

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No.2015-002199 (S.C. Ct. App. filed Jan. 24, 2020)

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr.; South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated, Appellants,

v.

Town of Summerville and Town of Summerville Board of Architectural Review, Respondents.

APPENDIX
VOLUME III OF III

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Attorneys for Appellants

RECEIVED

FEB 25 2020

S.C. SUPREME COURT

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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge
Case No. 2015-CP-18-00991

Appellate Case No. 2015-002199

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RECORD ON APPEAL
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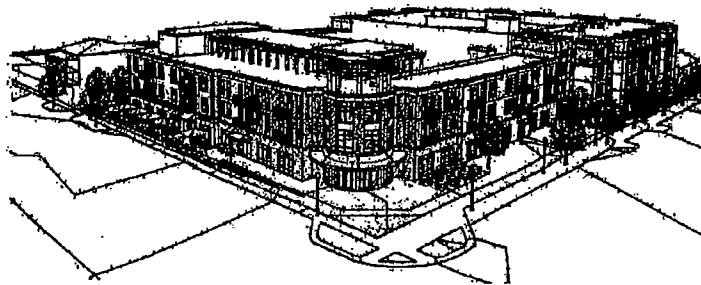
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972

CONCEPTUAL BAR SUBMITTAL
SEPTEMBER 26, 2014



THE DORCHESTER
SUMMERVILLE, S.C.

APPLGATE & CO. / Arthur Applgate

4130 Faber Place Drive
N. Charleston, SC 29405

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N. Charleston, SC 29405
Tel: 843.461.2777
Fax: 843.461.0442
www.stantec.com

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Stantec

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Fax: 843.461.0442
www.tobiaswest.com

PME:

Saber Engineering

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Charleston, SC 29405
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Fax: 843.461.0442
www.saberengineering.com

Gaff-D'Aquino Associates



Attn: Mr. Gaff
Charleston, SC 29405
843.461.2777
www.gaffdaquino.com

THE DORCHESTER
SUMMERVILLE, S.C.

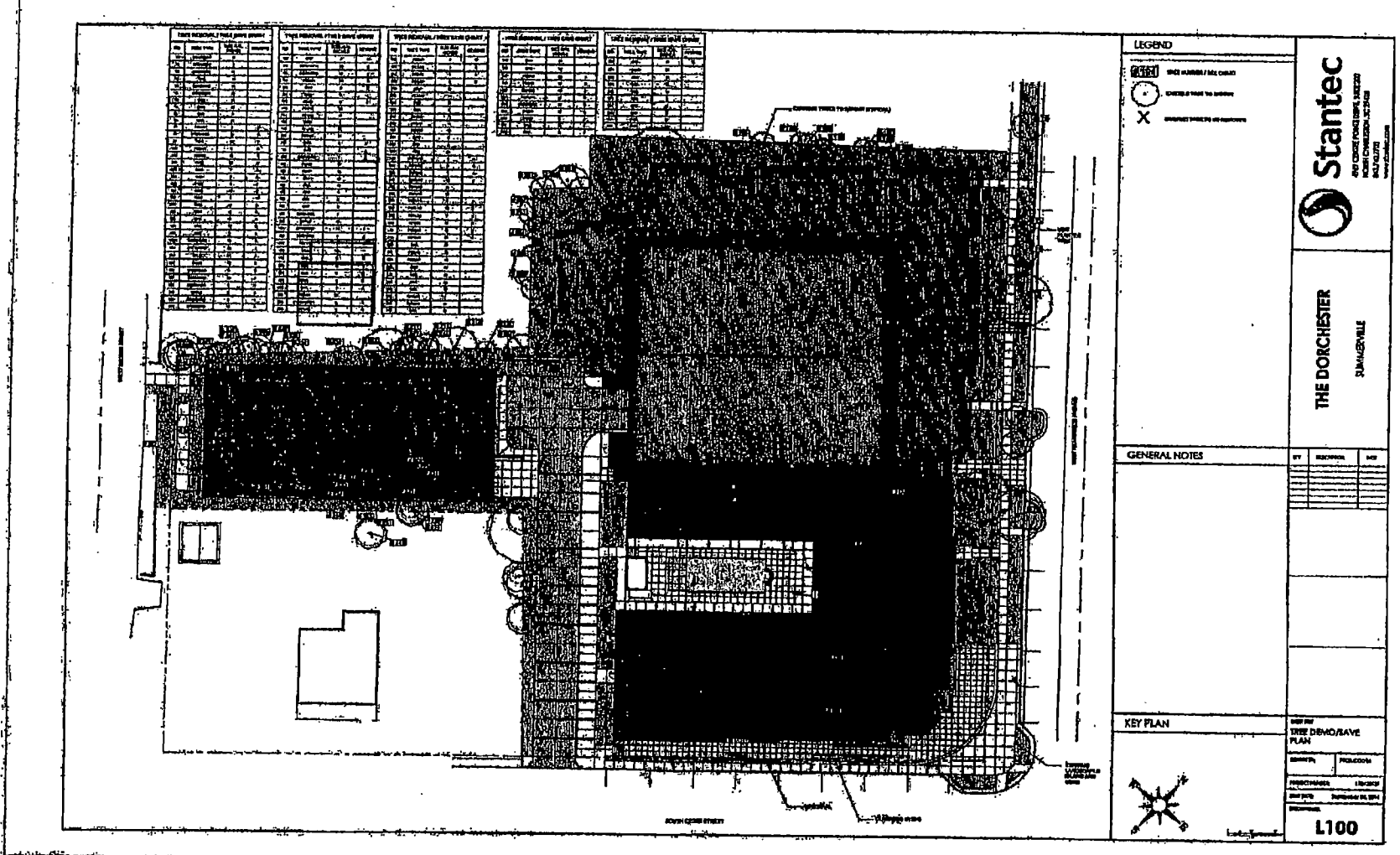
PRELIMINARY
NOT FOR
CONSTRUCTION

PRINTED
COVER

Project No. 14-0001
Client: The City of Summerville
Project: The Dorchester
Scale: As Shown
Date: 9/26/14
Prepared by: [Signature]
Reviewed by: [Signature]

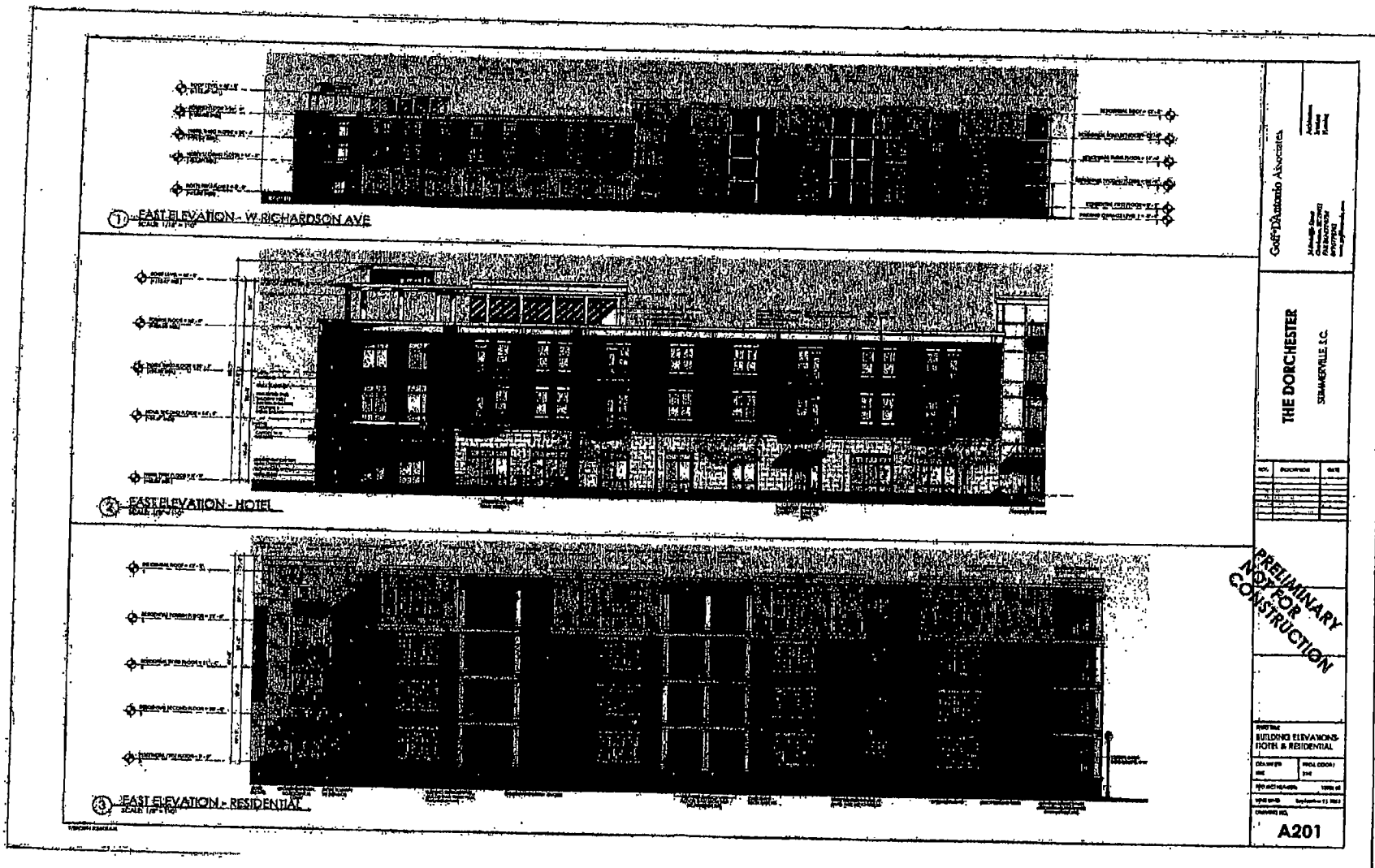
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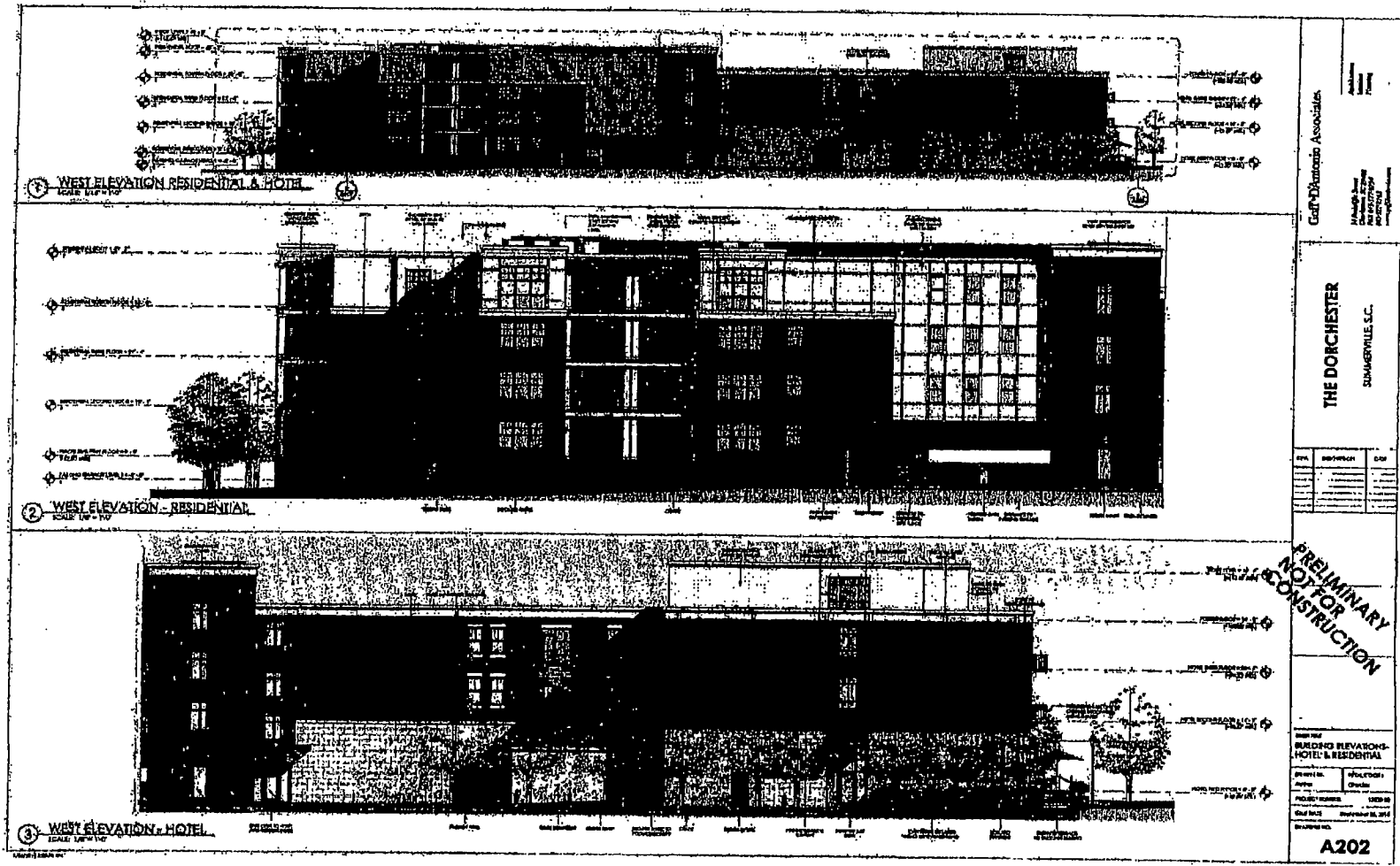


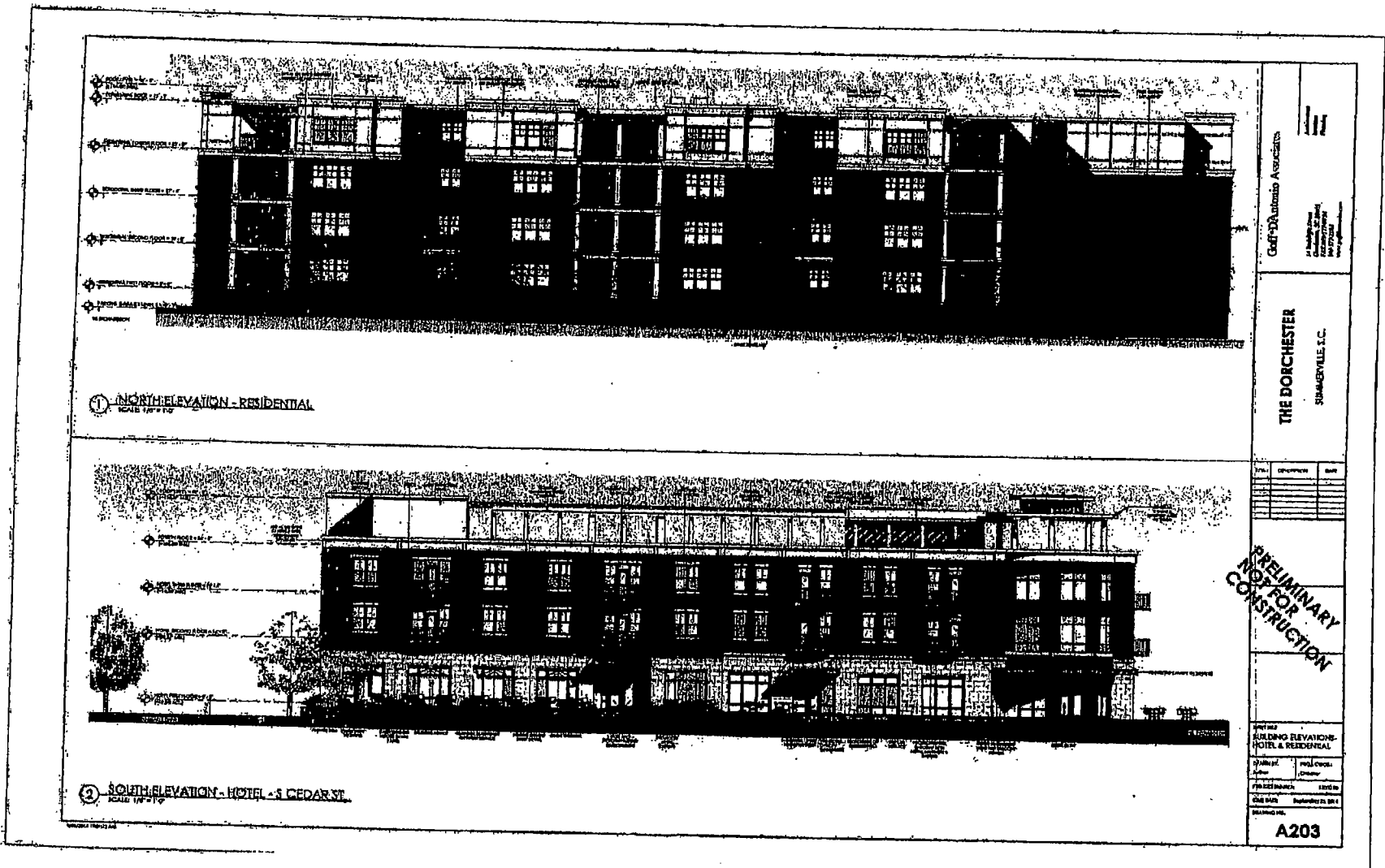


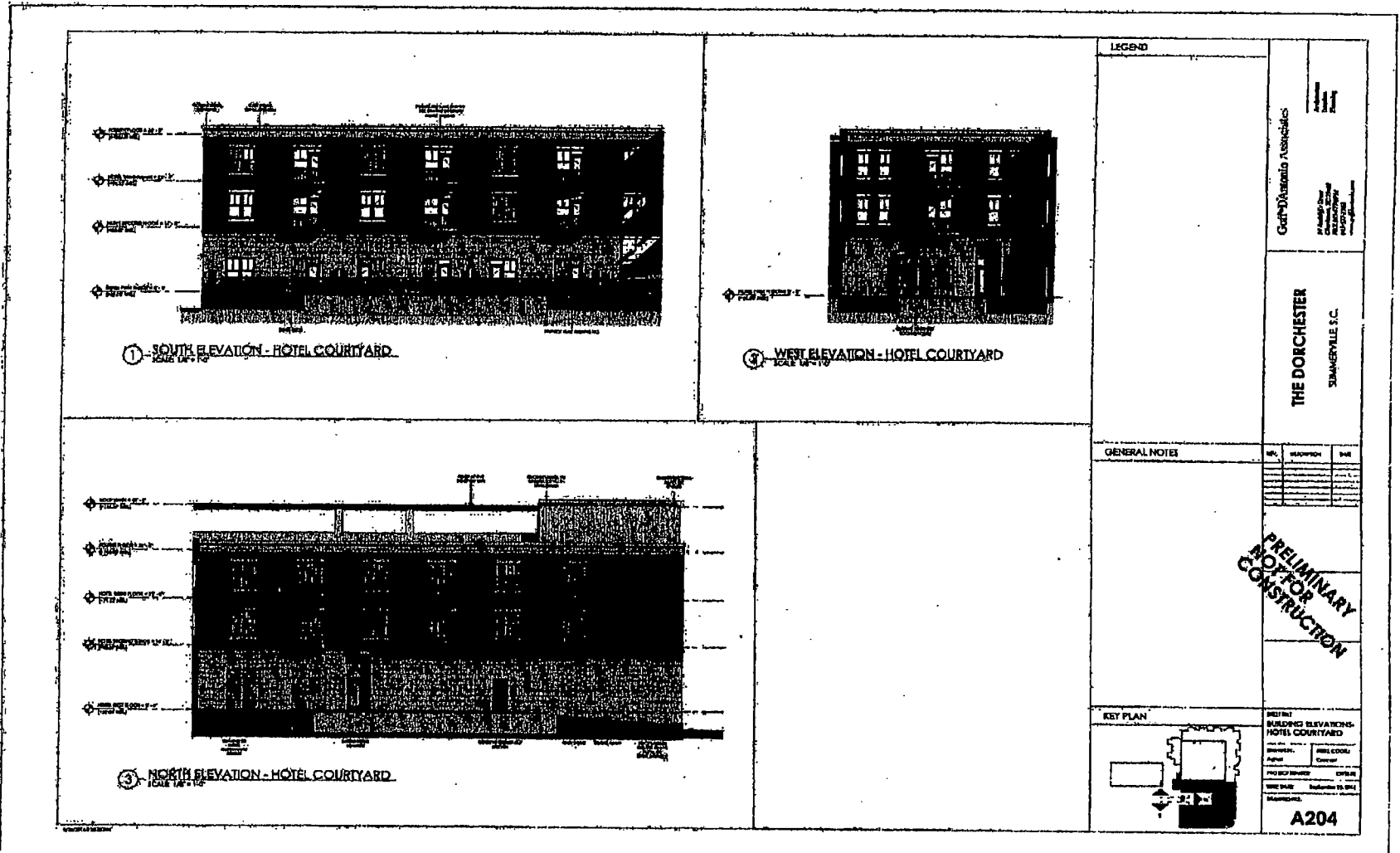


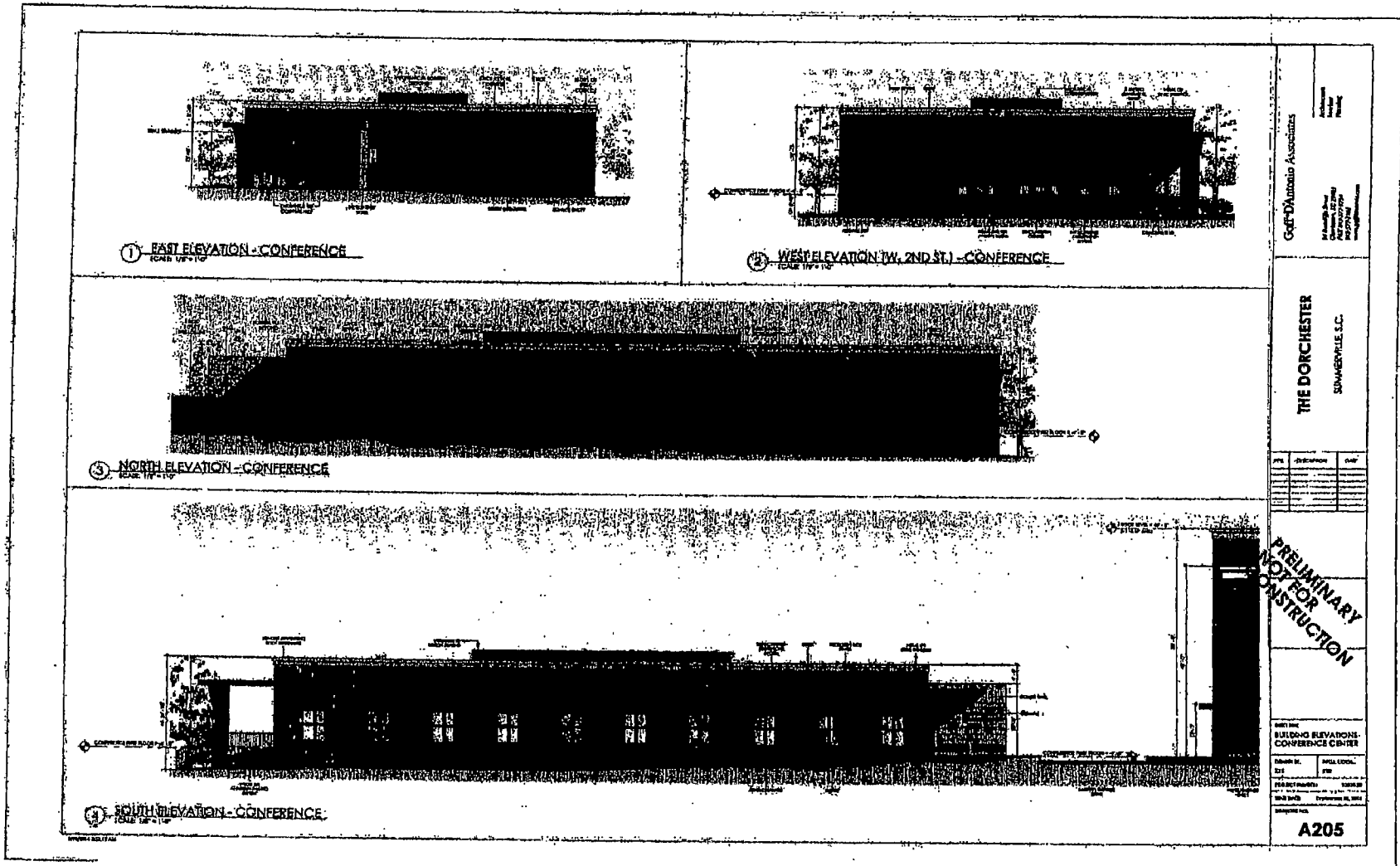






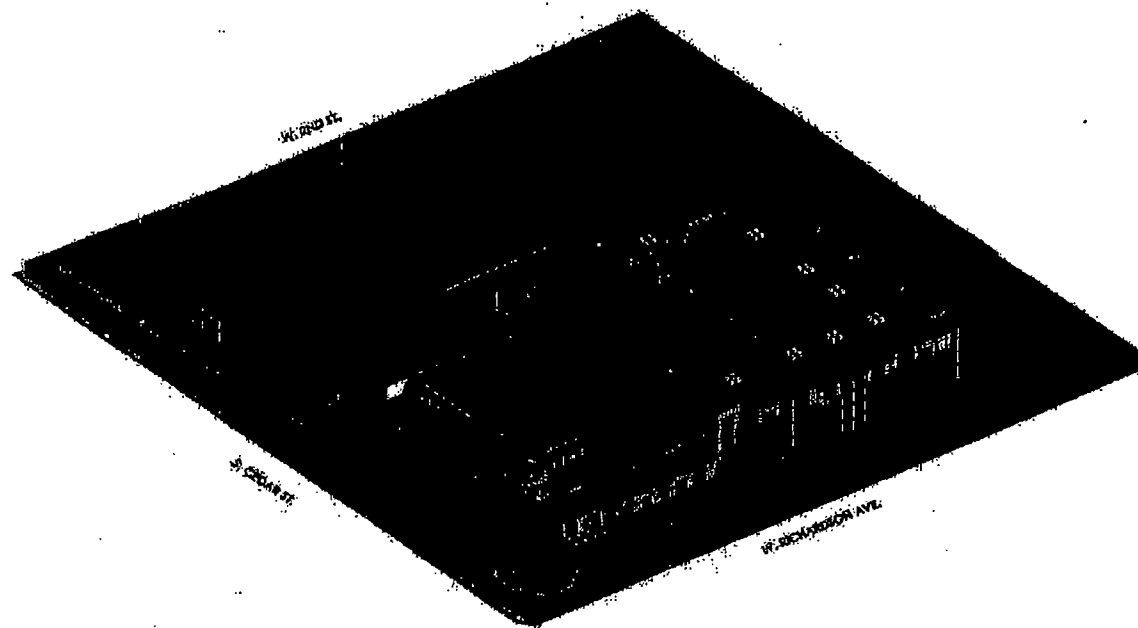






985

982



SOUTHEAST AERIAL PERSPECTIVE

Griffith Architects Associates

Architects and
Interior Designers
1000 10th St.
Dorchester, MA 01901
(617) 552-1111

THE DORCHESTER
SUMMERSVILLE, LLC

1000 10th St.
Dorchester, MA 01901
(617) 552-1111

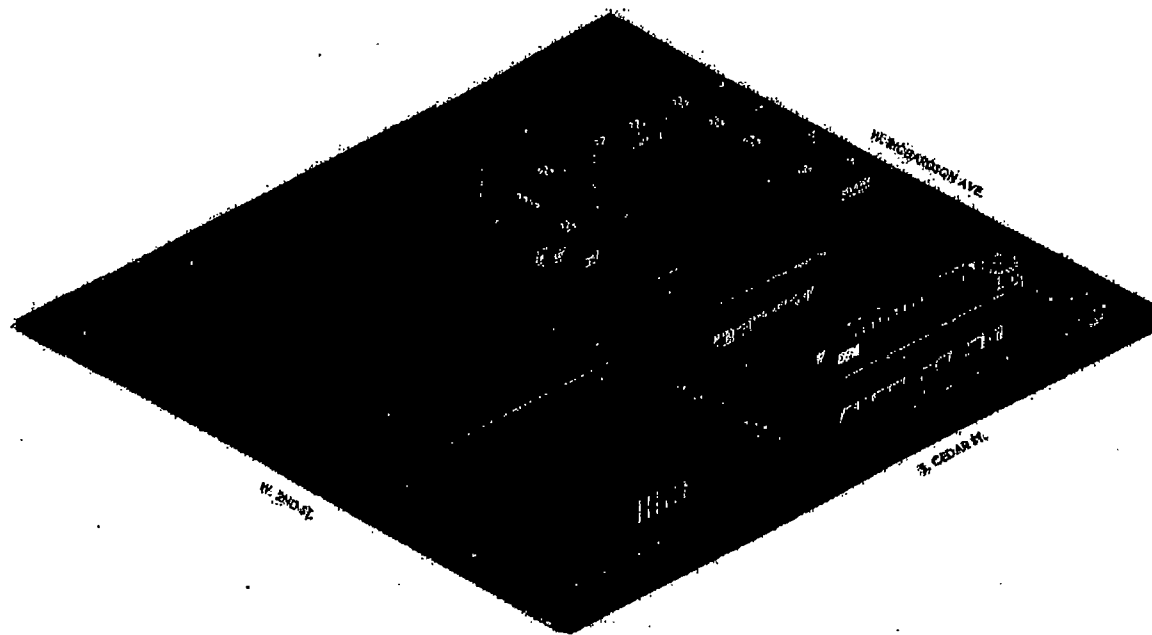
NOT TO SCALE

PRELIMINARY
NOT FOR
CONSTRUCTION

NOT FOR
CONSTRUCTION
PERMITS

Scale: 1/8" = 1'-0"
Date: 10/1/01
Project: 1000 10th St.
Sheet: A206

A206



SOUTHWEST AERIAL PERSPECTIVE

Griffith Associates

ARCHITECTS
PLANNERS
ENGINEERS

THE DORCHESTER

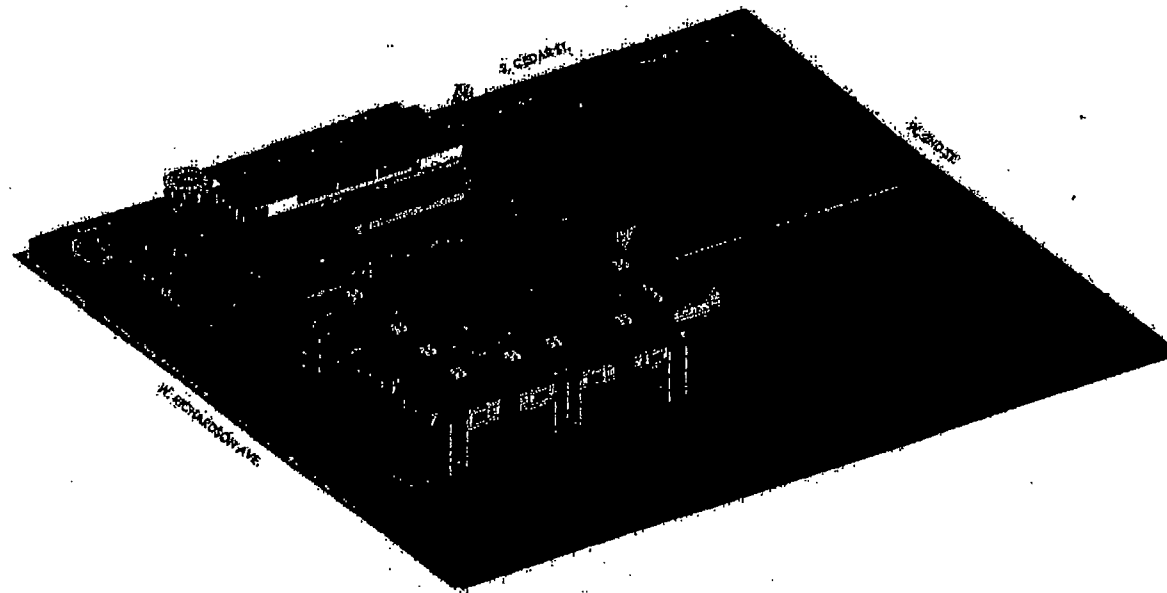
SUMMERVILLE, SC

PRELIMINARY
NOT FOR
CONSTRUCTION

WEDNESDAY
BUILDING
PERSPECTIVE

Author: [Name]
Project: [Name]
Date: [Date]
Scale: [Scale]
Sheet: [Sheet]

A207



NORTHEAST AERIAL PERSPECTIVE

Geoff D'Amato Associates
Architects
1000 10th St
N. 10th St
N. 10th St

THE DORCHESTER
SUNNYSIDE LLC

REV. DESCRIPTION DATE

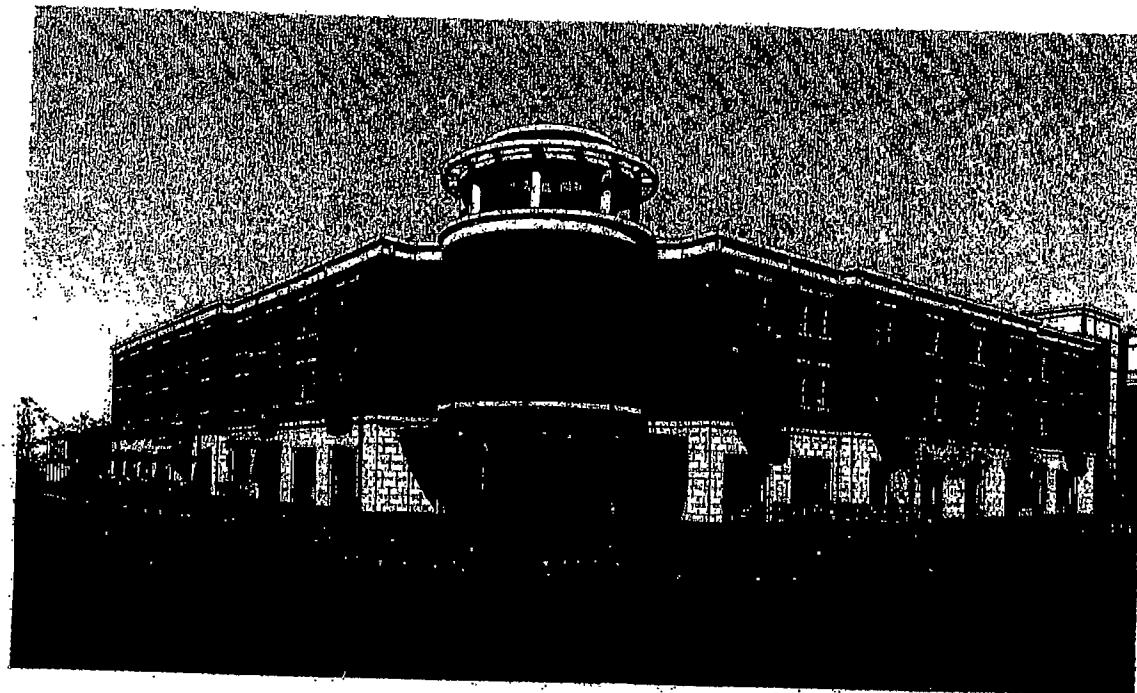
PRELIMINARY
NOT FOR
CONSTRUCTION

SHEET 1
BUILDINGS
PERSPECTIVES
DRAWN BY: J. COOK
CHECKED BY: J. COOK
DATE: 10/10/10
PROJECT: 1000 10th St
SUNNYSIDE LLC

A208

886

985



HOTEL ENTRY- S. CEDAR ST. & W. RICHARDSON AVE.

Architectural rendering

Geoff D'Amico Associates

Address
Phone

Project No.
Drawing No.
Date

THE DORCHESTER

SUMMERSVILLE, S.C.

REV. DESCRIPTION DATE

PRELIMINARY
NOT FOR
CONSTRUCTION

Scale
Dimensions
Perspective

Architect
Client

Project Manager
Contract

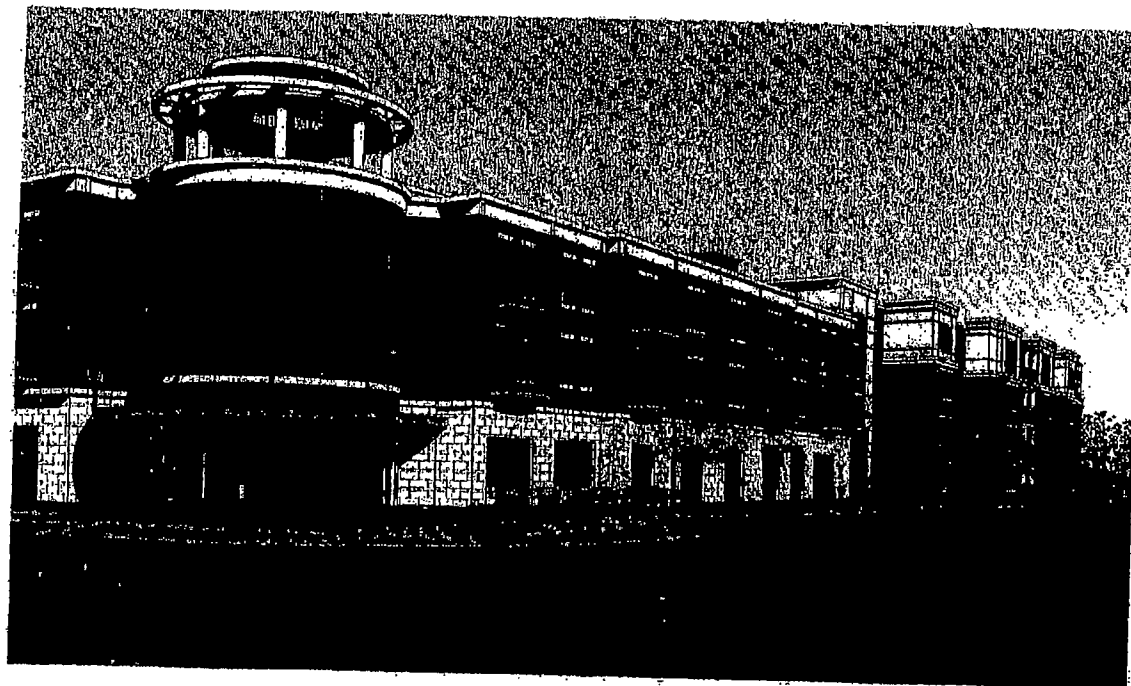
Site Date
September 10, 1994

Drawing No.

A209

686

986



HOTEL & RESIDENTIAL - W. RICHARDSON AVE.

FIGURE 4 A210 1/8

Geoff D'Amato Associates
Architect
11111 1st Ave.
Charmelle, AZ 85009
PH: 602/737-7000

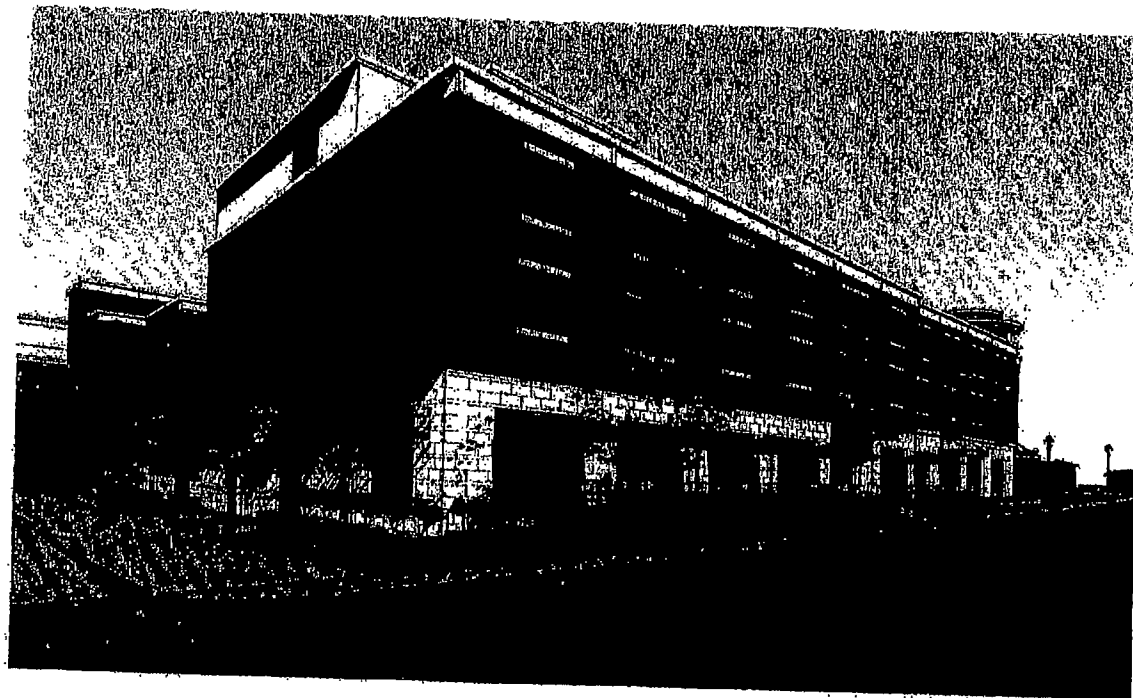
THE DORCHESTER
SUMMITVILLE, S.C.

REV. 1/1/2000

PRELIMINARY
NOT FOR
CONSTRUCTION

Drawn by: S. J. D'AMATO
Checked by: S. J. D'AMATO
Project Manager: S. J. D'AMATO
Date: 1/1/2000

A210



HOTEL & RESTAURANT - S. CEDAR ST.

© 2011 AECOM INC.

Godwin-Davies Associates

ARCHITECT

THE DORCHESTER

SEANVILLE, S.C.

1000 S. CEDAR ST.
SEANVILLE, S.C. 29155
(803) 781-1111

PRELIMINARY
NOT FOR
CONSTRUCTION

PROJECT
RENDERING
PERSPECTIVES

DATE: 01/11/11

PROJECT NAME: THE DORCHESTER

DATE: 01/11/11

PROJECT NO. 1000 S. CEDAR ST.

DATE: 01/11/11

A211

166

886

CHM 453

10/10/01



CONFERENCE CENTER - W. 2ND ST.

Coiff-D'Ambrosio Associates
10000 1st
Channah, NC 27505
919.733.1234

THE DORCHESTER
SUNNYSIDE, N.C.

PRELIMINARY
NOT FOR
CONSTRUCTION

FOR THE
BUILDINGS
PERSPECTIVES
SUNNYSIDE, N.C.
10000 1st
Channah, NC 27505
919.733.1234

A212

Ladies and Gentlemen,

We welcome you to our Board of Architectural Review Board Meeting. It is now 6:00 PM – the time scheduled for our meeting to begin.

As always we will review each submittal in the order that it was submitted; however, as a first order of business we must approve the minutes of our last meeting which were sent to Board Members for review prior to this meeting

For those of you who may be new to our meeting our charge is to look at each project, “purely on aesthetics, design, architecture, height, mass, and scale, and in harmony within the historic district in the town of Summerville.” We look at the overall “street scene”.

Depending on the size or complexity of a project, each applicant has the opportunity to present a conceptual or master plan for our review prior to committing funds for a full set of design plans and specifications. This means that we might agree with the concept while disagreeing with some of the details. It also means that each phase of the project must be submitted at a later date once plans are more fully developed to obtain the Board’s approval for that individual portion of the project and hopefully any disagreements will have been worked out before the applicant comes back to the Board.

Demolition is also considered as a separate action by the Board and while conceptual approval may be contingent on some demolition it doesn’t mean that demolition concerns are overlooked.

Although we are not required to solicit comments from anyone other than the applicant and the board members, we usually choose to allow others to express comments that might help influence our decision making. To allow everyone who wishes to be heard a reasonable

opportunity we must insist that each of you comply with the following guidance.

- 1. We ask that you limit your comments to not more than 3 minutes to speak on topic.**
- 2. Before you begin please sign in so we will have a record of who spoke**
- 3. Address your comments to the Board and do not engage in any side conversations with our other Guests.**
- 4. Please limit your comments to new concerns not previously brought to our attention. Rehashing the same points over and over will not enhance a position.**
- 5. If you are not the person called on to speak, please remain silent so that the Board and the Applicant can hear what the speaker has to say.**

The first project on our list is....

Dreyer, Lucy

From: Joshua Good <jgood@goffdantonlo.com>
Sent: Thursday, May 14, 2015 1:27 PM
To: Dreyer, Lucy
Subject: RE: The Dorchester

Lucy,

I can understand the delay in getting the meeting minutes out- there was definitely a lot said!

