recent BOZA proceeding that there was no preclusion from pursuing a second application. The City thus not only raised the issue before BOZA, but affirmatively waived the issue.

In the record of the BOZA meeting, the City's case briefing stated: "Though the applicant has previously appeared before this Board for essentially the same request, neither the Zoning Ordinance nor the Board Rules and Procedures prohibit this reapplication. As such, the application should be considered on its merits." (February 5, 2013 "Case Summary" at BOZA023.)

A technical argument of preclusion cannot be raised for the first time on appeal. Normandy; Wagner. If the matter is heard without objection, it can be appealed.

It might be argued that BOZA did not have the authority to raise res judicata or to refuse

to hear what was presented to it. However, BOZA refused to hear Petitioner's appeal, so BOZA was willing to refuse some things. The unnamed "staff" did raise the matter – and then both BOZA and any unknown adversary waived it by proceeding.

If the lack of a disclosed or formal adversary in the BOZA proceeding is offered as a reason why there was not a mechanism by which to raise the "defense" of res judicata, this

lacking attribute simply underscores the different, non-litigation, nature of a BOZA proceeding and why it is ordinarily unfitting to apply res judicata to the determinations of such a body.

Not a Full and Fair Opportunity in a Judicial
or Appropriate Quasi-Judicial Forum to "Litigate" a "Claim"

A zoning board is not a court. It is not a lower court. It is not a state or federal agency subject to the State Administrative Procedures Act or the federal Administrative Procedures Act.

It is a panel of nonjudicial municipal appointees who conduct meetings to consider often pro se applications. In these applications, "public input," with no rules of evidence, is solicited, there is no right to cross examination of witnesses, and board members are oriented to conclusions in the cases before them based on initially ex parte briefings by City employees. To the extent the Zoning Administrator is an adversary, the adversary is then allowed to sign the decision before it is shown to the applicant. It is unknown what other input is provided privately by the Zoning Administrator at this stage.

Decisions may rely on facts outside the record, such as what a board member did with his own house a full five city blocks away,¹¹ in which space at least three other districts encroach at various points, or such as what the board did or observed with respect to some other house on the

¹¹E.g., January 8, 2013 Minutes at BOZA006.

other side of King Park in some other hearing the instant proponent did not attend.¹²

The information presented by the City regarding the previous BOZA proceeding pertains to a different, separate, application made four years earlier, not the same application, by Ms. Dortch. The previous application was not a “cause of action” or claim, but, rather, deals with variance by an administrative body from a restriction enforced by an administrative person, as well as appeal. Ostensibly, the applicant/appellant in such a proceeding often proceeds without an adversary or pre-determined opposition. At least there is no advance notice of an opposing position.

The information presented by the City regarding the previous BOZA proceeding pertains to a matter handled only by a zoning administrator and then a quasi-judicial body in a non-judicial “public meeting” setting.

Res judicata is ordinarily reserved for fully and fairly litigated determinations on the merits of issues in a judicial forum, usually at least at the level of a court of general jurisdiction.

Res judicata is based on the judicial policy that “a losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise.” Astoria Federal Savings & Loan Ass’n v. Solimino, 501 U.S. 104, 107 (1991)(emphasis added). A contrary rule “would, as a general matter, impose unjustifiably upon those who have already shouldered their burdens, and drain the resources of an adjudicatory system with disputes resisting resolution.” Id. at 107-08 (emphasis added). Nevertheless, “[b]ecause res judicata may govern grounds and defenses not previously litigated,” thereby “blockad[ing] unexplored paths that may lead to truth,” it should be invoked “only after

¹²E.g., id. at BOZA005.

careful inquiry.” Brown v. Felsen, 442 U.S. 127, 132 (1979). “The ease and efficiency of res judicata as a means of quickly avoiding an evaluation of the merits of a plaintiff’s claim does not imply that the decision to apply the doctrine should be either facile or hasty.” Purter v. Heckler, 771 F.2d at 690.

Although administrative agencies are not courts, the doctrine of res judicata may, under certain circumstances, apply to their decisions. In Astoria, the U.S. Supreme Court explained that “[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose.” Astoria, 501 U.S. at 107 (emphases added)(quoting United States v. Utah Constr. & Mining Co., 384 U.S. 394, 422 (1966)).

However, the court cautioned that “[a]lthough administrative estoppel is favored as a matter of general policy, its suitability may vary according to the specific context of the rights at stake, the power of the agency, and the relative adequacy of agency procedures.” Astoria, 501 U.S. at 109-10.

Courts, in interpreting Astoria, have held that an agency acts in a “judicial capacity” when it provides the following safeguards: (1) representation by counsel, (2) pretrial discovery, (3) the opportunity to present memoranda of law, (4) examinations and cross-examinations at the hearing, (5) the opportunity to introduce exhibits, (6) the chance to object to evidence at the hearing, and (7) final findings of fact and conclusions of law. Reed v. AMAX Coal Co., 971 F.2d 1295, 1300 (7th Cir. 1992) (per curiam); In re Kaiser Aluminum Corp., 365 B.R. 447 (D. Del. 2007); Durko v. OI-NEG TV Products, 870 F. Supp. 1278 (M.D. Pa. 1994); Buckley v. U.S., 51 Fed. Cl. 174 (Fed. Cl. 2001); see also In Maryland State Dep’t of Educ. v. Shoop, 704

A.2d 499 (Md. Ct. App. 1998) (in holding that the Maryland State Department of Education was not acting in a “judicial capacity” when it suspended a vocational instructor for violating tool security policies, Maryland Court of Appeals explained that the hearing was not conducted by a judicial officer, the proceedings were not recorded in any way, and no rules of evidence or trial procedure were recognized); and Delamater v. Schweiker, 721 F.2d 50, 53 (2d Cir. 1983) (per

curiam) (“An action taken by an administrative agency to grant or deny a benefit is not an adjudicated action unless the agency has made its decision using procedures substantially similar to those employed by the courts.”).

In this case, the City has not contended that the safeguards described above were present during the variance application process that ultimately led to a “vote” against allowing Dortch a variance.

Two notable cases do impose the doctrine of res judicata in cases of agency decisions, Leviner v. Richardson, 443 F.2d 1338 (4th Cir. 1971) and S.C. Dep’t of Social Servs. v. Winyah Nursing Homes, Inc., 282 S.C. 556, 320 S.E.2d 464 (Ct. App. 1984). In Leviner, the plaintiff filed an application seeking disability benefits. His application was denied, without a hearing, on the basis that his disability was not present at the time his insured status had expired. The plaintiff did not request reconsideration of the denial decision, but subsequently filed a second, third and fourth application for benefits. All of his ensuing applications were denied. On appeal of the denial of the plaintiff’s fourth application, the Fourth Circuit held that the doctrine of res judicata “may apply” in cases where no administrative hearing was requested or held. Leviner, 443 F.2d at 1343.

However, the court also noted:

In Grose v. Cohen, supra, we said that the doctrine [of res judicata], as applied to administrative decisions, “is not encrusted with the rigid finality that characterizes the precept in judicial proceedings.” We added that “practical reasons may exist for refusing to apply it” and “when traditional concepts of res judicata do not work well, they should be relaxed or qualified to prevent injustice.”

Id. at 1342 (quoting Grose v. Cohen, 406 F.2d 823, 824-825 (4th Cir. 1969)) (internal citations omitted). The court further held that a prior administrative determination should not be res

judicata “where new and material evidence is offered which is of sufficient weight that it may result in a different determination.” Id. at 1343. Ultimately, the court chose to remand the case to the district court for it to decide whether the evidence proffered in support of the plaintiff’s fourth application could be deemed “new and material evidence” sufficient to result in a different determination. Id.