As I tried to state pretty clearly in the presentation, the materials and brands we proposed were for design intent only, with the caveat the final product selected would be the same or equal. This is crucial for the contractor to be able to competitively price the building and its components. The only product manufacturer that we were bound to use is the Hardt Artisan siding, per the boards comments. We also stated that final material selections could be approved on the on-site sample wall panel that will be built during construction. The product descriptions/colors presented are as follows:

Hotel/Event Center

Brick 1 - Boral New Orleans
Brick 2 - Boral Vintage Khaki
Mortar - Argos Putty or similar
Cast Stone - Bone White or similar; smooth finish
Cornice Color 1 - Extruded aluminum/FRP/GFRG; Forest Green or similar
Cornice Color 2 - Extruded aluminum/FRP/GFRG; Regal White or similar
Window - Aluminum Clad with simulated divided lites and exterior grilles; Dark bronze or similar
Storefront - Aluminum; Dark Bronze or similar
Wood Doors - Stained wood; type/color to be determined; color noted to be darker than what was presented
Wood Trim - Stained wood; type/color to be determined; color noted to be darker than what was presented
Fiber Cement Panel/Trim 1 - Smooth Finish; Color- Hardt Light Mist/SW 2850 Chelsea Gray or similar
Fiber Cement Panel/Trim 2 - Smooth Finish; Color- Hardt Iron Gray/SW 2849 Westchester Gray or similar
Balcony Rail - Statuary Bronze or similar
Standing Seam Metal Roof - Dove Gray or similar
Canopy/Steel Channel - Slate Gray or similar

Residential

Brick 1 - Boral New Orleans
Brick 2 - Boral Vintage Khaki
Mortar - Argos Putty or similar
Fiber Cement Siding - Hardt Artisan Lap siding; 5/8" thickness; 6" or 7" exposure; smooth finish; Light Mist/SW 2850 Chelsea Gray or similar
Fiber Cement Trim - 1 1/2" thick; smooth finish; Arctic White/SW 7656 Rhinestone or similar
Fiber Cement Panel (at W. Richardson Entry) - Smooth finish; Iron Gray/SW 2849 Westchester Gray or similar
Balcony Rail - Composite material w/ residential style profile at rails; White
Window - Aluminum Clad with simulated divided lites and exterior grilles; White or similar
Standing Seam Metal Roof - Dove Gray or similar
Aluminum Gutter/Downspouts - White/paint to match trim color; half round gutter; full round downspout

I think that about covers it, please let me know if you need any other information on materials. Thanks.

Josh Good

BAR May 11, 2015

SH
LB
CC
PB
PB

LB
ME
RP

JB - substantial/absent

Residential Architect - Josh Good ^{eliminated, steel, plywood, green, white, brick}
elevation facing neighborhood & conference center better reflect
rhythms & pattern of elevation on 10 Richardson ^{brick}

downspouts & gutters ^{aluminum} 1/2 round gutter full round -> downspouts

white holly, orange, center -> interior

trading - residential heavy wood look - but use aluminum ^{shiny}

hotel - iron welded dark bronze not quite black ^{shiny}

columns - typical wood weathering like cement board 14 x 14 ^{5/8" top}

board - wood - built up as opposed to cement board ^{3 1/4" top}

drum - 8' brick wall surround with gate (shadow - candle

through)

paint downspouts color of background they are against

3 arched siding 10" vertical preferred

full length of siding above & below window - detail in court plans

window will have 6" set cement tile & window face will set

back, not be flush - sill & trim detailed - white fishing

set 3" above back under

all siding & trim smooth

Hotel

brick sampler - less tumbled texture, higher mortar - ages over

time reflect Greenville architecture

water table ^{slab} out about 1/2" course

same windows product just dark brown almost dark brown
paneling below windows → wood-stained - ^{make darker}
storefront windows & door frames → align with wood doors

Conference Center

all doors same as hotel

porch element - salt finished concrete & align with brick

ceiling baseboard painted or coated / stained wood like doors

railing - substantial - use same as residential but dark brown

or custom wrought iron perhaps by local craftsman

add door with glass to back area

soffit green or darker gray - dependent on ceiling color

Comments

- Adrian Knit - not in favor of hotel; April meeting suggested canopy; scaled model

- William Hertzberg - soundproof of restaurant on top; drainage;

truck traffic - BTR numbers should register

- Lady - he should have his say - refused to sign in

- Howard Hutzon - could not hear discussion

couldn't see; Hutzon made important point - BTR

refused to demand scaled model - will get May 1974

3. won't realize until after it's built; black enclosure

on short central - insist on scaled model

appreciate your work - good idea Dr. Price

- Joyce Delfy - problem with Chairman - give people more

open forum; something about sound problem

(g) *Building design and site plan review.* Building design and site plan review for the PL district are as follows:

- (1) Maximum building height: As approved by town council.
- (2) Maximum impervious surface area: As approved by town council.
- (3) See article VIII of this chapter for site plan review requirements.

(Ord. No. 2001-0601, § 20-39, 6-1-2001)

Sec. 32-136. Central business district, purpose.

The purpose of this central business district is to recognize and follow special conditions created by the development of the downtown area of the town. In this central business district, the area and yard requirements and the parking requirements may be waived and the impervious surface area may be set at 100 percent. The requirements for building heights, signs, building design and site plan review for each zoning district and all building codes will remain in effect to maintain the safe, orderly development of this area.

(Ord. No. 2001-0601, § 20-40, 6-1-2001)

Sec. 32-137. Nonconforming uses and structures.

(a) *Continuation of nonconforming use of land.* The lawful use of land existing at the time of adoption of this chapter, or of an amendment thereto, although such use does not conform to the provisions thereof, may be continued; but if such nonconforming use is discontinued, as evidenced by lack of use for a period of at least one year (12 consecutive months) or for 18 accumulative months during any three-year period, or by substitution of a conforming use, any future use of such land shall be in conformity with the provisions of this chapter.

(b) *Continuation of nonconforming use of structure.* The lawful use of a structure, existing at the time of the adoption of this chapter, or of an amendment thereto, although such use does not conform to the provisions hereof, may be continued and such use may be extended throughout the structure; provided, however, that no structural alterations are made, other than those necessary to assure the safety of the structure; and provided, further, that such extension does not displace a conforming use in a district established by this chapter.

(c) *Changing of a nonconforming use.* Whenever a nonconforming use of a structure has been changed to a conforming use, such use shall not thereafter be changed back to a nonconforming use. Existing nonconforming uses which become conforming through a change in land classification submitted by the applicant shall be required to meet all off-street parking, boarding and screening as applicable to that district.

(d) *Restoration and rebuilding.* No building or structure or mobile home utilized for residential use that is damaged by fire or other causes to the extent of 50 percent of its appraised value shall be repaired or rebuilt except in conformity with all the regulations of this chapter. Exception: In the R-1 zoning district, the principal building or structure may be repaired or rebuilt to the same size, scale and decor as it originally existed.

(e) *Nonconforming approved lots of record.* Any lot of record at the time of passage or amendment of this chapter which does not comply with this chapter shall be considered a nonconforming lot.

(Ord. No. 2001-0601, § 20-41, 6-1-2001)

State law references: Nonconformities, S.C. Code 1976, § 6-29-730.

Sec. 32-131. - B-3 general business.

- (a) *Purpose.* The purpose of this B-3 district is to provide for general business and commercial areas designed to encourage the continuance and formation of a compatible and economically healthy environment.
- (b) *Permitted uses.* A building or premises in the B-3 district may be used for the following purposes:
 - (1) All types of business and commercial activity related to retail sales, business and professional offices, financial institutions, gasoline filling stations and repair garages, personal service shops and limited wholesale activity.
 - (2) Restaurants, bars, limited amusement centers, liquor stores and party shops.
 - (3) Private clubs, walk-in theaters, assembly and concert halls.
 - (4) Commercial kennels and veterinary clinics.
 - (5) Any residential uses and uses allowed in B-1 or B-2 within the requirements of each district.
- (c) *Accessory uses.* Accessory uses in the B-3 district are as follows: Uses on the same lot and customarily incidental to the permitted uses including, but not limited to, private garages or parking structures for vehicles, off-street parking and loading zones and storage facilities.
- (d) *Area and yard requirements.* Area and yard requirements in the B-3 district are as follows:
 - (1) Minimum lot size: Not applicable.
 - (2) Minimum lot frontage: 50 feet.
 - (3) Front yard setback: 30 feet. Exceptions may occur for situations as approved by the town's commercial design review board when reviewing for approval the siting of a proposed new building such as on those properties considered a part of the town's commercial business district or within a town center planned development. In these instances, the board may approve the structure to be sited closer to the property line than 30 feet.
 - (4) Side yard setback: Buffer requirements for protection of adjacent property.
 - (5) Back yard setback: Buffer requirements for protection of adjacent property.
- (e) *Permitted uses.* These uses (subsections (e)(1)–(8), below) shall meet the conditions set forth in subsections (f)(1)–(5) below.
 - (1) New and/or used car, truck and machinery sales and/or repair.
 - (2) Funeral homes.
 - (3) Major amusement facilities including golf driving ranges, golf courses, roller skating rinks and swimming pools.
 - (4) Hotels and motels.
 - (5) Campgrounds and overnight trailer courts.
 - (6) Wholesale, warehouse and storage facilities including building materials and lumberyards.
 - (7) Drive-in theaters and restaurants.
 - (8) Transportation facilities including bus depots, trucking facilities and services that require the use of a fleet of vehicles.
- (f) *Area and yard requirements.*
 - (1) Minimum lot size: Not applicable.
 - (2) Minimum lot frontage: 100 feet.
 - (3) Front yard setback: 30 feet.
 - (4) Side yard setback: Buffer requirements for protection of adjacent property.
 - (5) Back yard setback: Buffer requirements for protection of adjacent property.
- (g) *Signs.* Sign regulations for the B-3 district are found in article VI of this chapter.
- (h) *Parking requirements.* Parking requirements for the B-3 district are found in article VII of this chapter.
- (i) *Building design and site plan review.* Building design and site plan review for the B-3 district are as follows:
 - (1) Maximum building height: 65 feet. This maximum height limit may be waived on those parcels that meet the following conditions:
 - a. The parcel has at least 50 feet of frontage on a publicly maintained roadway; and
 - b. The parcel fronts on U.S. Hwy. 78, or is located north of U.S. Hwy. 78 as the town currently and continues to extend towards and beyond Interstate 26; and
 - c. The parcel is located within the block of U.S. Hwy. 78, and extends the width of the block to either West 4th North Street or East 4th North Street; and
 - d. Approval for other areas of town may be considered for overall height approval by the board of architectural review for the historic district or the commercial design review board for all other commercial areas of the town.
 - (2) Maximum impervious surface area: 80 percent.
 - (3) See article VIII of this chapter for site plan review requirements.

(Ord. No. 2001-0601, § 20-35, 6-1-2001; Ord. No. 08-0802, 9-10-2008; Ord. No. 11-1202, 1-11-2012)
 Cross reference—Businesses, ch. 8.

(g) *Building design and site plan review.* Building design and site plan review for the PL district are as follows:

- (1) Maximum building height: As approved by town council.
- (2) Maximum impervious surface area: As approved by town council.
- (3) See article VIII of this chapter for site plan review requirements.

(Ord. No. 2001-0601, § 20-39, 6-1-2001)

Sec. 32-136. Central business district; purpose.

The purpose of this central business district is to recognize and follow special conditions created by the development of the downtown area of the town. In this central business district, the area and yard requirements and the parking requirements may be waived and the impervious surface area may be set at 100 percent. The requirements for building heights, signs, building design and site plan review for each zoning district and all building codes will remain in effect to maintain the safe, orderly development of this area.

(Ord. No. 2001-0601, § 20-40, 6-1-2001)

Sec. 32-137. Nonconforming uses and structures.

(a) *Continuation of nonconforming use of land.* The lawful use of land existing at the time of adoption of this chapter, or of an amendment thereto, although such use does not conform to the provisions thereof, may be continued; but if such nonconforming use is discontinued, as evidenced by lack of use for a period of at least one year (12 consecutive months) or for 18 accumulative months during any three-year period, or by substitution of a conforming use, any future use of such land shall be in conformity with the provisions of this chapter.

(b) *Continuation of nonconforming use of structure.* The lawful use of a structure, existing at the time of the adoption of this chapter, or of an amendment thereto, although such use does not conform to the provisions hereof, may be continued and such use may be extended throughout the structure; provided, however, that no structural alterations are made, other than those necessary to assure the safety of the structure; and provided, further, that such extension does not displace a conforming use in a district established by this chapter.

(c) *Changing of a nonconforming use.* Whenever a nonconforming use of a structure has been changed to a conforming use, such use shall not thereafter be changed back to a nonconforming use. Existing nonconforming uses which become conforming through a change in land classification submitted by the applicant shall be required to meet all off-street parking, boarding and screening as applicable to that district.

(d) *Restoration and rebuilding.* No building or structure or mobile home utilized for residential use that is damaged by fire or other causes to the extent of 50 percent of its appraised value shall be repaired or rebuilt except in conformity with all the regulations of this chapter. Exception: In the R-1 zoning district, the principal building or structure may be repaired or rebuilt to the same size, scale and decor as it originally existed.

(e) *Nonconforming approved lots of record.* Any lot of record at the time of passage or amendment of this chapter which does not comply with this chapter shall be considered a nonconforming lot.

(Ord. No. 2001-0601, § 20-41, 6-1-2001)

State law references: Nonconformities, S.C. Code 1976, § 6-29-730.

Name

Address

<u>Name</u>	<u>Address</u>
RICK HUNTER	603 S MAIN ST
Bo Sells	513 W. Carolina Ave
Kueschke	803 S-Main St.
Hank D'Antonio	Golf D'Antonio Assoc.
	34 Radcliffe St
	Charleston, SC 29403

1001

Town of Summerville



Department of Planning & Development
BOARD OF ARCHITECTURAL REVIEW SIGN IN SHEET

Name

Address

Carolyn A. Smith
Hickory P.C. Smith
Arthur Applegate
Hank D'Antonio

and 205
201 S. Hickory St
The Danchester
Hoff D'Antonio Assoc
34 Radcliffe St Ches, SC,
STATEC : 4464 CORRESPONDENCE DE, SUITE 200
W. CHAS, SC
Frank Agnew
Gail D'Antonio Associates

Rick Raff

~~Barbara~~

Erica Chase

Tony Cantani

~~John Smith~~

11/3/2014

Town of Summerville



Department of Planning & Development
BOARD OF ARCHITECTURAL REVIEW SIGN IN SHEET - 3 MINUTE LIMIT

<u>Name</u>	<u>Address</u>
requested to be asked → ELAINE SEGELKEN	555 SIMMONS AVE
→ Christine Czarnik	406 S. Ocean St
→ Nathan Rie	206 Central Ave
→ William A. Harbeson	403 W. 13th South Street
→ DAVE COMER	708 N. RICHARDSON AVE
JOYCE DELK	208 ESSEX ST
PETER GORMAN	313 S. MAGNOLIA
Raymond Hutson	215 Golf Rd

Adrian Kunt

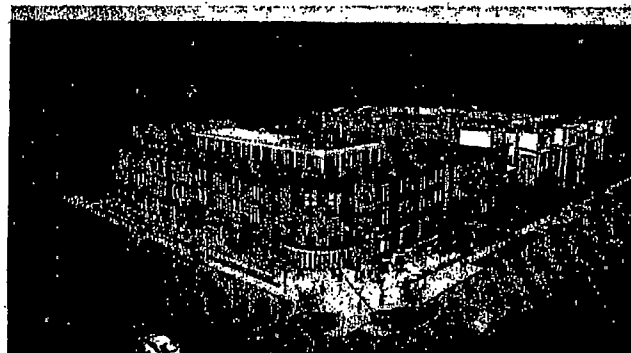
11/3/2014

FOR THE DORCHESTER - DOWNTOWN HOTEL

TMS	NAME	ADDRESS	CITY	STATE	ZIP5	PROPERTY LOCATION
137-07-03-005	SUMMERVILLE FAMILY YMCA	140 S CEDAR ST	SUMMERVILLE	SC	29483	S CEDAR ST 140
137-06-10-006	RAVA LLC C/O RICHARD C AYERS	214 S PINE ST APT A	SUMMERVILLE	SC	29483	S LAUREL ST
137-06-10-005	RAVA LLC C/O RICHARD C AYERS	214 S PINE ST APT A	SUMMERVILLE	SC	29483	S PINE ST 214
137-07-04-006	DAVENPORT PROPERTIES OF S	210 S CEDAR ST	SUMMERVILLE	SC	29483	S CEDAR ST 210
137-07-04-001	CROFT FAYE P AS TRUSTEE OF CROFT TRUST	1596 LONGRIDGE RD	MONCK'S CORNER	SC	29461	W RICHARDSON AVE 214
137-07-04-009	FREEMAN CATHERINE W ET AL	215 W 2ND SOUTH ST	SUMMERVILLE	SC	29483	W 2ND SOUTH ST 215
137-07-04-007	GAITHER ANNE W	215 W 2ND SOUTH ST	SUMMERVILLE	SC	29483	W 2ND SOUTH ST 215
137-07-04-010	FREEMAN CATHERINE W ET AL	215 W 2ND SOUTH ST	SUMMERVILLE	SC	29483	W 2ND SOUTH ST 215
137-07-07-020	COMMISSIONER OF PUBLIC WO	PO BOX 817	SUMMERVILLE	SC	29484	W RICHARDSON AVE 135
137-07-06-006	BUCK BETTY M & WILBUR P A	1041 CUMMINGS CIR	MOUNT PLEASANT	SC	29464	CENTRAL AVE 143
137-06-09-002	MICKALIS PROPERTIES LLC	627 W 2ND SOUTH ST	SUMMERVILLE	SC	29483	CENTRAL AVE 143
137-06-09-002	CHURCH-ST LUKE EVANGELICA	206 CENTRAL AVE	SUMMERVILLE	SC	29483	CENTRAL AVE 206
137-07-05-001	SUMMERVILLE ERA LLC	1895 BOWENS ISLAND RD	CHARLESTON	SC	29412	W RICHARDSON AVE 140
137-07-05-005	LYNCH SEYMOUR REVOCABLE L C/O SPENCER J LYNCH	1567 SPINNAKER LN	CHARLESTON	SC	29407	CENTRAL AVE 120
137-07-06-008	ANGELICA P GAMBLE LLC	PO BOX 772	ISLE OF PALMS	SC	29451	CENTRAL AVE
137-07-05-002	QMM LLC	136 W RICHARDSON AVE	SUMMERVILLE	SC	29483	W RICHARDSON AVE 136
137-07-05-008	COUCH JOHN N	111 DORCHESTER AVE	SUMMERVILLE	SC	29483	S CEDAR ST 217
137-07-05-007	SPEARMAN JAMES D & EMILY	206 CHAUSSEE BLVD	SUMMERVILLE	SC	29483	S CEDAR ST 219
137-07-05-006	CENTRAL AVENUE LLC	1567 SPINNAKER LN	CHARLESTON	SC	29407	S CEDAR ST 237
137-07-05-009	JASMAR & ASSOCIATES LLC	PO BOX 3260	SUMMERVILLE	SC	29484	CENTRAL AVE 114
137-07-05-003	PAS PARTNERS LLC	210 WEXTON CT	SUMMERVILLE	SC	29485	W RICHARDSON AVE 132
137-07-02-004	BOSWELL THAYER A	PO BOX 117	SUMMERVILLE	SC	29484	S PINE ST
137-06-10-004	HARSHAW CHARLES E	PO BOX 2544	SUMMERVILLE	SC	29484	S PINE ST 208
137-06-10-007	HUTSON HEYWARD G	215 GOLF RD	SUMMERVILLE	SC	29483	W RICHARDSON AVE 304
137-07-03-007	HUTSON HEYWARD G	215 GOLF RD	SUMMERVILLE	SC	29483	W RICHARDSON AVE 207
137-07-03-001	SUMMERVILLE FAMILY YMCA	140 S CEDAR ST	SUMMERVILLE	SC	29483	S CEDAR ST 118
137-07-03-008	BOUCHARD ADELL H	211 W RICHARDSON AVE	SUMMERVILLE	SC	29483	W RICHARDSON AVE 211

Nov. Mtg.

CONCEPTUAL BAR SUBMITTAL
NOVEMBER 4, 2014



THE DORCHESTER
SUMMERVILLE, S.C.

APPLIGATE & CO. / Arthur Applegate

4130 Faber Place Drive
N. Charleston, SC 29405

Civil:

Stantec

1001 Charles Foye Drive
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N. Charleston, SC 29414
Tel: 843.735.7707
Fax: 843.735.6545
www.stantec.com

Landscape:

Stantec

1001 Charles Foye Drive
Suite 200
N. Charleston, SC 29414
Tel: 843.735.7707
Fax: 843.735.6545
www.stantec.com

Architect:

Goff-D'Alema Associates

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Fax: 843.735.6545
www.goffdalema.com

Structural:

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Fax: 843.735.6545
www.tobiaswest.com

PME:

Saber Engineering

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Charleston, SC 29405
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Fax: 843.735.6545
www.saberengineering.com

Goff-D'Alema Associates

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Tel: 843.735.7707
Fax: 843.735.6545
www.goffdalema.com

THE DORCHESTER
SUMMERVILLE, S.C.

PRELIMINARY
NOT FOR
CONSTRUCTION

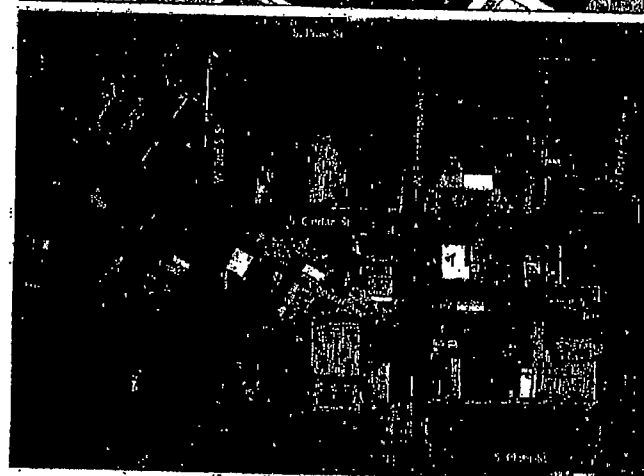
COVER

Sheet No. 1 of 1
Project Name
Client
Date
Scale

A000

1005

1002



Total Site Area: 2.24 acres
Maximum Height: 55 ft.
Minimum Setback: W. Richardson Ave. - 0 ft.
 S. Cedar St. - 0 ft.
 W. 2nd S. St. - 0 ft.
Adjacent Property - 5 ft.

Provided Maximum Height: 55 ft. at garage elevator
 Provided Minimum Setback: W. Richardson Ave. - 10 to 20 ft.
 S. Cedar St. - 10 ft.
 W. 2nd S. St. - 15 ft.
 Adjacent property - 5 ft. - 14 ft.

DISTRICT GROWTH STRATEGY

District	Character & Vision	Major Issues	Next Steps	Page
	Downtown District: A dense urban core with a mix of historic and modern buildings. The vision is to preserve the historic character while accommodating modern development.	1. Preservation of historic buildings and streetscapes. 2. Integration of modern development into the historic fabric.	1. Review and update the historic preservation ordinance. 2. Develop a design guidelines for new development.	1
	Midtown District: A mix of residential and commercial buildings. The vision is to create a vibrant, walkable neighborhood with a mix of uses.	1. Encourage a mix of residential and commercial uses. 2. Improve pedestrian and bicycle infrastructure.	1. Review the zoning ordinance to encourage mixed-use development. 2. Develop a pedestrian and bicycle plan.	2
	Eastside District: A mix of residential and commercial buildings. The vision is to create a vibrant, walkable neighborhood with a mix of uses.	1. Encourage a mix of residential and commercial uses. 2. Improve pedestrian and bicycle infrastructure.	1. Review the zoning ordinance to encourage mixed-use development. 2. Develop a pedestrian and bicycle plan.	3
	Westside District: A mix of residential and commercial buildings. The vision is to create a vibrant, walkable neighborhood with a mix of uses.	1. Encourage a mix of residential and commercial uses. 2. Improve pedestrian and bicycle infrastructure.	1. Review the zoning ordinance to encourage mixed-use development. 2. Develop a pedestrian and bicycle plan.	4
	Southside District: A mix of residential and commercial buildings. The vision is to create a vibrant, walkable neighborhood with a mix of uses.	1. Encourage a mix of residential and commercial uses. 2. Improve pedestrian and bicycle infrastructure.	1. Review the zoning ordinance to encourage mixed-use development. 2. Develop a pedestrian and bicycle plan.	5
	Northside District: A mix of residential and commercial buildings. The vision is to create a vibrant, walkable neighborhood with a mix of uses.	1. Encourage a mix of residential and commercial uses. 2. Improve pedestrian and bicycle infrastructure.	1. Review the zoning ordinance to encourage mixed-use development. 2. Develop a pedestrian and bicycle plan.	6

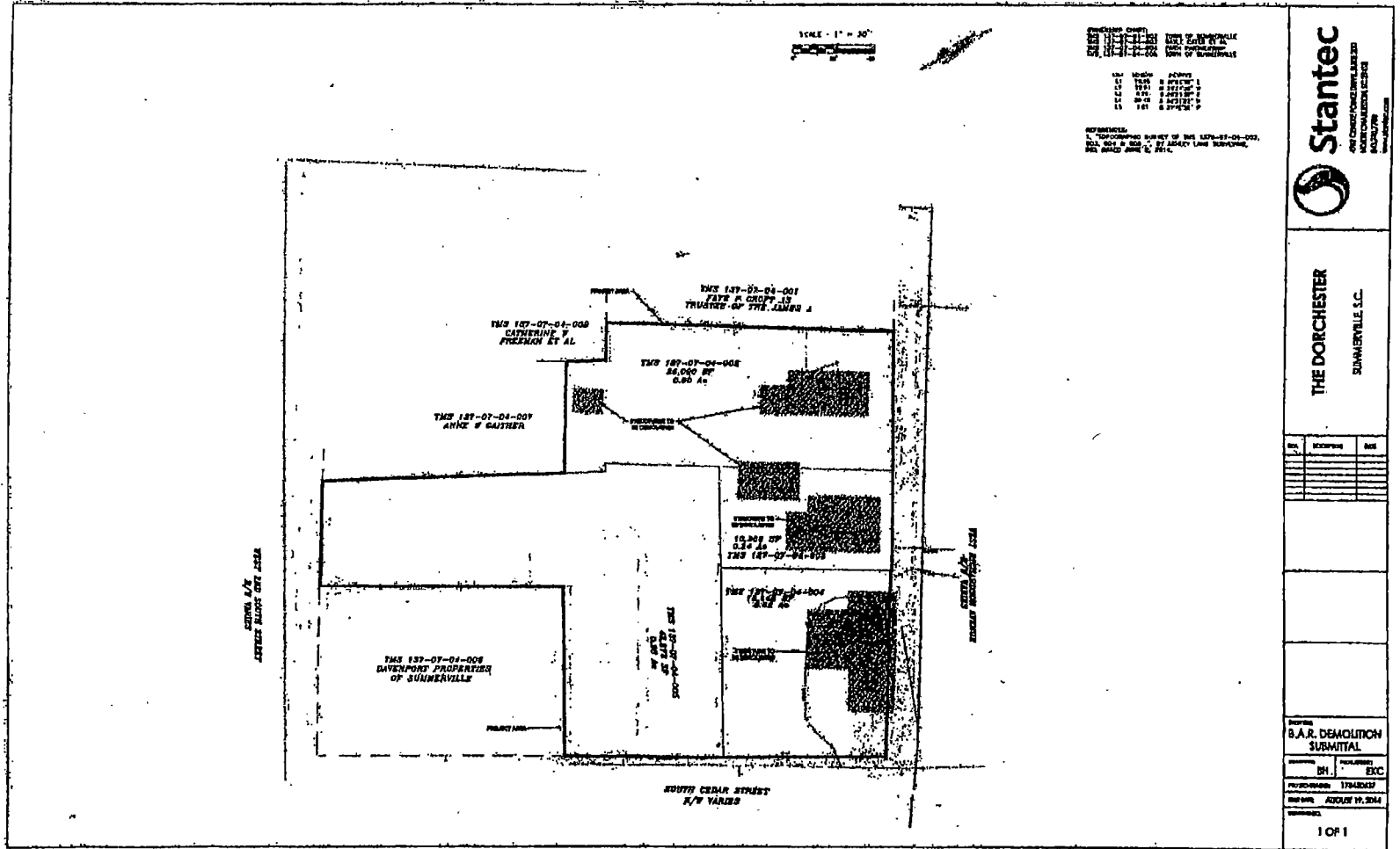
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- 1. Downtown District
- 2. Midtown District
- 3. Eastside District
- 4. Westside District
- 5. Southside District
- 6. Northside District

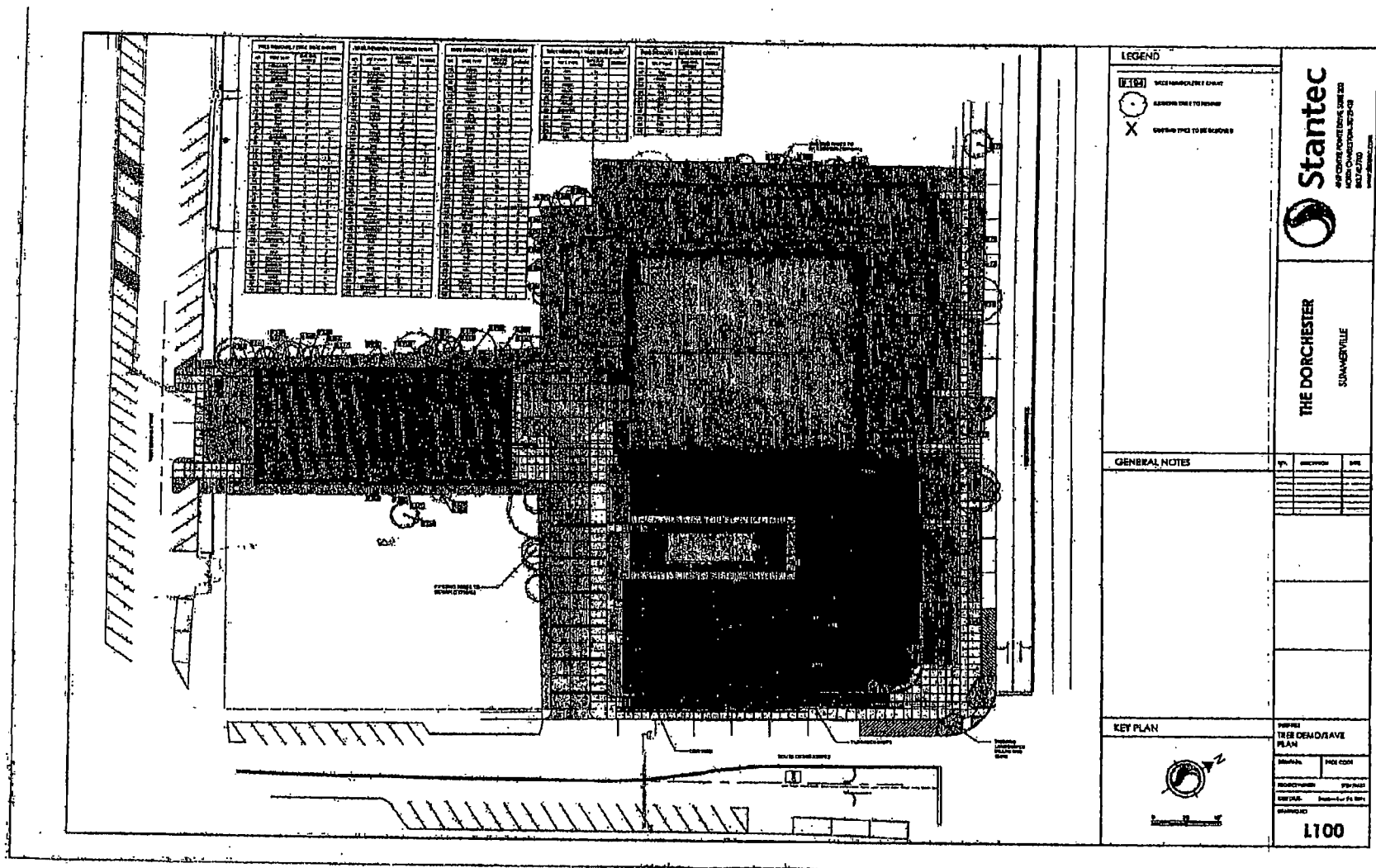
The Dorchester- Site Zoning and Vision Plan

1007

1004

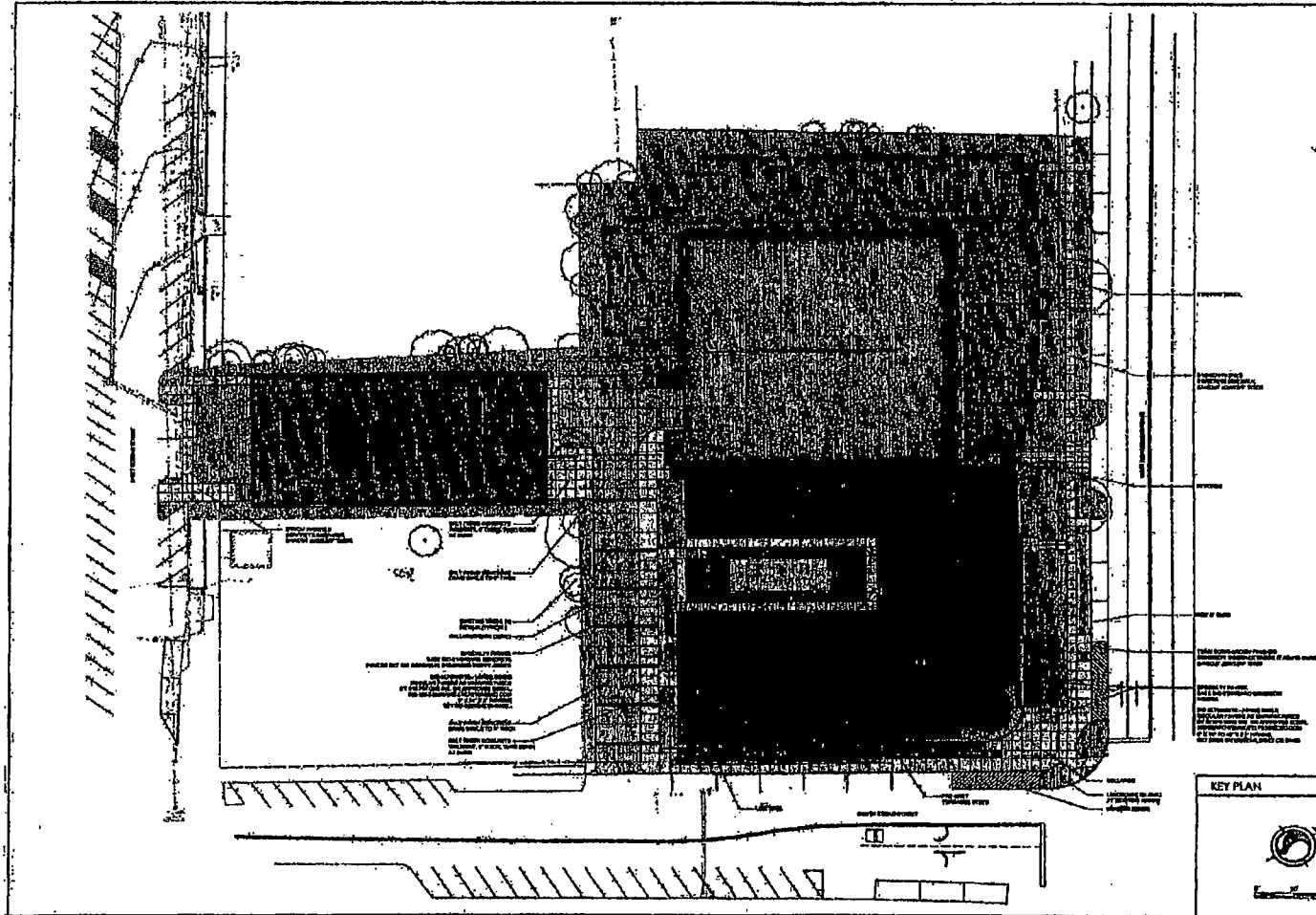


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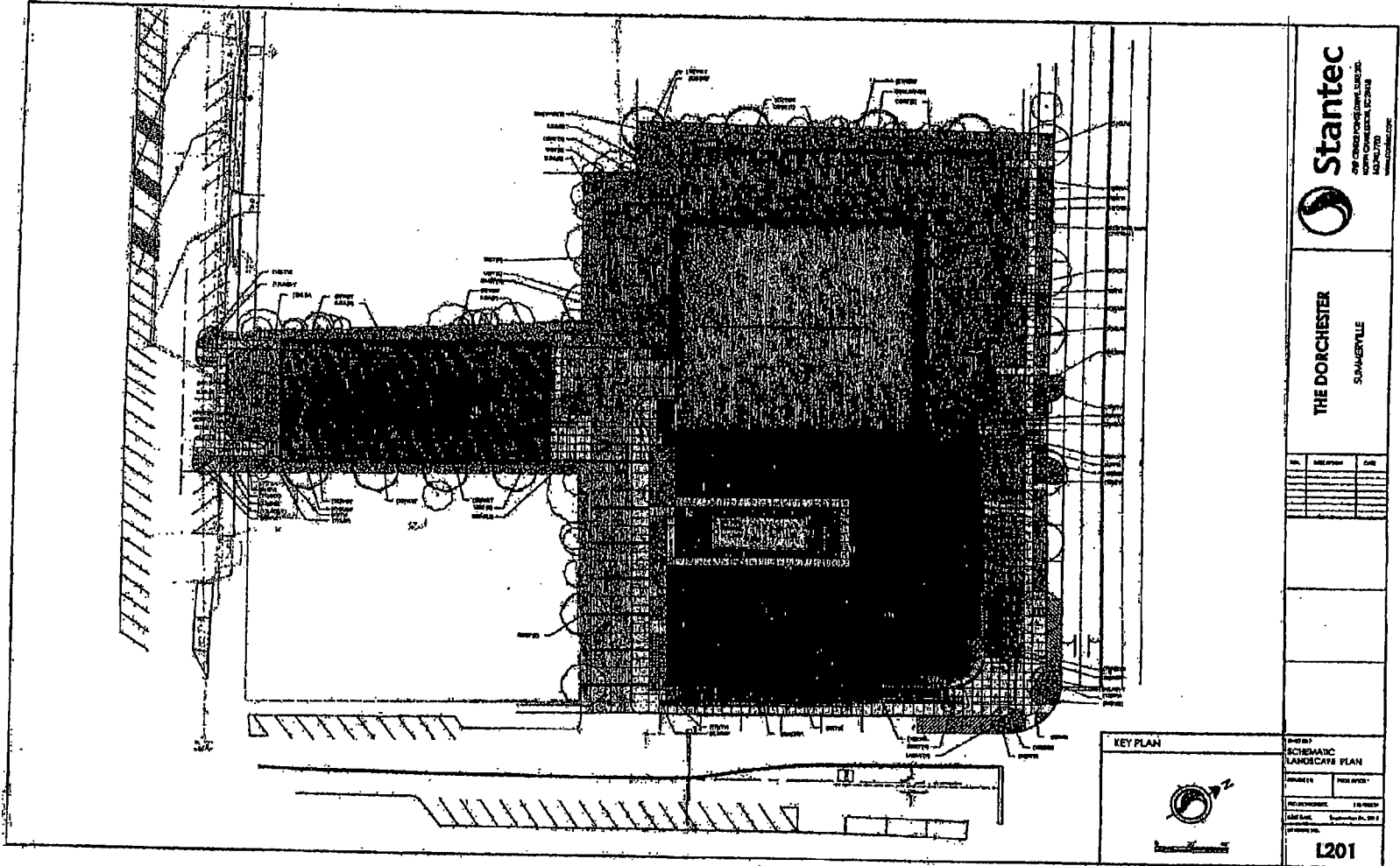
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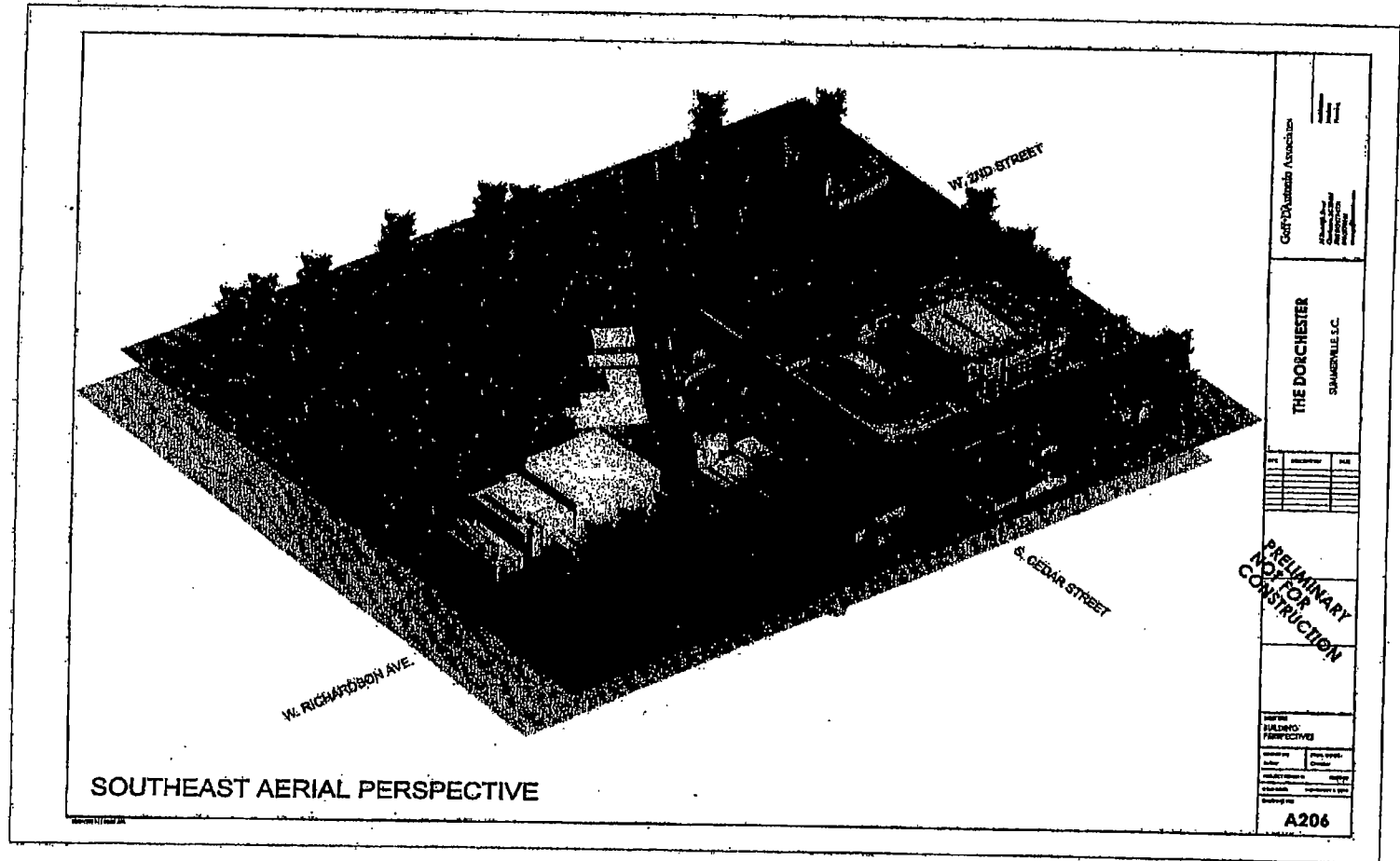
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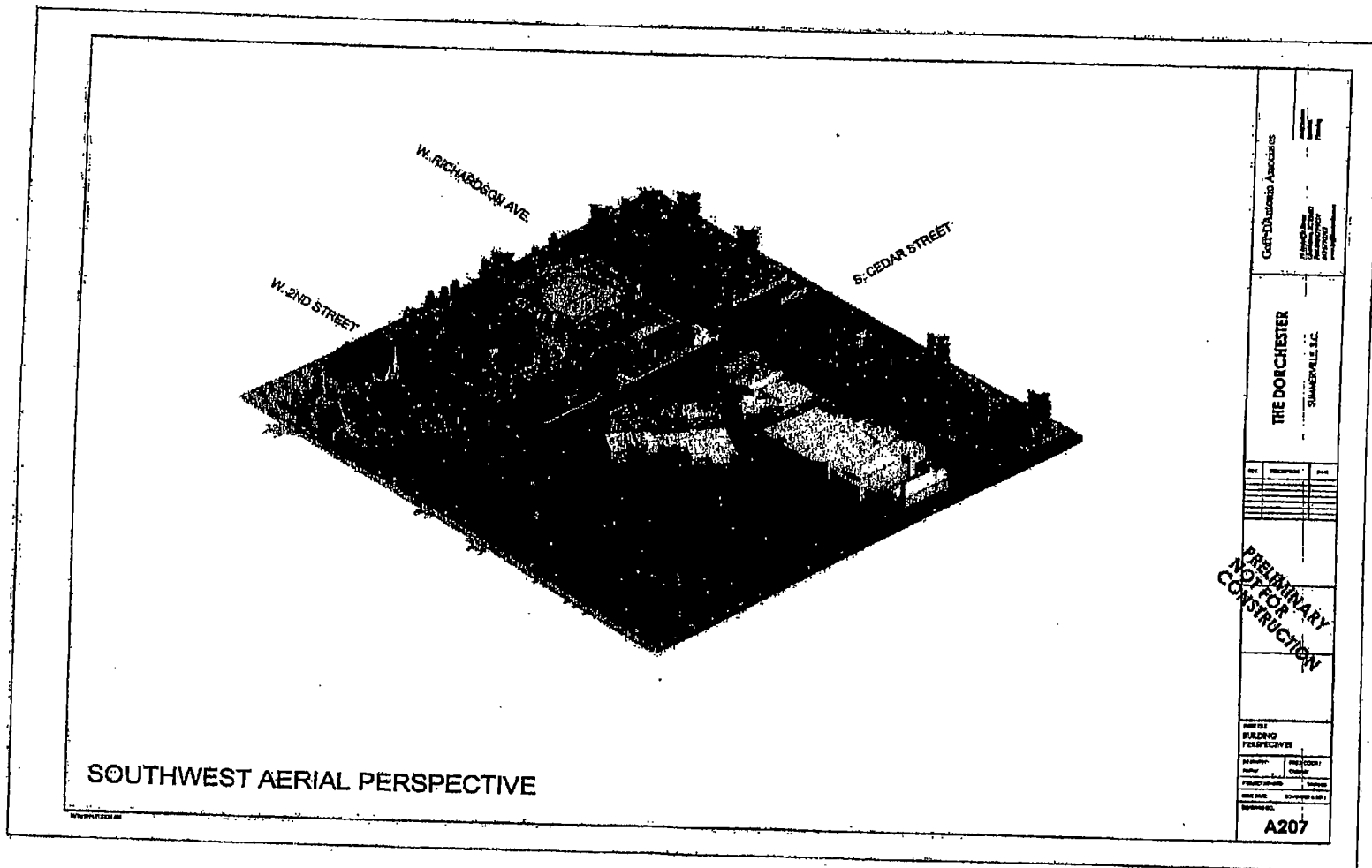
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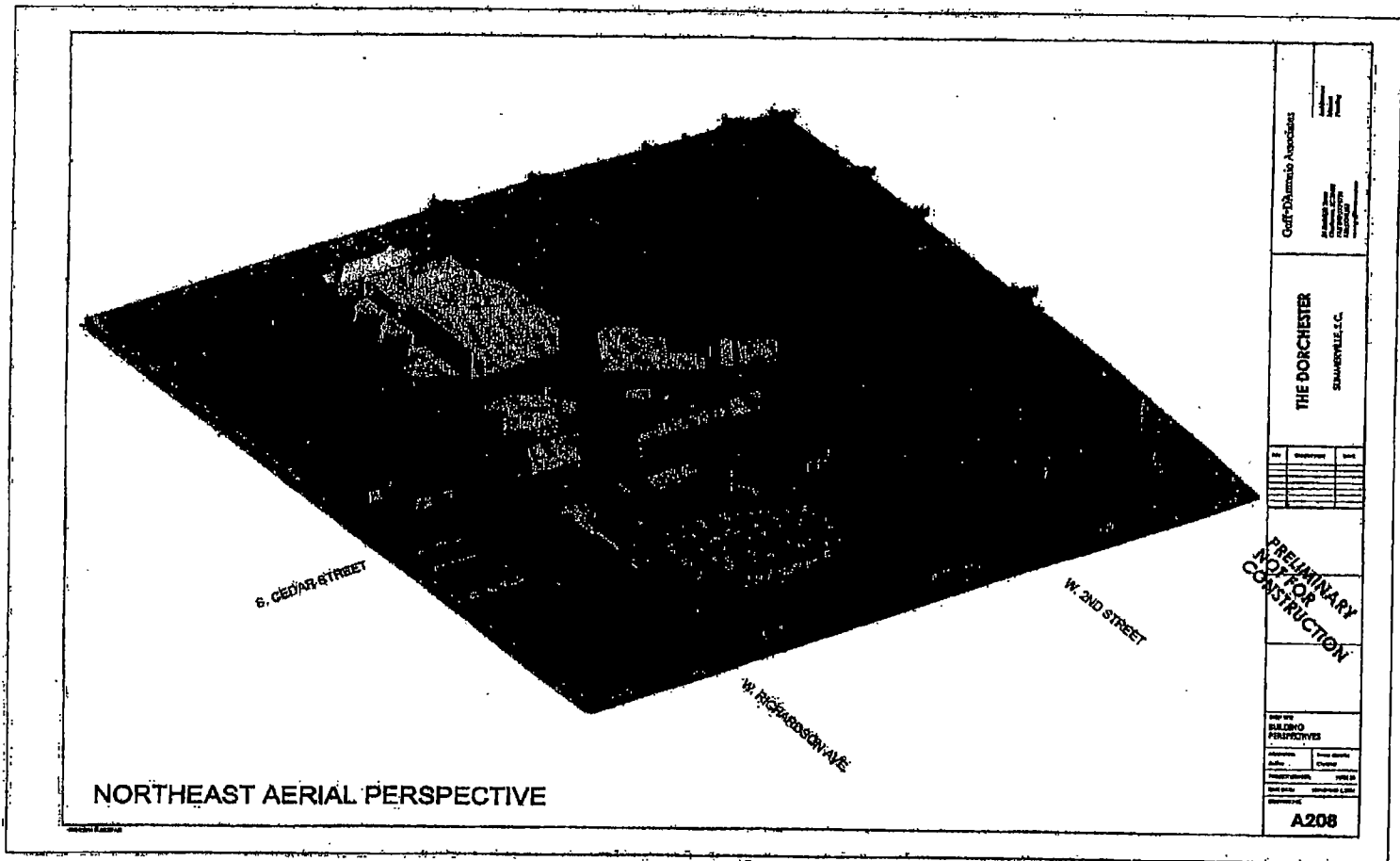


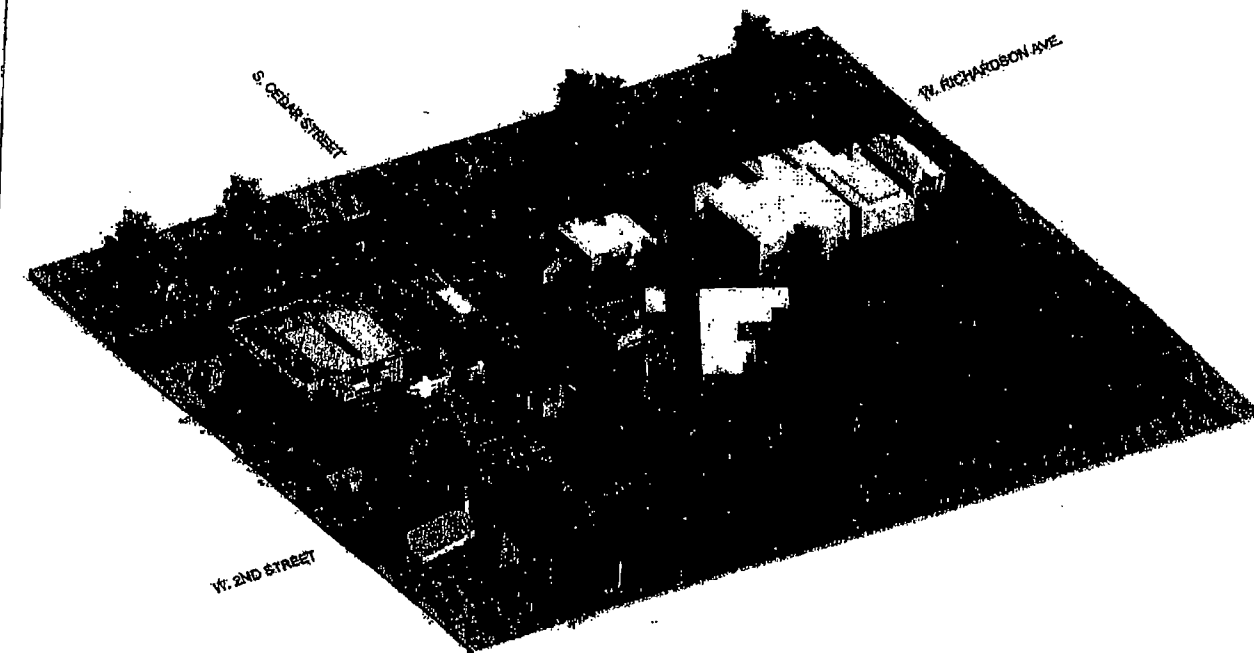
11011

1008









NORTHWEST AERIAL PERSPECTIVE

Goff-Dunsmuir Associates
 ARCHITECTS
 1000 10th St.
 San Francisco, CA 94103
 Tel: 415.398.1234
 Fax: 415.398.1235

THE DORCHESTER
 CHAMBERLAIN & ASSOCIATES, L.L.C.

No.	Description	Rev.

PRELIMINARY
 NOT FOR
 CONSTRUCTION

DATE: 01/11/01
 DRAWING: BUILDING PERSPECTIVES
 SCALE: 1/8" = 1'-0"
 SHEET: A209
 PROJECT: THE DORCHESTER
 CLIENT: CHAMBERLAIN & ASSOCIATES, L.L.C.

A209

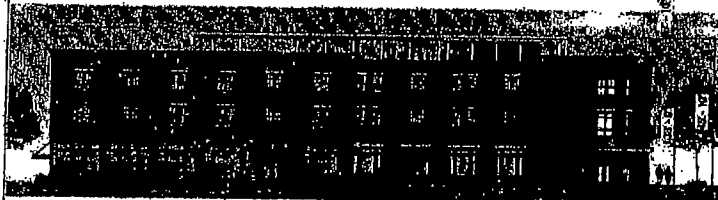
CONFERENCE
CENTER
BEYOND

DAVENPORT
BUILDING

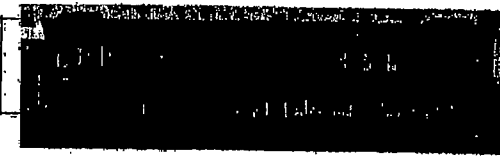
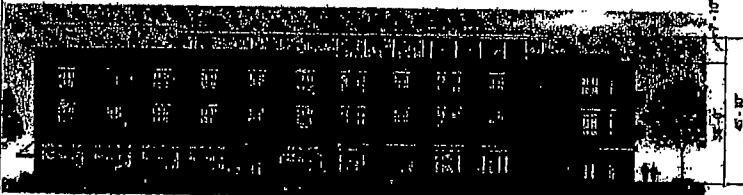
W. RICHARDSON
AVE

YMCA

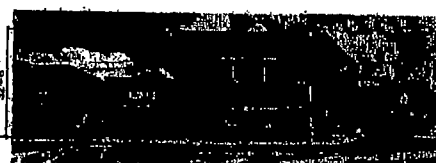
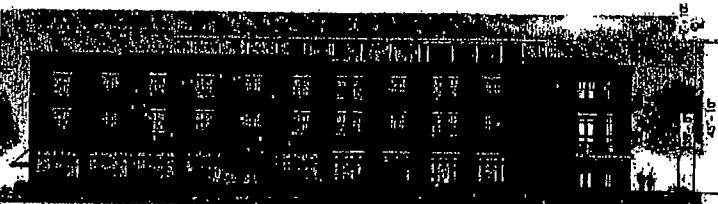
① STREETSCAPE SOUTH ELEVATION - HOTEL & CHURCH ST.



HISTORIC & NEW CITY HALL



RETAIL BUILDING @ MAIN STREET



RETAIL BUILDING @ 238 S. CEDAR ST

CONTEXT ELEVATIONS

City of Davenport Association

THE DOKCHETER

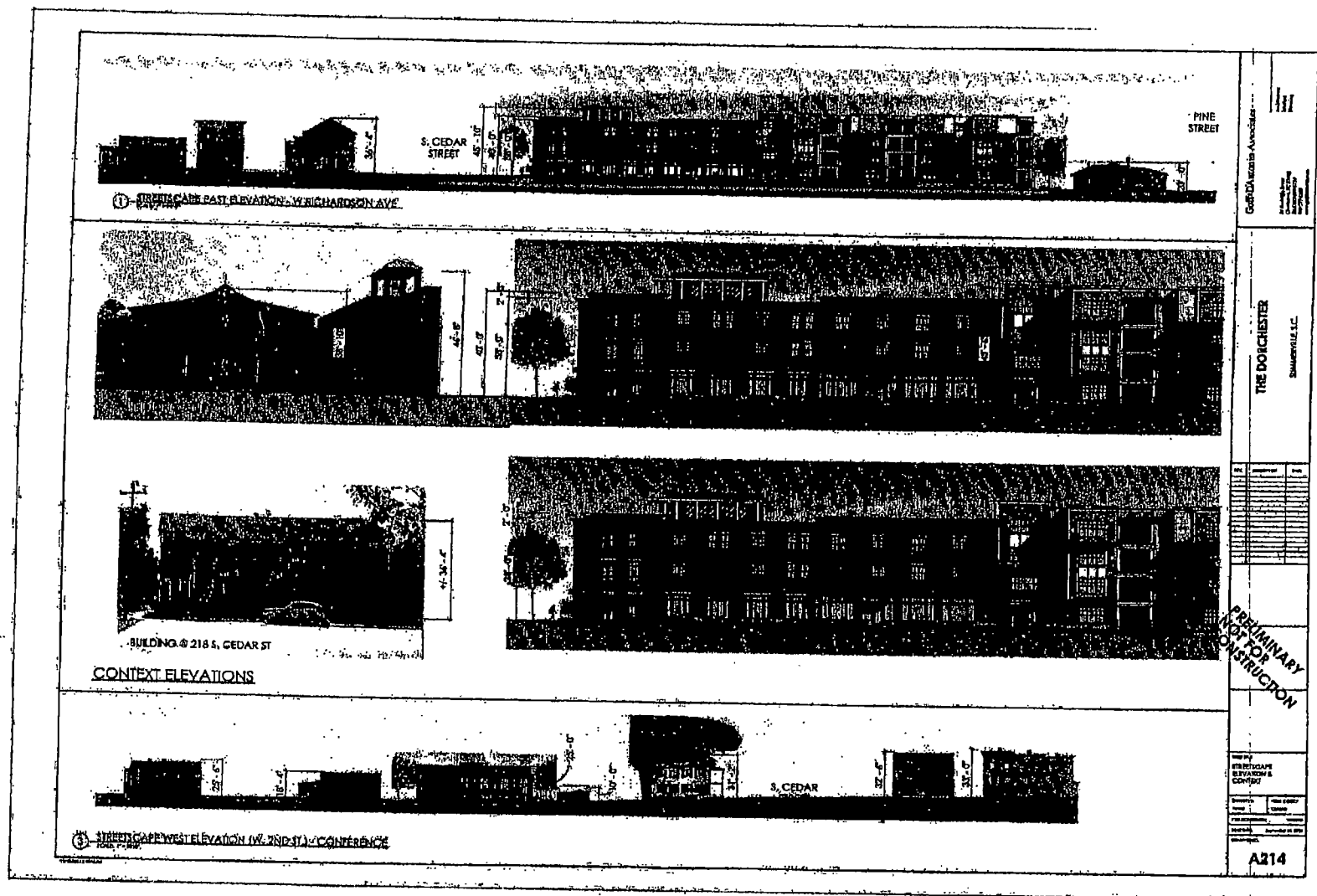
2014-2015

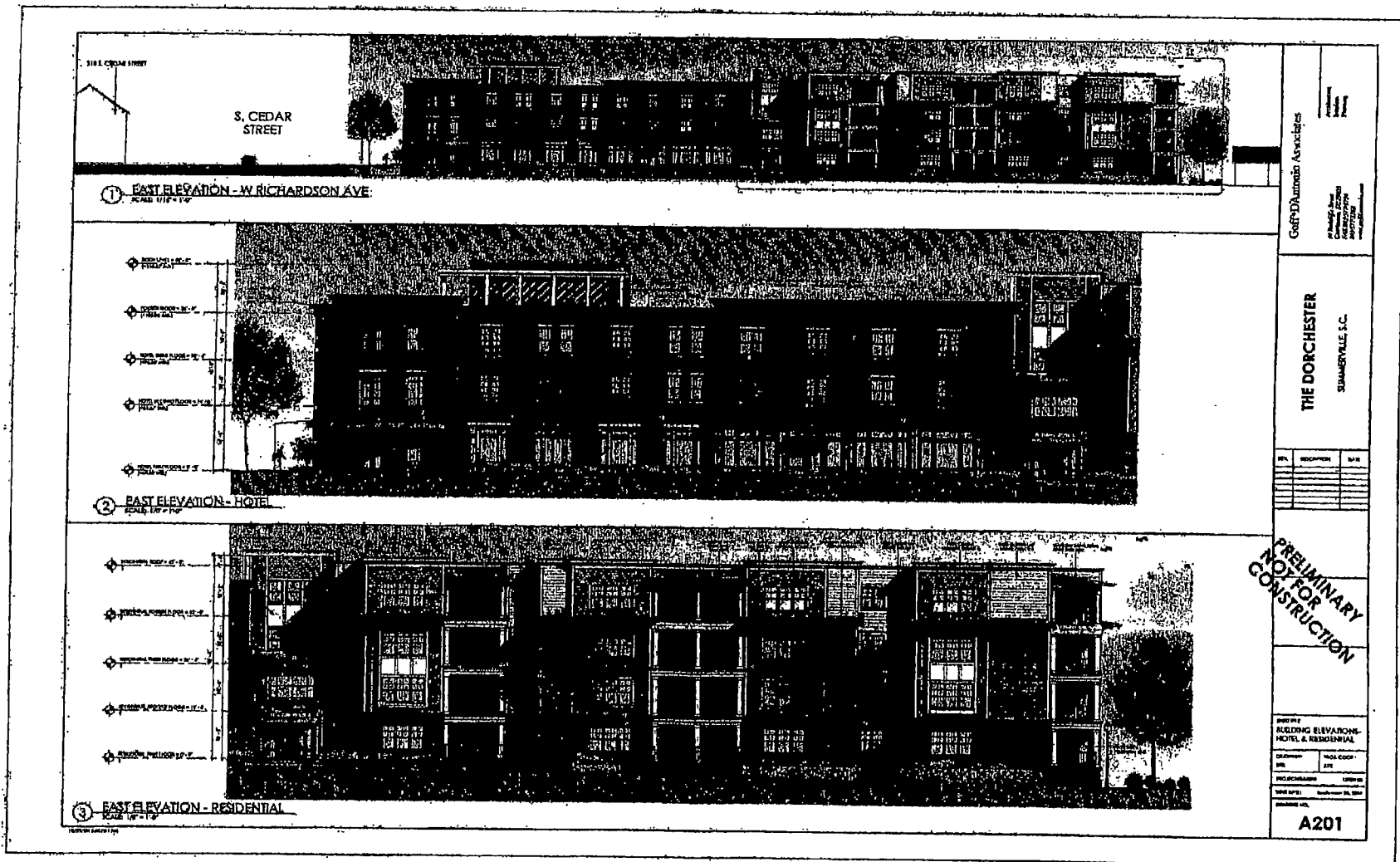
PRIMARY
NOT FOR
CONSTRUCTION

THE DOKCHETER
STATION &
COVER

DATE: 10/1/14
BY: [Signature]
CHECKED: [Signature]
APPROVED: [Signature]

A213



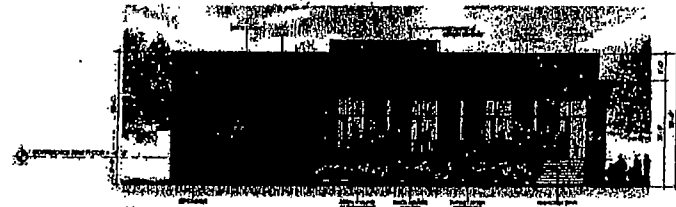


1018

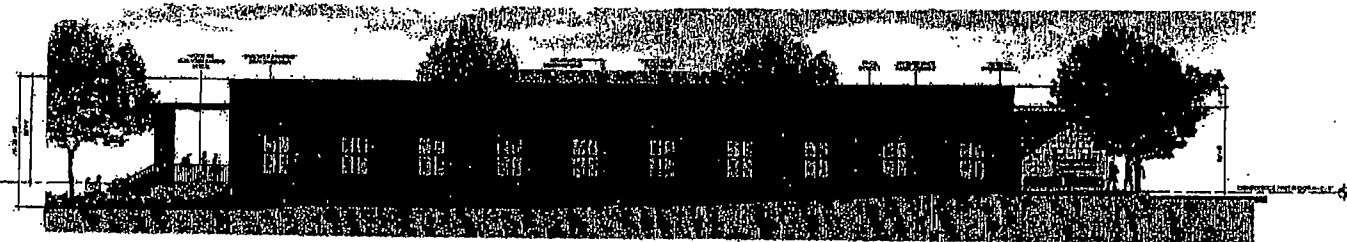
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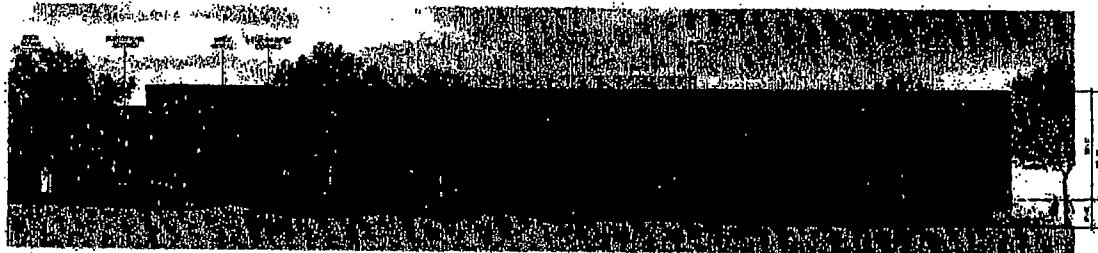
① EAST ELEVATION - CONFERENCE
SCALE 1/8" = 1'-0"



② WEST ELEVATION (W. 2ND ST.) - CONFERENCE
SCALE 1/8" = 1'-0"



④ SOUTH ELEVATION - CONFERENCE
SCALE 1/8" = 1'-0"



③ NORTH ELEVATION - CONFERENCE
SCALE 1/8" = 1'-0"

Goff-Diamond Associates

Architect
1200 15th St.
Columbia, SC 29201
803/797-7000
Fax 803/797-7001

THE DORCHESTER

SUMNERVILLE S.C.

PRELIMINARY
NOT FOR
CONSTRUCTION

SHEET NO. 1
BUILDING ELEVATIONS -
CONFERENCE CENTER

OWNER: DR.	FILE: C001
DATE: 02/01/00	1/0000
DESIGN: DR.	02/01/00
CONSTRUCTION: DR.	02/01/00

A205

1019

1018



HOTEL ENTRY - S. CEDAR ST. W. RICHARDSON AVE.

Geoff D'Amico Architects

1000 1st Ave
Camden, NJ 08102
609.291.1234
info@geoffdamico.com

THE DORCHESTER
SARASOTA, FL

REV	DESCRIPTION	DATE
1	Initial Drawing	10/1/10
2	Revised Drawing	10/1/10
3	Revised Drawing	10/1/10
4	Revised Drawing	10/1/10
5	Revised Drawing	10/1/10

PRELIMINARY
NOT FOR
CONSTRUCTION

NOT FOR
BUILDING
PERMITS

Project No.	1000 1st Ave
Client	Camden, NJ
Project Name	1000 1st Ave
Project No.	1000 1st Ave

DATE: 10/1/10
DRAWN BY: [Name]
CHECKED BY: [Name]
APPROVED BY: [Name]

A209

1020

1019



HOTEL & RESIDENTIAL - W. RICHARDSON AVE.

Goff-Dumais Associates

Architectural Firm
1000 W. RICHARDSON AVE
SUITE 100
DALLAS, TEXAS 75201

THE DORCHESTER

SUMMERVILLE, S.C.

NO.	DESCRIPTION	DATE
1	PRELIMINARY	10/1/80
2	REVISED	10/1/80
3	REVISED	10/1/80
4	REVISED	10/1/80
5	REVISED	10/1/80
6	REVISED	10/1/80
7	REVISED	10/1/80
8	REVISED	10/1/80
9	REVISED	10/1/80
10	REVISED	10/1/80

PRELIMINARY
NOT FOR
CONSTRUCTION

EXISTING
BUILDING
PERSPECTIVES

Architect: Goff-Dumais Associates
Project Name: THE DORCHESTER
Project Number: 1000
Scale: 1/4" = 1'-0"
Date: 10/1/80
Drawn By: [Signature]
Checked By: [Signature]

A210

1021

1020



HOTEL & RESTAURANT - S. CEDAR ST.

Gulfstream Associates

ALAN H. GULF
PRESIDENT & CEO
GULFSTREAM ASSOCIATES
1000 10TH AVENUE
SUITE 1000
ATLANTA, GA 30309

THE DORCHESTER
SUMMERVILLE, S.C.

DATE	DESCRIPTION	AMOUNT

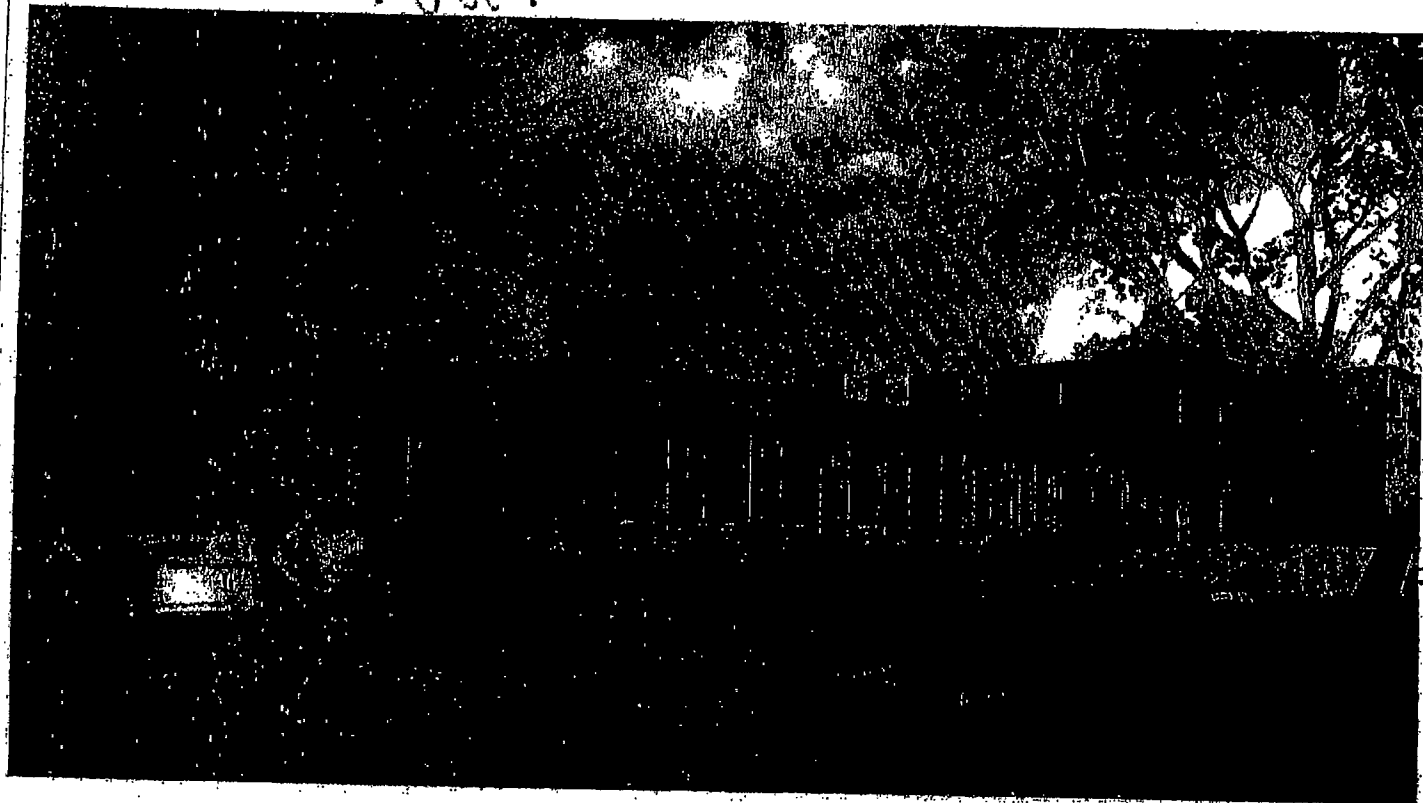
PRELIMINARY
NOT FOR
CONSTRUCTION

LEGEND
BUILDING
PERSPECTIVES

ITEM	DESCRIPTION	DATE
1	1000 10TH AVENUE	10/1/00
2	1000 10TH AVENUE	10/1/00
3	1000 10TH AVENUE	10/1/00
4	1000 10TH AVENUE	10/1/00

A211

1009



CONFERENCE CENTER - W. 2ND ST.

Conf-Datavision Associates

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THE DORCHESTER

SUMMERVILLE, S.C.

PRELIMINARY
NOT FOR
CONSTRUCTION

INTERIOR
BUILDINGS
PERSPECTIVES

PROJECT NO. 1009
DATE 10/01/01
DRAWN BY J. L. LEE
CHECKED BY J. L. LEE
SCALE 1/8" = 1'-0"

A212

From: Laura Greaver [<mailto:LGreaver@clawsonandstaubes.com>]
Sent: Monday, August 17, 2015 9:02 AM
To: Dickson, Edgar W. Law Clerk (Jenny Pittman) <edicksonlc@sccourts.org>; Becky Stevens <BStevens@dorchestercounty.net>
Cc: Rutledge Young <ryoung@duffyandyoung.com>; mrose5@sc.rr.com; gwaringsparker@bellsouth.net; Lisa Sharpe <lsharpe@duffyandyoung.com>; mrose5@sc.rr.com; Dickson, Edgar W. Secretary (Peggy Smith) <edicksonsc@sccourts.org>; J. Rutledge Young, Jr. <jry@duffyandyoung.com>; Amanda Smith <abb@p-tw.com>; Tim Domin <TDomin@clawsonandstaubes.com>; Andy Gowder <wag@p-tw.com>
Subject: RE: Board Appeals Croft vs. Town of Summerville; 15-CP-18-877/991

Jenny,

We appeared before Judge Dickson on Friday for a hearing on the above-referenced appeals of decisions of the Summerville Board of Architectural Review. Pursuant to Judge Dickson's request at that hearing, attached are the Minutes of the BAR meetings of June, July and August of 2015, wherein the Findings of Fact and Conclusions of the BAR were discussed and ultimately approved.

Additionally, because there was some discussion at the hearing from Appellants' counsel regarding a potential stay of activity, we also are submitting for the Court's record the attached Affidavits of Mayor Collins and Arthur Applegate, which address some of the anticipated damages from delay of this project. As discussed at the hearing, we would request a bond from Appellants should a stay be considered, and we would be happy to be heard by the Court with respect to this issue should the Court be inclined to consider it.

Thanks so much and please let us know if we can provide any additional information.
Laura

**CLAWSON
AND STAUBES**
LLC



Laura Simons Greaver
Licensed In SC

126 Seven Farms Drive, Suite 200 | Charleston SC | 29492-8144
Phone: 843 577 2026 Ext. 2254 | Fax: 843 722 2867 | Mobile: 843 518 7779

Website: www.clawsonandstaubes.com | Email:
lgreaver@clawsonandstaubes.com | Location: [Map](#)

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200

~~W. Richardson~~

45

1024

1025

		NUMBER AND STREET NAME	BUILDING EVALUATION SHEET 200 S. Cedar		
HISTORY	HISTORIC SIGNIFICANCE				
	NATIONAL STATE COMMUNITY UNKNOWN NONE	☐ ☐ ☐ ☐ ☒	30 20 15 5 0		☐
ARCHITECTURE	ARCHITECTURAL MERIT				
	EXCELLENT GOOD FAIR OR NONE	☐ ☐ ☒	30 15 0	☐	
	INCIDENCE IN COMMUNITY				
	UNIQUE UNUSUAL SOME COMMON	☐ ☐ ☐ ☒	10 7 3 0	☐	
	AMOUNT OF ALTERATION AND/OR ADDITION(S)				
NONE OR MINOR MODERATE EXTENSIVE OR COMPLETE	☐ ☐ ☒	5 3 0	☐		
	QUALITY OF ALTERATION AND/OR ADDITION(S)				
	EXCELLENT (OR NONE) GOOD FAIR OR POOR	☐ ☐ ☒	5 3 0	☐	☐
ENVIRONMENT	CONTRIBUTION TO NEIGHBORHOOD				
	GREAT MODERATE MINOR OR NONE	☐ ☐ ☒	20 10 0	☐	☐
NOTES					
BY RPJ		DATE 5-14-79	CHECKED BY	DATE	

SUMMERVILLE PRESERVATION STUDY
WILBUR SMITH AND ASSOCIATES

Identification LDA

1. Number and street 200 CEDAR
2. Common building name EXXON STATION
3. Present owner _____
4. Owner's (or agent's) address _____
5. Tenant(s) _____
6. Present use: Residential _____, Social or recreational _____,
Educational _____, Administrative, professional, financial _____,
Mercantile /, Industrial or manufacturing _____, Agricultural _____,
Communications _____, Transportation _____, National or state
government _____, County or city government _____, Military _____,
Medical care _____, Religious _____, Food service _____, Funerary _____,
Non-shelter _____, Other _____
7. Original use: Unknown _____, Same as present _____,
Other _____

Historic

1. Date of building _____, Factual source _____,
Estimated _____, Unknown _____.
Architect or builder _____, Unknown _____.
3. Original owner or tenant _____, Unknown _____.
4. Historic significance: None _____, Unknown _____.
Associated personage of historical importance
Local _____, State _____, National _____.
Name _____
Associated event of historical importance
Local _____, State _____, National _____.
Name _____
Other _____
5. Site of building: Unknown _____, Original _____, Moved _____.
Other _____

Page 1 of 3

Description

1. Plot area: Frontage___, Unknown___, Depth___, Unknown___.
2. Building area: Width___, Unknown___, Depth___, Unknown___.
3. Basement or foundation wall material: Unknown___, masonry piers- brick___ or concrete block___; brick /, stucco___, concrete block___, concrete___, other_____
4. Exterior wall material: Wood___, brick /, stucco___, stone___, other_____
5. Construction: Wood frame___, masonry bearing walls___, other_____
6. Roof material: Composition shingles /, wood shingles___, metal___, slate___, tar and gravel___, other_____
7. Colour scheme: Walls ^{WHITE SIDES} ~~MULTI BRICK-EDGED~~ roof BLACK, door(s) WHITE, windows WHITE, trim WHITE, shutters_____, other FOUNDATION - GREY
8. Apparent alterations and additions: None___, walls___, windows /, doors /, roof___, chimney___, porch-added___, porch-enclosed___, stairs___, storey___, room(s)___, wing(s) /, other_____
9. Condition of building:

	Good	Fair	Poor
Walls	___	/	___
Windows	___	/	___
Door(s)	___	/	___
Roof	___	/	___
Chimney(s)	___	___	___
Porch(s)	___	___	___
Stairs	___	___	___
Other	___	___	___

Page 2 of 3

10. Property features: Garage___, coach house___, stable___,
tool shed ☒, kitchen___, office___, fence___, wall___,
garden feature___,
other_____
11. Present status: Inhabitated ☒, abandoned___,
other_____
12. Surroundings and threat:
Isolated: Secure___, threatened___, unknown___.
Part of compatible group: Secure ☒, threatened___,
unknown___.
Part of hostile group: Secure___, threatened___,
unknown___.
13. Comments and observations:



200
W. R. Anderson
4-5

206 W. RICHARDSON AVE.
#2 NOTABLE-Front

1030

1031

		NUMBER AND STREET NAME	BUILDING EVALUATION SHEET 206A W. Richardson			
HISTORY	HISTORIC SIGNIFICANCE					
	NATIONAL STATE COMMUNITY UNKNOWN NONE	☐ ☐ ☒ ☐ ☐	30 20 15 5 0			15
ARCHITECTURE	ARCHITECTURAL MERIT					
	EXCELLENT GOOD FAIR OR NONE	☐ ☒ ☐	30 15 0			15
	INCIDENCE IN COMMUNITY					
	UNIQUE UNUSUAL. (rare/unique) SOME COMMON	☐ ☒ ☐ ☐	10 7 3 0			7
	AMOUNT OF ALTERATION AND/OR ADDITION(S)					
NONE OR MINOR. MODERATE EXTENSIVE OR COMPLETE.	☒ ☐ ☐	5 3 0			5	
	QUALITY OF ALTERATION AND/OR ADDITION(S)					
	EXCELLENT (OR NONE) GOOD FAIR OR POOR	☒ ☐ ☐	5 3 0			5 32
ENVIRONMENT	CONTRIBUTION TO NEIGHBORHOOD					
	GREAT MODERATE MINOR OR NONE.	☒ ☐ ☐	20 10 0			20 20 67
NOTES						
BY RPS		DATE 5-11-79		CHECKED BY		DATE

SUMMERVILLE PRESERVATION STUDY
WILBUR SMITH AND ASSOCIATES

Identification VCB

1. Number and street 206 A + 206 W ^{\$208} W RICHARDSON
2. Common building name ^{THE} HOUSE SHOP / AUTUMN Co.
3. Present owner _____
4. Owner's (or agent's) address _____
5. Tenant(s) _____
6. Present use: Residential _____, Social or recreational _____,
Educational _____, Administrative, professional, financial ☒,
Mercantile ☒, Industrial or manufacturing _____, Agricultural _____,
Communications _____, Transportation _____, National or state
government _____, County or city government _____, Military _____,
Medical care _____, Religious _____, Food service _____, Funerary _____,
Non-shelter _____, Other _____
7. Original use: Unknown _____, Same as present _____,
Other RESIDENCE

Historic

1. Date of building _____, Factual source _____,
Estimated _____, Unknown _____.
Architect or builder _____, Unknown _____.
3. Original owner or tenant _____, Unknown _____.
4. Historic significance: None _____, Unknown _____.
Associated personage of historical importance
Local _____, State _____, National _____.
Name _____
Associated event of historical importance
Local _____, State _____, National _____.
Name _____
Other _____
5. Site of building: Unknown _____, Original _____, Moved _____.
Other _____

Description

1. Plot area: Frontage___, Unknown___, Depth___, Unknown___.
2. Building area: Width___, Unknown___, Depth___, Unknown___.
3. Basement or foundation wall material: Unknown___, masonry piers- brick___ or concrete block___; brick /, stucco___, concrete block___, concrete___, other_____
4. Exterior wall material: Wood /, brick___, stucco___, stone___, other_____
5. Construction: Wood frame /, masonry bearing walls___, other_____
6. Roof material: Composition shingles /, wood shingles___, metal___, slate___, tar and gravel___, other_____
7. Colour scheme: Walls CREME, roof RED, door(s) CREME, windows BROWN, trim BROWN, shutters BROWN, other BALUSTERS - LIGHTER BROWN
8. Apparent alterations and additions: None___, walls___, windows___, doors___, roof___, chimney___, porch-added___, porch-enclosed___, stairs___, storey___, room(s)___, wing(s)___, other_____
9. Condition of building:

	Good	Fair	Poor
Walls	<u>/</u>	___	___
Windows	<u>/</u>	___	___
Door(s)	<u>/</u>	___	___
Roof	<u>/</u>	___	___
Chimney(s)	___	___	___
Porch(s)	<u>/</u>	___	___
Stairs	<u>/</u>	___	___
Other	___	___	___

Page 2 of 3

- No architectural value
No. 208 W. RICHARDSON
10. Property features: Garage___, coach house___, stable___,
tool shed___, kitchen___, office___, fence___, wall___,
garden feature___,
other_____
11. Present status: Inhabited___/___, abandoned___,
other_____
12. Surroundings and threat:
Isolated: Secure___, threatened___, unknown___.
Part of compatible group: Secure___, threatened___/___,
unknown___.
Part of hostile group: Secure___, threatened___/___,
unknown___.
13. Comments and observations:

DOORS
 _____ single (1)
 _____ double (2)
 _____ transom (3)
 _____ fanlight (4)
 _____ sidelights (5)
 _____ other (0)

K) CONSTRUCTION METHOD

masonry (1)
 frame (2)
 log (3)
 steel (4)
 other (0)

L) EXTERIOR WALLS

weatherboard (1)
 beaded weatherboard (2)
 shiplap (3)
 finishboard (4)
 wood shingle (5)
 stucco (6)
 tabby (7)
 brick (8)
 brick veneer (9)
 stone veneer (10)
 cast stone (11)
 marble (12)
 asphalt roll (13)
 synthetic siding (14)
 asbestos shingle (15)
 pigmented structural
 glass (16)
 other (0)

M) PORCH DETAILS

chamfered posts (1)
 turned posts (2)
 supports on pedestals (3)
 columns (4)
 posts
 piers (6)
 pillars (7)
 freestanding posts (8)
 balustrade (9)
 apron wall (10)
 turned balusters (11)
 decorative sawn balusters (12)
 slat balusters (13)
 other sawn/turned work (14)
 insect screening (15)
 porte cochere (16)
 other (0)

N) CHIMNEY MATERIAL

brick (1)
 stuccoed brick (2)
 stone (3)
 brick & stone (4)
 other (0)

O) ROOF MATERIAL

composition shingle (1)
 pressed metal shingle (2)
 wood shingle (3)
 slate (4)
 raised seam metal (5)
 other metal (6)
 rolled roofing (7)
 not visible (8)
 tile (9)
 other (0)

P) FOUNDATION

not visible (1)
 brick pier (2)
 brick pier with fill (3)
 brick (4)
 stuccoed masonry (5)
 stone pier (6)
 none (7)
 concrete block (8)
 slab construction (9)
 basement (10)
 raised basement (11)
 other (0)

Q) DECORATIVE ELEMENT MATERIAL

cast iron (1)
 pressed metal (2)
 terra cotta (3)
 granite (4)
 marble (5)
 cast stone (6)
 brick (7)
 wood (8)
 pigmented glass (9)
 stone (10)
 stucco (11)
 other (0)

R) INTERIOR FEATURES (list)

18. HISTORIC OUTBUILDINGS AND STRUCTURES:

none (1)
 none visible (2)
 garage (3)
 garage w/living area (4)
 shed (5)
 kitchen (6)

tenant house (7)
 other house (8)
 office (9)
 barn (10)
 tobacco barn (11)
 dairy (12)

crib (13)
 smokehouse (14)
 slave house (15)
 privy (16)
 well (17)
 springhouse (18)

store (19)
 windmill (20)
 chicken coop (21)
 silo (22)
 washhouse (23)
 root cellar (24)
 other (0)

19. SURROUNDINGS: residential (1) residential/commercial (2) commercial (3) rural (4) rural community (5) industrial (6) other (0)

20. ADDITIONAL DESCRIPTIVE COMMENTS: Rear gable wing, left elevation. Cottage: 2 X 2 bays, lateral gable roof with full-facade shed porch with exposed rafter ends, 6/6 windows, simple entry.