Leviner, a Fourth Circuit case, is not binding on this Court. However, even it were binding, the Court concludes that “practical reasons” should be considered for refusing to apply res judicata to nonjudicial, nonadversarial proceedings of inferior municipal boards. Courts have refused to apply administrative res judicata in cases where there is manifest error in the record. See, e.g., Oubre v. District of Columbia Dep’t of Employment Servs., 630 A.2d 699 (D.C. 1993); Grose v. Cohen, 406 F.2d 823 (4th Cir. 1969); Purter, 771 F.2d 682; Perkins v. Kramer, 198 P.2d 475 (Mont. 1948); see also Wright v. Marlboro County School Dist., 317 S.C. 160, 452 S.E.2d 12 (Ct. App. 1994) (res judicata does not apply in cases where an administrative tribunal is asked to judge allegations of its own wrongdoing).

Here, there may be rather large errors on the face of the record that would profoundly and shockingly affect the practicalities and justice in this case. It appears, prima facie, that BOZA did not properly understand the four criteria it was charged with applying, and did not consider

the matter against the backdrop of duplexes being specifically contemplated in the character of the district in question.

City of Columbia Ordinance Section 17-275 – the section cited for the requirement of 10,000 square feet of lot to support a duplex in an RG-1 district – is presented as a schedule or chart in the form of a matrix, accompanied by footnotes. With the exception of footnotes to the numerals and alphabetic codes entered on the chart, it does not speak in sentences.

A review of the footnotes and the full context indicates that a requirement of 5000 square feet “per unit” applies in an RG-1 district when each unit is a “detached single-family unit.”

Section 17-275, Note; Section 17-275 fn. g.

That is, two freestanding houses on one lot require 5000 square feet of land, each. However, there is at least some ambiguity or silence regarding the requirements and policy for a duplex, in which, as here, the two units are in one building and are not detached from one another.

According to the chart in Section 17-275 and an explicit footnote, in the more restrictive, lower density, RD district, “a duplex” only requires 5000 square feet for the first unit, and a total of 7500 square feet is needed for “a duplex.” Inexplicably, there is no “duplex” footnote for RG-1 districts.

There is only a chart requiring 5000 square feet of land for the “first unit” and 5000 square feet for “each additional unit,” and a footnote referring to “detached” single-family units. According to the footnote, “g,” as well as the general “Note” preceding all the footnotes, additional “detached” single family units require an additional 5000 square feet of land. Here, the two units are not detached.

Whether a requirement of an additional 5000 square feet for a duplex in the less restricted, significantly higher density, RG-1 district was ever intended is called into question by examining the requirements for the much more restricted "RD" district. An RG-1 district, the type of district in which Petitioner's house is located, specifically allows not only single family units and two-family units, but also four-family and other multi-family units, Sections 17-235 and 17-258, whereas the RD district only allows single family units and two-family units, Sections 17-234 and 17-258.

According to the chart and footnote "f" in Section 17-275, in the RD district, "[a] minimum lot area of 7,500 square feet is required for a duplex." It seems absurd to interpret the plain language of the chart and footnotes in a manner requiring 10,000 square feet of land for a duplex in the multi-family RG-1 district, while only requiring 7,500 square feet of land for a duplex in the lower density, much more restrictive, two-family, RD district. If Dortch needed a variance at all, she would not have been out of character with the multi-family character of her district, and she would have been close to meeting the ancillary restrictions applicable to the next stricter district designation, rather than the next more lenient one. It appears that if res judicata were applied here it could operate as a blockade to a path to the truth.

Like Leviner, Winayh cautions against the application of res judicata in agency, commission, and board proceedings. In Winayh, the Department of Social Services (DSS), an actual state agency subject to the Administrative Procedures Act, brought an action against a corporate nursing home and several of its officers, directors and shareholders to enforce a final agency decision that found the nursing home liable for medicaid overpayments. The final agency decision sought to be enforced by DSS had been made by DSS after an adversarial "fair hearing,"

and it had not been appealed by the nursing home. In the action to enforce the final agency decision, the nursing home's principal shareholder sought to raise issues that could have been, but were not, raised at the fair hearing. On appeal of the matter, the Court of Appeals held that the doctrine of res judicata precluded the raising of those issues, concluding that "the unappealed DSS decision bound the Nursing Home and its privies on all issues that were or could have been addressed at the fair hearing." Winyah, 282 S.C. at 563, 320 S.E.2d at 468.

In this case, Respondent has not contended that anything resembling a "fair hearing" was held when Dortch's 2008 pro se application was denied at the BOZA public meeting in 2009. Accordingly, Winyah does not dictate the application of res judicata here.

Res judicata generally does not apply to variance applications before town zoning boards. RICO Corporation v. Town of Exeter, 787 A.2d 1136 at 1143-44 (R.I. 2001); see also Lamar Outdoor Advertising v. City of Dayton Board of Zoning Appeals 2002 Ohio 3159, 02 LW 2325 (2d) (Ct. App. 2002) (zoning inspector's determination of violation, being a purely administrative determination, could not operate as res judicata); and see S.C. Atty. Gen. Op. d. February 17, 2009 (decision of zoning administrator, whose authority is limited to administering and enforcing provisions of the zoning ordinance, has no preclusive effect).

Respondent cites Price v. City of Georgetown, 297 S.C. 185, 375 S.E.2d 335 (Ct. App. 1988) as a persuasive case. Price was a rezoning case, rather than a variance application or appeal to a zoning board. In Price, res judicata was found to be inapplicable and the trial judge was reversed for applying it. In Price, the zoning ordinance in question had been amended to expressly permit successive rezoning applications. The Court held that res judicata had therefore been legislatively abolished in that jurisdiction "insofar as it might relate to any year-old ruling of

the zoning board of the City.” 297 S.C. at 188 (emphasis added). Thus, the remainder of the court’s analysis or observation was not used to resolve the issue, was dictum, and is not precedent.

Respondent also cites Kreisberg v. Scheyer, 808 N.Y.S. 2d 889 (N.Y.Sup.Ct. 2006) as persuasive. Kreisberg was an opinion of a trial-level court of comparable jurisdiction to the South Carolina Circuit Court. There, the court determined that res judicata did not apply, and based its determination on the fact that the applicants were not the same in the two proceedings, and that the relief sought was different. The remainder of the decision is dictum regarding what “would” otherwise be the result, 808 N.Y.S. 2d at 892, and how the matter would be governed by the provisions of a statute not applicable here, entitled “Town Law,” 808 N.Y.S. 2d at 892, which provided for handling “second applications for similar relief” and “the same applicant applying for identical relief.” Kriesberg therefore does not provide authority I can comfortably apply to this case.

Respondent also cites as persuasive, Callowhill Center Assocs., LLC v. Zoning Bd. of Adjustment, 2 A.3d 802 (Pa. Commonw. Ct. 2010). Callowhill involved a sign as big as the side of a building. In fact, the request at issue was for a variance to put a “building wrap” sign on the side of a Philadelphia building. The court confirmed that Pennsylvania courts apply res judicata “narrowly,” 2 A. 3d at 809, in zoning matters, because “the need for flexibility outweighs the risk of repetitive litigation,” *id.* Callowhill went on to establish various elements which must be met and considerations to be made. This Court, too, chooses to apply the doctrine narrowly under the circumstances.

Matter not Determined on the Merits and Not Finally Determined

Res judicata requires three elements, the first of which is a judgment that is final, valid, and on the merits. Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 183, 437 S.E.2d 130, 132 (Ct. App. 1993). The information presented by the City regarding the previous BOZA proceeding pertains to an appeal which was, itself, not determined on the merits. It was

determined based on a pro se appeal being a day or two late. The information presented by the City regarding the previous BOZA proceeding does not establish the fact that this previous proceeding has ever been finally determined.

CONCLUSION

I find the doctrine of res judicata to be neither fair nor applicable in the instant circumstances, and that the defense is precluded in any event by not being asserted in the BOZA meeting.

Accordingly, the motion to dismiss is denied.

AND IT IS SO ORDERED.

James R. Barber, III
Circuit Judge

Date: _____

STANTON LAW OFFICES, P.A.