21. ALTERATIONS Small addition in rear ell, right elevation.

HISTORICAL INFORMATION

22. Theme(s): sl. 23. Period(s): _____ 24. Important persons: _____

25. Architect(s): _____ Source: _____

26. Builder(s) _____ Source: _____

27. Historical data _____

28. Informant/Bibliography _____

PROGRAM MANAGEMENT

29. Quadrangle name: Summerville 30. Photographic prints (1) slides (2) negatives (3)

31. Other documentation: survey back-up files (1) National Register files (2) tax act files (3) grant files (4) state historical marker files (5) environmental review files (6) HABS/HAER (7) SCHAA (8) other (0)

32. Recorder name/firm Preservation Consultants: SF 33. Date recorded 3/11/1996

Control Number U/ 35 / 1390 / 4960272
country census designated place site #

(Attach photos here)

Photo #	Photo Index #	View of	N, S, E, W
1	F4, F6	Facade	N
2	F4, F5	Cottage Facade	N

Date Taken/Recorded by: 1996/ Preservation Consultants

State Historic Preservation Office • P.O. Box 11669 • Columbia, SC 29211 • (803) 734-8609

206 W. Richardson
(Rear)
#4 Supportive

1038

1039

NUMBER AND STREET		BUILDING EVALUATION SHEET	
NAME		~~370~~ W. Richardson (Rear)	
206			
HISTORY	HISTORIC SIGNIFICANCE		
	NATIONAL STATE COMMUNITY UNKNOWN NONE	☐ 30 ☐ 20 ☐ 15 ☒ 5 ☐ 0	5
ARCHITECTURE	ARCHITECTURAL MERIT		
	EXCELLENT GOOD FAIR OR NONE	☐ 30 ☐ 15 ☒ 0	0
	INCIDENCE IN COMMUNITY		
	UNIQUE UNUSUAL SOME COMMON	☐ 10 ☐ 7 ☐ 3 ☒ 0	0
	AMOUNT OF ALTERATION AND/OR ADDITION(S)		
NONE OR MINOR MODERATE EXTENSIVE OR COMPLETE	☒ 5 ☐ 3 ☐ 0	5	
ARCHITECTURE	QUALITY OF ALTERATION AND/OR ADDITION(S)		
	EXCELLENT (OR NONE) GOOD FAIR OR POOR	☒ 5 ☐ 3 ☐ 0	5
ENVIRONMENT	CONTRIBUTION TO NEIGHBORHOOD		
	GREAT MODERATE MINOR OR NONE	☐ 20 ☒ 10 ☐ 0	10
NOTES			
BY RFS		DATE 5-11-79	CHECKED BY DATE

SUMMERVILLE PRESERVATION STUDY
WILBUR SMITH AND ASSOCIATES

Identification LDA

1. Number and street 14 RICHARDSON
2. Common building name 14 RICHARDSON
3. Present owner _____
4. Owner's (or agent's) address _____
5. Tenant(s) _____
6. Present use: Residential /, Social or recreational _____,
Educational _____, Administrative, professional, financial _____,
Mercantile _____, Industrial or manufacturing _____, Agricultural _____,
Communications _____, Transportation _____, National or state
government _____, County or city government _____, Military _____,
Medical care _____, Religious _____, Food service _____, Funerary _____,
Non-shelter _____, Other _____
7. Original use: Unknown _____, Same as present _____,
Other _____

Historic

1. Date of building _____, Factual source _____,
Estimated _____, Unknown _____.
Architect or builder _____, Unknown _____.
3. Original owner or tenant _____, Unknown _____.
4. Historic significance: None _____, Unknown _____.
Associated personage of historical importance
Local _____, State _____, National _____.
Name _____
Associated event of historical importance
Local _____, State _____, National _____.
Name _____
Other _____
5. Site of building: Unknown _____, Original _____, Moved _____.
Other _____

Page 1 of 3

Description

1. Plot area: Frontage __, Unknown __. Depth __, Unknown __.
2. Building area: Width __, Unknown __. Depth __, Unknown __.
3. Basement or foundation wall material: Unknown __, masonry piers- brick __ or concrete block __; brick /, stucco __, concrete block __, concrete __, other _____
4. Exterior wall material: Wood /, brick __, stucco __, stone __, other _____
5. Construction: Wood frame /, masonry bearing walls __, other _____
6. Roof material: Composition shingles /, wood shingles __, metal __, slate __, tar and gravel __, other _____
7. Colour scheme: Walls LT GREEN, roof RED, door(s) BLACK, windows LT GREEN, trim LT GREEN, shutters _____, other _____
8. Apparent alterations and additions: None __, walls __, windows __, doors __, roof __, chimney __, porch-added __, porch-enclosed __, stairs __, storey __, room(s) __, wing(s) __, other _____
9. Condition of building:

	Good	Fair	Poor
Walls	<u>/</u>	_____	_____
Windows	<u>/</u>	_____	_____
Door(s)	<u>/</u>	_____	_____
Roof	_____	<u>/</u>	_____
Chimney(s)	_____	_____	_____
Porch(s)	<u>/</u>	_____	_____
Stairs	<u>/</u>	_____	_____
Other _____	_____	_____	_____

Page 2 of 3

10. Property features: Garage___, coach house___, stable___,
tool shed___, kitchen___, office___, fence___, wall___,
garden feature___,
other_____
11. Present status: Inhabitated___/___, abandoned___,
other_____
12. Surroundings and threat:
Isolated: Secure___, threatened___, unknown___.
Part of compatible group: Secure___/___, threatened___,
unknown___.
Part of hostile group: Secure___, threatened___,
unknown___.
13. Comments and observations:



1043

1044



1044

1045

210 W. RICHARDSON AVE.
#2 NOTABLE

		NUMBER AND STREET NAME	BUILDING EVALUATION SHEET 210 W. Richardson	
HISTORY	HISTORIC SIGNIFICANCE			
	NATIONAL STATE COMMUNITY UNKNOWN NONE	☐ ☐ ☒ ☐ ☐	30 20 15 5 0	15
ARCHITECTURE	ARCHITECTURAL MERIT			
	EXCELLENT GOOD FAIR OR NONE	☐ ☒ ☐	30 15 0	15
	INCIDENCE IN COMMUNITY			
	UNIQUE UNUSUAL SOME COMMON	☐ ☒ ☐ ☐	10 7 3 0	7
	AMOUNT OF ALTERATION AND/OR ADDITION(S)			
NONE OR MINOR MODERATE EXTENSIVE OR COMPLETE	☒ ☐ ☐	5 3 0	5	
	QUALITY OF ALTERATION AND/OR ADDITION(S)			
	EXCELLENT (OR NONE) GOOD FAIR OR POOR	☒ ☐ ☐	5 3 0	5
ENVIRONMENT	CONTRIBUTION TO NEIGHBORHOOD			
	GREAT MODERATE MINOR OR NONE	☒ ☐ ☐	20 10 0	20
NOTES				
BY RPS		DATE 5-11-79	CHECKED BY	DATE

SUMMERVILLE PRESERVATION STUDY
WILBUR SMITH AND ASSOCIATES

Identification LDA

1. Number and street 210 W RICHARDSON
2. Common building name _____
3. Present owner _____
4. Owner's (or agent's) address _____
5. Tenant(s) _____
6. Present use: Residential /, Social or recreational _____,
Educational _____, Administrative, professional, financial _____,
Mercantile _____, Industrial or manufacturing _____, Agricultural _____,
Communications _____, Transportation _____, National or state
government _____, County or city government _____, Military _____,
Medical care _____, Religious _____, Food service _____, Funerary _____,
Non-shelter _____, Other _____
7. Original use: Unknown _____, Same as present /,
Other _____

Historic

1. Date of building _____, Factual source _____,
Estimated _____, Unknown _____.
Architect or builder _____, Unknown _____
3. Original owner or tenant _____, Unknown _____
4. Historic significance: None _____, Unknown _____.
Associated personage of historical importance
Local _____, State _____, National _____.
Name _____
Associated event of historical importance
Local _____, State _____, National _____.
Name _____
Other _____
5. Site of building: Unknown _____, Original _____, Moved _____.
Other _____

Description

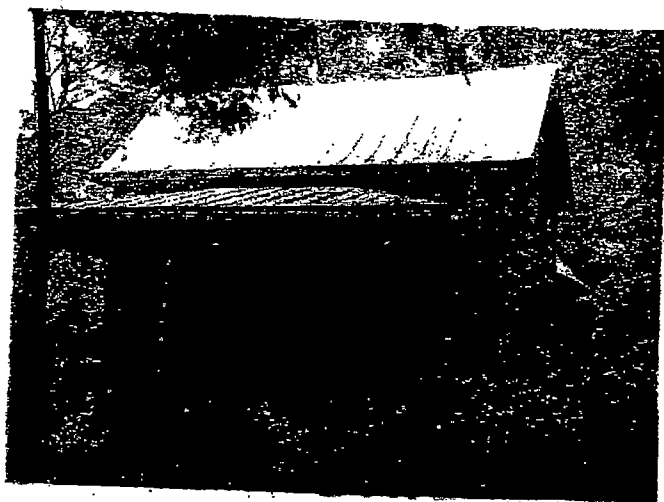
1. Plot area: Frontage __, Unknown __. Depth __, Unknown __.
2. Building area: Width __, Unknown __. Depth __, Unknown __.
3. Basement or foundation wall material: Unknown __, masonry piers- brick __ or concrete block __; brick /, stucco __, concrete block __, concrete __, other _____
4. Exterior wall material: Wood /, brick __, stucco __, stone __, other _____
5. Construction: Wood frame /, masonry bearing walls __, other _____
6. Roof material: Composition shingles __, wood shingles __, metal /, slate __, tar and gravel __, other _____
7. Colour scheme: Walls LT GREEN, roof GREY, door(s) DK GREEN, windows DK GREEN, trim SAND, shutters DK GREEN, other _____
8. Apparent alterations and additions: None __, walls __, windows __, doors __, roof __, chimney __, porch-added __, porch-enclosed __, stairs __, storey __, room(s) __, wing(s) __, other _____
9. Condition of building:

	Good	Fair	Poor
Walls	<u>/</u>	—	—
Windows	<u>/</u>	—	—
Door(s)	—	<u>/</u>	—
Roof	—	—	<u>/</u>
Chimney(s)	—	—	—
Porch(s)	—	<u>/</u>	—
Stairs	—	<u>/</u>	—
Other _____	—	—	—

Page 2 of 3

10. Property features: Garage___, coach-house___, stable___,
tool shed___, kitchen___, office___, fence___/___, wall___,
garden feature___,
other_____
11. Present status: Inhabitated___/___, abandoned___,
other_____
12. Surroundings and threat:
Isolated: Secure___, threatened___, unknown___.
Part of compatible group: Secure___/___, threatened___,
unknown___.
Part of hostile group: Secure___, threatened___,
unknown___.
13. Comments and observations:

Page 3 of 3



210 W. Richardson - Unit 5
demo point moved 7/31/12

213 W. 2ND S. ST.
4 SUPPORTIVE

1051

1052

NUMBER AND STREET		BUILDING EVALUATION SHEET			
NAME		213 W. 2ND South St.			
HISTORY	HISTORIC SIGNIFICANCE				
	NATIONAL STATE COMMUNITY UNKNOWN NONE	☐ ☐ ☐ ☐ ☒	30 20 15 5 0		0
ARCHITECTURE	ARCHITECTURAL MERIT				
	EXCELLENT GOOD FAIR OR NONE	☐ ☐ ☒	30 15 0		0
	INCIDENCE IN COMMUNITY				
	UNIQUE UNUSUAL SOME COMMON	☐ ☐ ☐ ☒	10 7 3 0		0
	AMOUNT OF ALTERATION AND/OR ADDITION(S)				
NONE OR MINOR MODERATE EXTENSIVE OR COMPLETE	☒ ☐ ☐	5 3 0		5	
	QUALITY OF ALTERATION AND/OR ADDITION(S)				
	EXCELLENT (OR NONE) GOOD FAIR OR POOR	☒ ☐ ☐	5 3 0	5	10
ENVIRONMENT	CONTRIBUTION TO NEIGHBORHOOD				
	GREAT MODERATE MINOR OR NONE	☐ ☒ ☐	20 10 0	10	10
NOTES					

BY

RFS

DATE

7-26-79

CHECKED BY

DATE

Roll 6-9

SUMMERVILLE PRESERVATION STUDY
WILBUR SMITH AND ASSOCIATES

Identification LDA

1. Number and street 213 W 2ND South
2. Common building name (Lumber Shop) (1920-)
3. Present owner _____
4. Owner's (or agent's) address _____
5. Tenant(s) _____
6. Present use: Residential ☒, Social or recreational _____,
Educational _____, Administrative, professional, financial _____,
Mercantile _____, Industrial or manufacturing _____, Agricultural _____,
Communications _____, Transportation _____, National or state
government _____, County or city government _____, Military _____,
Medical care _____, Religious _____, Food service _____, Funerary _____,
Non-shelter _____, Other _____
7. Original use: Unknown _____, Same as present ☒,
Other _____

Historic

1. Date of building _____, Factual source _____,
Estimated _____, Unknown _____.
Architect or builder _____, Unknown _____
3. Original owner or tenant _____, Unknown _____
4. Historic significance: None _____, Unknown _____
Associated personage of historical importance
Local _____, State _____, National _____
Name _____
Associated event of historical importance
Local _____, State _____, National _____
Name _____
Other _____
5. Site of building: Unknown _____, Original _____, Moved _____
Other _____

Page 1 of 3

Description

1. Plot area: Frontage___, Unknown___, Depth___, Unknown___.
2. Building area: Width___, Unknown___, Depth___, Unknown___.
3. Basement or foundation wall material: Unknown___, masonry piers- brick___ or concrete block___; Brick ☒, stucco___, concrete block___, concrete___, other_____
4. Exterior wall material: Wood ☒, brick___, stucco___, stone___, other_____
5. Construction: Wood frame ☒, masonry bearing walls___, other_____
6. Roof material: Composition shingles ☒, wood shingles___, metal___, slate___, tar and gravel___, other_____
7. Colour scheme: Walls Lt GREEN, roof GREY, door(s) GREEN / BLACK, windows DK GREEN, trim DK GREEN, shutters_____, other_____
8. Apparent alterations and additions: None___, walls___, windows___, doors___, roof___, chimney___, porch-added___, porch-enclosed___, stairs___, storey___, room(s)___, wing(s)___, other_____
9. Condition of building:

	Good	Fair	Poor
Walls	☒	___	___
Windows	☒	___	___
Door(s)	☒	___	___
Roof	☒	___	___
Chimney(s)	☒	___	___
Porch(s)	☒	___	___
Stairs	☒	___	___
Other_____	___	___	___

Page 2 of 3

10. Property features: Garage___, coach house___, stable___,
tool shed___, kitchen___, office___, fence___, wall___,
garden feature___,
other_____
11. Present status: Inhabitated___, abandoned___,
other_____
12. Surroundings and threat:
Isolated: Secure___, threatened___, unknown___,
Part of compatible group: Secure___, threatened___,
unknown___.
Part of hostile group: Secure___, threatened___,
unknown___.
13. Comments and observations:

Page 3 of 3.

Identification

1. Number and street _____
2. Common building name _____
3. Present owner _____
4. Owner's (or agent's) address _____
5. Tenant(s) _____
6. Present use:
Residential _____, Social or recreational _____, Educational _____
Exhibition, audition and spectacle _____, Administrative, professional
financial _____, Mercantile _____
Industrial or manufacturing _____, Agricultural _____
Communications _____, Transportation _____
National or state governmental _____, County or city
governmental _____, Military _____, Medical care _____, Religious _____
Food Service _____, Funerary _____, Non-shelter _____, Other _____
7. Original use: Unknown _____, Same as present _____
Other _____

Historic

1. Date of building _____, Factual source _____,
Estimated _____, Unknown _____.
2. Architect or builder _____, Unknown _____.
3. Original owner or tenant _____, Unknown _____.
4. Historical significance
None _____, Unknown _____.

Associated personage of historical importance

Local _____, State _____, National _____.

Name _____

Associated event of historical importance

Local _____, State _____, National _____.

Name _____

Other _____

5. Site of building: Unknown _____, Original _____,
Moved _____, Other _____

Description

1. Plot area: Frontage _____, Unknown _____.
Depth _____, Unknown _____.
2. Building area: Width _____, Unknown _____.
Depth _____, Unknown _____.
3. Basement or foundation wall material:
Unknown _____, masonry piers _____, brick ☒,
stucco _____, concrete block _____, concrete _____, other _____.
4. Exterior wall material:
Wood ☒, brick _____, stucco _____, stone _____, other _____.
5. Construction:
Wood frame _____, masonry bearing walls _____, other _____.
6. Roof material:
Composition shingles ☒, wood shingles _____, metal _____,
slate _____, tar and gravel _____, other _____.
7. Color scheme:
Walls light green, roof gray,
door(s) dark green, windows dark green,
trim dark green, shutters _____,
other _____.
8. Apparent alterations and additions
None _____, walls _____, windows _____, doors _____,
roof _____, chimney(s) _____, porch(es) _____, stair(s) _____,
storey added _____, other _____.

9. Condition of building:

	Good	Fair	Poor
Walls	☒	☐	☐
Windows	☒	☐	☐
Door(s)	☒	☐	☐
Roof	☒	☐	☐
Chimney(s)	☒	☐	☐
Porch(es)	☒	☐	☐
Stairs	☒	☐	☐
Other	☐	☐	☐

10. Property features

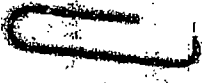
Garage _____, coach house _____, stable _____,
 kitchen _____, office _____, fence ☒, garden feature _____,
 other Shed.

11. Present status: Inhabited _____, abandoned _____,
 other _____.

12. Surroundings and threat:

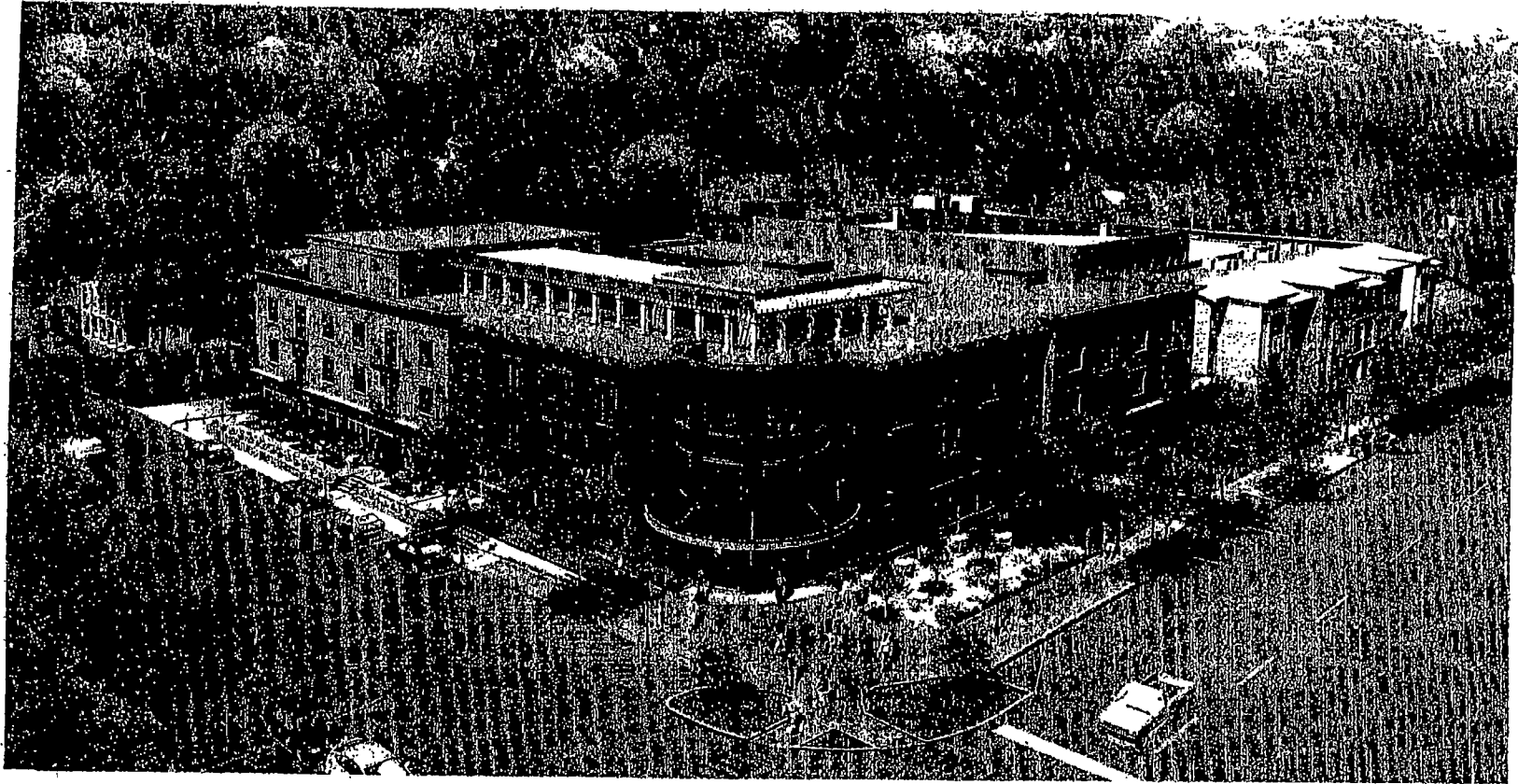
Isolated: Secure _____, threatened _____, unknown _____
 Part of compatible group: Secure ☒, threatened _____,
 unknown _____.
 Part of hostile group: Secure _____, threatened _____,
 unknown _____.

213 W. 2ND S
4 SUPPORT



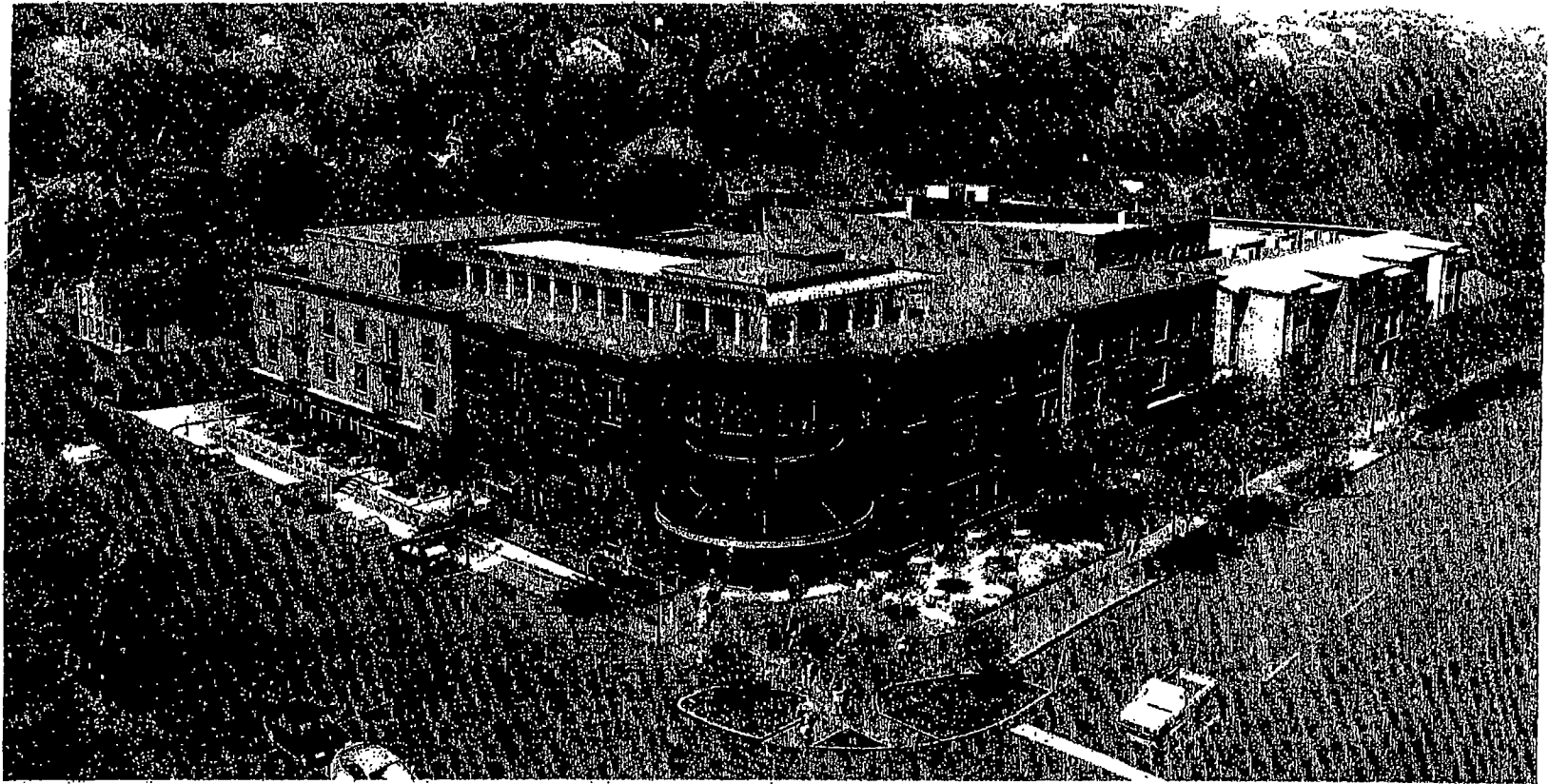
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Final B.A.R. Submittal

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April 6, 2015



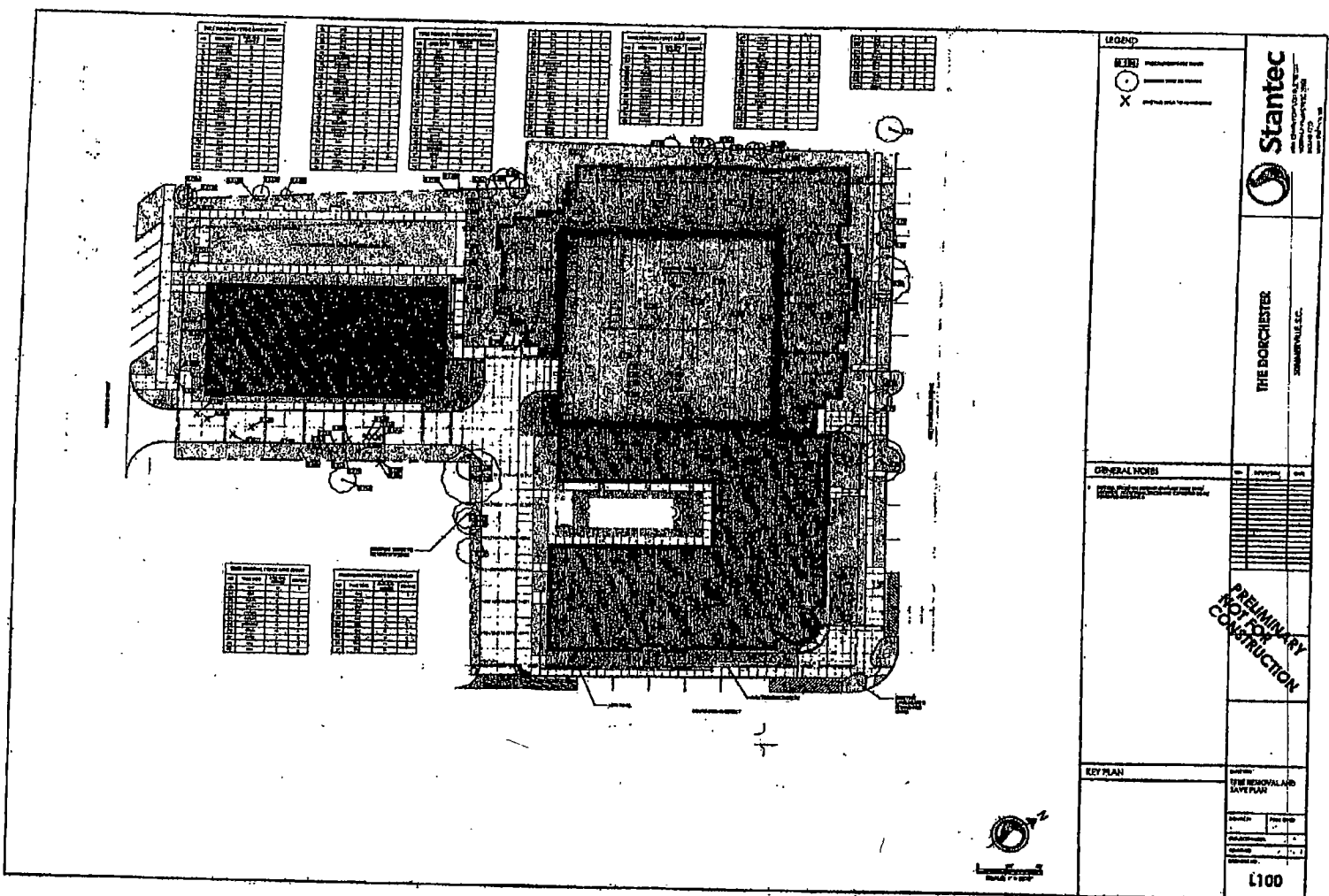
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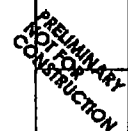
Final B.A.R. Submittal

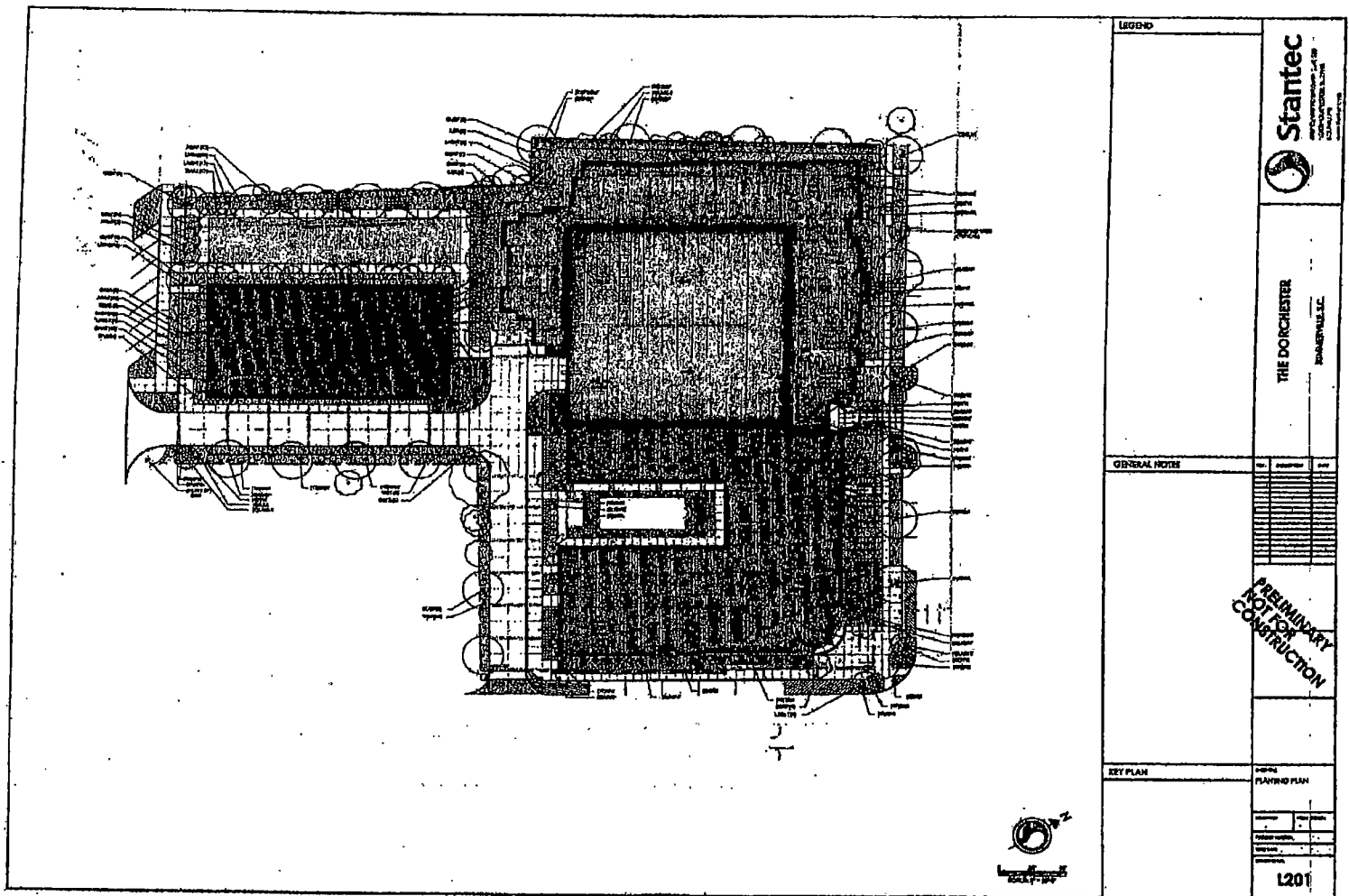
APPLEGATE & CO.
Goff & D'Antonio Associates
April 6, 2016

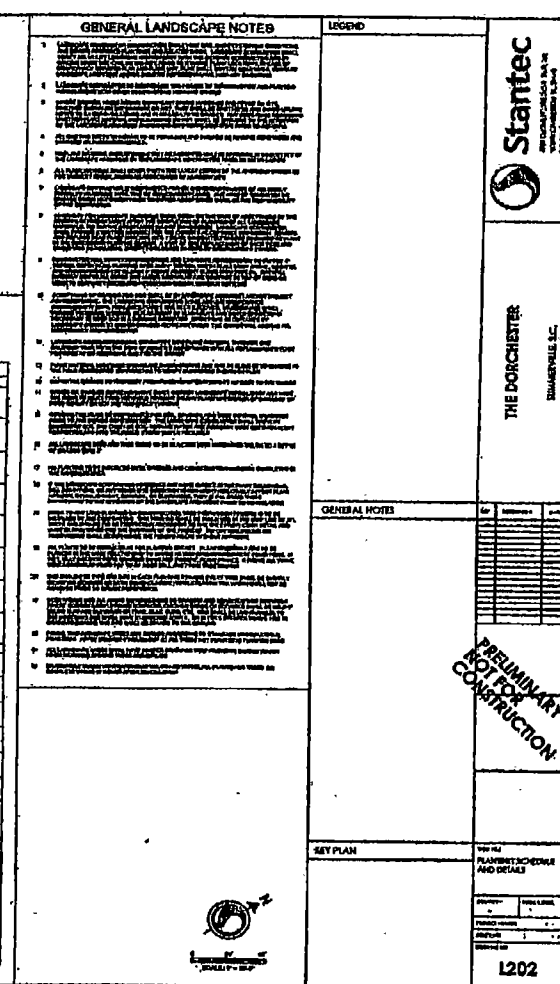


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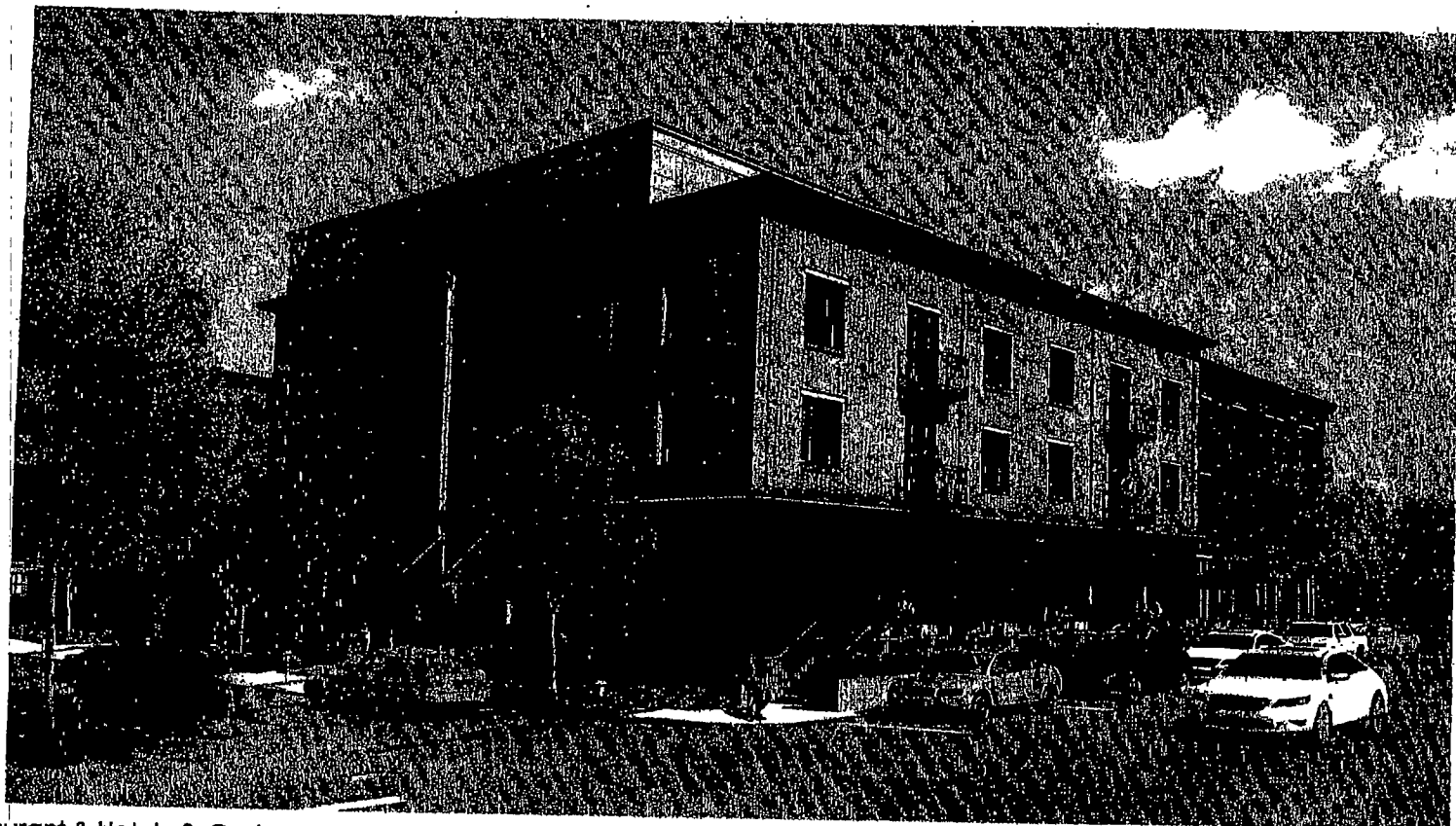






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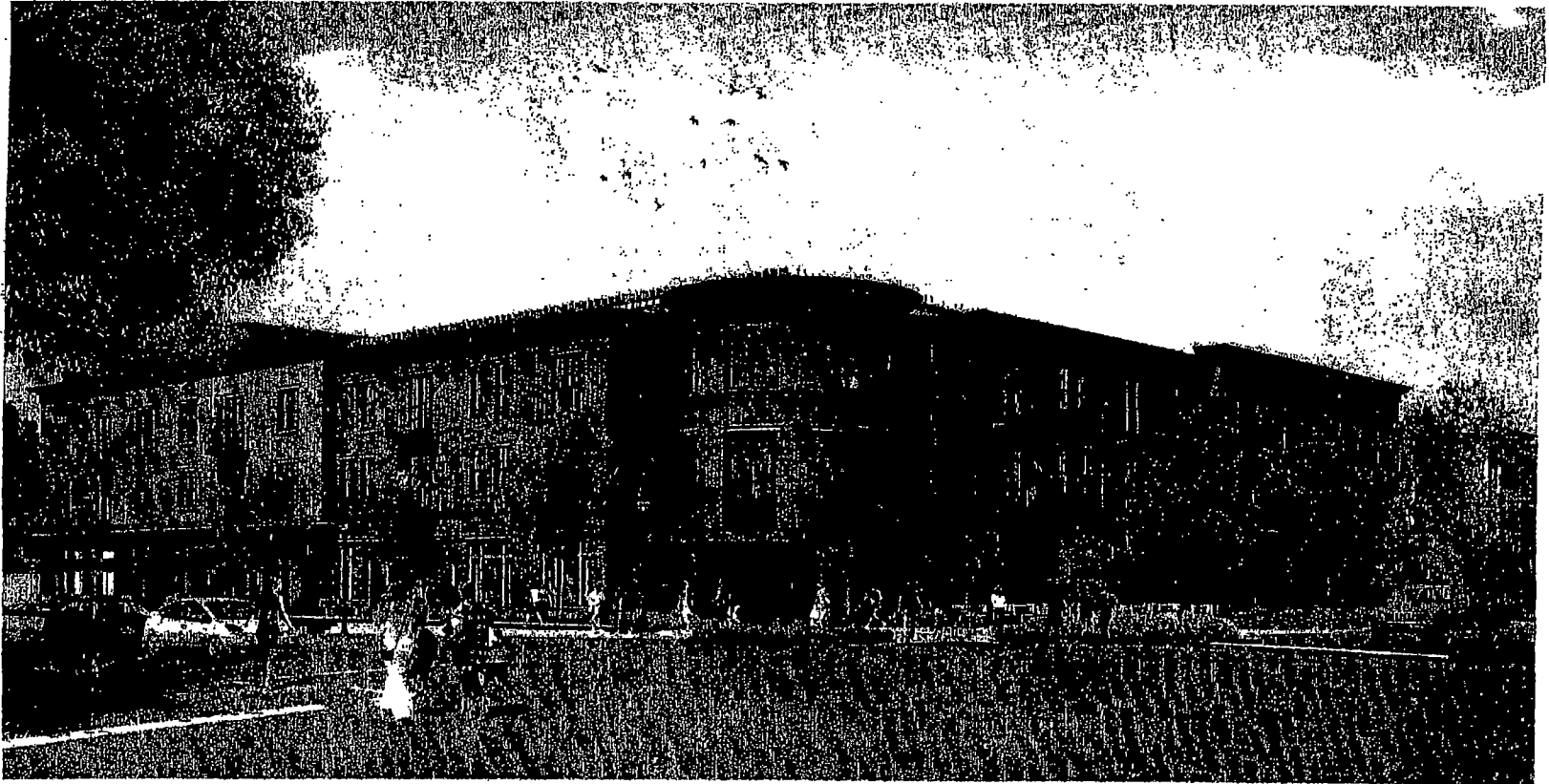
Restaurant & Hotel - S. Cedar St.


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April 4, 2016

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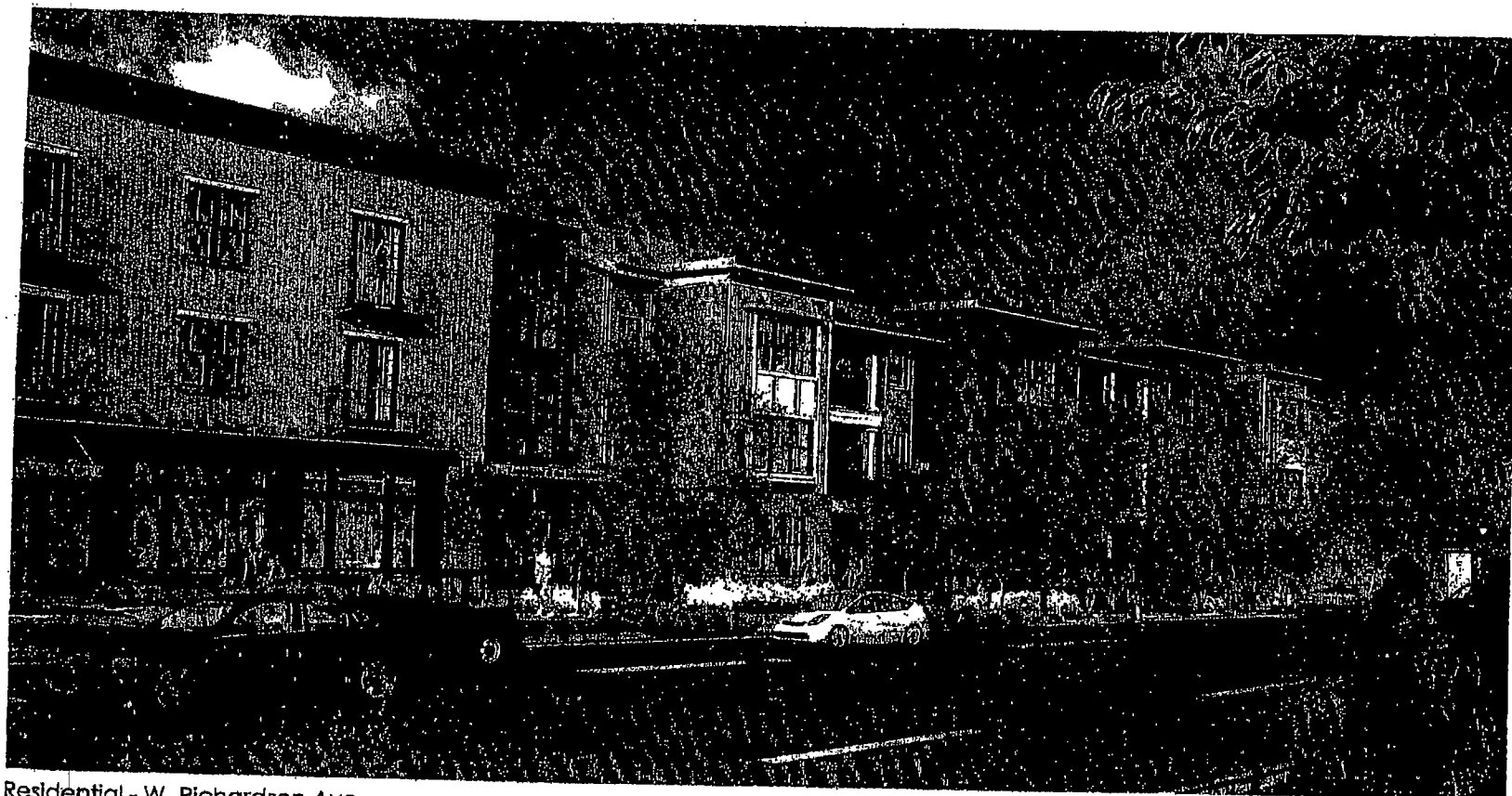
Hotel Entry - S. Cedar St. & W. Richardson Ave.


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1070

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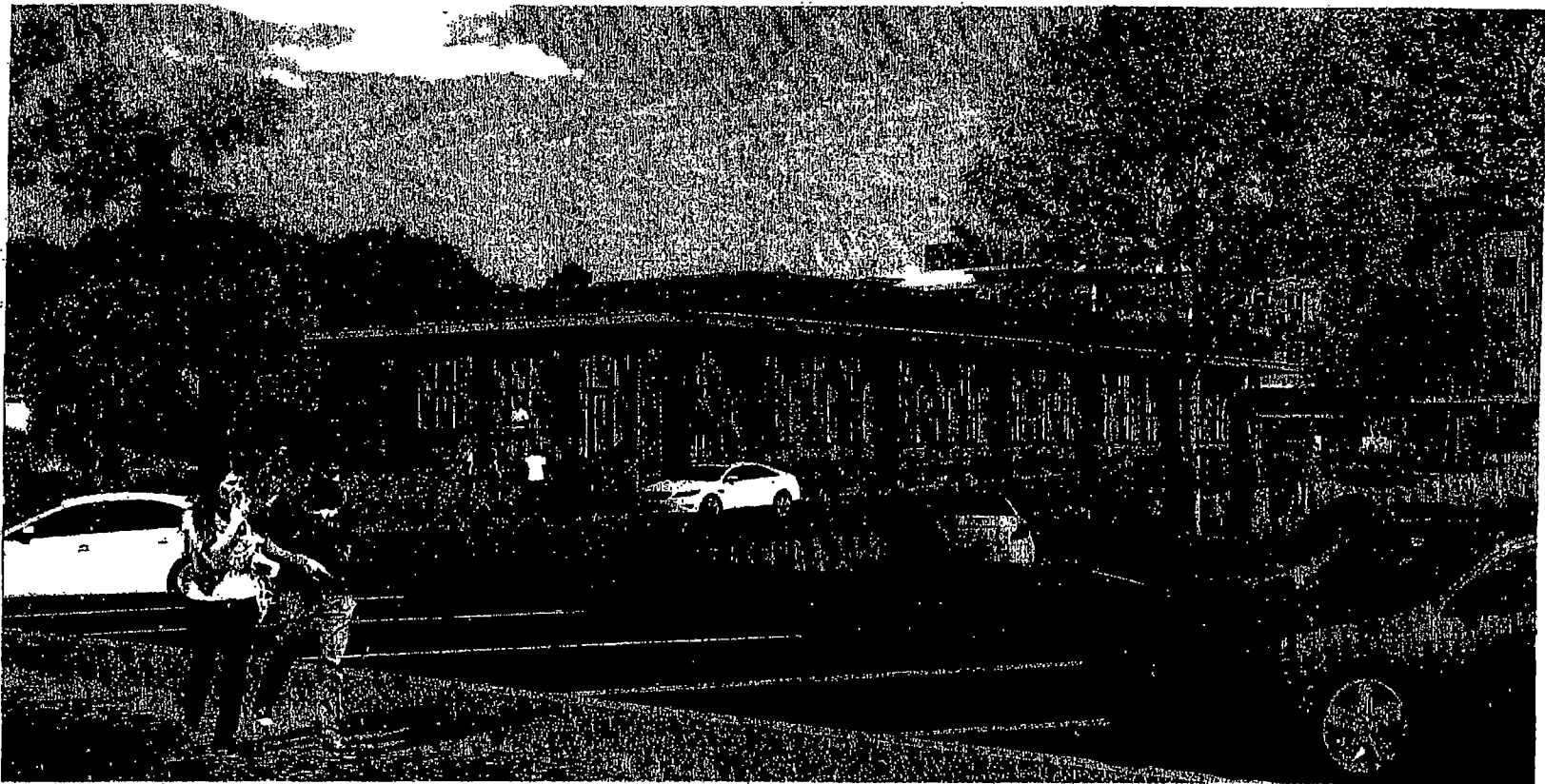
Residential - W. Richardson Ave.



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April 6, 2015

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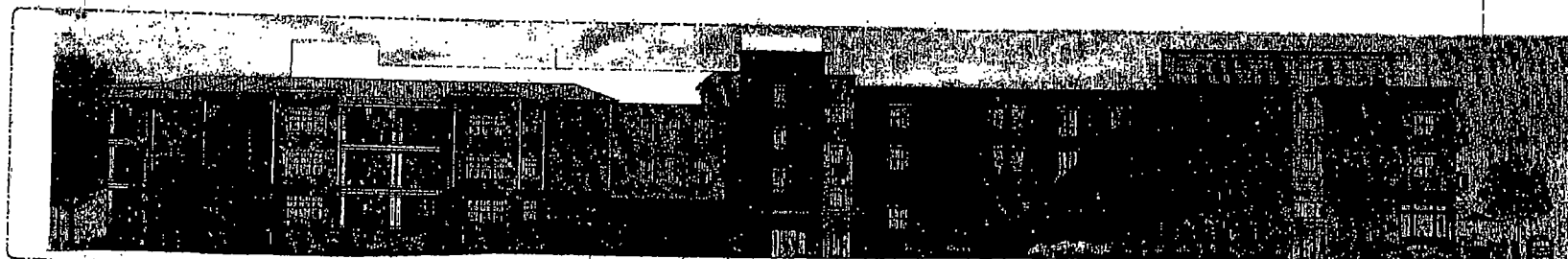
1070



Conference Center - W. 2nd South St.



East Elevation (W. Richardson Ave.) - Overall
NOT TO SCALE



West Elevation - Overall
NOT TO SCALE



MATERIAL LEGEND: Brick Color 1: New Orleans' Queen (Sand)
Brick Color 2: Lowcountry Blend (Palmello)
Caststone Unit Color Bone White, Smooth Finish
Fiber Cement Color 1: Hardie Light Mist
Fiber Cement Color 2: Hardie Tan Gray
Fiber Cement Color 3: Hardie Arctic White
Fiber Cement Color 4: Hardie Reattered Moss

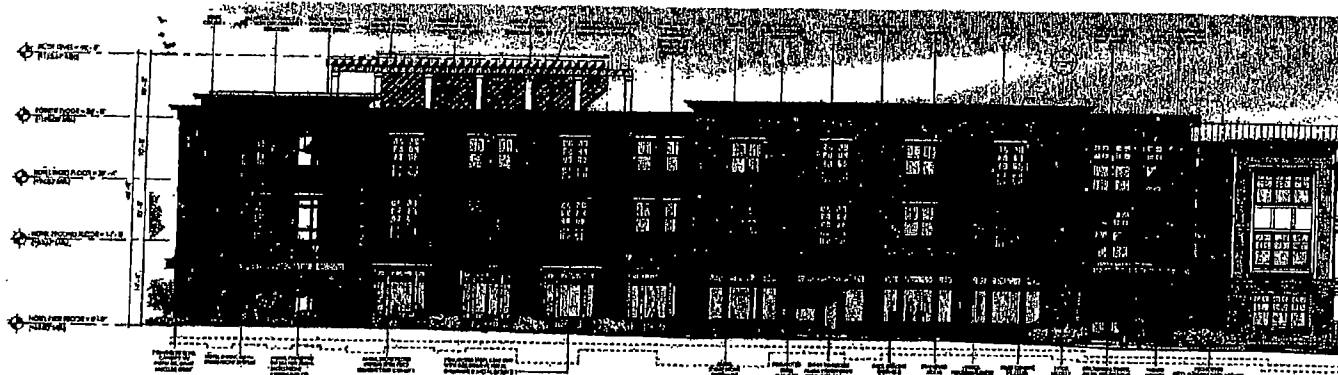
Metal Canice Color 1 (Hotel): Forest Green
Metal Canice Color 2 (Hotel): Forest Green
Metal Canice Color 3 (Rooftop): Regal White
Metal Canice Color 4 (Hotel): Forest Green
Alum. Shutter Color (Hotel) Conf: Dark Bronze
Alum. Grid Window Color (Hotel): Dark Bronze
Vinyl Window Color (Residential): White

Rolling 1 (Hotel) Color: Statuary Bronze
Rolling 2 (Residential) Color: White
Rolling 3 (Conference) Color: Statuary Bronze
Standing Sebra Metal Roof Color: Dark Gray
Steel Channel Canopy Color: Slate Gray
Alum. Truss (Rooftop) Color: To match Light Gray
Alum. Truss (Conference) Color: match Dark Bronze

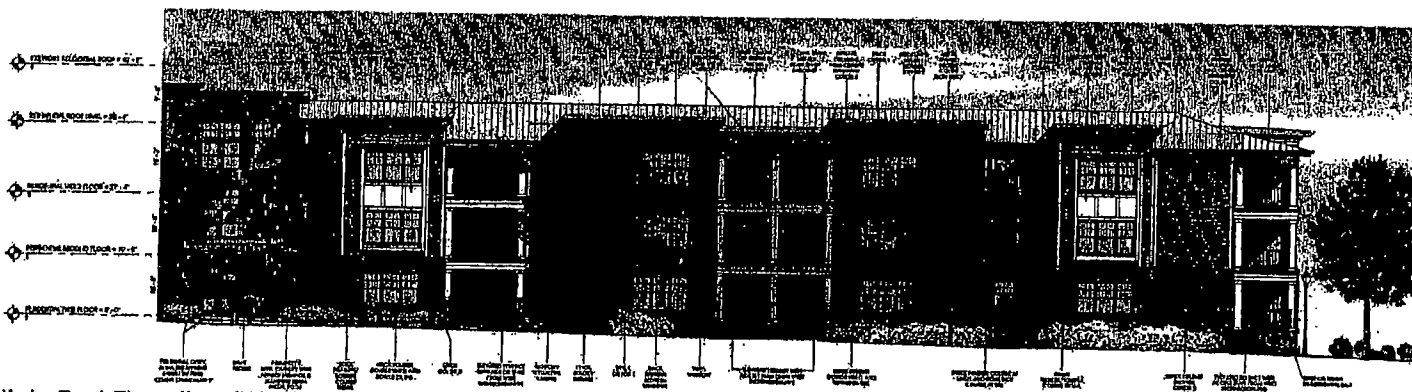
APPLGATE & CO.
Garofalo Associates
April 6, 2015

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Hotel - East Elevation (W. Richardson Ave.)
SCALE: 1/16" = 1'-0"



Residential - East Elevation (W. Richardson Ave.)
SCALE: 1/16" = 1'-0"

MATERIAL LEGEND:

Brick Color 1: New Orleans Queen (Sora)
Brick Color 2: Lowcountry Blend (Palmetto)
Caststone Color: Bone White, Smooth Finish
Fiber Cement Color 1: Hardie Light Mist
Fiber Cement Color 2: Hardie Iron Grey
Fiber Cement Color 3: Hardie Arctic White
Fiber Cement Color 4: Hardie Reclaimed Moss

Metal Cornice Color 1 (Hotel): Forest Green
Metal Cornice Color 2 (Hotel): Forest Green
Metal Cornice Color 3 (Residential): Regal White
Metal Cornice Color 4 (Hotel): Forest Green
Alum. Clad Window Color (Hotel): Dark Bronze
Vinyl Window Color (Residential): White

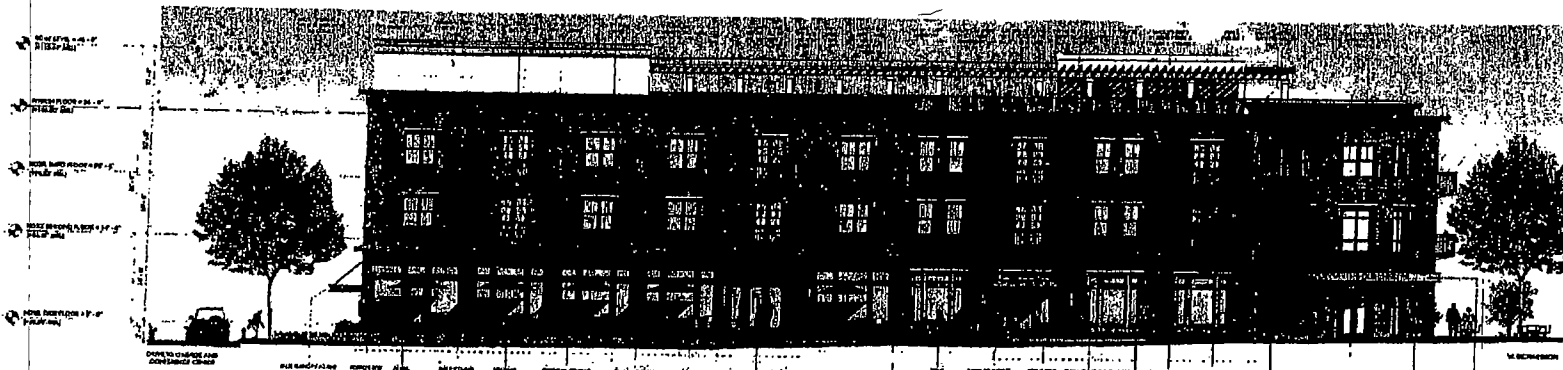
Railing 3 (Hotel) Color: Slatery Bronze
Railing 2 (Residential) Color: White
Railing 1 (Confidence) Color: Slatery Bronze
Standing Seam Metal Roof Color: Dove Gray
Steel Channel Canopy Color: Slate Gray
Alum. Truss (Residential) Color: To match Light Alum
Alum. Truss (Confidence) Color: match Dark Bronze



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Goff & Antonio Associates
April 6, 2015

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Hotel - South Elevation (S. Cedar St.)
SCALE: 1/16" = 1'-0"



Residential - North Elevation
SCALE: 1/16" = 1'-0"



MATERIAL LEGEND:
Brick Color 1: New Orleans/Guion (Borel)
Brick Color 2: Lowcountry Blend (Palmistia)
Caststone Unit Color: Bone White, Smooth Finish
Fiber Cement Color 1: Hardie Light Mist
Fiber Cement Color 2: Hardie Iron Grey
Fiber Cement Color 3: Hardie Africa White
Fiber Cement Color 4: Hardie Heathered Moss

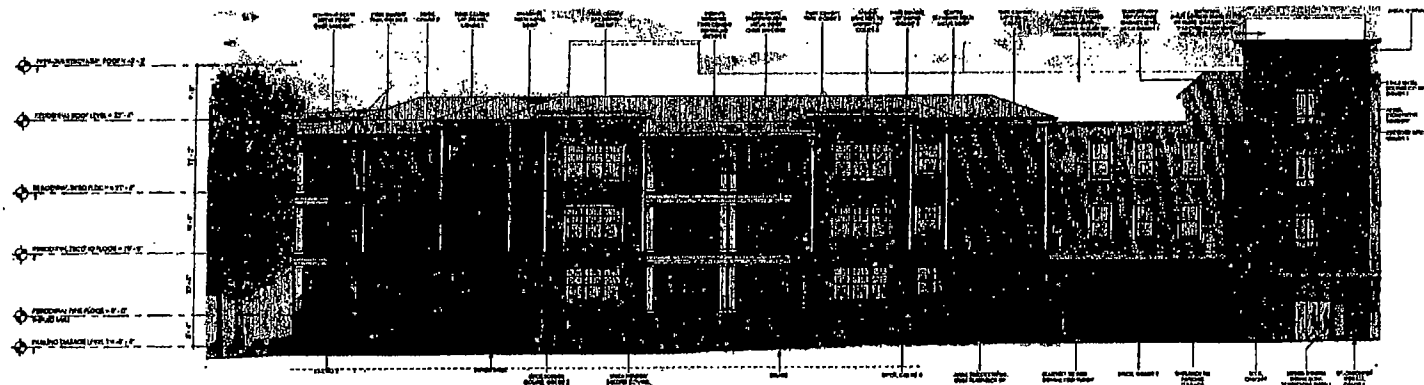
Metal Cornice Color 1 (Hotel): Forest Green
Metal Cornice Color 2 (Hotel): Forest Green
Metal Cornice Color 3 (Hotel): Royal White
Metal Cornice Color 4 (Hotel): Forest Green
Alum. Storefront Color (Hotel): Dark Bronze
Alum. Clad Window Color (Hotel): Dark Bronze
Vinyl Window Color (Residential): White

Railing 1 (Hotel): Color Statuary Bronze
Railing 2 (Residential): Color White
Railing 3 (Conference): Color Statuary Bronze
Standing 34mm Metal Roof Color: Dark Grey
Steel Chimney Canopy Color: Slate Grey
Alum. Truss (Rooftop) Color: To match Light Mist
Alum. Truss (Conference) Color: match Dark Bronze

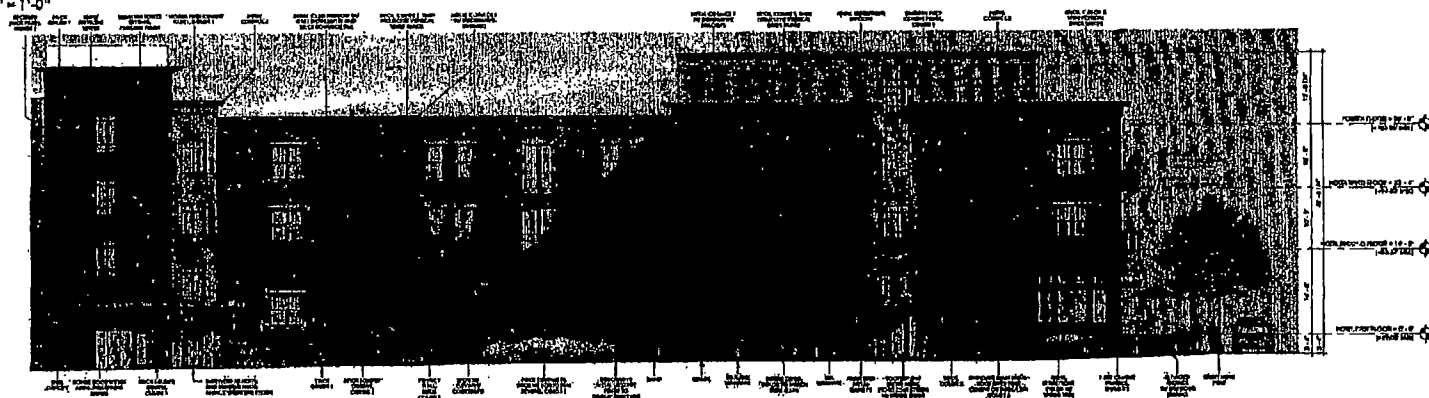
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Goff/D'Antonio Associates
April 6, 2015

1075

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Residential - West Elevation
SCALE: 1/16" = 1'-0"



Hotel - West Elevation
SCALE: 1/16" = 1'-0"

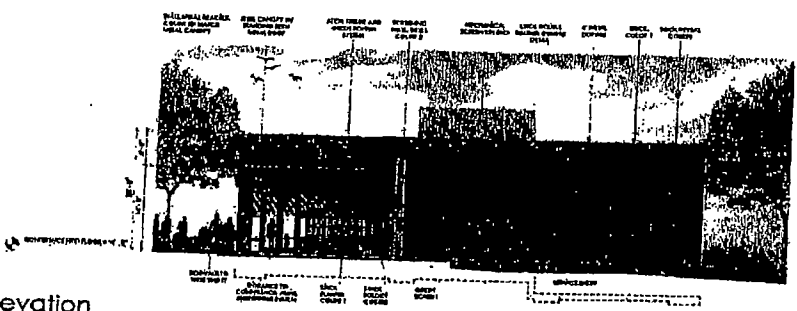
MATERIAL LEGEND:
Brick Color 1: New Orleans Queen (Basil)
Brick Color 2: Lowcountry Blend (Palmetto)
Cushions: Light Color: Bone White, Medium: Blush
Fiber Cement Color 1: Hardie Light Mist
Fiber Cement Color 2: Hardie Iron Gray
Fiber Cement Color 3: Hardie Arctic White
Fiber Cement Color 4: Rustle Heathered Moss

Metals: Cornice Color 1 (Hotel): Forest Green
Metals: Cornice Color 2 (Hotel): Forest Green
Metals: Cornice Color 3 (Residential): Regal White
Metals: Cornice Color 4 (Hotel): Forest Green
Alum. Staircase Color (Hotel/ Conf.): Dark Bronze
Alum. Glass Window Color (Hotel): Dark Bronze
Vinyl Window Color (Residential): White

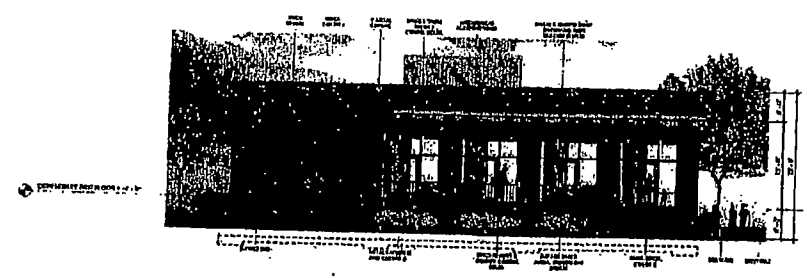
Railing 1 (Hotel) Color: Statuary Bronze
Railing 2 (Residential) Color: White
Railing 3 (Conference) Color: Statuary Bronze
Standing Room (Metal Roof Color): Olive Gray
Steel Channel Canopy Color: Slate Grey
Alum. Trellis (Rooftop) Color: To match Light Mist
Alum. Trellis (Conference) Color: To match Dark Bronze



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Gift/D'Antonio Associates
April 6, 2015



Conference Center - East Elevation
SCALE: 1/16" = 1'-0"



Conference Center - West Elevation (W. 2nd South St.)
SCALE: 1/16" = 1'-0"

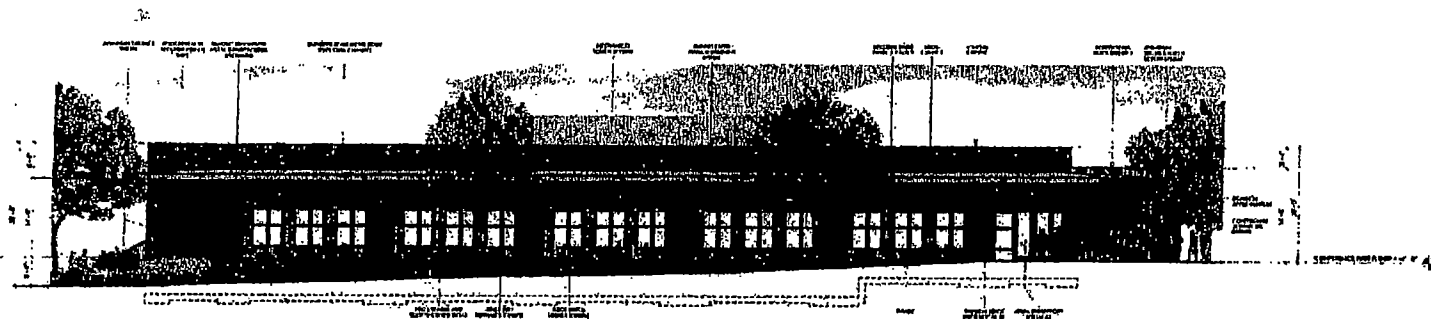


MATERIAL LEGEND:

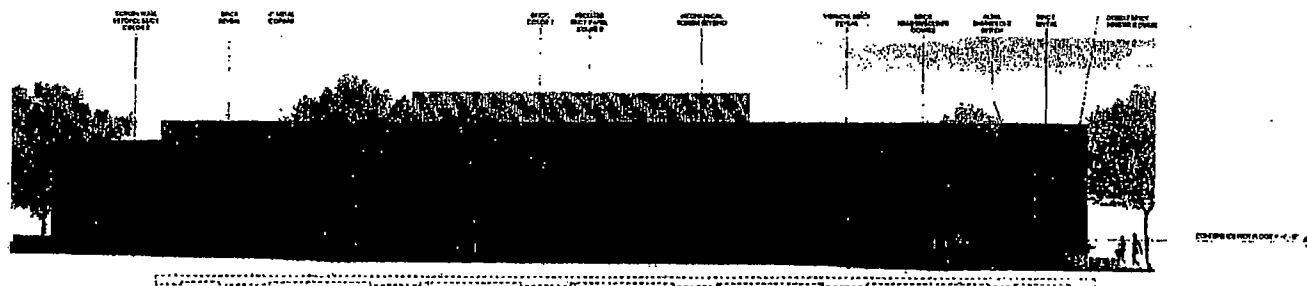
Brick Color 1: New Orleans Green (Sora)	Metal Cornice Color 1 (Hotel): Forest Green	Roofing 1 (Hotel) Color: Statuary Bronze
Brick Color 2: Lowcountry Blend (Palmello)	Metal Cornice Color 2 (Hotel): Forest Green	Roofing 2 (Residential) Color: White
Caststone Unit Color: Bone White, Antioch Finish	Metal Cornice Color 3 (Roofing): Regal White	Roofing 3 (Conference) Color: Statuary Bronze
Fiber Cement Color 1: Hardie Light Mist	Metal Cornice Color 4 (Hotel): Regal Green	Standing Seam Metal Roof Color: Dove Gray
Fiber Cement Color 2: Hardie Bon Gray	Alum. Storefront Color (Hotel): Cont. J: Dark Bronze	Steel Channel Canopy Color: Slate Gray
Fiber Cement Color 3: Hardie Antioch White	Alum. Glad Window Color (Hotel): Dark Night	Alum. Rails (Roofing) Color: To match Light Mist
Fiber Cement Color 4: Hardie Heathered Moss	Vinyl Window Color (Residential): White	Alum. Rails (Conference) Color: match Dark Bronze

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April 6, 2015

1076
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Conference Center - South Elevation (S. Cedar St.)
SCALE: 1/16" = 1'-0"



Conference Center - North Elevation
SCALE: 1/16" = 1'-0"

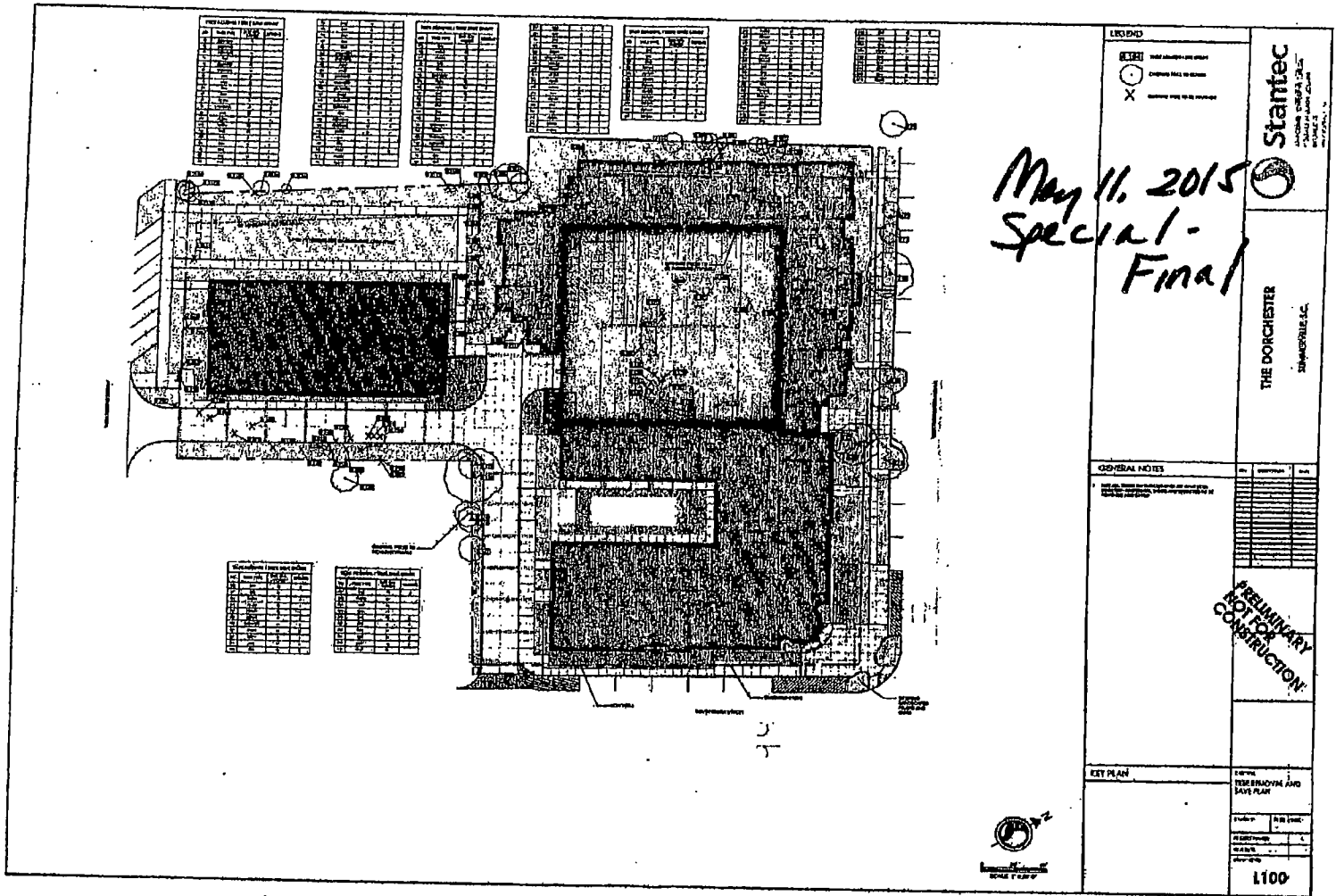


MATERIAL LEGEND:
Brick Color 1: New Orleans Queen (Bone)
Brick Color 2: Lowcountry Blend (Palmella)
Carlsberg Unit Color: Bone White, smooth finish
Fiber Cement Color 1: Hardie Light Mist
Fiber Cement Color 2: Hardie Iron Gray
Fiber Cement Color 3: Hardie Arctic White
Fiber Cement Color 4: Hardie Weathered Wood

Metal Composite Color 1 (Hotel): Forest Green
Metal Composite Color 2 (Hotel): Forest Green
Metal Composite Color 3 (Roof): Regal White
Metal Composite Color 4 (Hotel): Forest Green
Alum. Storefront Color (Hotel/Cont.): Dark Bronze
Alum. Grid Window Color (Hotel): Dark Bronze
Vinyl Window Color (Residential): White

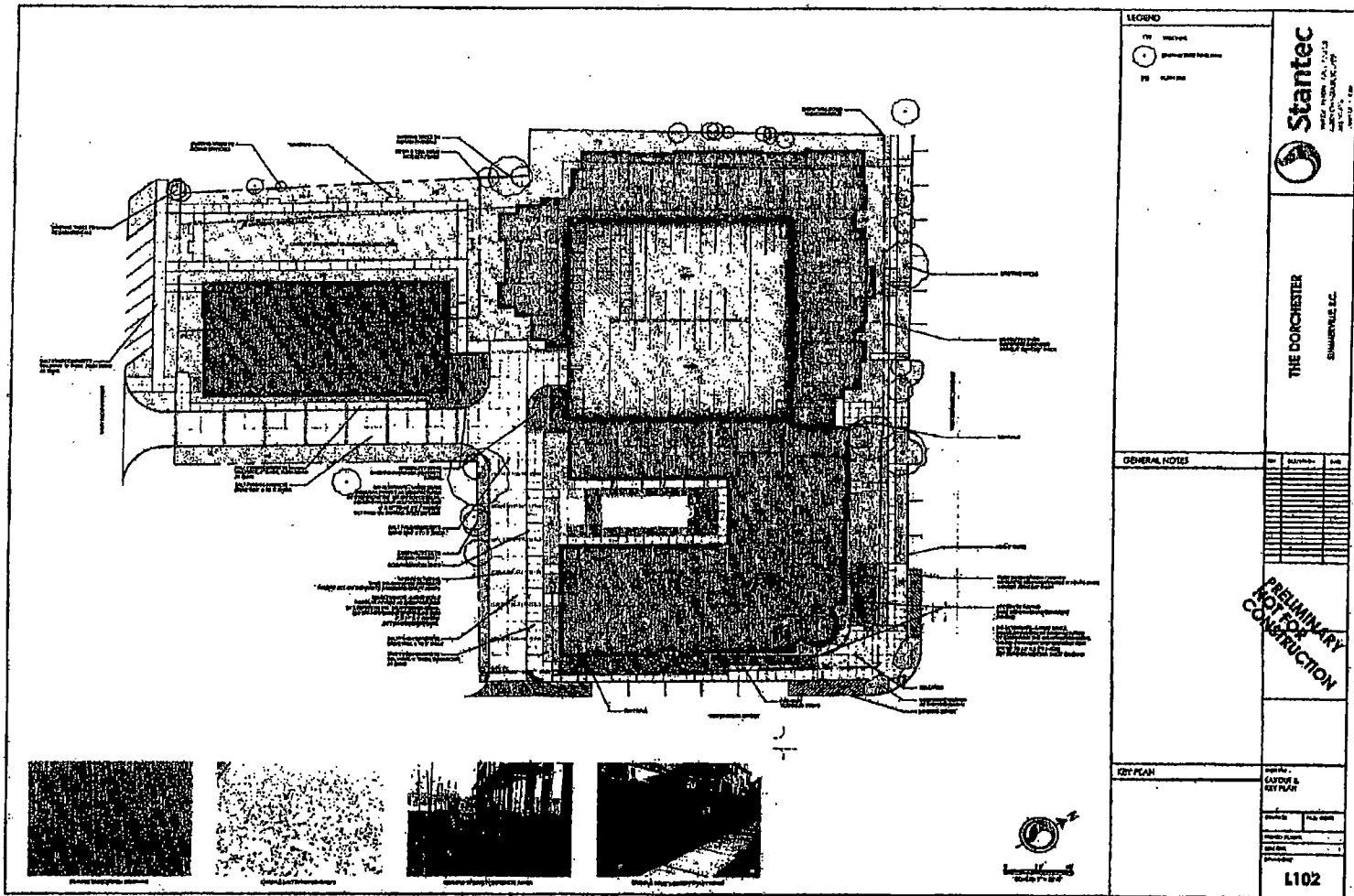
Roofing 1 (Hotel) Color: Statuary Bronze
Roofing 2 (Residential) Color: White
Roofing 3 (Conference) Color: Statuary Bronze
Sliding Beam Metal Roof Color: Dove Gray
Steel Channel Canopy Color: Slate Gray
Alum. Trim Color (Roof): To match Light Mist
Alum. Trim Color (Conference) Color: match Dark Bronze

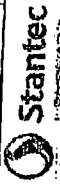
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stantec
ARCHITECTURAL
INTERIORS
1000 WEST 10TH AVENUE
SUITE 1000
DENVER, CO 80202
303.733.8000

THE DORCHESTER
SOMERSET, VT

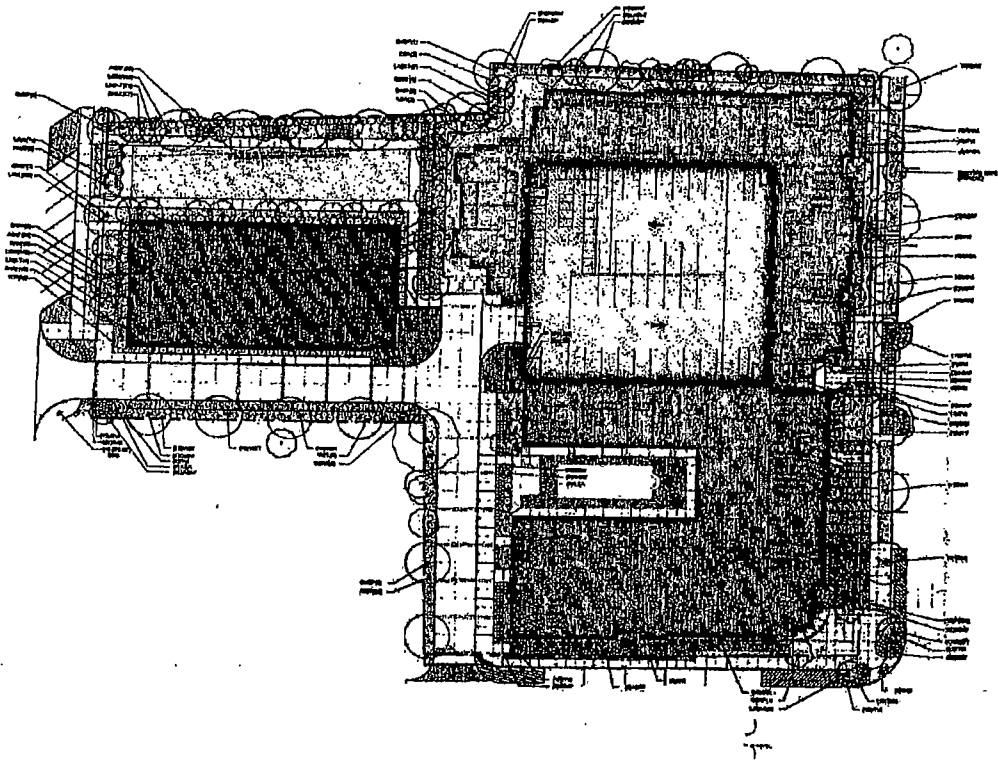
PRELIMINARY
NOT FOR
CONSTRUCTION

L201

1000-40

GENERAL NOTES

KEY PLAN

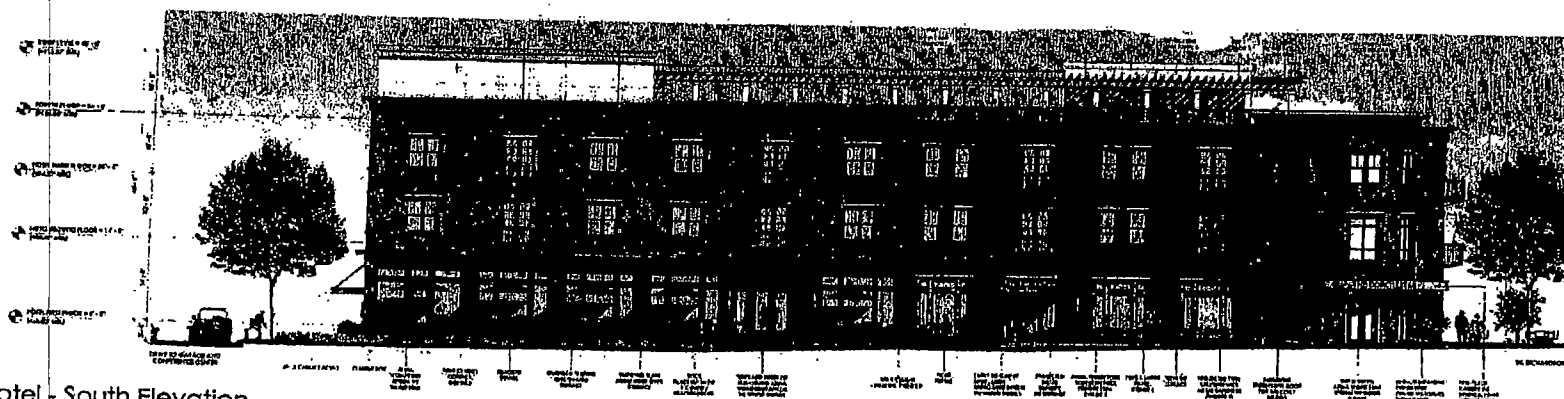


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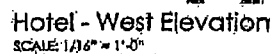


Hotel - South Elevation
SCALE: 1/16" = 1'-0"


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May 11, 2016

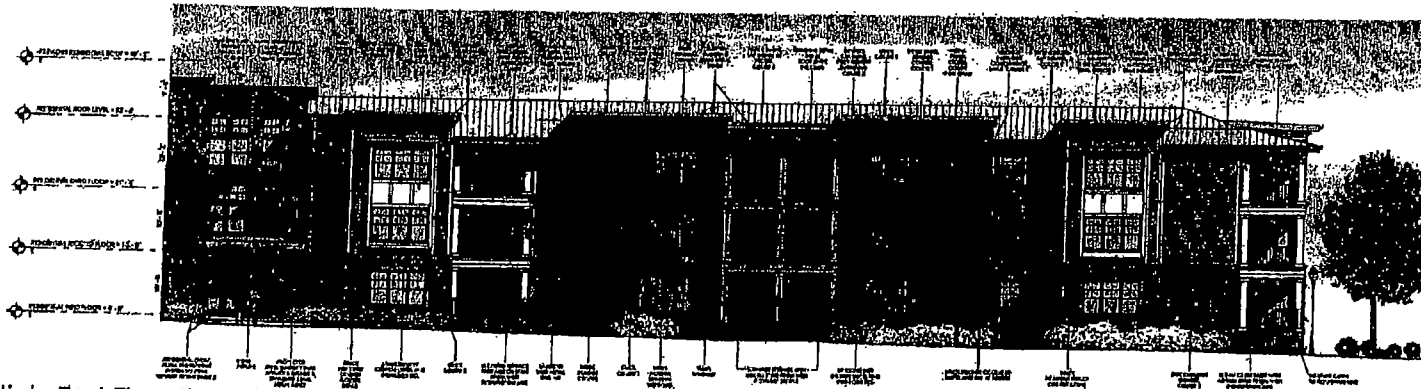
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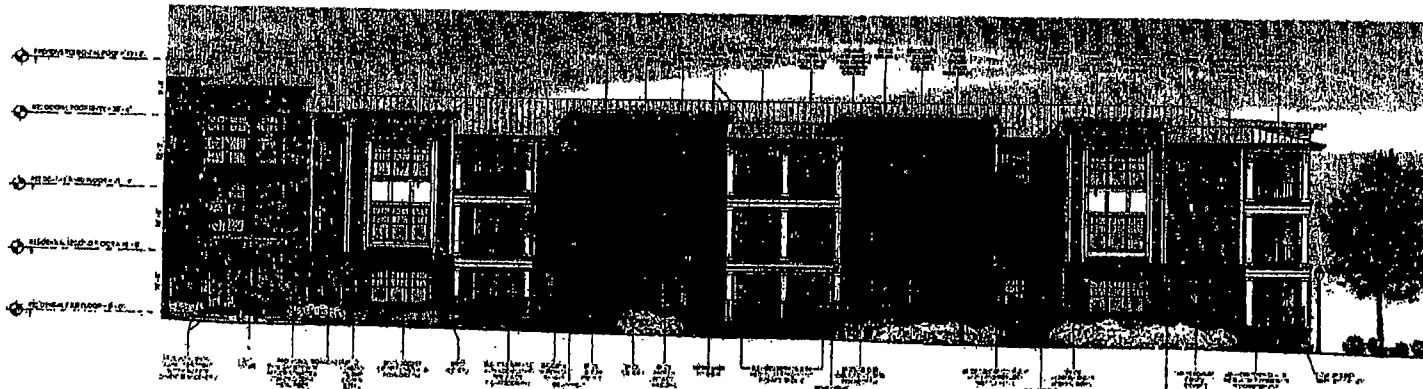
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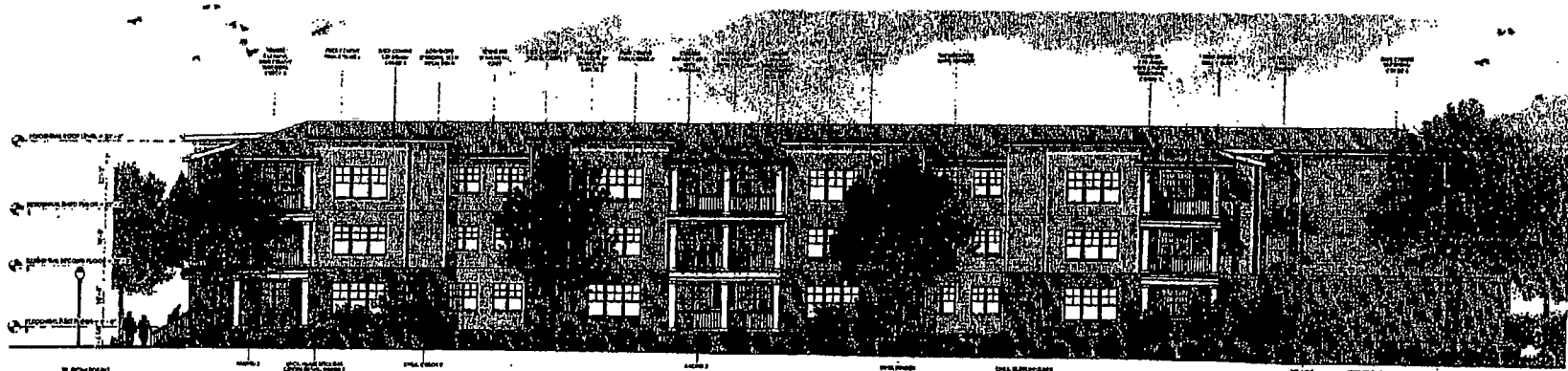
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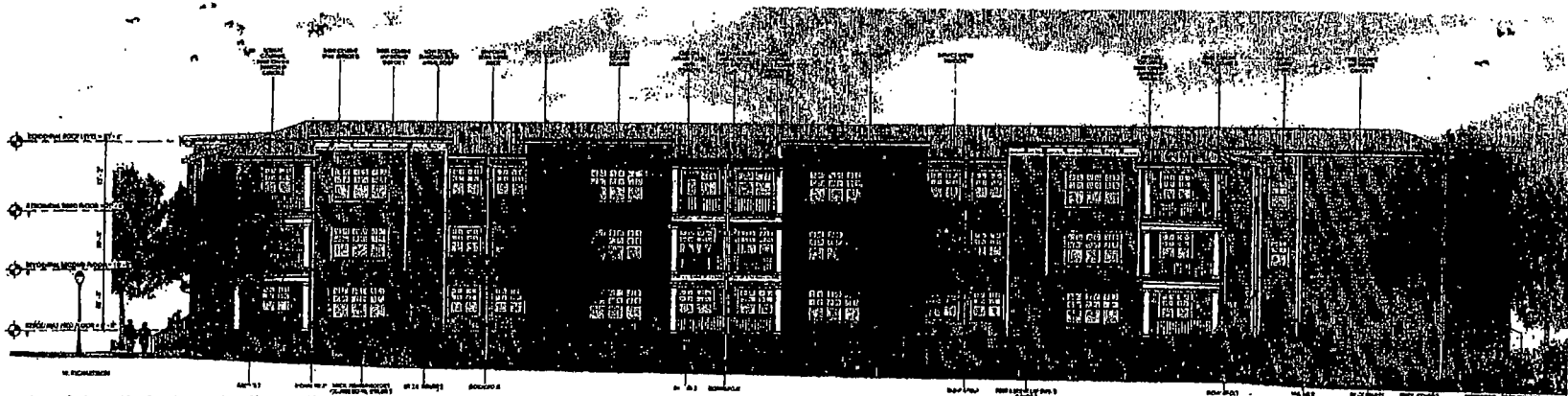
Residential - East Elevation (W. Richardson Ave.) Previous
SCALE: 1/16" = 1'-0"



Residential - East Elevation (W. Richardson Ave.) Proposed
SCALE: 1/16" = 1'-0"

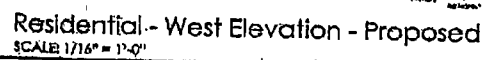


Residential - North Elevation - Previous
SCALE: 1/16" = 1'-0"



Residential - North Elevation - Proposed
SCALE: 1/16" = 1'-0"