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TELEPHONE 803-929-1484
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September 17, 2010

M. BARON STANTON
ATTORNEY AT LAW

The Honorable Jeanette W. McBride
Clerk of Court
Richland County Court of Common Pleas
P. O. Box 2766
Columbia, SC 29202

Re: **Frieda H. Dortch v. City of Columbia, Planning & Development Services/Zoning Division**
Appeal to Circuit Court
Richland County Court of Common Pleas
Case No. 09-CP-40-1307

Dear Ms. McBride:

We enclose the following:

1. A motion to reconsider;
2. A motion and order information and cover sheet;
3. The \$25.00 filing fee;
4. An extra copy of the motion; and
5. A postage-paid reply envelope.

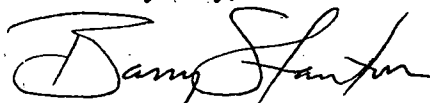
Would you please file the motion and assist in scheduling it at the earliest appropriate time, and return a clocked-in copy to me in the envelope provided.

Because this is a motion to reconsider an order of Judge Barber, and is properly directed to him, we are sending a photocopy of the motion papers directly to Judge Barber as well, and by this copy are respectfully requesting the earliest available hearing.

Thank you for your assistance.

With kind regards,

Yours very truly,


M. Baron Stanton

MBS:eh
Enclosures
cc w/encl.:

The Honorable James R. Barber, III
Peter M. Balthazor, Esquire

STANTON LAW OFFICES, P.A.
OPERATING ACCOUNT
P.O. BOX 245 (R63) 929148
COLUMBIA, SC 29202

THE NATIONAL BANK
OF SOUTH CAROLINA
COLUMBIA, SC 29201
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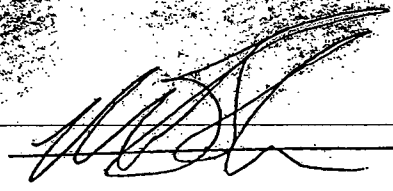
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**25.00

PAY TO THE
ORDER OF

Richland County Clerk of Court

25 DOLLARS

Richland County Clerk of Court



MEMO

Dortch/City mot reconsid Stonebur

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Richland County Common Pleas

Clerk : Jeanette W. McBride
 Richland County Judicial Center
 Columbia, SC 29201
 (803) 576-1999

Received From: Stanton

Date : 9/17/2010

RECEIPT # 110134

Clerk: COCNETTS

Paying for: Columbia,
 Dortch, Frieda H

Transaction Type: Payment

Payment Type: Check \$25.00

Reference # 4782

Comment:

Total Paid \$25.00

<u>Case #</u>	<u>Caption</u>	<u>Previous Balance</u>	<u>Amount Paid</u>	<u>Balance Due</u>
2009CP4001307	Frieda H Dortch vs City Of Columbia Planning	\$25.00	\$25.00	\$0.00

Total Cases: 1	\$25.00	\$25.00	\$0.00
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Dortch's Motion to Reconsider
Circuit Court's Dismissal of Appeal,
dated Sept. 23, 2013

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Frieda H. Dortch,

Petitioner,

v.

City of Columbia, Planning &
Development Services/Zoning
Division,

Respondent.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 13-CP-40-02159

**DORTCH'S MOTION TO
RECONSIDER ORDER GRANTING
CITY'S MOTION TO
DISMISS
ON THE BASIS OF RES JUDICATA**

Petitioner respectfully requests pursuant to Rules 52 and 59, SCRCPC, that the Court reconsider its order dated August 19, 2013 (entered September 10, 2013), vacate the order, and deny the City's motion to dismiss.

The grounds for this motion are that it appears the Court overlooked some principles of law and did not rule on some of the issues presented.

Namely, the City moved to dismiss, on the grounds of res judicata, this appeal from the decision of the City Board of Zoning Appeals.

Petitioner submitted as a form of briefing, a proposed order to the Court, setting forth multiple reasons why Respondent City's motion to dismiss should be denied.

Petitioner set forth the following issues as reasons why the motion should not be granted:

- (1) The issue of res judicata was waived and not asserted by the City in the proceeding below;
- (2) Flexibility, careful inquiry and caution are required and allowed in applying the doctrine to proceedings of lower tribunals such as variance proceedings before appointed municipal boards;
- (3) The attributes of the forum and the proceedings in the instant case do not make application of the doctrine fair – the circumstances are bad for application of res judicata;
- (4) The record reveals a high probability of error by BOZA and that the use sought by Petitioner was never intended to be prohibited under the ordinance in question; and

RICHLAND COUNTY
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JEANETTE M. BRIDGES
C.C.P.C. CLERK

(5) The previous proceeding before BOZA was never finally determined on the merits.

In the order signed by the Court, the Court did not appear to address these issues. Two of these issues apply regardless of what sort of tribunal is involved.

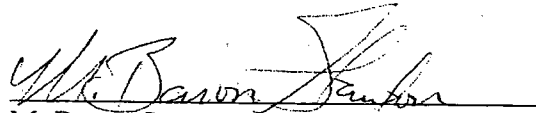
Instead, the Court essentially simply ruled as a categorical matter, that res judicata does apply to zoning board decisions unless there is a showing of a substantial change in circumstances.

The Court then ruled that the earlier proceeding and the proceeding appealed herein involved similar if not identical issues and that there was no substantial change in circumstances. Even here, the Court remarked only that there was no change in the zoning district in question, and overlooked and did not address evidence of the repairs made and money spent by Petitioner since the earlier proceeding. Also, the Court made no note of the new confirmation by a City employee that the subject property cannot even be demolished, because it is in a design preservation district.

Virtually all the cases cited in the order signed by the Court were distinguished or explained as inapplicable in Petitioner's proposed order; none of these points were discussed.

For the foregoing reasons and the reasons more fully set forth in Petitioner's proposed order, Petitioner asks that the Court reconsider its order as above indicated.

Respectfully submitted,


M. Baron Stanton
STANTON LAW OFFICES, P.A.
1728 Main Street
P. O. Box 245
Columbia, South Carolina 29202
803-929-1484

ATTORNEY FOR PETITIONER
Freida H. Dortch

Date: Sept 23, 2013

APPENDIX OF ORDINANCES AND STIPULATION

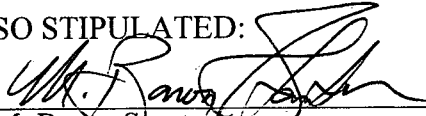
**Stipulation to Inclusion of Less than All Matter
Originally Designated and to Inclusion in Appendix
and Allowance of Judicial Notice of Certain Ordinances**

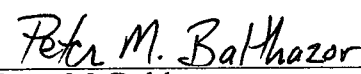
STIPULATION TO INCLUSION OF LESS THAN ALL
MATTER ORIGINALLY DESIGNATED AND TO
INCLUSION IN APPENDIX AND ALLOWANCE OF JUDICIAL NOTICE
OF CERTAIN ORDINANCES

The parties to the appeal hereby stipulate to not including Item 2 of Respondent's Designation.

The parties further stipulate to including in an appendix to the Record, copies of the current versions of certain ordinances (current as of the date of service of the Record), copies of which were not presented to the court below, but as to which current copies the parties stipulate the appellate court above the Circuit Court may take judicial notice. These ordinances are City of Columbia Ordinance Sections 17-82, 17-83, 17-111, 17-112, 17-114, 17-234, 17-235, 17-258, and 17-275.

SO STIPULATED:


M. Baron Stanton
Attorney for Appellant


Peter M. Balthazor
Attorney for Respondent

*by MBS
with permission*

Sec. 17-82. Duties of zoning administrator.