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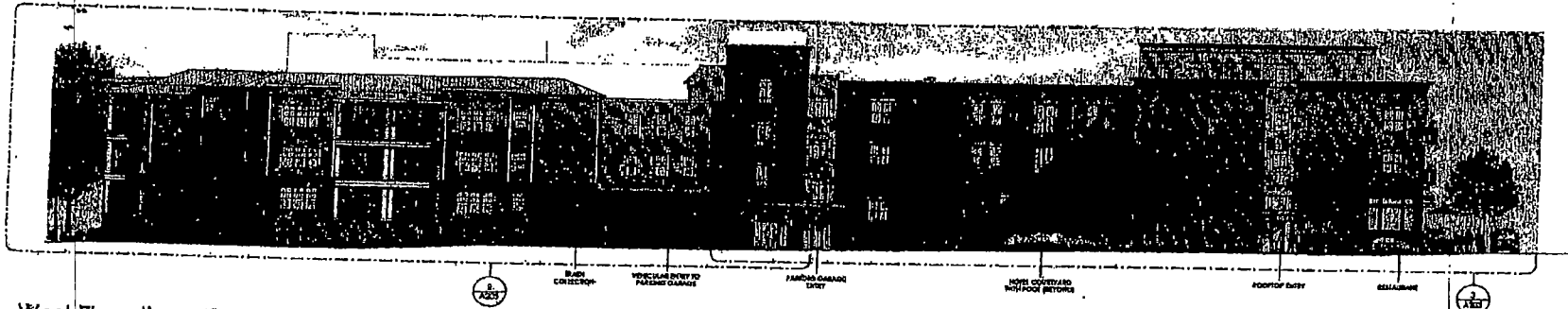
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May 11, 2015



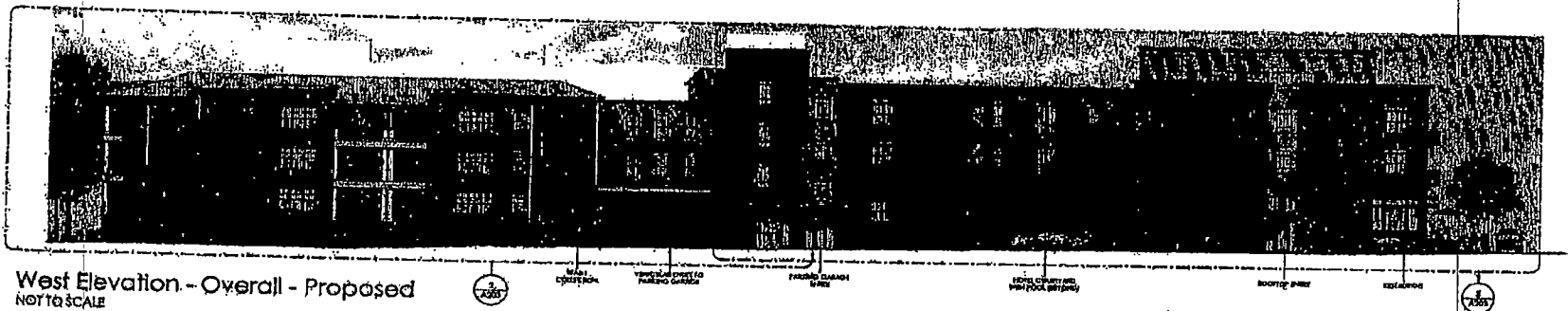
East Elevation - Overall - Previous
NOT TO SCALE



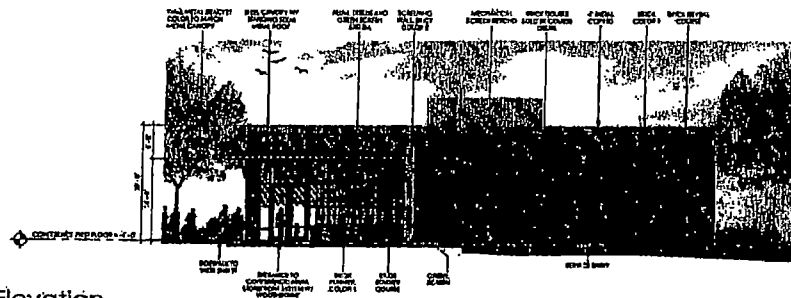
East Elevation - Overall - Proposed
NOT TO SCALE



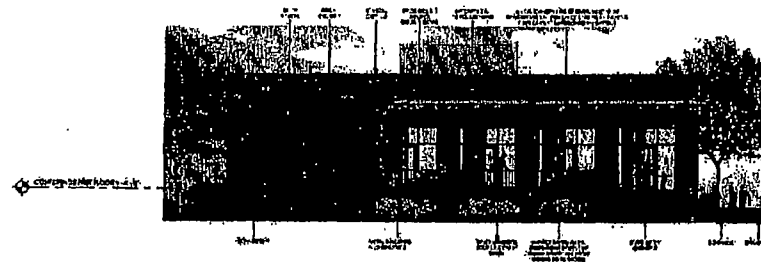
West Elevation - Overall - Previous
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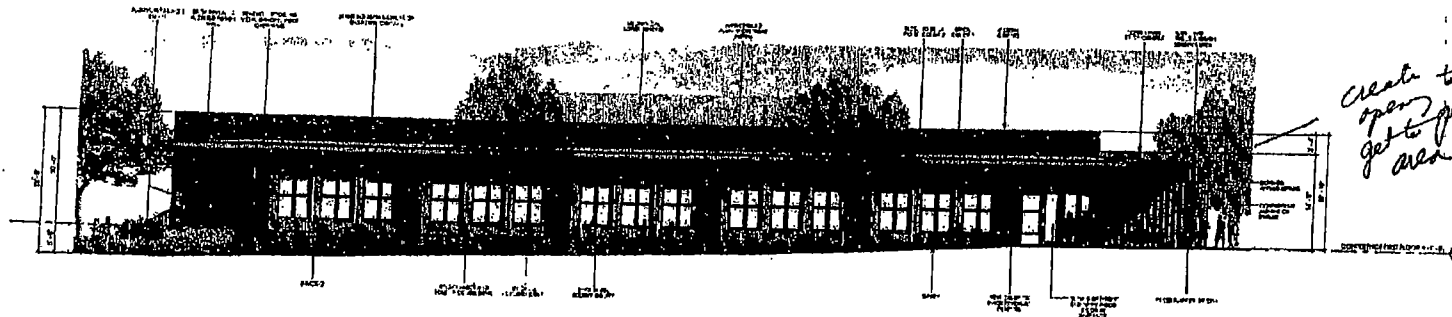
West Elevation - Overall - Proposed
NOT TO SCALE



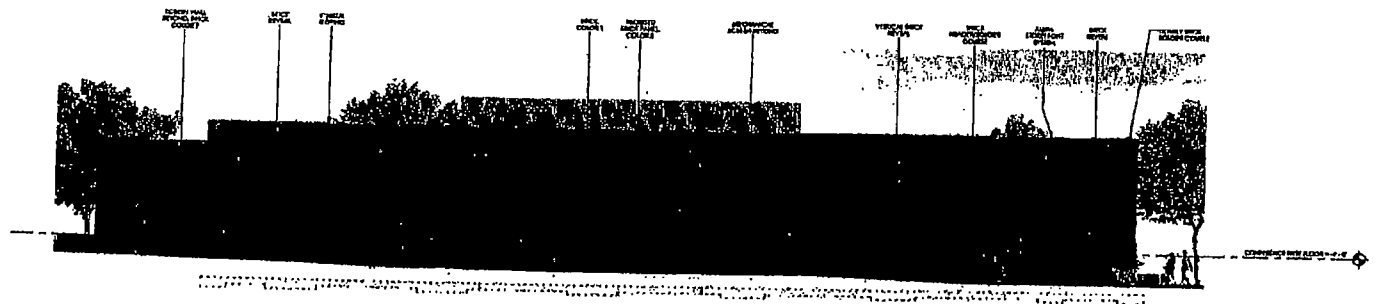
Conference Center - East Elevation
SCALE: 1/16" = 1'-0"



Conference Center - West Elevation (W. 2nd South St.)
SCALE: 1/16" = 1'-0"



Conference Center - South Elevation (S. Cedar St.)
SCALE: 1/16" = 1'-0"



Conference Center - North Elevation
SCALE: 1/16" = 1'-0"

Architectural floor plan of a building. The plan shows a large central hall with a fireplace, a kitchen area with a sink and stove, a living room with a fireplace, a bedroom, a bathroom, and a dining area. There are also several smaller rooms and a large outdoor area with a lawn and garden. The plan is labeled with various rooms and areas, including 'KITCHEN', 'LIVING ROOM', 'BEDROOM', 'BATHROOM', 'PATIO', 'LAWN', and 'GARDEN'. The plan is drawn in a simple, schematic style with lines and text labels.

SCALE: 1/16" = 1'-0".




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 Goff D'Antonio Associates
 May 11, 2015

Town of Summerville



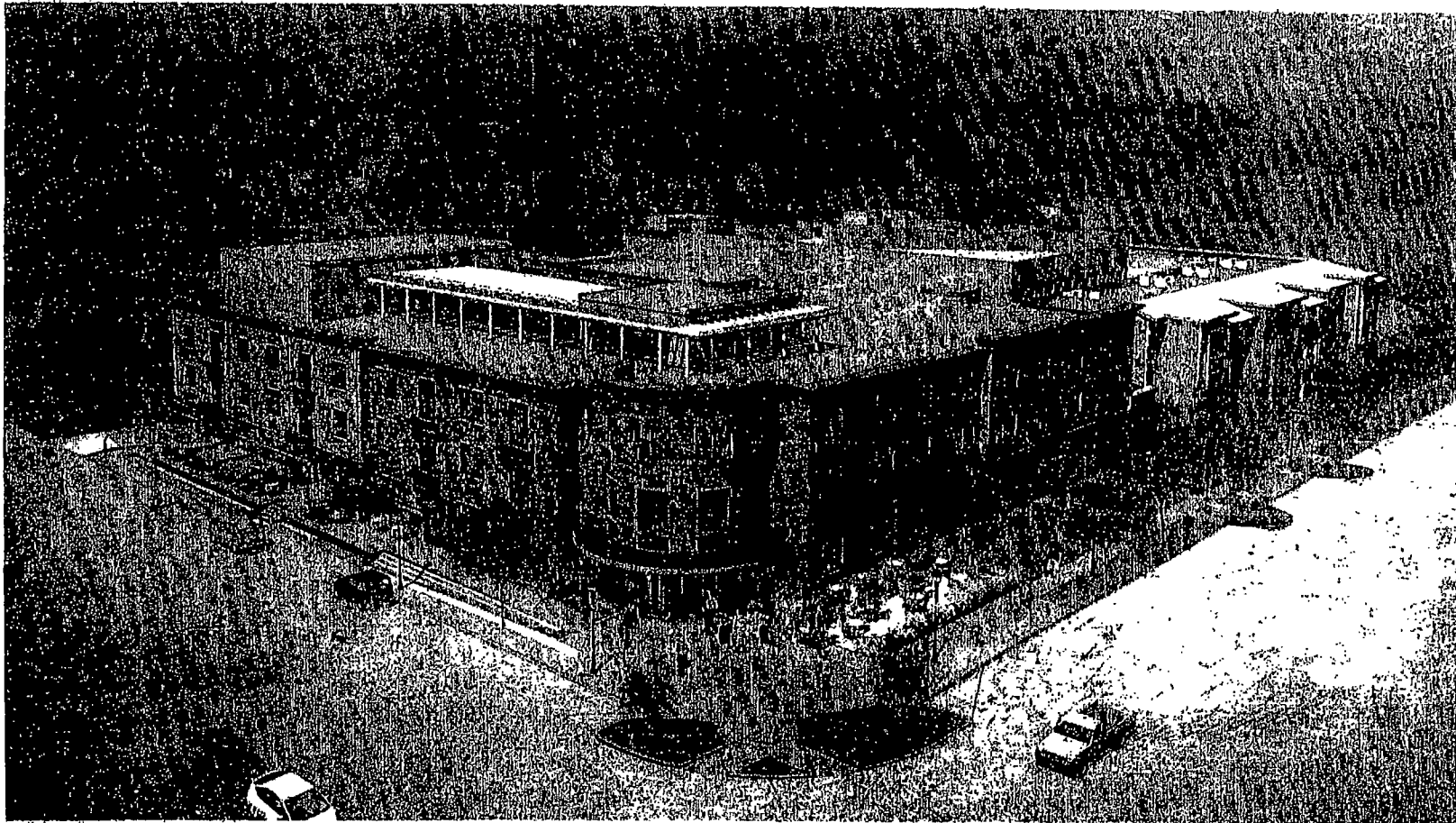
Department of Planning & Development
BOARD OF ARCHITECTURAL REVIEW SIGN IN SHEET

Name

Address

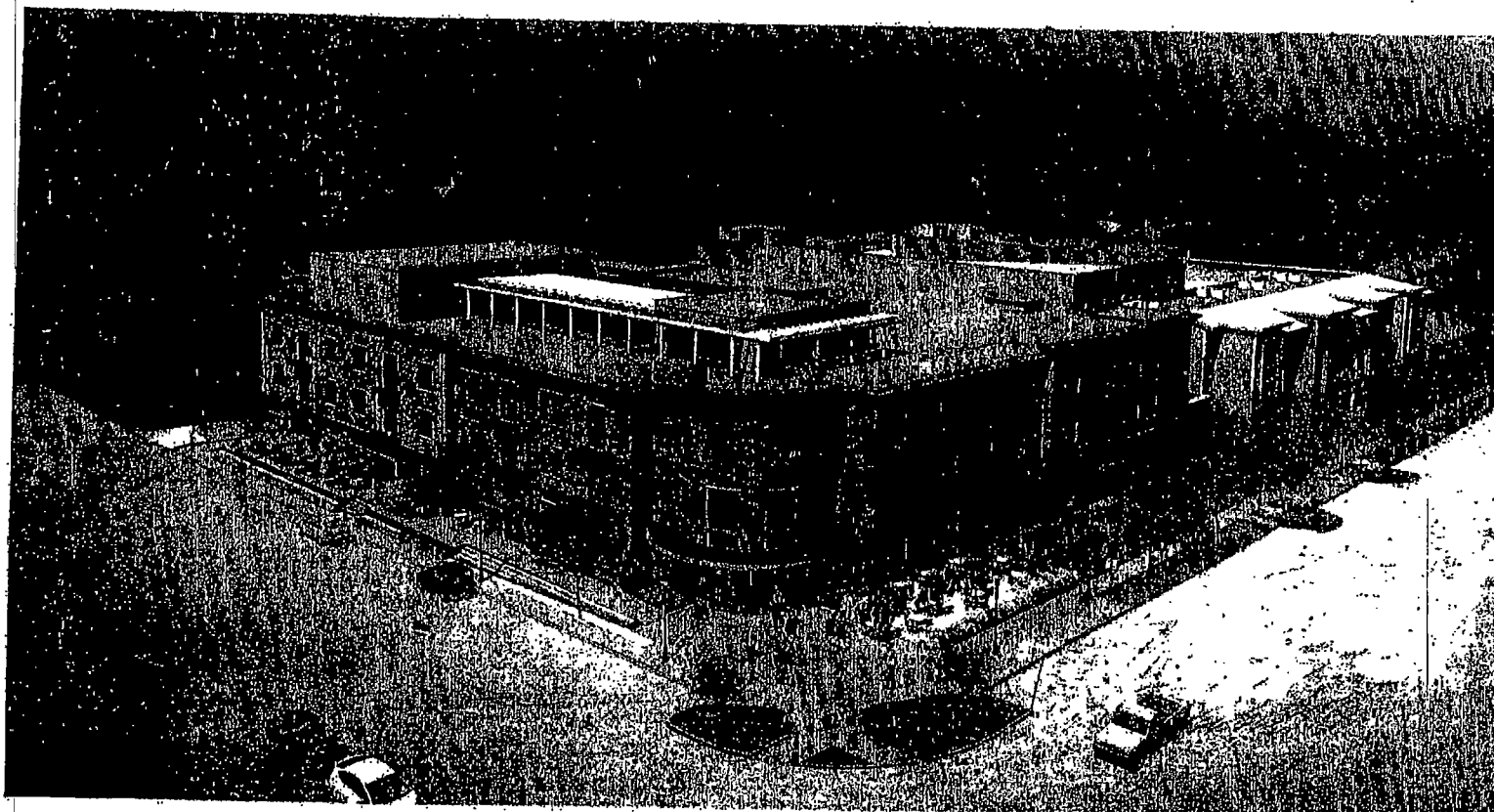
<i>Irvin P. Jones</i>	<i>Johnson House Movers</i>
<i>Bennett Williams</i>	<i>Applegate & Co.</i>
<i>Arthur Applegate</i>	<i>Applegate & Co.</i>

1/12/2015



Conceptual & Preliminary BAR Submittal

APPLEGATE & CO.
Goffe D'Antonio Associates
January 5, 2014



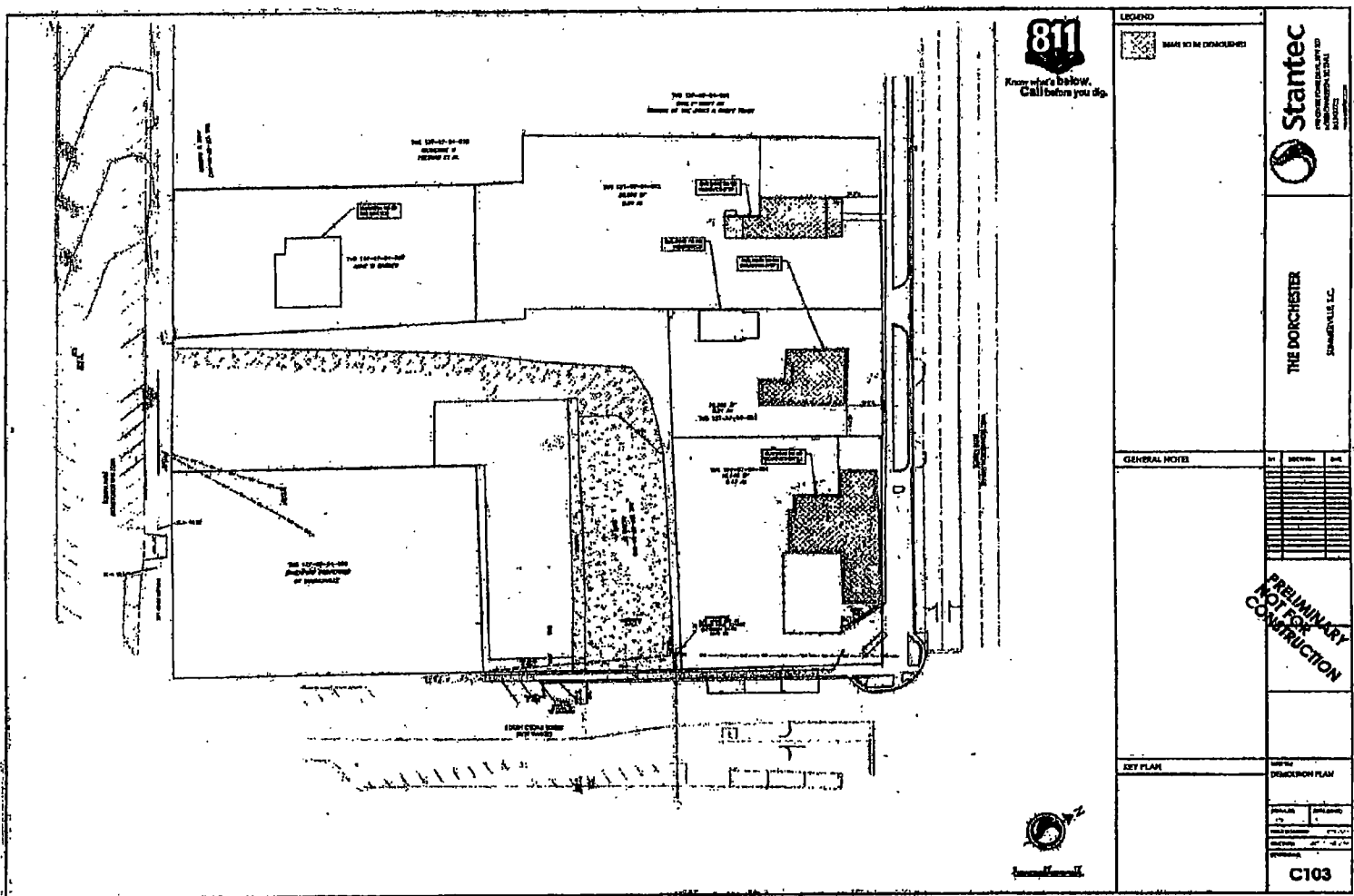
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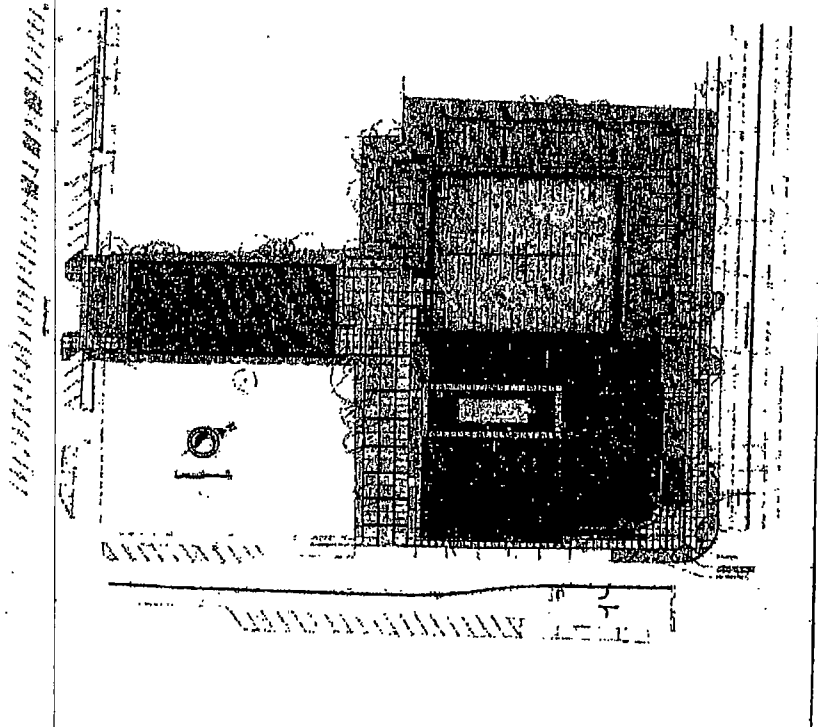
Conceptual & Preliminary BAR Submittal

APPLEGATE & CO.
Goff & Antonio Associates
January 5, 2014

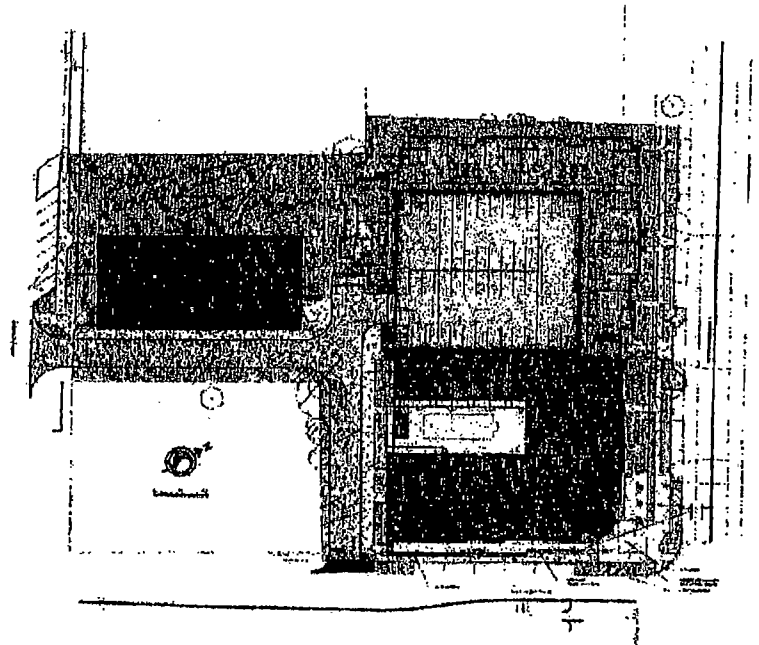


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PREVIOUS SITE PLAN DESIGN



PROPOSED SITE PLAN - WITH ADDITIONAL PROPERTY


DORCHESTER

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Goff & Antonio Associates
January 5, 2014

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PERSPECTIVE - CORNER - PREVIOUS DESIGN

PERSPECTIVE - CORNER - PROPOSED DESIGN

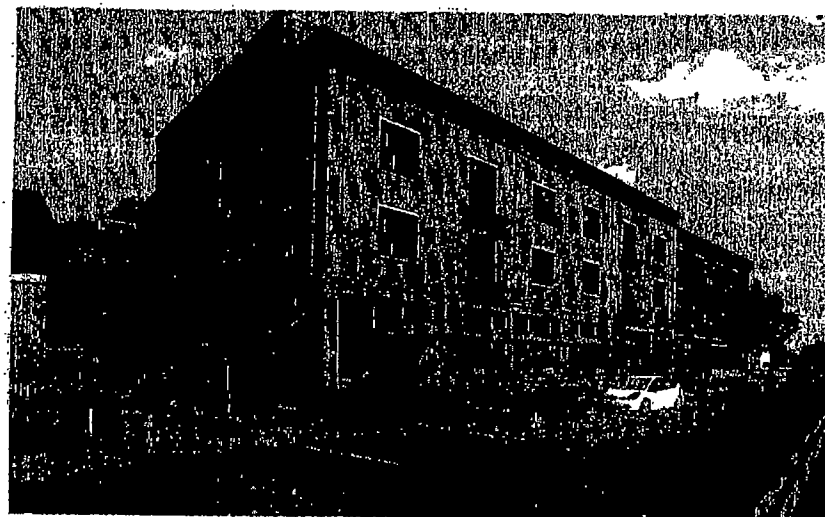
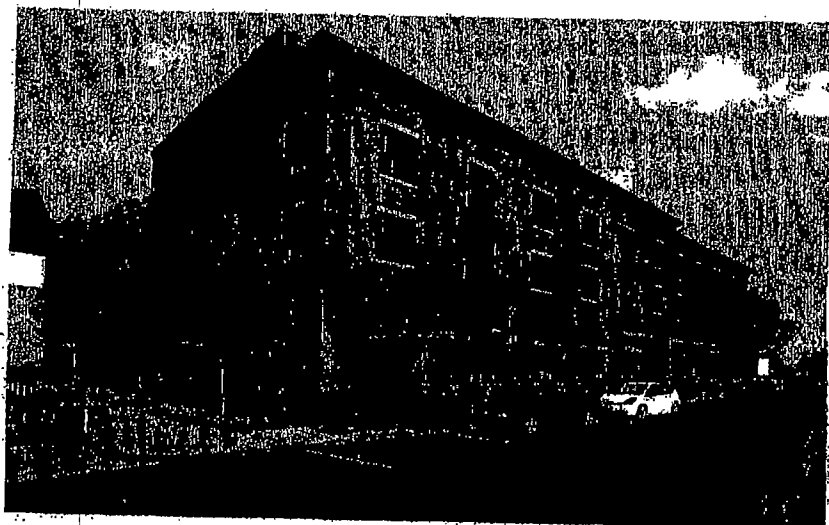


No three wall unit

APPLEGATE & CO.
Golf & Antonio Associates
January 3, 2014

1098

1097



PERSPECTIVE - RESTAURANT - PREVIOUS DESIGN

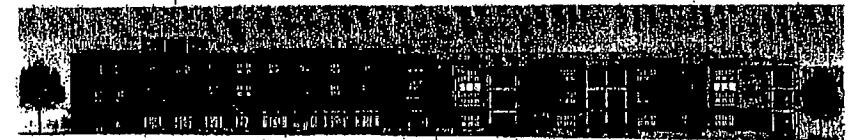
PERSPECTIVE - RESTAURANT - PROPOSED DESIGN


DORCHESTER

 APPLEGATE & CO.
Gaff & D'Antonio Associates
January 5, 2014

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PREVIOUS FOUR STOREY RESIDENTIAL

PROPOSED THREE STOREY RESIDENTIAL

1100

1099

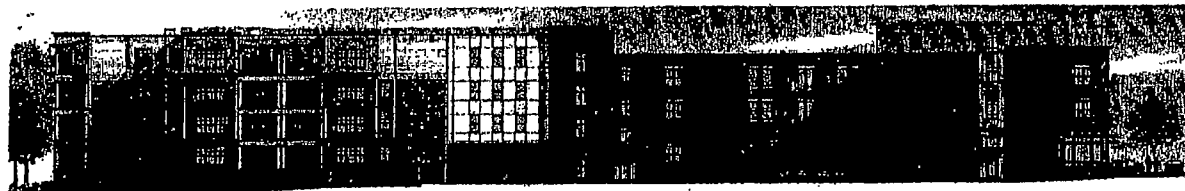


PERSPECTIVE - CONFERENCE CENTER - PREVIOUS DESIGN

PERSPECTIVE - CONFERENCE CENTER - PROPOSED DESIGN


DORCHESTER

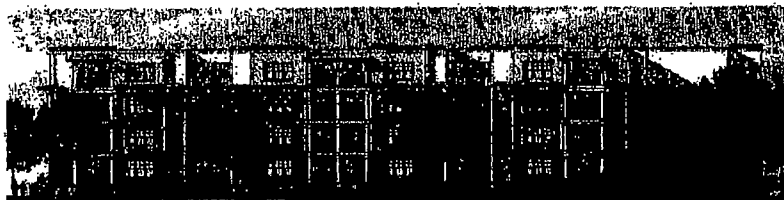
 APPLEGATE & CO.
Goff & D'Antonio Associates
January 5, 2014 1



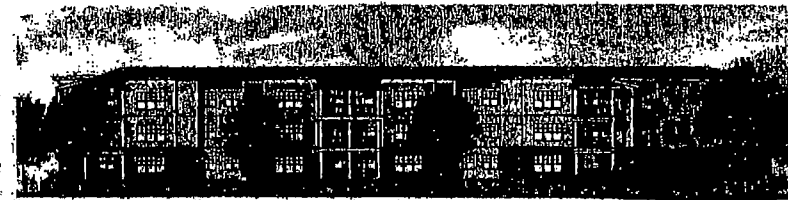
WEST ELEVATION - PREVIOUS DESIGN
SCALE: 1/32" = 1'-0"



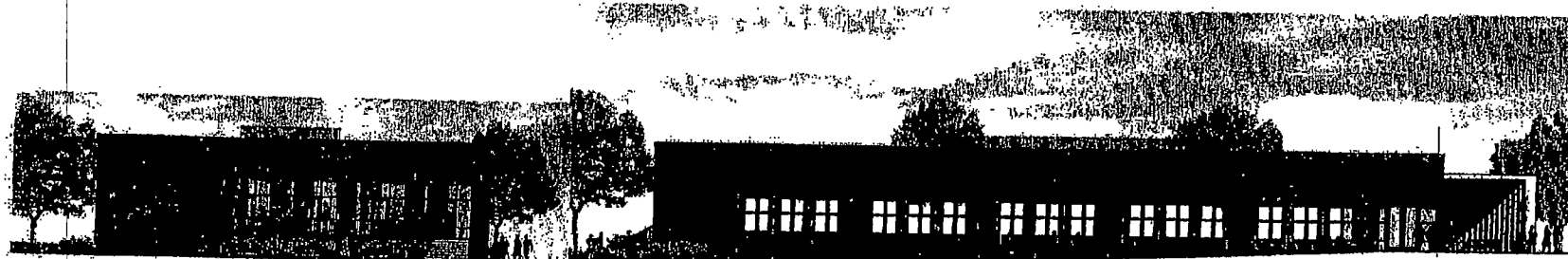
WEST ELEVATION - PROPOSED DESIGN
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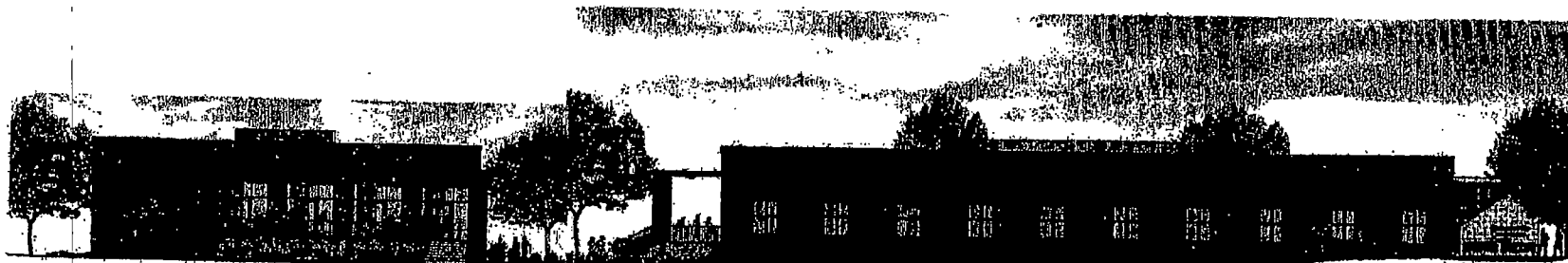
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SCALE: 1/32" = 1'-0"



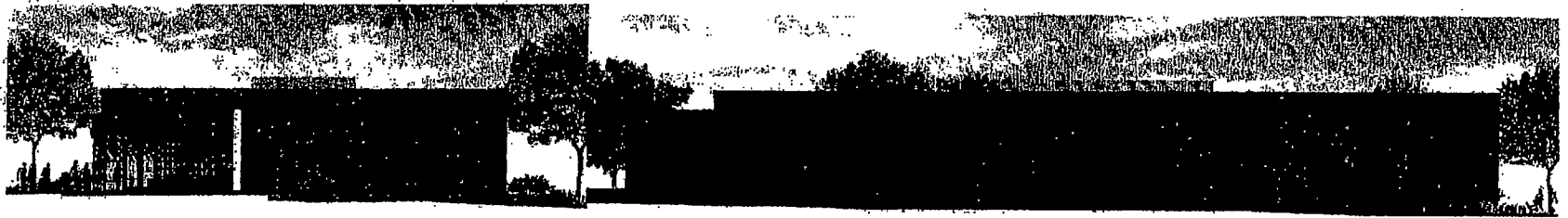
NORTH ELEVATION - PROPOSED DESIGN
SCALE: 1/32" = 1'-0"



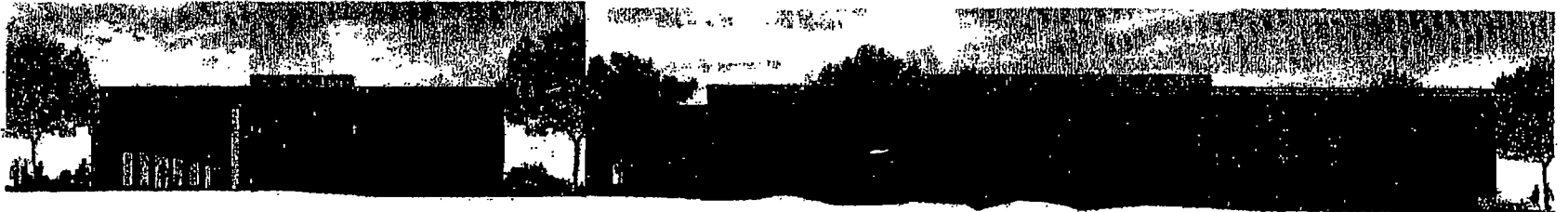
CONFERENCE CENTER WEST AND SOUTH ELEVATION - PROPOSED



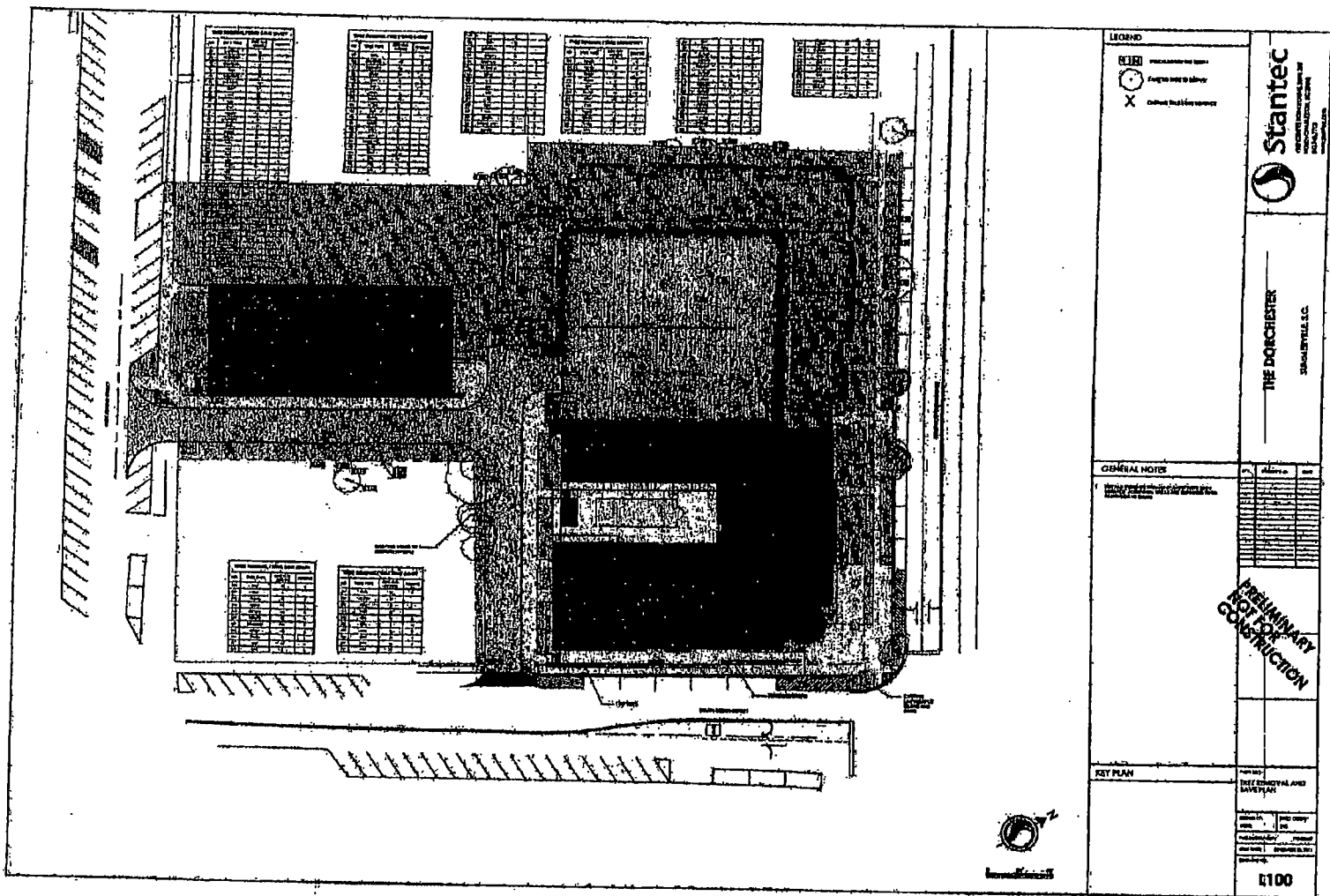
CONFERENCE CENTER WEST AND SOUTH ELEVATION - PREVIOUS

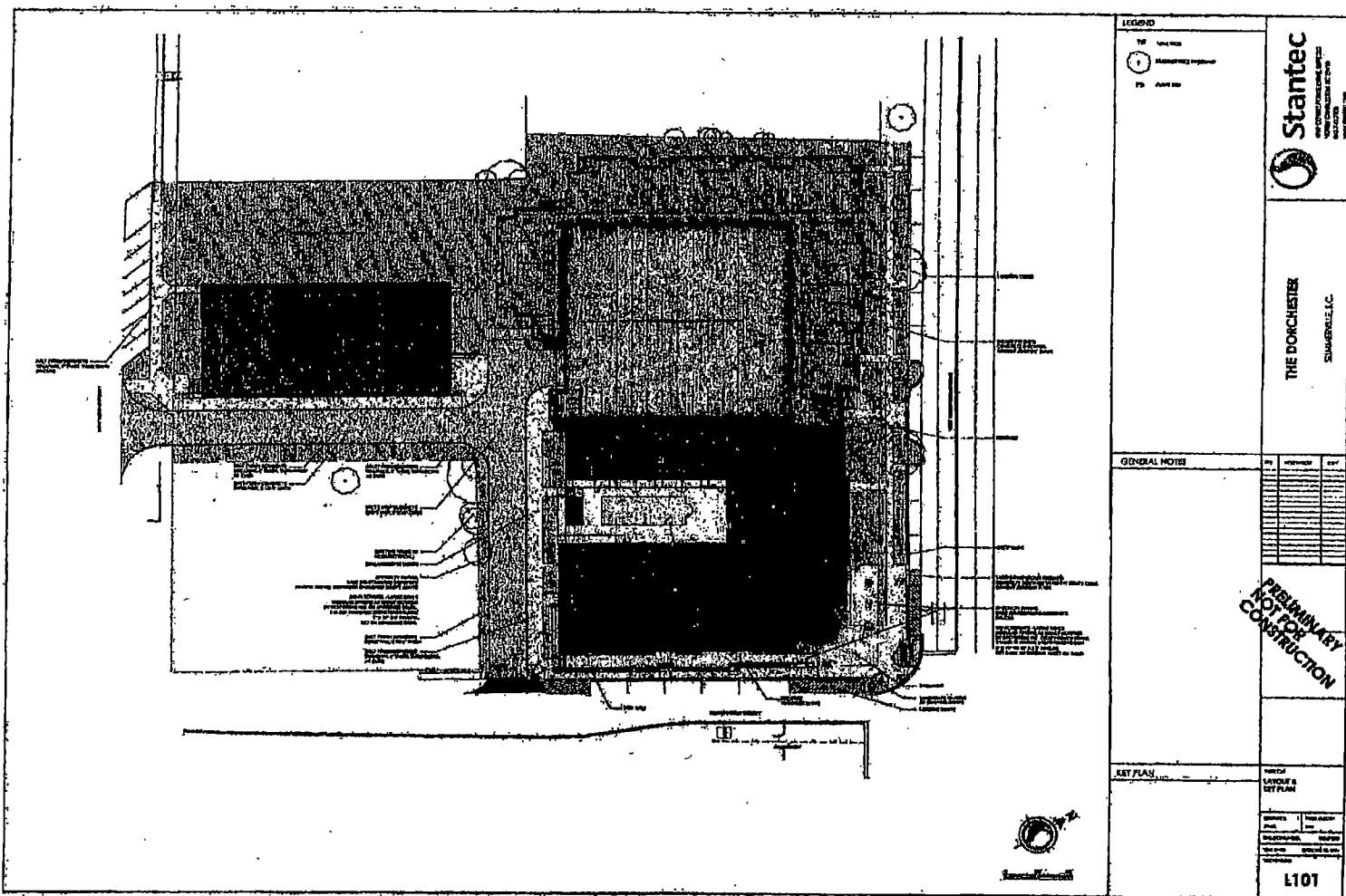


CONFERENCE CENTER EAST AND NORTH ELEVATION - PROPOSED



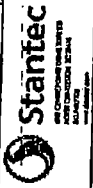
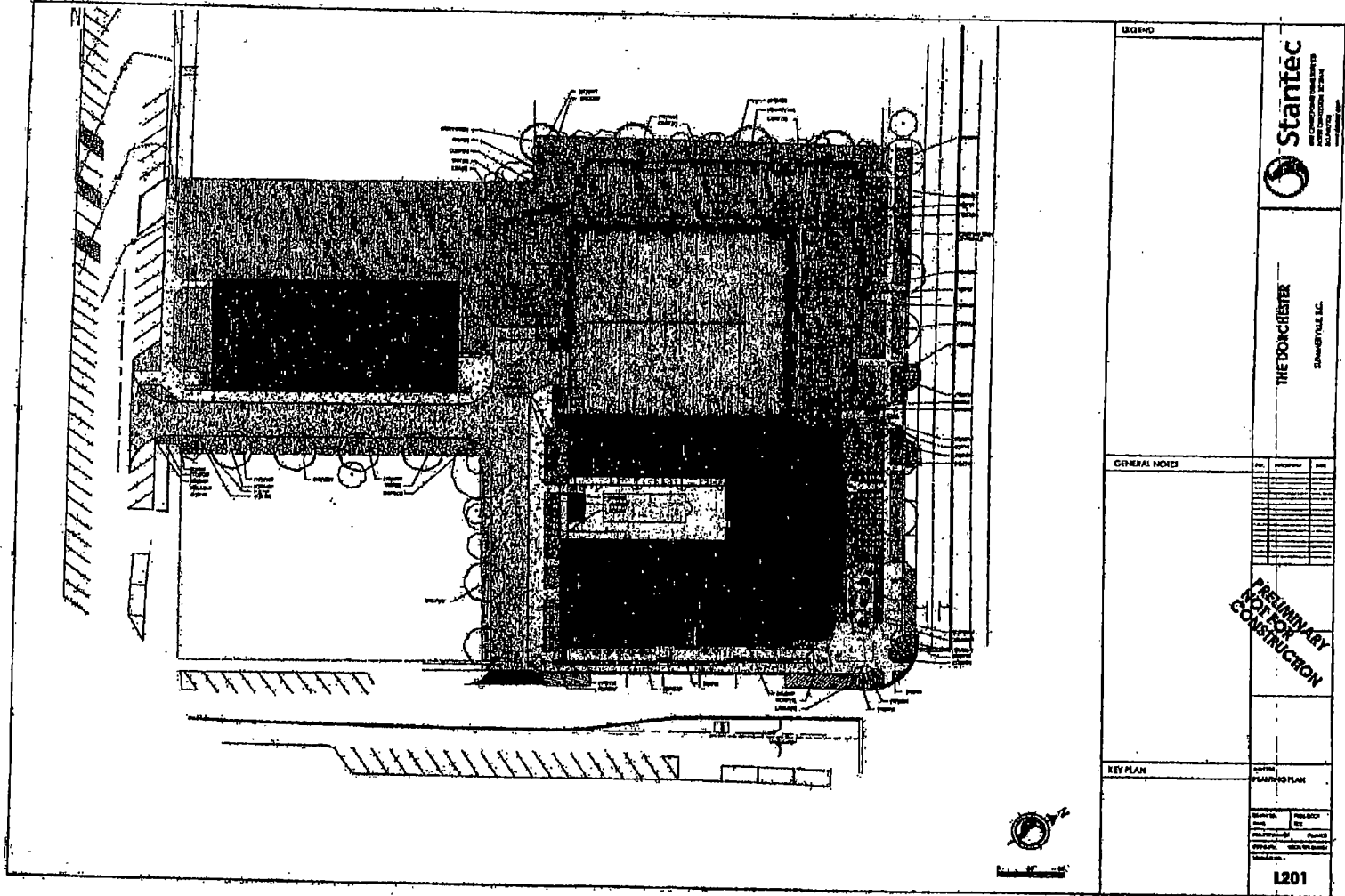
CONFERENCE CENTER EAST AND NORTH ELEVATION - PREVIOUS