The duties of the zoning administrator shall include:

- (1) Interpretation of the terms and provisions of this article;
- (2) Administration of the provisions of this article relating to zoning permits and certificates;
- (3) Administration of provisions of this article relating to applications for special exceptions, variances, appeals from an administrative decision and other actions before the zoning board of zoning appeals;
- (4) Administration of provisions of this article relating to applications for zoning amendments and giving notice of hearings on such amendment requests as specified in this article;
- (5) The receipt of complaints from persons who allege that violations of this article have occurred, to properly investigate or cause to be investigated such complaints, and to initiate or cause to be initiated action to prevent, enjoin, abate or remove such violations;
- (6) The maintenance of the official copy of the zoning map and other such records and official materials as may relate to the adoption, amendment, enforcement or administration of this article; and
- (7) Other such duties as may properly relate to the accomplishment of the spirit and intent of this article.

(Code 1979, § 6-3172; Ord. No. 99-011, § 2, 4-21-99)

CERTIFIED
A TRUE COPY

CITY CLERK

Sec. 17-83. Zoning permit.

- (a) *Required.* No building or other structure shall be erected, moved, added to or structurally altered without a zoning permit therefor issued by the zoning administrator. A zoning permit shall not be issued by the zoning administrator except in conformity with the provisions of this article, unless he receives a written order from the board of zoning appeals in the form of an interpretation involving error or a special exception or variance as provided in division 3 of this article. If the permit is denied, reasons shall be stated for the denial.
- (b) *Application.* All applications for zoning permits shall be accompanied by plans drawn to scale, showing the actual dimensions and shape of the lot to be built upon, the exact sizes and locations on the lot of all buildings already existing, if any, and the location and dimensions of the proposed building or alteration. The application or plans shall include such other information as lawfully may be required by the zoning administrator, including existing or proposed uses of the building and land, the number of families, housekeeping units or rental units the building is designed to accommodate, conditions existing on the lot and on nearby lots, and such other matters as may be necessary to determine conformance with and provide for the enforcement of this article. One copy of the plans shall be returned to the applicant by the administrative official, after he shall have marked the copy either as approved or disapproved and attested to this by his signature on the copy.
- (c) *Expiration.*
- (1) If the work described in any zoning permit has not begun within six months from the date of issuance thereof, or in the case of a special exception, within the time limit established therefor, the permit shall expire and be canceled by the zoning administrator. Written notice thereof shall be given to the persons affected.
 - (2) If the work described in any zoning permit has not been substantially completed within one year of the date of issuance thereof, the permit shall expire and be canceled by the zoning administrator, except as follows:
 - a. In the case of a special exception, work shall be substantially completed within the time limit established therefor by the zoning board of zoning appeals; or
 - b. In the case of work which may reasonably be expected to require more than one year for completion, the zoning administrator may specify a time limit in excess of one year at the time of original issuance of the zoning permit.
 - (3) Written notice of the expiration of any zoning permit shall be given to the persons affected, including notice that further work as described in the canceled permit shall not proceed unless and until a special zoning permit has been obtained.
- (d) *Certificate of occupancy.* No renovated, new or used structure may be occupied or used until the zoning administrator has approved a certificate of occupancy.

(Code 1979, § 6-3173; Ord. No. 99-011, § 2, 4-21-99)

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8.4.14

Sec. 17-111. Organization and procedures.

(a) *Establishment; membership.* A board of zoning appeals and a board of zoning appeals—form based codes is hereby established.

- (1) The board of zoning appeals (BoZA) shall consist of seven members appointed by the city council, a majority of which shall constitute a quorum. The members shall be appointed for staggered terms of three years and until successors are appointed and qualified. Members may be removed for cause by the city council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board shall elect one of its members chairman for a one-year term.
- (2) The board of zoning appeals—Form based codes (BoZA-FBC) shall consist of five members appointed by city council, a majority of which shall constitute a quorum. The members shall be appointed for staggered terms of three years and until successors are appointed and qualified. Members may be removed for cause by the city council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board shall elect one of its

***Editor's note**—Ord. No. 2012-096, adopted Oct. 16, 2012, amended former Div. 3, §§ 17-111—17-114, in its entirety which pertained to similar subject matter and derived from the Code of 1979, §§ 6-3191—6-3194; Ord. No. 99-011, §§ 2, 3, 4-21-99; Ord. No. 2004-058, 7-21-04; Ord. No. 2008-030, 4-2-08.

members chairman for a one-year term. Of the members appointed, one shall be an architect, one shall be an attorney, one shall be a landscape architect or urban planner and one shall be in real estate.

(b) *Meetings and rules of procedure; records.*

- (1) Each board shall adopt rules necessary to the conduct of its affairs in accordance with the provisions of this article. Meetings of each board shall be held at the call of the chairman and at those other times as the board may determine. The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
- (2) Each board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such facts, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the zoning administrator and shall be a public record.

(c) *Appeal procedure.* Appeals to each board may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the zoning administrator and/or the consolidated review committee (CRC). That appeal shall be taken within 30 days by filing with the zoning administrator and with the applicable board a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board shall hear the appeal within 30 business days, give public notice thereof as well as due notice to the parties in interest, and decide the appeal within ten business days. At the hearing, any party may appear in person or by agent or attorney.

(d) *Stay of proceedings pending appeal.* An appeal stays all proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the applicable board of zoning appeals, after notice of appeal is filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board or by a court of record on application, on notice to the zoning administrator from whom the appeal is taken and on due cause shown.

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

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

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

- (1) *Administrative review.* The board of zoning appeals shall hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article, provided that those appeals must be taken within 30 days after the order, requirement, decision or determination which is alleged to be in error is made.
- (2) *Special exceptions.*
 - a. *Duties.* Duties of the board are as follows:
 1. Hear and decide only the applications for special exceptions as the board of zoning appeals is specifically authorized to pass upon by terms of this article;
 2. Decide the questions as are involved in determining whether special exceptions should be granted; and,
 3. Prescribe appropriate conditions and safeguards in conformity with this article including, but not limited to items like the following: (1) hours of operation; (2) landscaping; and (3) screening of activities or structures.
 - b. *Procedures in consideration of special exception applications.*
 1. A written application for a special exception shall be submitted indicating the section of this article under which the special exception is sought and stating the grounds on which it is requested.
 2. Notice of public hearing shall be posted on the property for which special exception is sought and shall be published at least 15 days prior to the public hearing in a newspaper of general circulation in the city.
 3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
 4. The board of zoning appeals shall not vary the conditions and/or provisions of sections 17-259 through 17-274 and 17-283 that establish specific standards that must be met prior to the establishment of several principal uses that require a special exception.
 5. The board of zoning appeals may prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both.
 - c. *Criteria for special exceptions.* In addition to definitive standards applicable to the proposed use in this article, the board of zoning appeals shall approve an application for special exception only upon a finding that the following criteria are met:
 1. The proposed special exception will not have a substantial adverse impact on vehicular traffic or vehicular and pedestrian safety and adequate provisions are made in the proposed exception for parking and for loading and unloading.
 2. The proposed special exception will not have a substantial adverse impact on adjoining properties in terms of environmental factors such as noise, lights, glare, vibration, fumes, odors, obstruction of air or light, and litter;

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- (ii) These conditions do not generally apply to other property in the vicinity;
 - (iii) Because of these conditions, the application of this division to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
 - (iv) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.
2. The board may not grant a variance the effects of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably should a variance be granted, may not be considered grounds for a variance.
 3. Notice of public hearing shall be given as described in subsection (2)b.2. of this section.
 4. The hearing shall be held. Any party may appear in person, or by agent or by attorney.
 5. The board of zoning appeals shall make findings that the requirements of subsection (3)b.1. of this section have been met by the applicant for a variance.
 6. The board of zoning appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
 7. The board of zoning appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 8. The board of zoning appeals may prescribe a time limit within which the action for which the variance is requested shall be begun or completed, or both.

c. *Effect of failure to meet conditions.*

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

- (4) *Joint applications for special exception and variance(s).* Whenever in conjunction with an application for special exception, an applicant files an application for variance, the board of zoning appeals may combine the applications and consider them simultaneously, provided that the procedures established for special exceptions and variances within this section 17-112 shall not be varied.

(Ord. No. 2012-096, 10-16-12; Ord. No. 2013-110, 10-1-13)

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Sec. 17-114. Actions and decisions of board.

- (a) Upon appeal of a decision of the zoning administrator or the CRC, a board of zoning appeals may, in conformity with the provisions of this article, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the zoning administrator or the CRC from whom the appeal is taken.
- (b) All final decisions and orders of a board shall be in writing and be permanently filed in the office of the zoning administrator as a proper record. All findings of fact and conclusions of law shall be separately stated in final decisions or orders of the board.

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

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Sec. 17-234. RD and RD-2 two-family residential district.

The RD and RD-2 districts are intended as one- and two-family residential areas with attached and detached units with medium to high population densities. RD-2 is intended for use only in Historic Mill Village areas and only shall be applied where more than 50 percent of the parcels retain the original Mill Village residence. Certain structures and uses required to serve governmental, educational, religious, noncommercial recreational, and other needs of those areas are permitted outright within such districts or are permissible as special exceptions subject to restrictions and requirements intended to preserve and protect the two-family residential character of the district.

(Code 1979, § 6-3064; Ord. No. 2010-110, 7-28-10)

Sec. 17-235. RG-1, RG-1A and RG-2 general residential districts.

The RG-1, RG-1A and RG-2 districts are intended as medium and high density residential areas permitting progressively higher population densities, characterized by single-family detached, two-family detached and multiple-family structures, and garden type apartments. Certain structures and uses required to serve governmental, educational, religious, noncommercial recreational, and other needs of the areas are permitted outright or are permissible as special exceptions subject to restrictions and requirements intended to preserve and protect the residential character of the districts.

(Code 1979, § 6-3065)

Sec. 17-258. Table of permitted uses.

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

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

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

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

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

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

TABLE 1. TABLE OF PERMITTED USES

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

Principal Uses	Zoning Districts																		Off-Street Parking Requirements	
	D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-2	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1		MX-2
DIVISION A. AGRICULTURE, FORESTRY AND FISHING																				
1 Agricultural production—Crops																				
18 Horticultural specialties	x																			2 spaces per acre and 1 space per 1,000 square feet of office and/or retail
181 Ornamental floriculture and nursery products	x																			
182 Food crops grown within a covered enclosure	x	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	x	x	a/e	a/e	a/e	
183 Aquaponics	a														a	a				
19 General farms, primarily crop	x	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	a/e	No requirement
2 Agricultural production—Livestock	x																			
7 Agricultural services																				
74 Veterinary services (section 17-259)																				
741 With indoor kennels								e	e	x	x	x			x	x		x	x	3 for each 1,000 square feet of gross floor area
742 With outdoor kennels								e	e	x	e	x			x	x				
78 Landscape and horticultural services																				
781 Landscape counseling and planning								x	x	x	x	x	x		x	x	x	x	x	3 for each 1,000 square feet of gross floor area
782 Lawn and garden services										x	e				x	x				1.7 for each 1,000 square feet of gross floor area
783 Ornamental shrub and tree services										x	e				x	x				
8 Forestry	x																			No requirement

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Principal Uses	Zoning Districts																			Off-Street Parking Requirements
		RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-2	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	
	D-1																			
9 Fishing, hunting and trapping	x																			1.7 for each 1,000 square feet of gross floor area
91 Commercial fishing	x																			
92 Fish hatcheries and preserves	x																			
97 Hunting and trapping, and game prop- agation	x																			
DIVISION B. MINING																				
14 Mining and quarrying of nonmetallic miner- als, except fuels																	x			No requirement
DIVISION C. CONSTRUCTION																				
15 Building construction—General contractors and operative builders															x	x				3 for each 1,000 square feet of gross floor area
151 Office only								x	x	x	e	x	x	x	x	x	a/e	x	x	
16 Construction other than building construc- tion—General contractors															x	x				
161 Office only								x	x	x	e	x	x	x	x	x	a/e	x	x	
17 Construction—Special trade contractors															x	x				
171 Office only											e				x	x	a/e	x	x	
DIVISION D. MANUFACTURING (section 17- 293)																				
20 Food and kindred products															x	x			a/c	1.7 for each 1,000 square feet of gross floor area
205 Bakery products										x					x	x			a/c	
207 Microbrewery (section 17-290) prod- ucts										c					x	x		c	c	
21 Tobacco products																x				
22 Textile mill products																x			a/c	
23 Apparel and other finished products made from fabrics and similar materials															x	x		e	a/c	

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Principal Uses	Zoning Districts																			Off-Street Parking Requirements	
	D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-2	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2		
40 Railroad transportation																					1.7 for each 1,000 square feet of gross floor area
401 Railroads																X				e	
402 Railway express service																	X			e	
41 Local and suburban transit and interurban highway passenger transportation and service facilities for motor vehicle passenger transportation										e		e	e		X	X			e	e	
42 Motor freight transportation and warehousing															X	X					
421 Trucking, local and long distance															X	X					
4212 Local trucking without storage										e					X	X					
4214 Local trucking with storage															X	X					
422 Public warehousing															X	X					
4227 Miniwarehouse (section 17-260)										e					X						
423 Terminal and joint terminal maintenance facilities for motor freight transportation															X	X				4 for each 1,000 square feet of gross floor area	
424 Private commercial storage (section 17-260)								a	a	X		X	a	a	X	X			X	1.7 for each 1,000 square feet of gross floor area	
43 U.S. Postal Service								e	e	e	X	e	e	e	X		e	e	e	4 for each 1,000 square feet of gross floor area	
44 Water transportation															X	X				1.7 for each 1,000 square feet of gross floor area	
45 Transportation by air															X	X					
46 Pipelines															X	X					
47 Transportation services															X	X					

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Principal Uses	Zoning Districts																		Off-Street Parking Requirements	
		RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-2	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1		MX-2
	D-1																			
472 Arrangement of transportation services								X	X	X	X	X	X	X	X	X		X	X	3 per each 1,000 square feet of gross floor area
48 Communication																				
481 Telephone communication (wire or radio)										X	X	X	X		X			X	X	3 for each 1,000 square feet of gross floor area
482 Telegraph										X	X				X				X	
483 Radio and television broadcasting										X	X	X	X	X	X	X		e	e	
484 Cable									X						X				X	1.7 for each 1,000 square feet of gross floor area
489 Communication services, not elsewhere classified										X						X	X			
49 Electric, gas and sanitary services																				
491 Electric substations	e	e	e	e	e	e	e	e	e	e	e	e	e	e	X	X	e	e	e	1.7 for each 1,000 square feet of gross floor area
492 Gas production and distribution															e	X				
493 Combination electric and gas, and other utility services																X	e			
494 Water supply (section 17-261)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
495 Sanitary services																				
4952 Sewerage systems (section 17-262)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
4953 Refuse systems																X				
DIVISION F. WHOLESALE TRADE																				
50 Wholesale trade—Durable goods															X	X				1.7 for each 1,000 square feet of gross floor area
501 Motor vehicles and automotive parts and supplies										e					X	X				
5093 Scrap															e	e				
51 Wholesale trade—Nondurable goods																				

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Principal Uses		Zoning Districts																	Off-Street Parking Requirements
		D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	
515	Farm products—Raw materials															x	x		

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Principal Uses		Zoning Districts																		Off-Street Parking Requirements	
		D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-2	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1		MX-2
511	Paper and paper products									e						x	x			1.7 for each for each 1,000 square feet of gross floor area	
512	Drugs, drug proprietaries and drug- gists' sundries									e							x				
513	Apparel—Goods and notions									e						x	x				
514	Groceries and related products									e						x	x				
515	Farm products—Raw materials															x	x				
516	Chemicals and allied products															x	x			1.7 for each 1,000 square feet of gross floor area	
517	Petroleum and petroleum products																				
5171	Petroleum bulk stations and terminals																x				
5172	Petroleum and petroleum prod- ucts wholesalers, except bulk stations and terminals															x	x				
518	Beer, wine and distilled alcoholic bev- erages															x	x				
519	Miscellaneous nondurable goods									e						x	x			1.7 for each 1,000 square feet of gross floor area	
DIVISION G. RETAIL TRADE (section 17-263)																					
52	Building materials, hardware, garden supply and mobile home dealers																				3.5 for each 1,000 square feet of gross floor area
521	Lumber and other building materials dealers									e						x			e		
523	Paint, glass and wallpaper stores								x	x	x	x	x	x	x	x			x	x	
525	Hardware stores								x	x	x	x	x	x	x	x			x	x	
526	Retail nurseries, lawn and garden sup- ply stores								x	x	x				x	x			x	x	3 for each 1,000 square feet of gross floor area
527	Mobile home dealers																x				