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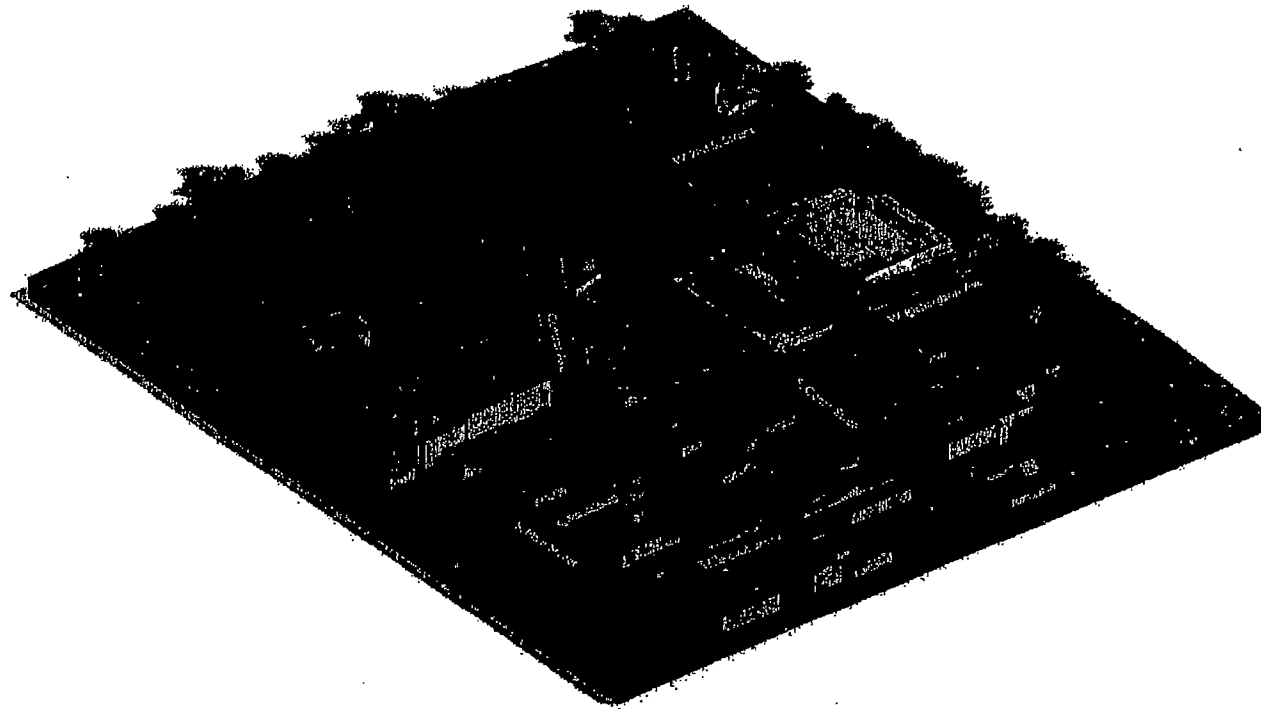
THE DONCHETER
STANLEYVILLE, IL

GENERAL NOTES

PRELIMINARY
NOT FOR
CONSTRUCTION

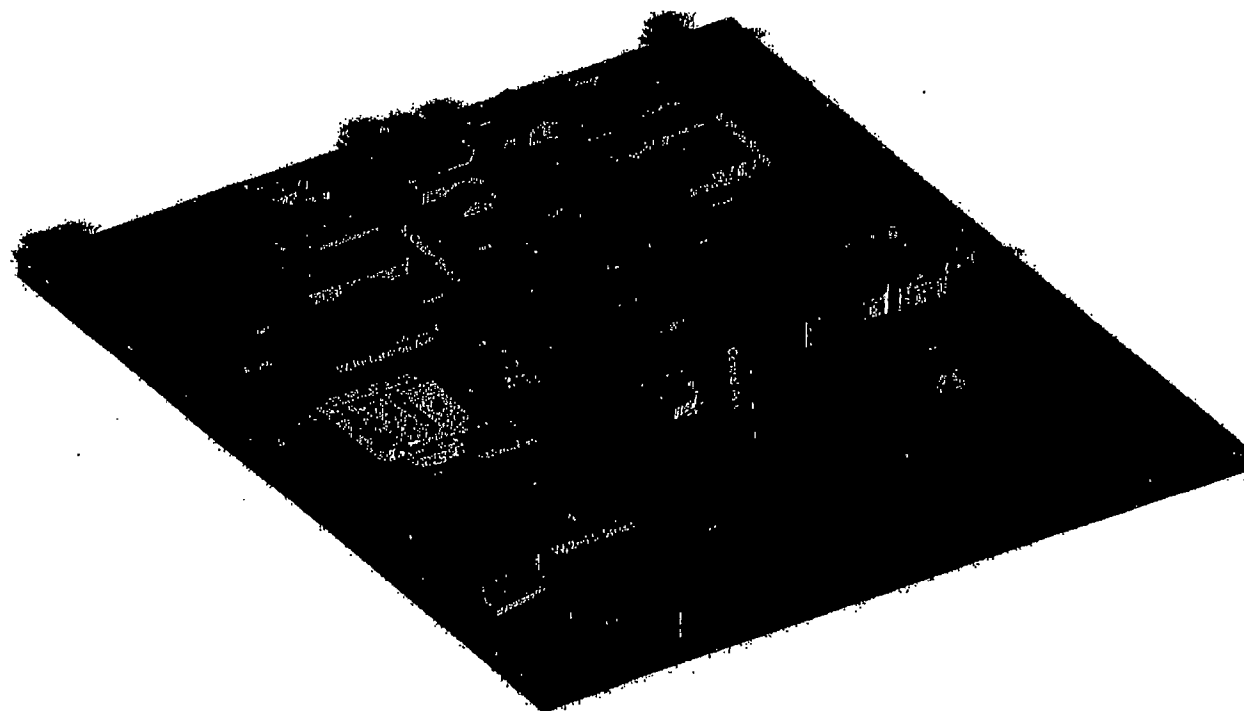
KEY PLAN

L201



SOUTHEAST AERIAL PERSPECTIVE





NORTHWEST AERIAL PERSPECTIVE


DORCHESTER

APPLEGATE & CO.
Goff-D'Antonio Associates
January 5, 2014



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CONFERENCE
CENTER
BEYOND

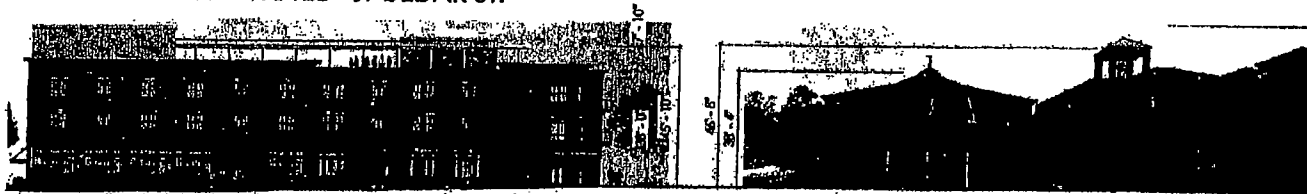
DAVENPORT
BUILDING

HOTEL

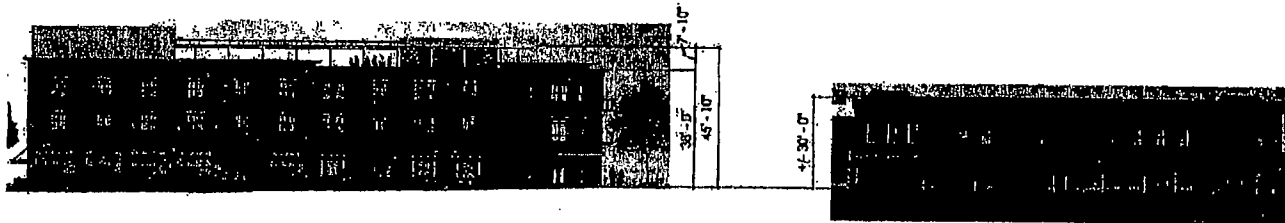
W. RICHARDSON
AVE

YMCA

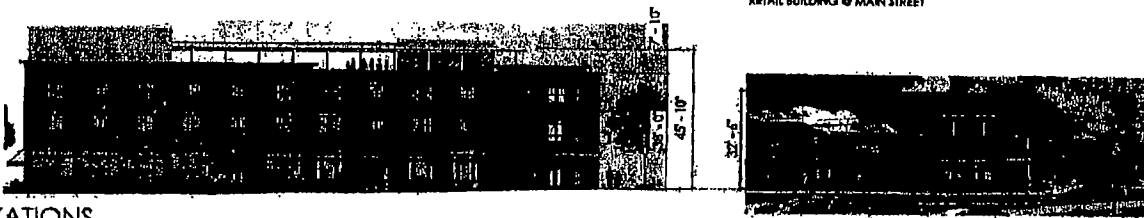
STREETSCAPE SOUTH ELEVATION - HOTEL - S. CEDAR ST.



HISTORIC & NEW CITY HALL



RETAIL BUILDING @ MAIN STREET



RETAIL BUILDING @ 238 S. CEDAR ST

CONTEXT ELEVATIONS



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Goff & D'Antonio Associates
January 5, 2014

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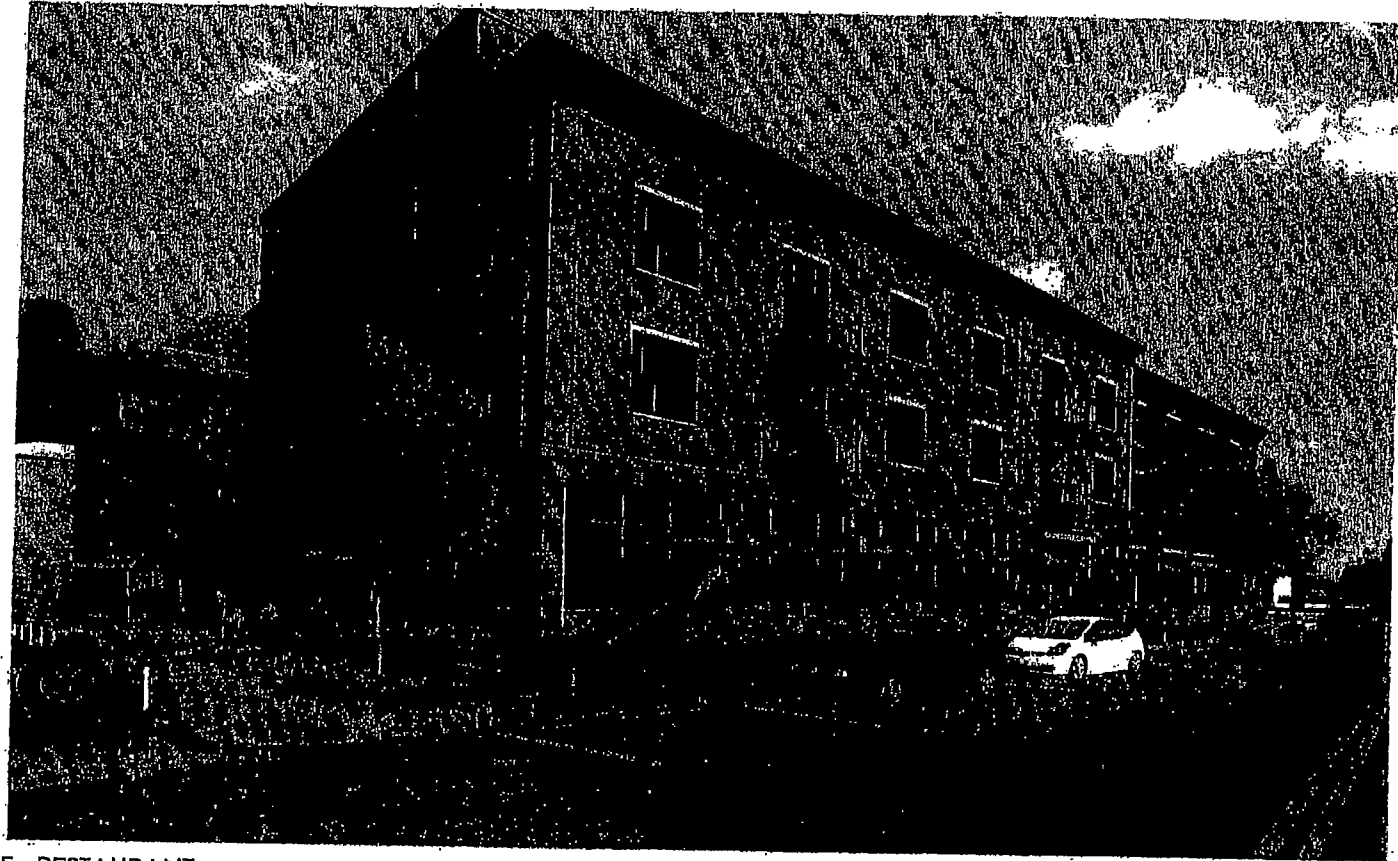
1109



PERSPECTIVE - S. CEDAR ST. & W. RICHARDSON ST. CORNER


DORCHESTER

 APPLEGATE & CO.
Goff & D'Antonio Associates
January 5, 2014



PERSPECTIVE - RESTAURANT


DORCHESTER

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January 5, 2014



PERSPECTIVE - RESIDENTIAL



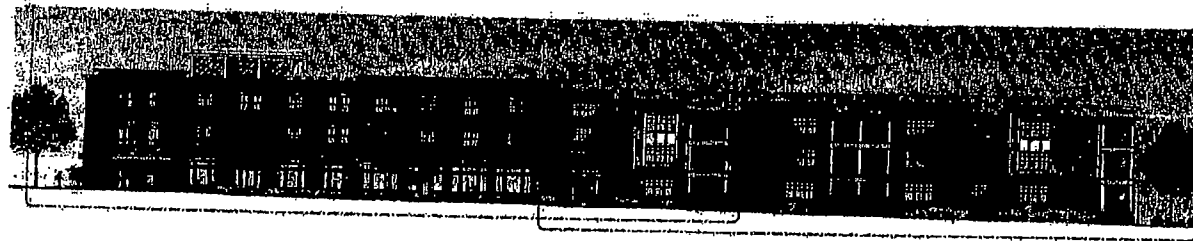
APPLEGATE & CO.
Golf & D'Antonio Associates
January 5, 2014

1112

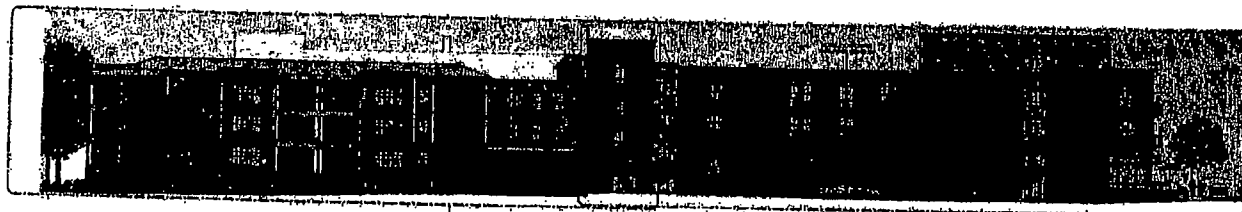
1111



PERSPECTIVE - CONFERENCE CENTER



EAST ELEVATION - OVERALL (W. RICHARDSON AVE)
SCALE: 1/32" = 1'-0"



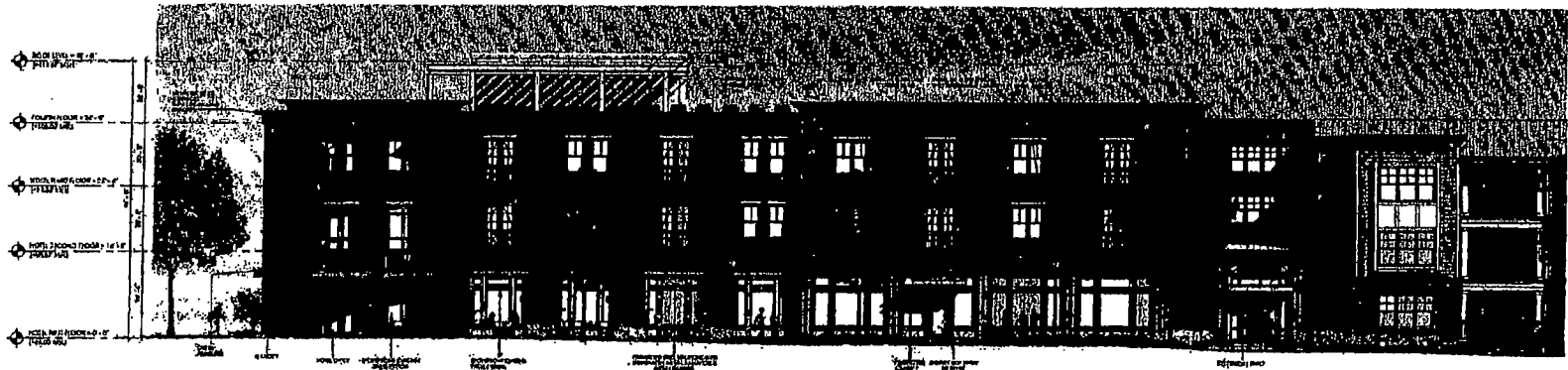
WEST ELEVATION - OVERALL
SCALE: 1/32" = 1'-0"

DORCHESTER

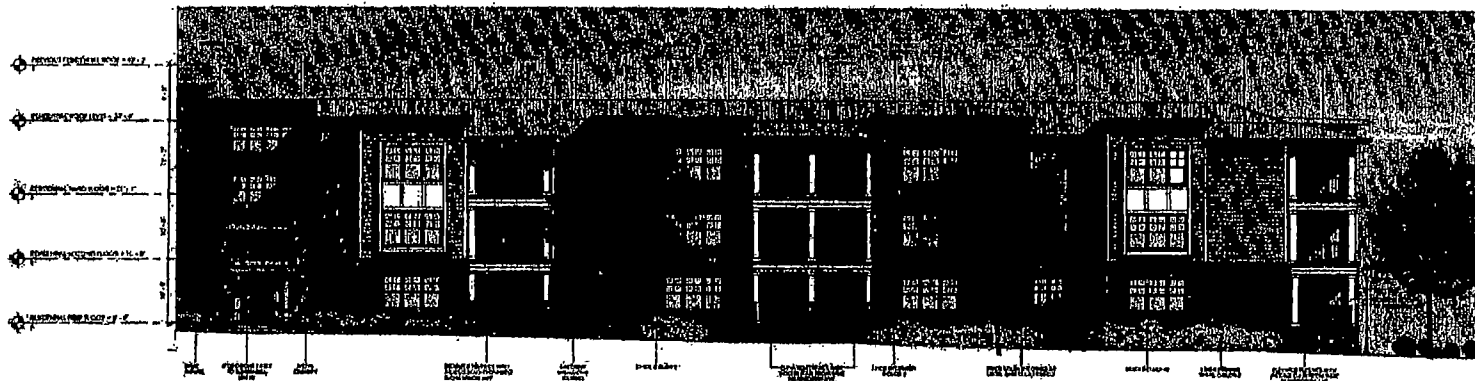
APPLEGATE & CO.
Civil/Architectural
January 5, 2014

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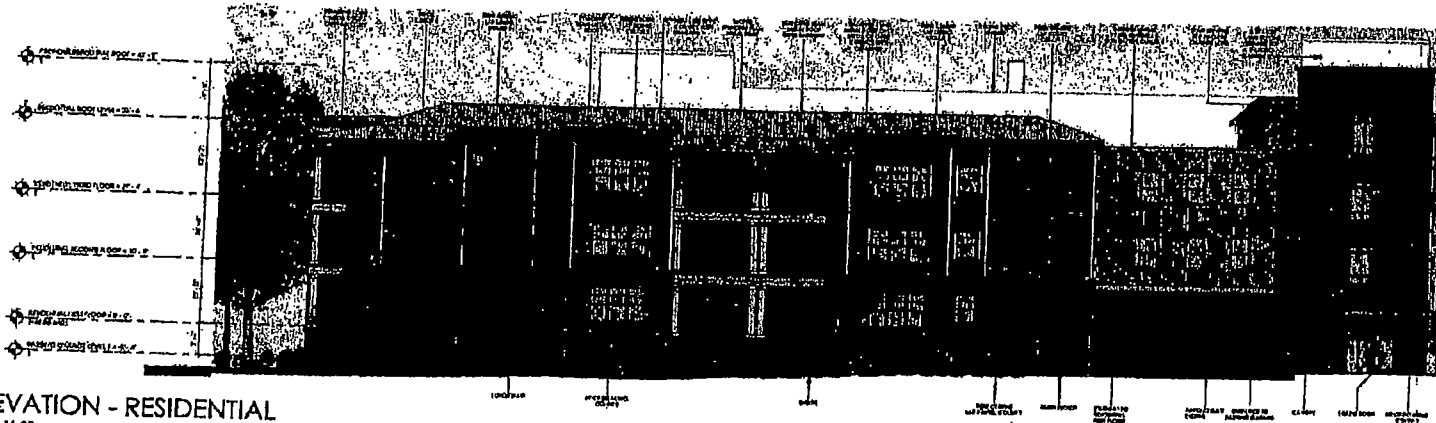
EAST ELEVATION - HOTEL
SCALE: 1/16" = 1'-0"



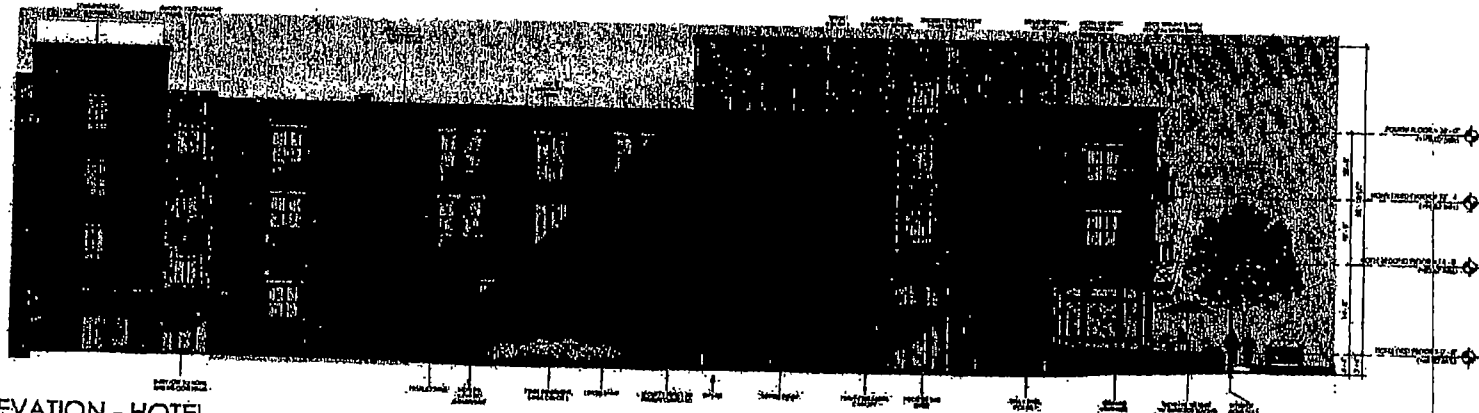
EAST ELEVATION - RESIDENTIAL
SCALE: 1/16" = 1'-0"

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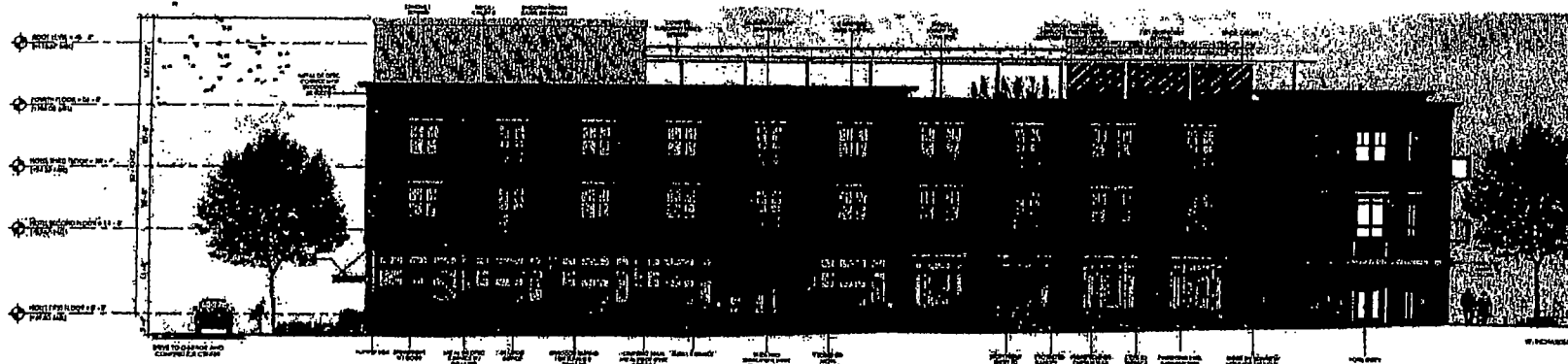
WEST ELEVATION - RESIDENTIAL
SCALE: 1/16" = 1'-0"



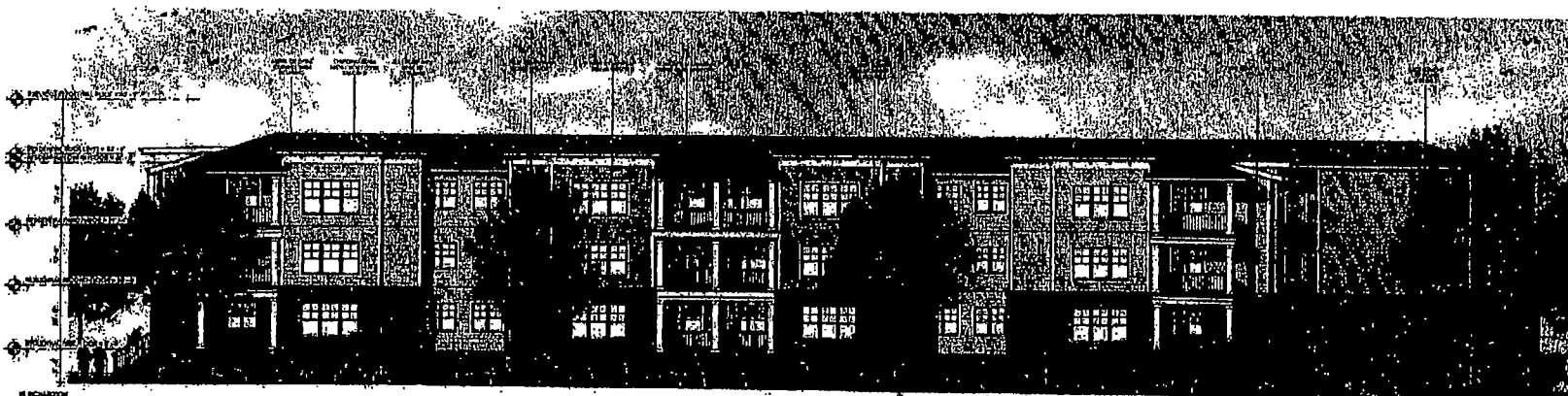
WEST ELEVATION - HOTEL
SCALE: 1/16" = 1'-0"


DORCHESTER

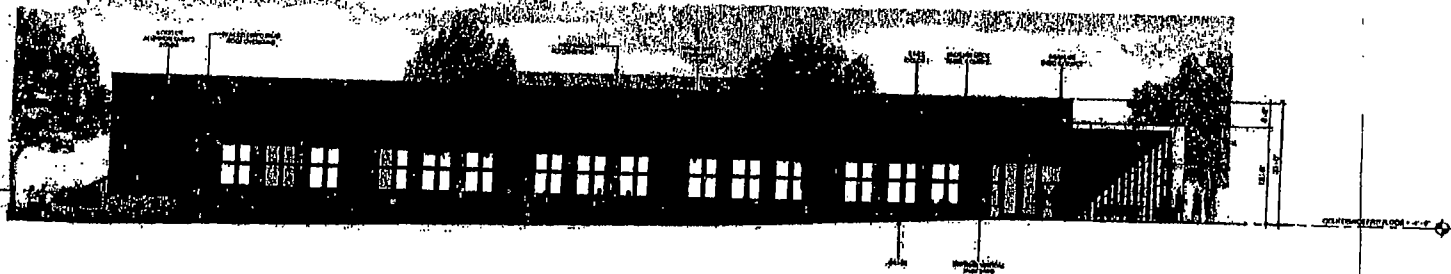
 APPLEGATE & CO.
Goff D'Antonio Associates
January 5, 2014



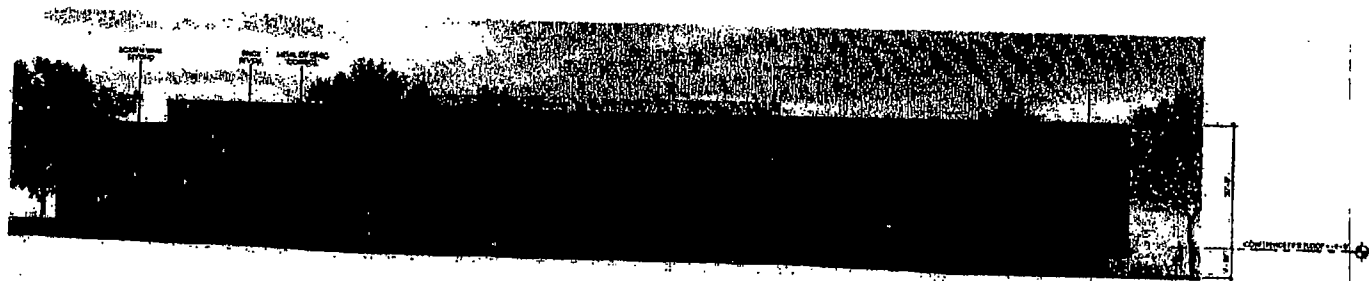
SOUTH ELEVATION - OVERALL
SCALE: 1/16" = 1'-0"



NORTH ELEVATION - OVERALL
SCALE: 1/16" = 1'-0"



CONFERENCE CENTER - SOUTH ELEVATION
SCALE: 1/16" = 1'-0"



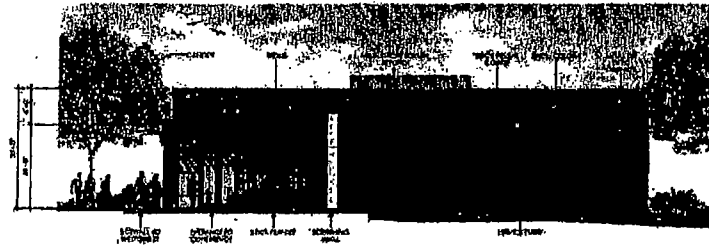
CONFERENCE CENTER - NORTH ELEVATION
SCALE: 1/16" = 1'-0"


DORCHESTER

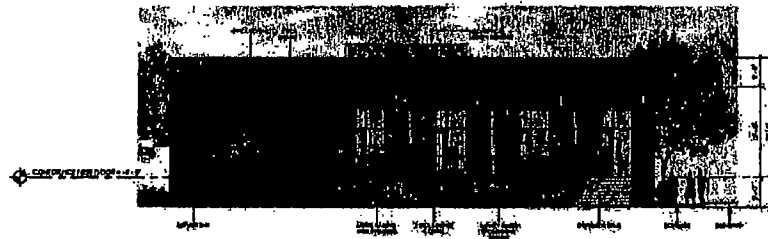
 APPLEGATE & CO.
Jeff D'Antonio/Architect
January 8, 2014

1118

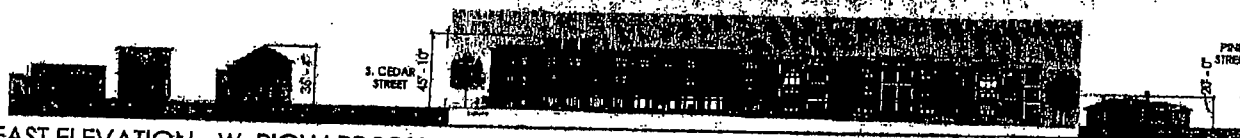
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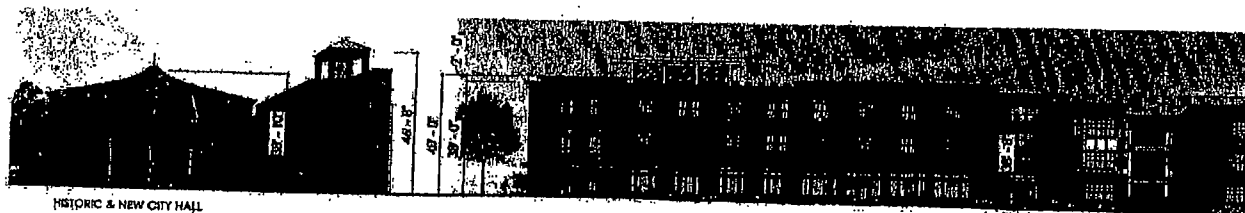
CONFERENCE CENTER - EAST ELEVATION
SCALE: 1/16" = 1'-0"



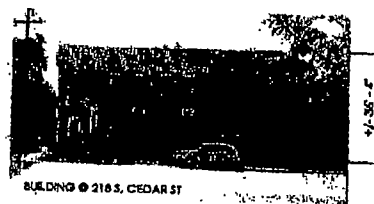
CONFERENCE CENTER - WEST ELEVATION
SCALE: 1/16" = 1'-0"



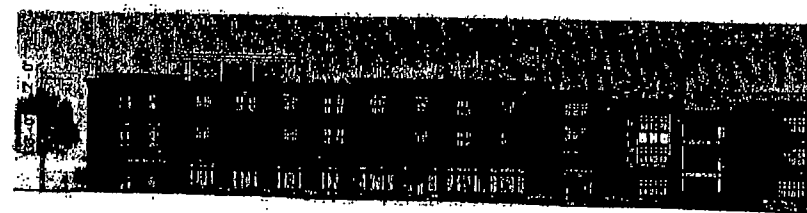
STREETSCAPE EAST ELEVATION - W. RICHARDSON AVE.



HISTORIC & NEW CITY HALL



BUILDING @ 218 S. CEDAR ST

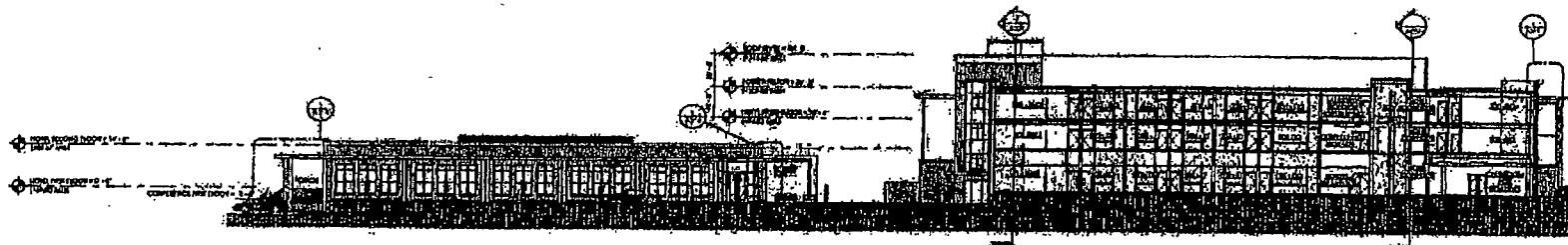


S. CEDAR

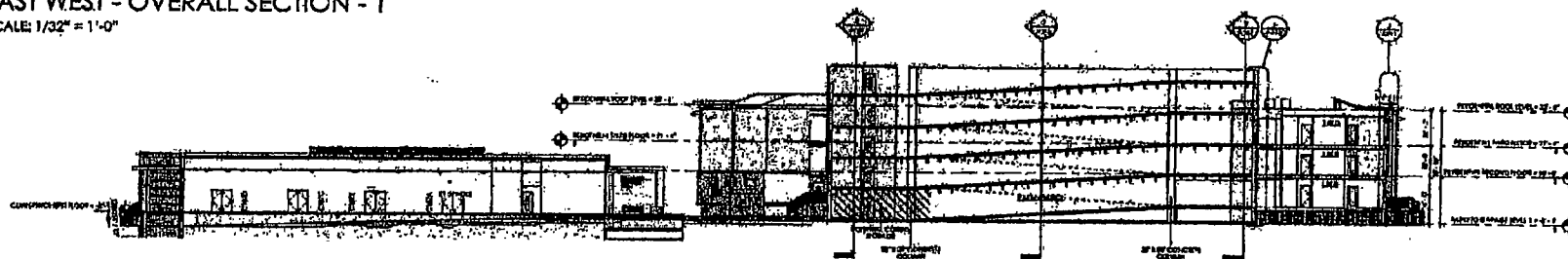
CONTEXT ELEVATIONS



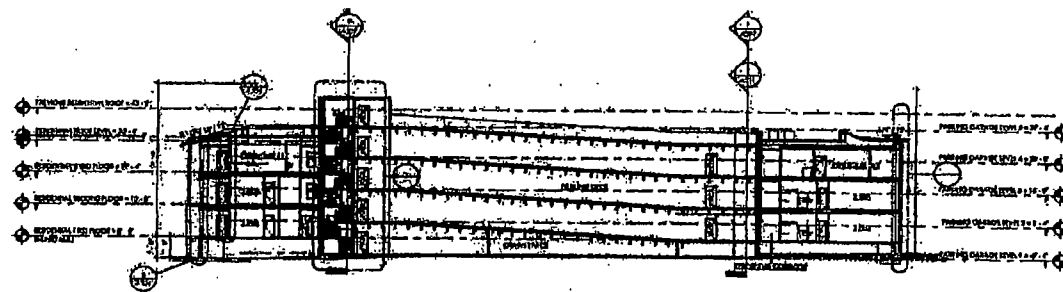
STREETSCAPE WEST ELEVATION - CONFERENCE CENTER - W. 2ND ST.