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Principal Uses	Zoning Districts																			Off-Street Parking Requirements
	D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-2	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	
53 General merchandise stores																				
531 Department stores									x	x	x	x	x	x				x	x	3.5 for each 1,000 square feet of gross floor area
533 Variety stores									x	x	x	x	x	x				x	x	
539 Miscellaneous general merchandise stores									x	x	x	x	x	x	x			x	x	
54 Food stores																				
541 Grocery stores									x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
543 Fruit stores and vegetable markets										x	x				x			x	x	
546 Retail bakeries									x	x	x	x	x	x	x			x	x	
549 Miscellaneous									x	x		x	x	x	x			x	x	3 for each 1,000 square feet of gross floor area
55 Automotive dealers and gasoline service stations																				
551 Motor vehicle dealers (new and used) (17-286)										x		x			x			c	c	
552 Motor vehicle dealers (used only) (17-286)										x		x			x			c	c	3.5 for each 1,000 square feet of gross floor area
553 Auto and home supply stores (17-286)									x	x	x	x	x	x	x			c	c	
554 Gasoline service stations (17-286)									e	e	x	e	e	e	x	x		e	e	
555 Boat dealers (17-286)									e	e					x			c	c	3.5 for each 1,000 square feet of gross floor area
556 Recreational and utility trailer dealers (17-286)									e	e					x			c	c	
56 Apparel and accessory stores								e	x	x	x	x	x	x	x			x	x	3 for each 1,000 square feet of gross floor area
57 Furniture, home furnishings and equipment stores									x	x	x	x	x	x	x			x	x	
58 Eating and drinking places																				

§ 17-258

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Principal Uses	Zoning Districts																		Off-Street Parking Requirements	
	D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-2	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1		MX-2
5992 Florist								e	x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
5993 Cigar store and stands								e	x	x	x	x	x	x	x			x	x	
5994 News dealers and newsstands								e	x	x	x	x	x	x	x				x	
5999 Miscellaneous retail stores, not elsewhere classified								e	x	x	x	x	x	x	x			x	x	
DIVISION H. FINANCE, INSURANCE AND REAL ESTATE (60—67)								x	x	x	x	x	x	x	x	x	x	x	x	3 for each 1,000 square feet of gross floor area
6141 Non-depository personal credit institutions (pay day loan and/or title loan establishments (section 17-294)								c	c	c	c	c	c	c	c	c	c			
6152 Banquet hall										e	e	x	x	x	x			e	x	
6553 Cemetery subdividers and de- velopers	e	e	e	e	e	e	e	x	x	x	x	x	x	x	x	x	x	o	o	
DIVISION I. SERVICES																				1 for each bedroom
70 Hotels, roominghouses, camps and other lodg- ing places																				
701 Hotels, motels and tourist courts										x	e	x	x	x				x	x	
701.1 Suite hotel (section 17-272)								e	x			x	x	x	x			x	x	
701.2 Bed and breakfast hotel (section 17- 271)			e					e	x			x	x	x	x			x	x	
702 Roominghouses and boardinghouses						e		e	e											
703 Camps and trailering parks	e																			No requirements
704 Organization hotels and lodginghouses, on membership basis						e		x	x	x		x	x	x				x	x	1 for each 3 beds
72 Personal services																				

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		Zoning Districts																		Off-Street Parking Requirements	
		D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-2	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1		MX-2
Principal Uses																					
721 Laundry, cleaning and garment services																					

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	D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-2	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	
7211 Power laundries										e					X	X				1.7 for each 1,000 square feet of gross floor area
7212 Garment pressing and agents for laundries and dry cleaners								e	X	X	e	X	X	X	X			X	X	
7213 Linen supply										X		X			X			0	e	
7214 Diaper service										X		X			X			0	0	
7215 Coin-operated laundries and dry cleaning				a	a	a	a	e	e	X	e	X	X	X	X	X		X	X	3.5 for each 1,000 square feet of gross floor area
7216 Dry cleaning plants, except rug cleaning														X	X					1.7 for each 1,000 square feet of gross floor area
7217 Carpet and upholstery clean- ing														X	X			0	0	
7218 Industrial launderers														X	X					
7219 Laundry and garment services not elsewhere classified										e				X	X				X	
7219.1 Taylor and alteration shops									X	X	X	X	X	X				X	X	3.5 for each 1,000 square feet of gross floor area
722 Photographic studies, portrait								X	X	X	X	X	X	X	X		X	X	X	1.7 for each 1,000 square feet of gross floor area
723 Beauty shops							a	e	X	X	X	X	X	X	X		X	X	X	3 for each 1,000 square feet of gross floor area
724 Barbershops							a	e	X	X	X	X	X	X	X		X	X	X	1 for each 300 square feet of gross floor area
725 Shoe repair shops, shoeshine parlors and hat cleaning shops									X	X	X	X	X	X	X		X	X	X	5 plus 1 for each 2 seats of main assem- bly room
726 Funeral service and crematories								X		X	X	X		X			X	X	X	

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	D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-2	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1	MX-2	
729 Miscellaneous personal services, except massage parlors and spas								e	e	x		x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
7298 Body piercing facilities and tattoo establishments										e					e			x	x	
7299 Massage parlors, spas								e	e	e		e	e							
73 Business services																				
7311 Advertising agencies								x	x	x		x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
7312 Outdoor advertising agencies										e					x			o	o	
732 Consumer credit reporting agencies								x	x	x	x	x	x	x	x			x	x	3.5 for each 1,000 square feet of gross floor area
7332 Blueprinting and photocopying services (section 17-264)								x	x	x		x	x	x	x		x	x	x	
7333 Commercial photography, art and graphics								x	x	x		x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
7399 Stenographic services and reproduction services not elsewhere classified								x	x	x	x	x	x	x	x			x	x	
734 Services to dwellings and other buildings																				

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		D-1	RS-1 RS-1A RS-1B RS-2 RS-3	R-D RD-2	RG-1	RG-1A	RG-2	RG-3	C-1	C-2	C-3	C-3A	C-4	C-5	C-6	M-1	M-2	UTD	MX-1		MX-2
7342	Disinfecting and extermination services									X	X	X				X			O	O	3 for each 1,000 square feet of gross floor area
7349	Cleaning and maintenance services to dwellings and other buildings not elsewhere classified									X	X	X				X			O	O	
735	Equipment rental and leasing services									X						X	X		C	C	
736	Personal supply services																				
7361	Employment agencies							X	X	X	X	X	X	X	X	X	X	X	X	X	
7363	Temporary help supply services									X		X	X	X	X	X	X			X	
737	Computer and data processing services							X	X	X	X	X	X			X	X	X	X	X	3 for each 1,000 square feet of gross floor area
738	Miscellaneous business services																				
7381	Detective agencies and protective services							X	X	X	X	X	X	X	X		e	X	X		
7384	Photofinishing laboratories															X	X		X	X	
7389	Miscellaneous									X	X					X	X		X	X	
7399	Business services not elsewhere classified							e		X		X	X			X			X	X	
7399.1	Recycling centers (see section 17-273)															e	e				3 for each 1,000 square feet of gross floor area
75	Automobile repair, services and garages																				
751	Automobile rental and leasing without drivers																				

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7512 Passenger car rental and leasing without drivers										X		X			X			O	O	3 for each 1,000 square feet of gross floor area
7513 Truck rental and leasing without drivers										X		X			X			O	O	
7519 Utility trailer and recreational vehicle rental										X		X			X			O	O	
752 Automobile parking																				No requirements
7523 Parking lots	e	e	e	e	e	e	e	X	X	X		X	X	X	X	X		X	X	
7525 Parking structures								e	e	e		e	e	e	e	X		X	X	
753 Automotive repair shops										e	e	e			X	X				3.3 for each 1,000 square feet of gross floor area
754 Automotive services, except repair																				
7542 Carwashes										X	e	X			X					
7549 Automotive services, except repair and carwashes										e	e	e			X	X				3.3 for each 1,000 square feet of gross floor area
76 Miscellaneous repair services																				
762 Electrical repair shops																				
7621 Radio and mobile telephone installation shops								e		X		X	X	X	X					3.3 for each 1,000 square feet of gross floor area
7622 Radio and television repair shops									X	X	e	X		X	X			X	X	
7623 Refrigeration and air conditioning service and repair shops										X	e	X			X					
763 Watch, clock and jewelry repair								e	X	X	X	X	X	X	X		X	X	X	
764 Reupholstery and furniture repair								a	a	X	X	X			X				X	
769 Miscellaneous repair shops and related services																				

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7692 Welding repair															x	x				
7699 Repair shops, not otherwise classified									e	x		x		e	x			e	e	3.3 for each 1,000 square feet of gross floor area
78 Motion pictures																				
781 Motion picture production										x		x	x	x				x	x	1 for each 5 seats in the main auditorium or 1 for each 50 square feet of space used for seating
7832 Motion picture theaters except drive-in								e	e	x		x	x	e	x			x	x	
7833 Drive-in motion picture theaters										e					e					No requirements
79 Amusement and recreation services except motion pictures																				
791 Dance studios and schools								x	x	x	x	x	x	x	x		x	x	x	5 for each 1,000 square feet of gross floor area
793 Bowling alleys and billiard and pool establishments									e	x		x	x		x			x	x	5 for each bowling lane or 1 for each 200 square feet of gross floor area
794 Commercial sports																				

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	D-1																			
7941 Professional sports clubs and promoters										X		X	X		X				3 for each 1,000 square feet of gross floor area	
7948 Racing including track operations										X					X				1.5 for each 1,000 square feet of gross floor area	
795 Civic sports and recreation																				
7951 Municipal or other passive recreation facilities (parks, greenways, including administration facilities)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	No requirements	
7952 Municipal active recreation facilities (athletic ball fields, swimming pools, playgrounds, including administration facilities)(Sec. 17-289)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C		
799 Miscellaneous amusement and recreation services																				
7991 Physical fitness facilities and yoga facilities								e	X	X	X	X	X	X		X	X	X	5 for each 1,000 square feet of gross floor area	
7992 Public golf courses	e	e	e	e	e	e	e	X		X					X				5 for each hole	
7993 Coin-operated amusement devices										X		X	X	X	X		X	X	5 for each 1,000 square feet of gross floor area	
7996 Amusement parks										X		X	X		X				1 for each 75 square feet of exhibit or amusement area	
7997 Membership sports and recreation clubs	e	e	e		e	e	e	e	e	X		X	X		X			X	5 for each 1,000 square feet of gross floor area	
7999 Amusement and recreation services not elsewhere classified										X		X			X		e	e		
7999.1 Bingo parlors										e		e			e					
80 Health services																				

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801 Offices of physicians								x	x	x	x	x	x	x	x		x	x	x	6 for each 1,000 square feet of gross floor area
804 Offices and clinics of other health practitioners including therapeutic massage (17-288)								c	c	c	c	c	c	c	c		c	c	c	
805 Nursing and personal care facilities				e	e	e	e	x		x		x	x	x				e	e	1 for each 6 beds
806 Hospitals								x		x	x	x	x					x	x	1 for each 2 beds (not including bassinets)
807 Medical and dental laboratories								x	x	x	x	x	x	x	x		x	x	x	1.7 for each 1,000 square feet of gross floor area
81 Legal services								x	x	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
82 Educational services																				
821 Elementary and secondary schools (17-296)	e	e	e	e	e	e	e	c	c	c	c	c	c					c	c	2 per classroom, plus 2 per office, plus 1 for every 5 seats in main auditorium
822 Colleges, universities, professional schools and junior colleges								x		x	x	x	x	x				x	x	1 for each 5 seats in the main assembly hall plus 4 for each classroom plus 2 for each office
823 Libraries and information centers	e	e	e	e	e	e		x	x	x	x	x	x		e		x	x	x	3 for every 1,000 square feet of gross floor area
824 Correspondence schools and vocational schools																				
8244 Business and secretarial schools								x	e	x	x	x	x		x			x	x	1 for each 5 seats in the main assembly hall plus 4 for each classroom plus 2 for each office
8249 Vocational schools except vocational high schools not elsewhere classified								x		x	x	x	x		x			x	x	
83 Social services																				

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832 Individual and family social services								x	x	x	x	x	x				x	x	x	3 for each 1,000 square feet of gross floor area
833 Job training and vocational rehabilitation services								x	x	x	x	x	x		x		x	x	x	
835 Day care facilities (section 17-265)	e	e	e	e	e	e	e	e	e	e	e	e	e	e	e		e	e	c	1 per every 4 students
836 Residential care (section 17-266)	e	e	e	e	e	e	e	e	e	e		e	e					e	e	1 per every 4 residents subject to state law
84 Museums, art galleries, botanical and zoological gardens																				
841 Museums and art galleries								x	e	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
842 Arboreta, botanical and zoological gardens	e							e	e	x	x	x	x		x		x	x	x	
86 Membership organizations																				
861 Business associations								x	x	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
862 Professional membership								x	x	x	x	x	x	x	x		x	x	x	
863 Labor unions and similar labor organizations								x		x	x	x	x	x	x	x	x	x	x	
864 Civic, social and fraternal associations								x	x	x	x	x	x	x	x		x	x	x	
865 Political organizations								x	x	x	x	x	x	x	x		x	x	x	
866 Religious organizations	e	e	e	e	e	e	e	x	x	x	x	x	x	x	x		x	x	x	
87 Engineering, accounting, research, management, and related services organizations																				

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871 Engineering, architectural and surveying services								x	x	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
872 Accounting, auditing and bookkeeping services								x	x	x	x	x	x	x	x		x	x	x	
8731 Commercial, physical and biological researches										e					x	x		e	x	
8732 Commercial economic, sociological, and educational research								x	x	x	x	x	x	x	x			x	x	
8733 Noncommercial research organization								x	x	x	x	x	x	x	x		x	x	x	
8734 Testing laboratories										x		x			x	x		e	x	
874 Management and public relations services								x	x	x		x	x	x	x			x	x	
88 Private households																				
8811 Dwellings																				
8811.1 Detached one-family	x	x	x	x	x	x	x	x	e	e	e						x	x		2 for each dwelling unit
8811.2 Attached one-family				x	x	x		e	e								x	x		
Townhouses (section 17-268)							x		e									x	x	
Two-family			x	x	x	x		x	e	e	e							x	x	
Multifamily				x	x	x		e	e	e	e							x	x	
Group development		e		x	x	x		e	e	e	e							x	x	
Mid-rise (section 17-267)								x		e		x	x	x				x	x	
8811.3 Mobile home parks subject to article VI, division 2, of this chapter					e	e														2 per mobile home accommodation

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8811.4 Dormitories, Public								e		e		x	x					e	x	See section 17-321
8811.5 Fraternity and sorority houses				e	e	e		e		e		e	e					e	e	
8811.6 Dormitories, Private (section 17-321)							c					c/e	c/e		c	c			c/e	
89 Miscellaneous services								x	x	x	x	x	x	x	x		x	x	x	3 for each 1,000 square feet of gross floor area
DIVISION J. PUBLIC ADMINISTRATION																				
91 Executive, legislative and general government except finance																				
911 Executive offices								x	x	x	x	x	x	x				x	x	3 for each 1,000 square feet of gross floor area
912 Legislative bodies								x	x	x	x	x	x					x	x	
919 General government not elsewhere classified								x	x	x	x	x	x	x				x	x	
92 Justice, public order and safety																				
921 Courts								x		x	x	x	x		x			x	x	3 for each 1,000 square feet of gross floor area
922 Public order and safety																				
9223 Correctional institutions										e					e	e				1 for each 6 inmates
9224 Police and fire protection	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	1 for each employee on shift
93 Public finance, taxation and monetary policy								x	x	x	x	x	x	x				x	x	3 for each 1,000 square feet of gross floor area
94 Administration of human resources programs								x	x	x	x	x	x	x				x	x	
95 Administration of environmental quality and housing programs								x	x	x	x	x	x	x				x	x	
96 Administration of economic programs								x	x	x	x	x	x	x					x	

(Code 1979, § 6-3091; Ord. No. 93-82, 9-15-93; Ord. No. 99-011, § 2, 4-21-99; Ord. No. 99-076, 9-15-99; Ord. No. 2000-028, 5-17-00; Ord. No. 2000-024, § 3, 3-29-00; Ord. No. 2003-39, 5-21-03; Ord. No. 2003-040, 5-21-03; Ord. No. 2003-046, 8-6-03; 2004-005, 2-11-04; Ord. No. 2004-066, 7-21-04; Ord. No. 2005-066, 7-20-05; Ord. No. 2005-092, 8-24-05; Ord. No. 2007-015, 6-6-07; Ord. No. 2008-004, 1-23-08; Ord. No. 2008-025, 6-18-08; Ord. No. 2008-051, 11-5-08; Ord. No. 2008-069, 10-1-08; Ord. No. 2009-023, 4-1-09; Ord. No. 2009-024, 4-1-09; Ord. No. 2009-036, 6-3-09; Ord. No. 2009-064, 8-5-09; Ord. No. 2009-099, 10-7-09; Ord. No. 2009-109, 1-27-10; Ord. No. 2009-117, 2-3-10; Ord. No. 2009-132, 2-3-10; Ord. No. 2010-050, 4-7-10; Ord. No. 2010-110, 7-28-10; Ord. No. 2010-119, 8-2-11; Ord. No. 2010-135, 10-6-10; Ord. No. 2010-143, 12-7-10; Ord. No. 2011-033, 5-24-11; Ord. No. 2011-047, 8-2-11; Ord. No. 2011-048, 8-2-11; Ord. No. 2011-085, 12-13-11; 2011-082, 1-17-12; Ord. No. 2012-020, 4-10-12; Ord. No. 2012-021, 4-18-12; Ord. No. 2012-026, 6-5-12; Ord. No. 2013-009, 2-5-13; Ord. No. 2013-049, 6-4-13; Ord. No. 2013-115, 12-10-13)

Note—Formerly numbered as 17-255.

Sec. 17-275. Lot size, setback and height requirements.

Lot, setback and height requirements shall comply with table 2 unless modified by special provisions, exceptions and conditions contained elsewhere in this article.

TABLE 2. SCHEDULE OF MAJOR HEIGHT AND AREA REQUIREMENTS

District	Minimum Lot Area per Unit (square feet)		Approximate Maximum Density (units per acre)	Minimum Yard Requirements (feet)			Minimum Lot Width (feet)	Maximum Height (feet)	Percent Maximum Lot Coverage
	First Unit	Each Additional Unit		Front	Rear	Side			
D-1	40,000	NA	1.1	35	15	10	150	40	25
RS-1	15,000	NA		35	15	8	90 ^h	40	30
RS-1A	12,000	NA	3.6	35	15	6	75 ^h	40	30
RS-1B	10,000	NA	4.4	25	10	5	60 ^h	40	30
RS-2	8,500	NA	5.1	25	10	5	60 ^h	40	30
RS-3	5,000	NA	8.7	20	10	5	50 ^h	40	30
RD ^g	5,000	2,500 ^f	5.8	25	10	5	50 ^h	40	50
RD-2	3,300	^m	13.2	5	10	5	50 ^h	35	50
RG-1 ^g	5,000	5,000	8.7	25	10	5	50 ^h	40	40
RG-1A ^g	5,000	3,600	11.7	25	10	5	50 ^h	40	40
RG-2 ^g	5,000	2,500	16.4	25	10	5	50 ^h	40	40
RG-3 ^{g, i}	NA ^a	NA	NA	25	25	25	150	6x ^b	40
C-1 ^g	5,000	2,500	16.4	25	10	5	NA ^h	50 ^c	50
C-2	NA	NA	NA	25	10	0 or 3	NA	50 ^c	NA
C-3	NA	NA	NA	25	10	0 or 3	NA	50 ^c	NA
C-3A	0	NA	0	25	10	0 or 3	0	50	50
C-4	NA	NA	NA	NA	NA	0 or 3	NA	NA	NA
C-5	NA	NA	NA	NA	NA	NA	NA	NA	NA
C-6	NA	NA	NA	NA	NA	0 or 3	NA	50 ^c	NA
M-1	NA	NA	NA	25	0 ^e	0 ^d	NA	50 ^c	NA
M-2	NA	NA	NA	25	0 ^e	0 ^d	NA	50 ^c	NA
UTD	5,000	NA	8.7	25	10	5	50	40	30
MX-1	NA	NA	NA	0—10 ^j	NA	NA	NA	50	NA
MX-2	NA	NA	NA	NA ^k	NA	NA	NA	NA ^l	NA

Note: Detached single-family units shall require 5,000 square feet per unit and the density shall meet the same requirements for the first unit.

Footnotes:

^a Minimum lot area for a high-rise residential development shall be one acre.

^b The height of a high-rise residential development shall not exceed six times the distance from the property line adjacent to the street to the face of the building.

^c Buildings between the height of 50 and 75 feet may be allowed provided there is an increase of one foot in side, front and rear yards over the minimum requirements for each additional three feet in height.

^d No side yard is required except that a landscaped buffer must be provided in accordance with this article.

^e No rear yard is required except that a landscaped buffer must be provided in accordance with this article.

^f A minimum lot area of 7,500 square feet is required for a duplex.

^g Detached single-family dwellings shall be required to have 5,000 square feet per unit. The density shall meet the same requirements for the first unit.

^h Residential lots shall have a minimum lot depth of 70 feet.

ⁱ Minimum lot area of 5,000 square feet is required for single-family units. Minimum yard requirement for single-family units is: rear—ten feet, and side—five feet.

^j Principal structures shall be no more than ten feet from a front lot line.

^k No required minimum front yard setback. Maximum front yard setback shall be 15 feet.

^l The building façade of the floor located at or directly above 45 feet in height, shall be setback at least 8 feet from the main façade and the area created may be used for outdoor uses. This requirement may be waived for any area of the façade within 50 feet of a street corner.

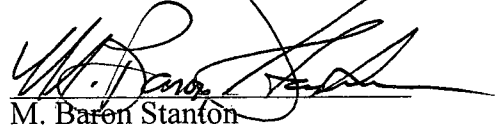
^m A minimum lot area of 3,300 square feet is required for a duplex. A new duplex may only be established on any single lot that is depicted as a discrete tax parcel upon a tax map within the 1999 editions of the Richland County or Lexington County Real Property Tax Map compilations.

(Code 1979, § 6-3092; Ord. No. 2001-018, 2-21-01; Ord. No. 2000-024, § 3, 3-29-00; Ord. No. 2008-025, 6-18-08; Ord. No. 2009-036, 6-3-09; Ord. No. 2009-131, 3-17-10; Ord. No. 2010-110, 7-28-10)

Note—Formerly numbered as 17-272.

Certificate of Counsel

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not subsequently changed by agreement, and no other material.



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