EAST WEST - OVERALL SECTION - 1
SCALE: 1/32" = 1'-0"

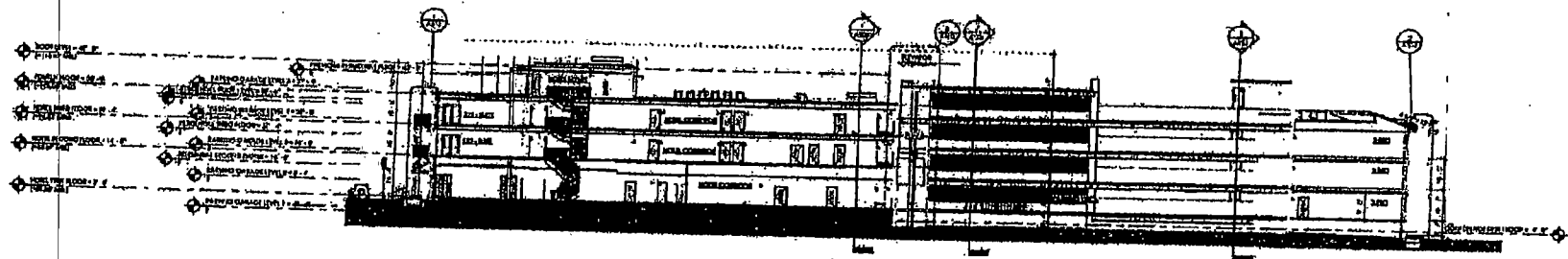


EAST WEST - OVERALL SECTION - 2
SCALE: 1/32" = 1'-0"

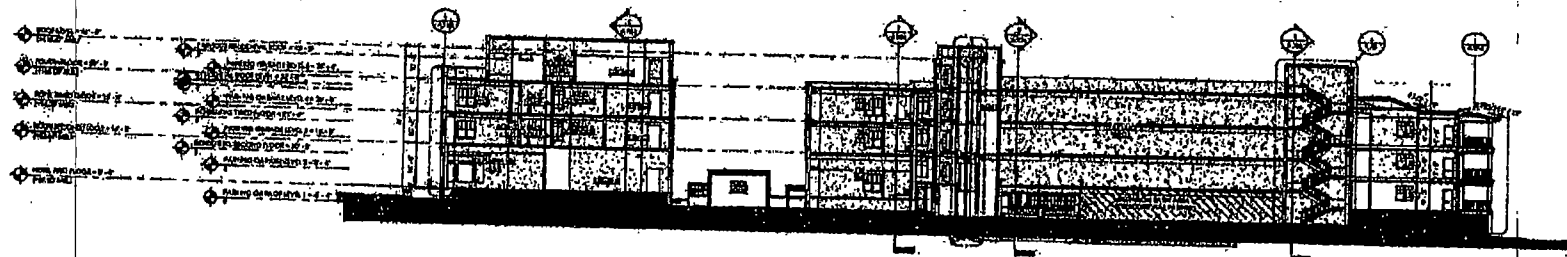


EAST WEST - OVERALL SECTION - 3
SCALE: 1/32" = 1'-0"





NORTH SOUTH - OVERALL SECTION - 1
SCALE: 1/32" = 1'-0"



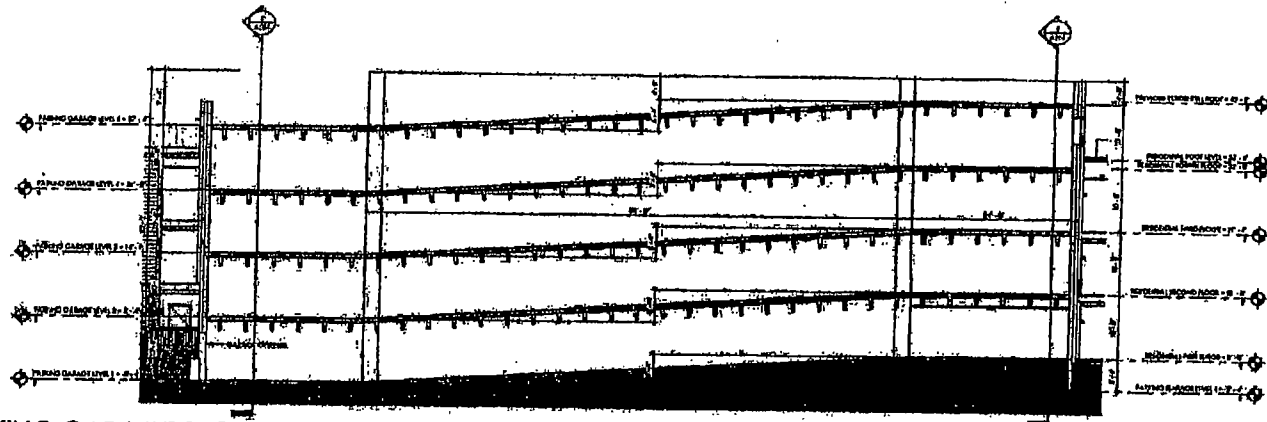
NORTH SOUTH - OVERALL SECTION - 2
SCALE: 1/32" = 1'-0"

DORCHESTER

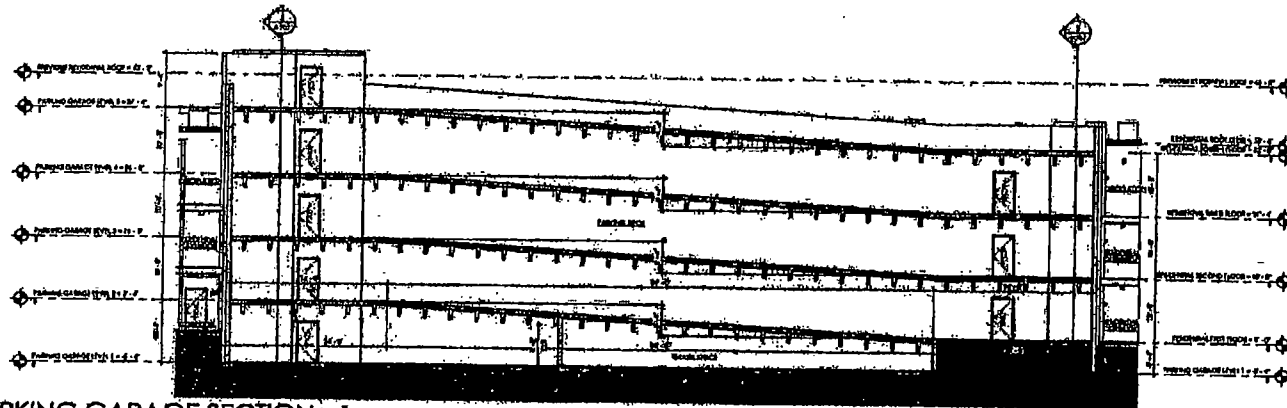
APPLEGATE & CO.
Civil & Mechanical
January 8, 2014

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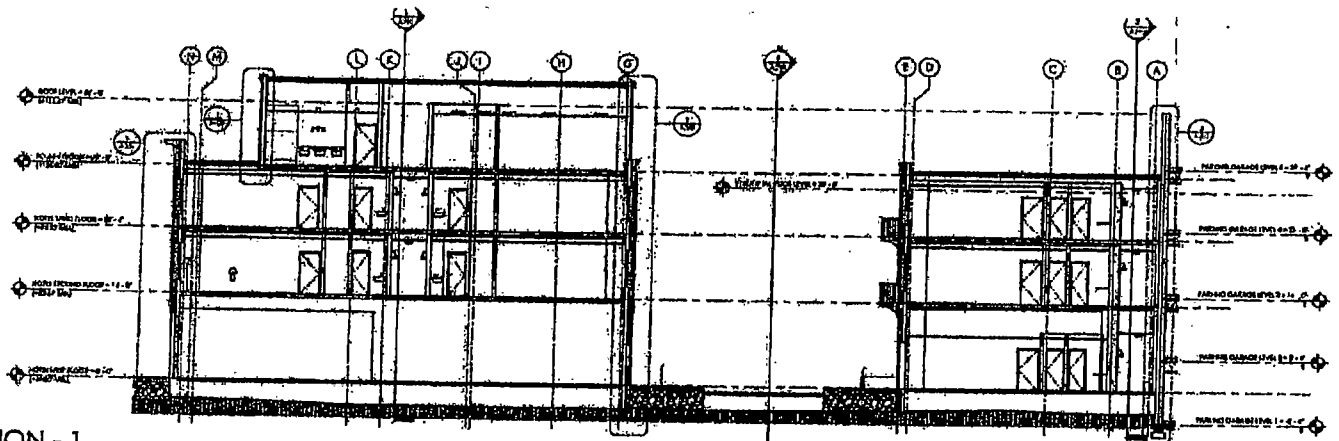


EAST WEST - PARKING GARAGE SECTION - 1
SCALE: 1/16" = 1'-0"

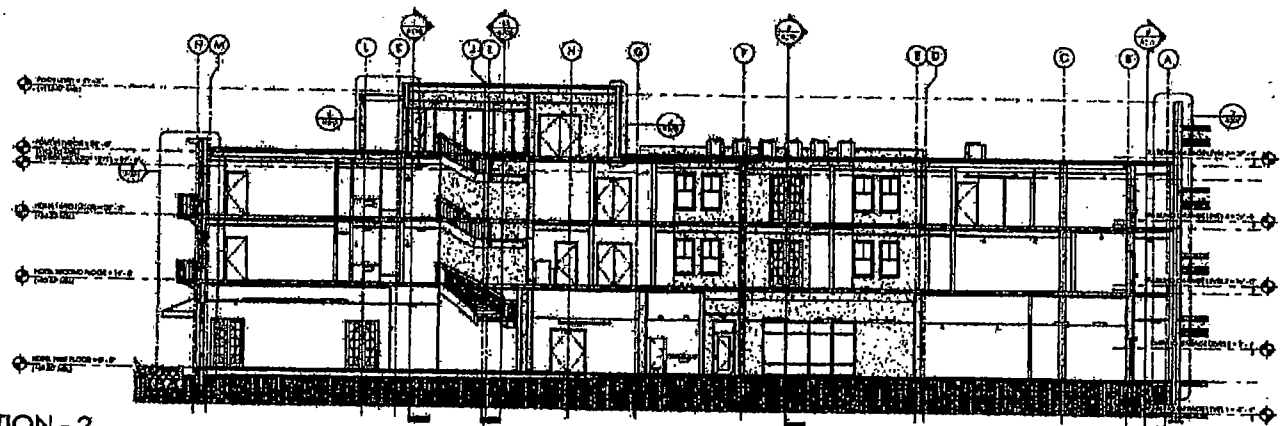


EAST WEST - PARKING GARAGE SECTION - 1
SCALE: 1/16" = 1'-0"





NORTH SOUTH - HOTEL SECTION - 1
SCALE: 1/16" = 1'-0"



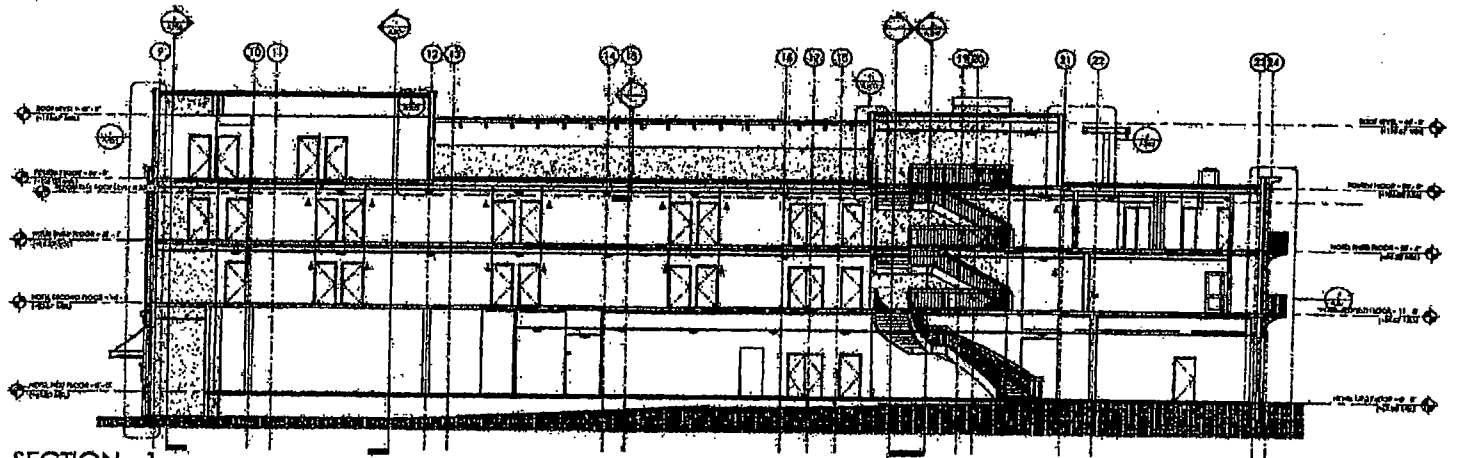
NORTH SOUTH - HOTEL SECTION - 2
SCALE: 1/16" = 1'-0"


DORCHESTER

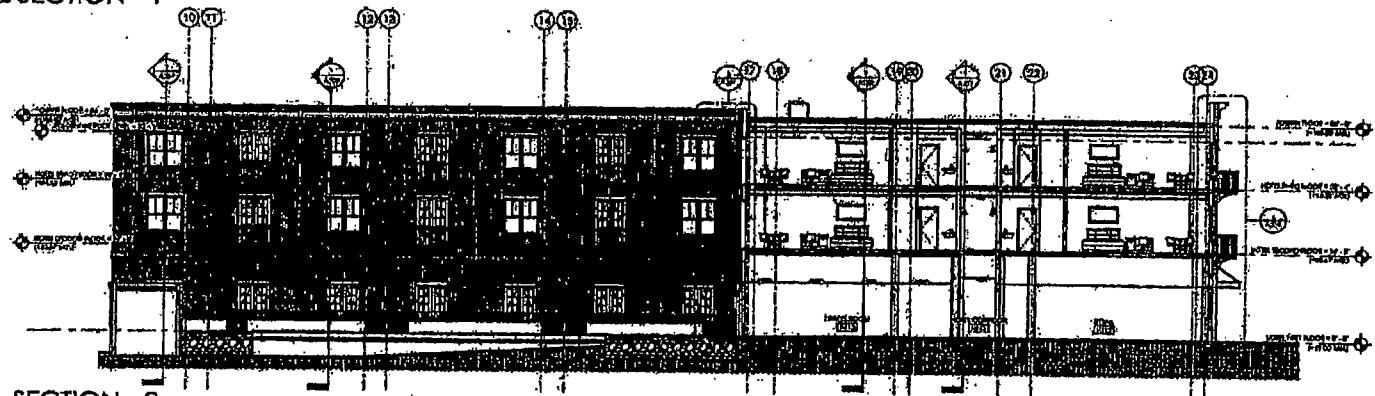
 **APPLEGATE & CO.**
Goff & D'Antonio Associates
January 5, 2014

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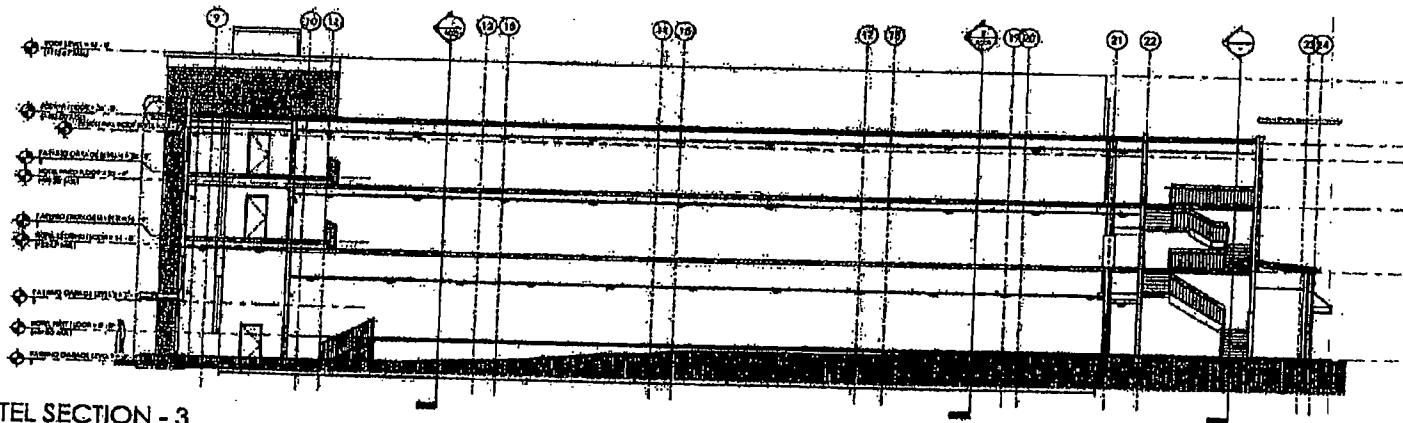


EAST WEST - HOTEL SECTION - 1
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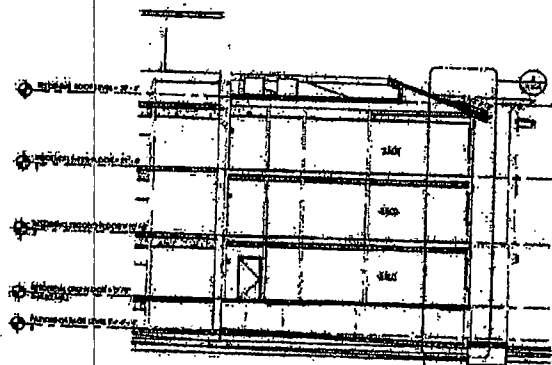


EAST WEST - HOTEL SECTION - 2
SCALE: 1/16" = 1'-0"

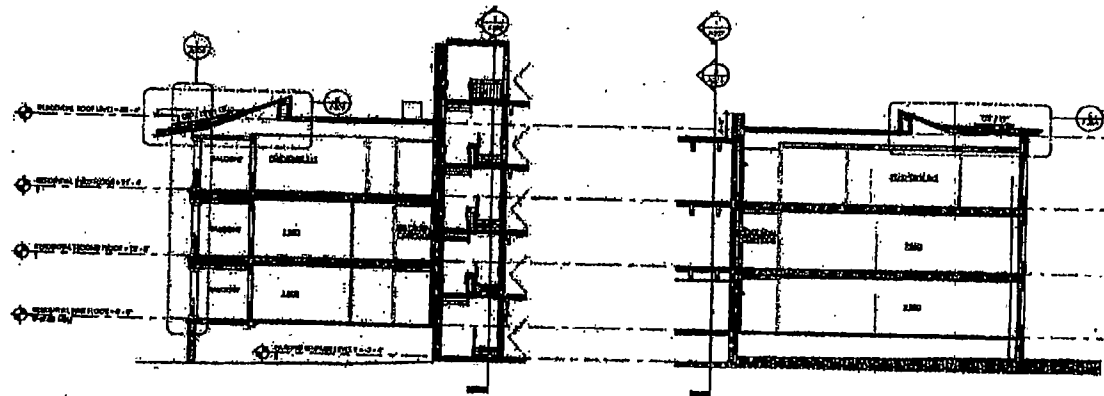




EAST WEST - HOTEL SECTION - 3
SCALE: 1/16" = 1'-0"



NORTH SOUTH - RESIDENTIAL SECTION
SCALE: 1/16" = 1'-0"



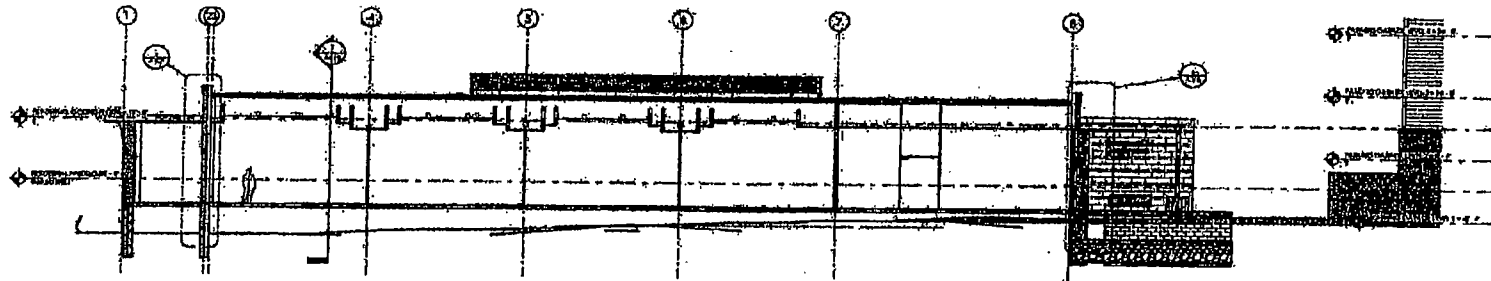
EAST WEST - RESIDENTIAL SECTION - 1 & 2
SCALE: 1/16" = 1'-0"

DORCHESTER

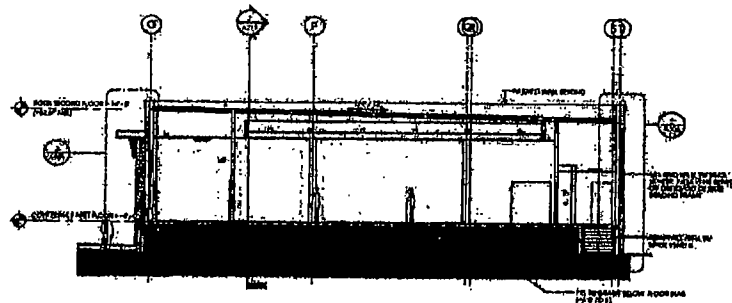
APPLEGATE & CO.
Goff & Antonio Associates
January 5, 2014

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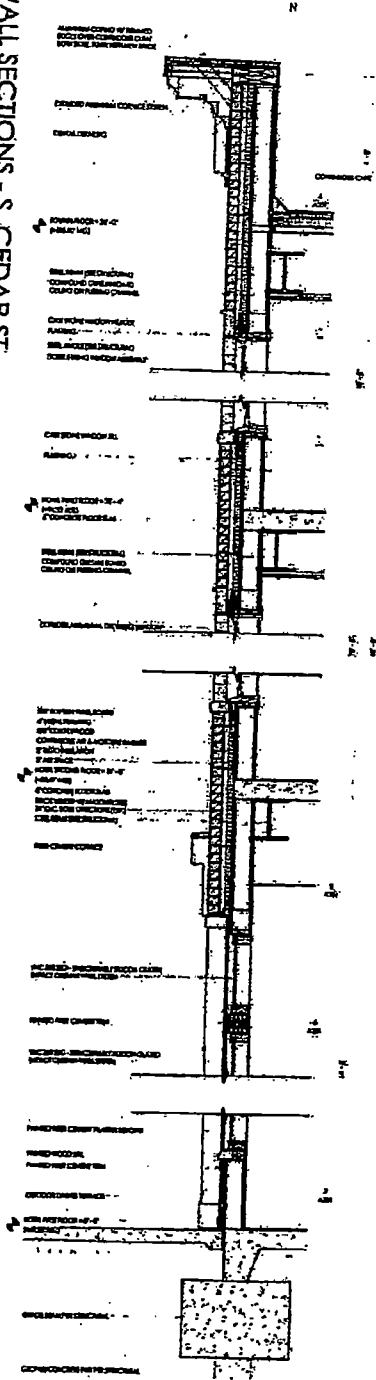
EAST WEST - CONFERENCE CENTER SECTION
SCALE: 1/16" = 1'-0"



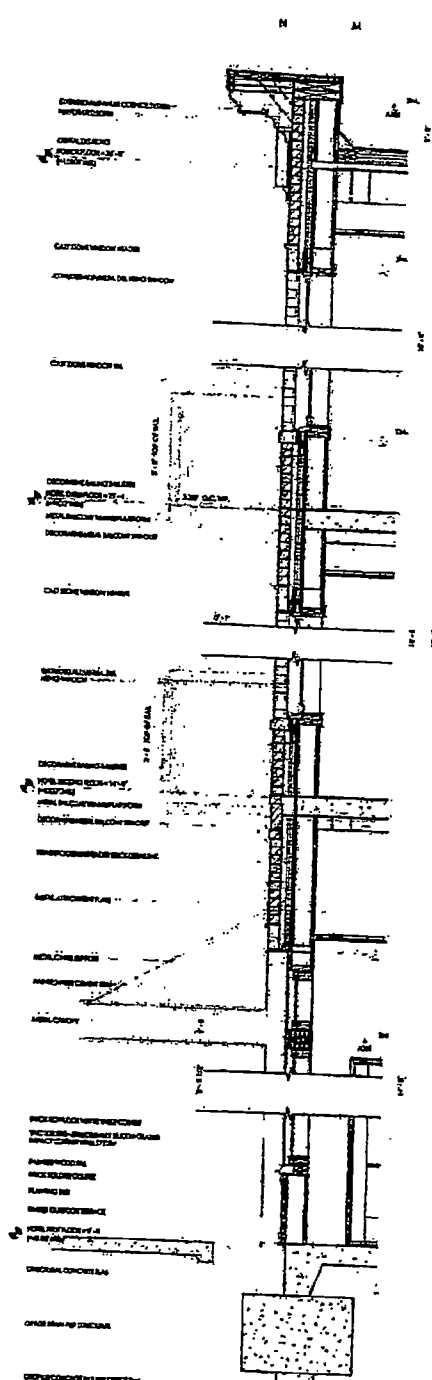
NORTH SOUTH - CONFERENCE CENTER SECTION
SCALE: 1/16" = 1'-0"

DORCHESTER

HOTEL WALL SECTIONS - S. CEDAR ST.



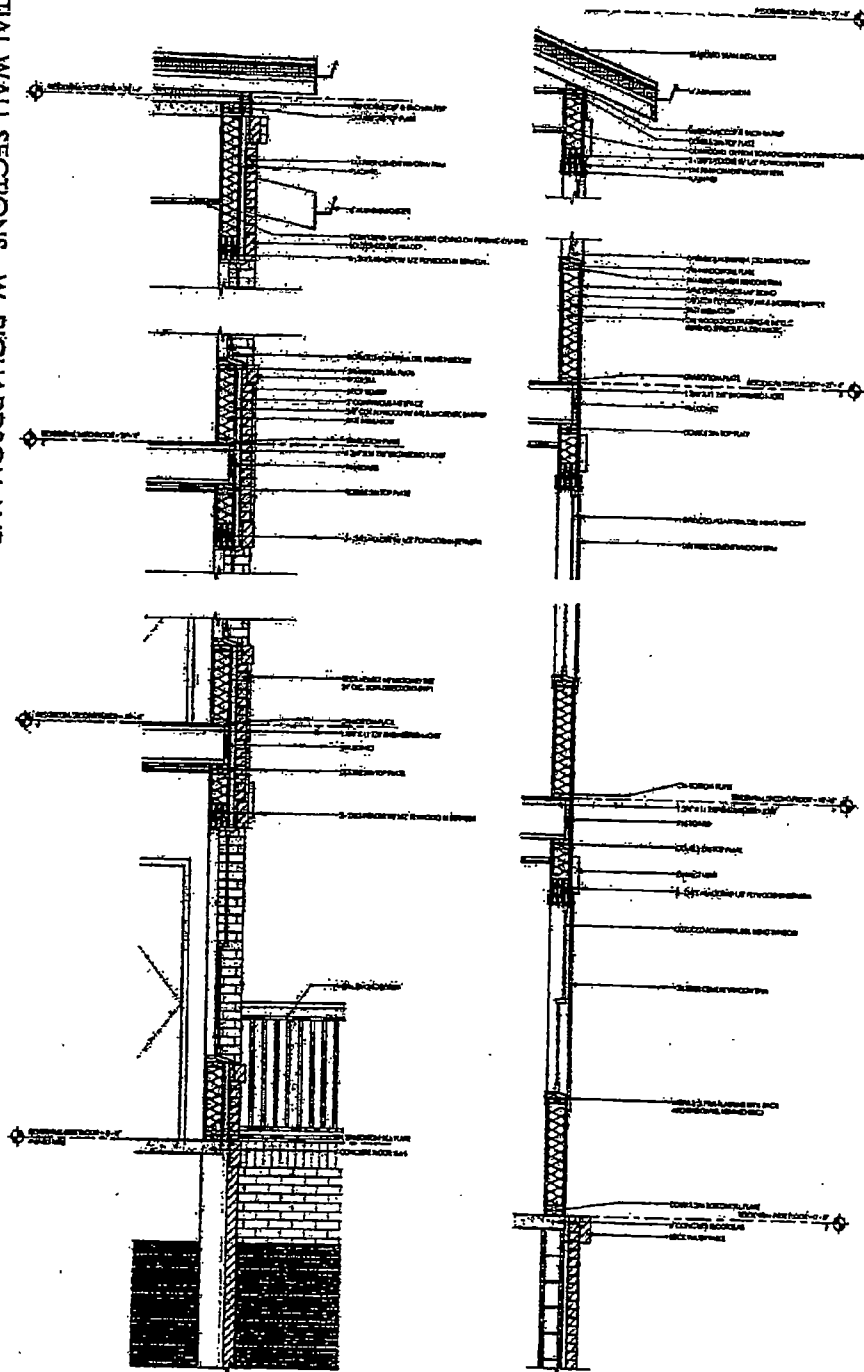
Wall Section @ Restaurant
SCALE: 3/8" = 1'-0"



Wall Section @ Hotel Parlor
SCALE: 3/8" = 1'-0"

DONALD STEIN

RESIDENTIAL WALL SECTIONS - W. RICHARDSON AVE.



Wall Section @ Brick Elevation
SCALE: 3/8" = 1'-0"

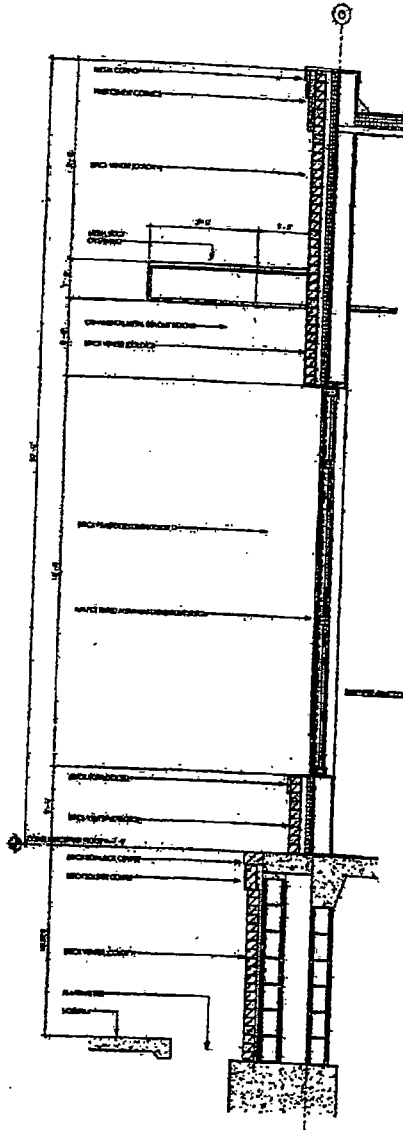
Wall Section @ Fiber Cement Siding
SCALE: 3/8" = 1'-0"

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1129

CONFERENCE CENTER WALL SECTIONS

DORCHESTER



Wall Section @ South Elevation
SCALE 3/8" = 1'-0"

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge
Case No. 2015-CP-18-00991

Appellate Case No. 2015-002199

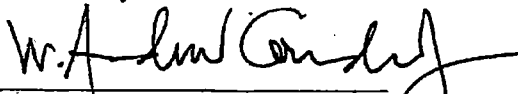
Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr.; South Carolina Public
Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers
Association, individually, and on behalf of all others similarly situated, Appellants,

v.

Town of Summerville and Town of Summerville Board of Architectural Review, Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



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(843) 871-1821
Attorney for Appellants

February 24, 2017
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge
Case No. 2015-CP-18-00991

Appellate Case No. 2015-002199

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr.; South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated, Appellants,

v.

Town of Summerville and Town of Summerville Board of Architectural Review, Respondents.

BRIEF OF APPELLANTS

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Summerville, SC 29483
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Attorneys for Appellants

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II. The Circuit Court erred either by not finding the decisions of the BAR appealed to the Circuit Court to be incorrect, or correct without accepting "additional evidence," or by not remanding those decisions to the BAR for a "rehearing" as required by S.C. Code Ann. § 6-29-930(A)	18
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A. The BAR did not adopt, develop or use "rules of procedure" as required by S.C. Code Ann. § 6-29-870(D); "reasonable rules concerning time and place of access" as required by S.C. Code Ann. § 30-4-30(a); "prescribed procedures and guidelines" referenced in Sec. 32-175(f); "rules of order" required to be "adopt[ed]" by the BAR by Sec. 32-176(e); "guidelines" required to be "develop[ed]" by the BAR by Sec. 32-176(h)(4); and "established guidelines" referenced in Sec. 32-176(h)(6)	19
B. The BAR's Secretary did not receive complete applications from all required parties at least fourteen days before, and the Town's planning department did not receive complete applications at least ten days before, the next regularly scheduled BAR meeting, and those applications did not include items listed on "the current checklist," in violation of Sec. 32-176(i), 32-181(c)(6).....	23
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E. The BAR failed to issue the certificate of appropriateness granted the Town and Developer on May 11, 2015 within "180 days of the time of the filing of the application with the designated town official" as required by Sec. 32-182(c)	26
F. The BAR erred by not issuing a separate certificate of appropriateness for demolition and for new construction, and on each property, for which an application was filed regarding the Hotel project.....	27
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STATEMENT OF THE ISSUES ON APPEAL

I. Did the Circuit Court err by soliciting, receiving, admitting, considering and relying on evidence added to the BAR record by the BAR when the BAR lacked jurisdiction to do so, having been created by the BAR after the Appellants appealed the April 6, 2015 and May 11, 2015 BAR decisions to the Circuit Court?

II. Did the Circuit Court err either by not finding the decisions of the BAR appealed to the Circuit Court to be incorrect, or correct without accepting “additional evidence,” or by not remanding those decisions to the BAR for a “rehearing” as required by S.C. Code Ann. § 6-29-930(A)?

III. Did the Court err by affirming BAR decisions when the BAR had failed to adopt, develop and comply with procedures and criteria required by law to have been adopted, developed and followed when the BAR made the decisions being appealed?

IV. Did the Court err by approving BAR decisions when facts on the BAR record fail to adequately support the decisions of the BAR and the BAR failed to show how facts that are on the BAR record comply with the criteria for BAR approval?

V. Did the Court err by affirming BAR decisions when the BAR transacted BAR business at secret meetings held deliberately without a quorum, proper prior public notice, public attendance and participation; and without keeping and publishing immediately minutes and records to the public, all in violation of the South Carolina Freedom of Information Act and other laws?

VI. Did the Court err by affirming BAR decisions when the BAR wrongfully issued a certificate of appropriateness based on numerous applications that were unqualified, and

wrongfully failed to accept and consider public objections to the BAR applications because they were unqualified?

STATEMENT OF THE CASE

On May 5, 2015, the Appellants filed a Petition, 2015-CP-18-877, with the Circuit Court as authorized by S.C. Code Ann. § 6-29-900 *et seq.* and Summerville, S.C. Code of Ordinances ("Town Ordinance") Sec. 32-181(c)(7) and Sec 32-182(f), to appeal decisions made by the Town of Summerville Board of Architectural Review ("BAR") on April 6, 2015. On May 22, 2015, the Appellants filed with the Circuit Court a second Petition, 2015-CP-18-991, to appeal decisions made by the BAR on May 11, 2015. These appeals were consolidated into this one action. (R. pp. 19-21). The respondents filed responses to this appeal on August 11, 2015.

At BAR meetings on June 1, July 6 and August 3, 2015, the BAR responded to these appeals by creating a purported new "decision" and new "findings and conclusions." (R. pp. 933-934; R. pp. 935-938; R. pp. 939-941). This purported new decision and accompanying findings and conclusions were adopted by the BAR on August 3, 2015, in a new seventeen-page document entitled "Decision of the Town of Summerville Board of Architectural Review, Including Findings of Fact and Conclusions of Law" ("BAR Findings" or "Findings and Conclusions"). (R. pp. 31-47; R. pp. 939-941). On August 5, 2015, the BAR submitted to the Circuit Court as the purported record of the appeal both the documents and recordings that existed on May 11, 2015, the last date of the BAR decisions being appealed, and the seventeen pages of BAR Findings adopted by the BAR at its August 3, 2015 meeting.

On August 14, 2015, a hearing was held before the Circuit Court regarding the Appellants' appeals of the BAR's April 6 and May 11, 2015 decisions. At the August 14,

2015 hearing the Circuit Court Judge requested *sua sponte* that the BAR supplement the record of May 11, 2015, with “minutes,” but not with the recordings or the agenda, “of the BAR meetings of June, July and August of 2015, wherein the BAR Order was discussed and ultimately approved.” (R. p. 4; R. pp. 777-779). The BAR provided the Court these June 1, July 6 and August 3, 2015 minutes which it considered, along with the Bar Findings adopted by the BAR on August 3, 2015, as part of the record when the Circuit Court rendered its decision.

On September 24, 2015, the Circuit Court issued an Order, filed October 23, 2015, affirming the decisions of the BAR on April 6, May 11 and August 3, 2015. (R. pp. 1-7). On October 22, 2015 Appellants filed and served a Notice of Appeal of the Circuit Court’s decision as authorized by SC Code Ann. § 6-29-940.

FACTS

On November 10, 2013, the Town of Summerville (“Town”) published a Request for Proposal for the design and construction of a hotel, restaurant, bar, garage, convention center and condominiums in Summerville, S.C. (“Hotel project”) in the Historic District of the Town. On December 18, 2013, the Town awarded the Hotel project to Applegate & Co. (“Developer”). (R. p. 905). On May 28, 2014, the Town created the Town of Summerville Redevelopment Corporation (“RDC”), pursuant to S.C. Code Ann. § 31-10-10 *et. seq.*

On July 9, 2014, the Town, the RDC and the Developer signed a Public-Private Partnership Agreement Between [sic] Town of Summerville, Town of Summerville Redevelopment Corporation and Applegate & Co. (“PPP Agreement”) regarding the building of the Hotel project. (R. pp. 1-2; R. p. 794-852).

The Developer, the Town and other property owners, but not the RDC,¹ filed eight separate Applications ("Application" or "Applications") seeking BAR approval of the Hotel project, including the demolition of buildings. (R. p. 853; R. p. 854; R. p. 856; R. p. 857; R. pp. 858-859; R. p. 860; R. p. 862; R. p. 863).

These Applications are undated and no record exists showing when the Applications were filed, with whom they were filed and what, if anything, was attached to the Application for the BAR to consider. (R. p. 853; R. p. 854; R. p. 856; R. p. 857; R. pp. 858-859; R. p. 860; R. p. 862; R. p. 863). None of these Applications request, and no law defines or mentions, "conceptual" or "preliminary" approval. The public was not permitted to inspect or copy these Applications prior to the BAR meetings at which they were considered.² There is no evidence that any Application was complete, submitted by all required parties or received by the BAR Secretary at least fourteen days before, or by the Town's planning department at least ten days before, the next regularly scheduled BAR meeting, as required by Town Ordinances, Sec. 32-176(i), 32-181(c)(6).³

Prior to the BAR meetings at which these Applications were considered, notice was not provided, as required by Town Ordinance, Sec 32-182(b), that the public was entitled to speak against proposed demolition. At the meetings, the BAR Chairman repeatedly stated that the public had no right to speak at the meetings, even though it did, and did not let the public speak at some meetings about information the public wanted the

¹ The RDC should have been an applicant for a certificate of appropriateness since the RDC was an "owner" of the Hotel project, as a co-signer of the PPPA Agreement authorizing the Hotel project as a "redevelopment project" as defined by S.C. Ann. § 31-10-20(16). See Town Ordinance, Sec. 32-181(c)(1); pp. 22, 24-26 infra. However, at no time did the RDC file an application for consideration by the BAR.

² See pp. 25, 41-42 infra.

³ The Developer and the Town "certif[ied] that all information required is included and the application is complete" even though, according to the BAR record, nothing was attached to the one-page Applications and, therefore, the Applications were incomplete in violation of Town Ordinance, Sec. 32-176(i). See pp. 23-24 infra.

BAR to consider and to be on the BAR record as a basis for appeal. (R. p. 305; R. p. 414; R. pp. 919-920). When the public could speak, it did so subject to unpublished, ad hoc rules made up and announced at the meetings by the BAR Chairman limiting public comment and objections on the record about the BAR Applications. (R. p. 32, § 5; R. p. 34, § 13; R. p. 169; R. pp. 216-217; R. pp. 303-306, 368 lines 1-16, 370-371; R. p. 414).

September 8, 2014 Meeting. There is no evidence on the BAR record that any action was taken on the Application regarding the Hotel project filed for the BAR's September 8, 2014 meeting.⁴ Therefore, the Court should find the BAR failed to act on this Application at the BAR's "next regularly scheduled meeting following receipt of the application," in violation of Town Ordinance, Sec. 32-181(c)(6).⁵

October 6, 2014 Meeting. At unknown dates an Application for the demolition of existing structures in the Town was filed to be considered at a BAR meeting on October 6, 2014, regarding the Hotel project by each of the following: (1) Gayle F. E. Gates Revocable Trust; (2) Faith Partnership; and (3) Anne Gaither. (R. p. 854; R. p. 856; R. p. 857).

The Agenda for this October 6, 2014 BAR meeting does not identify any of these three Applications or the Application for the September 8, 2014 meeting, to be considered at the October 6, 2014 BAR meeting; does not reference that demolition will be considered; does not reference "conceptual" or "preliminary" approval of any

⁴The minutes, recording and transcript of the recording of the September 8, 2014 BAR meeting were not submitted by the BAR as part of the BAR record to be considered by the Circuit Court, as required by S.C. Code Ann. § 6-29-920(A).

⁵ "[T]he [BAR] must file with the clerk a duly certified copy of the proceedings held before the [BAR] including a transcript of the evidence heard before the [BAR], if any . . ." Id. See pp. 25-26 infra.

Application; and does not state what or whose Application(s) will be considered at the October 6, 2014 meeting. Rather, the Agenda states in pertinent part only the following:

208 S. Cedar Street, 200, 206 and 210 W. Richardson Avenue – Mixed Use Development consisting of 65 room hotel, restaurant with roof top bar, 34-36 unit condos, conference center and 157 space parking garage (B-3).” (R. p. 884).

Despite these omissions in the Agenda for the October 6, 2014 BAR meeting, and the failure of any Application to ask for “conceptual” approval, at the meeting the BAR Chairman stated that:

“As with any other project, the applicant has the opportunity to present a conceptual or master plan for our review prior to committing funds for a full set of design plans and specifications. This means that we might agree with the concept while disagreeing with some of the details. It also means that each phase of the project must be submitted later for approval; that they will be more developed at that point; and the individual portions of the project and any disagreements will have been worked out before the applicant comes back to the Board. (R. pp. 169-170)(emphasis added).

Moreover, at this October 6, 2014 meeting the Developer told the BAR that “we’re here on a conceptual basis” and that its Application being considered at that meeting “is not a final product.” (R. pp. 197). In addition, the BAR Findings retroactively adopted by the BAR on August 3, 2015 state that the purpose of the BAR’s October 6, 2014 meeting was to:

[C]onsider the applications of Goff D’Antonio Architects and Applegate & Co. for conceptual approval to demolish structures located on the above-referenced real properties and to build a mixed-use development” (R. p. 31)(emphasis added).

However, there were no real properties referenced above this statement in the BAR Findings; the BAR Findings do not state what or whose Application or

Applications were considered at the October 6, 2014 BAR meeting and what, if anything, was attached to any Application or Applications considered; and no BAR Application before the BAR at its October 6, 2014 meeting has requested "conceptual" approval. Despite this failure to request or notice "conceptual approval," at the end of the October 6, 2014 meeting the BAR Chairman announced that no decision would be made at that meeting and "requested that the architect take comments under consideration and come back for conceptual approval with a re-design." (R. p. 1355)(emphasis added).

November 3, 2014 BAR Meeting. The Agenda for this November 3, 2014 BAR meeting does not mention any of the three above-referenced BAR Applications filed with the BAR to be considered at the October 6, 2014 BAR meeting; does not mention the BAR Application filed for the September 8, 2014 BAR meeting; does not state what or whose BAR Application will be considered at the November 3, 2014 BAR meeting; does not identify what, if anything, was attached to any Application as a submission to be considered by the BAR; and does not reference considering property at 213 W. 2nd Street South, 208 West Richardson Ave. or at the corner of South Cedar Street or West Richardson Ave. as stated in the three above-referenced BAR Applications for consideration at the October 6, 2015 BAR meeting. Rather, the Agenda states in pertinent part only the following, which is different than what is stated on all the above-referenced BAR Applications:

208 S. Cedar Street, 200, 206 and 210 W. Richardson Avenue – Conceptual Mixed Use Development consisting of 65 room hotel, restaurant with roof top bar, 34-36 unit condos, conference center and 157 space parking garage. (B-3). (R. p. 884).

This Agenda published by the BAR for its November 3, 2014 BAR meeting is identical to the Agenda published by the BAR for its October 6, 2014 meeting, except the word "Conceptual" was added, for unknown reasons, in the Agenda for the BAR's November 3, 2104 meeting. This Agenda does not reference demolition, (R. p. 884), even though demolition was considered at the meeting.

At the November 3, 2014, BAR meeting the Developer asked the BAR to give "conceptual and preliminary approval for the project," (R. p. 317), which was not requested or noticed in the BAR Agenda for the November 3, 2014 BAR meeting and in all of the BAR Applications and Agendas regarding the Hotel project that had been submitted to the BAR before the November 3, 2014 BAR meeting.

At the hearing the President of the Summerville Preservation Society tried to object that the BAR should not consider the Hotel project because the Developer had not submitted a final design of the Hotel project to the RDC for prior review and approval as required by Paragraph 8a of the PPP Agreement.⁶ The BAR Chairman objected to the making of this objection. (R. p. 368, lines 1-16).

January 5, 2015 BAR Meeting. The BAR Application does not show that the Developer or the Town owns or represents owners of existing structures sought in the January 5, 2015 BAR Application to be demolished. In fact, the three above-noted Applications filed with the BAR for the BAR meeting on October 6, 2014 show that the following properties are not owned by the Town or the Developer but by private parties:

⁶ Paragraph 8a of the PPP Agreement states that "[p]rior to submission for review and approval to any required public agency for permitting or certificate of appropriateness, developer will submit a final design for both the private and public improvements to the RDC for review and approval." *Id.* (emphasis added).

206 and 208 West Richardson Ave.; 213 W. 2nd Street; and the intersection of S. Cedar Street and W. Richardson Ave. Because the Town and the Developer did not own these structures sought to be demolished and no authorization had been submitted to the BAR showing the Town or the Developer represented the owners, the Town and the Developer were not qualified to submit this Application for demolition of these structures. (Town Ordinance, Sec. 32-181(c)(1)); see pp. 23-25 infra).

This BAR Application does not request “conceptual” or “preliminary” approval. Nevertheless, at the January 5, 2015 BAR meeting the Developer requested that the BAR give “conceptual and the preliminary approval,” (R. p. 419), and “[t]he Board gave conceptual/preliminary approval of the [Hotel] project.” (R. p. 36, § 26; R. pp. 459-460; R. p. 915).⁷ In addition, at this meeting the BAR approved moving a cottage at the rear of 206 W. Richardson Ave. and “approved the demolition of the structure located at 200 W. Richardson Avenue.” (R. pp. 36, §§ 22, 23, 24).

January 12, 2015 BAR Meeting. The Agenda for this meeting states that at the meeting the BAR will consider:

208 S. Cedar Street, 213 W. 2nd South Street, 200, 206 and 210 W. Richardson Avenue – Final approval for demo of existing buildings for a Mixed Use Development consisting of 65 room hotel, restaurant with roof top bar, 27 unit condos, conference center and 157 parking garage. (B-3). (R. p. 888)(emphasis added).

Inconsistently, this Agenda omits consideration of 208 W. Richardson Ave., which is part of the BAR Application for this January 12, 2015 BAR meeting. On the BAR Application for the BAR meeting on January 12, 2015 after the printed words

⁷ Handwritten by the BAR Chairman at the bottom of the BAR Application for the BAR meeting on January 12, 2015, is the following: “Approved as Noted – conceptual & preliminary only.” (R. p. 858) (emphasis added).

"Approved as Noted" are the handwritten words "Conceptual & Preliminary Approval only" even though, (1) the BAR did not vote to give "conceptual" or "preliminary" approval at this meeting; and (2) the Application for this meeting does not ask for "conceptual" or "preliminary" approval but asks only for "final" approval, and does not clarify for which specific properties on that BAR Application that "Conceptual & Preliminary Approval" was granted. (R. p. 858).

April 6, 2015 BAR Meeting. At the April 6, 2015 BAR meeting a motion "for conditional final approval passed with a majority vote of 4 to 1." (R. p. 926)(emphasis added).

May 5, 2015 BAR Meeting. The BAR passed a "motion to give final approval based on the conditional final requirements being satisfactorily answered." (R. p. 724; R. p. 931). Based on that approval, the BAR issued to the Developer and the Town a Certificate of Appropriateness dated May 11, 2015 regarding the Hotel project. (R. p. 48).

June 1, 2015 BAR Meeting. Although the Appellants had filed the appeals of both the April and May BAR actions, the BAR continued to revise and supplement those actions long after the appeals. The pertinent Agenda of the BAR's June 1, 2015 meeting consisted of the following:

Appeal of BAR Decision of April 6, 2015 for 208 S. Cedar; 213 W. 2nd South Street; and, 200, 206, 210 W. Richardson Avenue - . . .
Notification by Board's Legal Counsel of Receipt of Appeal;
Responsibilities of Board. (Executive Session to receive legal advice concerning receipt of Appeal and Responsibilities of Board in responding to Appeal). (R. p. 893)(emphasis in original).

No public questions or comments were allowed at this meeting. The BAR provided no recording or transcript of a recording of this meeting to the Circuit Court or

to the Appellants. In executive session at this meeting BAR members “discuss[ed] legal advice concerning an appeal to their decision of April 6th” (R. p. 933). Afterwards, during the meeting, the BAR passed a motion “to direct the Town Attorney to prepare findings of fact and conclusions for review and approval by this Board at its next scheduled meeting” and stating that “staff is directed to prepare transcripts for filing with the Circuit Court [regarding] cases 2015-CP-18-877 and 2015-CP-18-991 . . . filed with the Circuit Court.” (Id.)

July 6, 2015 BAR Meeting. The pertinent Agenda of the BAR’s July 6, 2015 meeting consisted of the following:

Executive Session to receive legal counsel related to pending litigation regarding the appeals of the BAR decisions of April 6, 2015 and May 4, 2015.

Review and Consideration of the proposed Order of the appeals of BAR decisions of April 6, 2015 and May 4, 2015 for . . . final approval for a mixed use development . . . (R. p. 935)(emphasis in original).

No public questions or comments were allowed at this meeting. The BAR provided no recording or transcript of a recording of this meeting to the Circuit Court or to the Appellants. At this meeting the BAR passed a motion, after receiving legal advice in Executive Session about the two BAR appeals, “to review the findings of fact and conclusions of law for [the Hotel project] and reconvene to adopt, deny or amend that document.” (R. pp. 935-936).

August 3, 2015 BAR Meeting. The pertinent Agenda of the BAR’s August 3, 2015 meeting consisted of the following:

Executive Session to receive legal counsel related to pending litigation regarding the appeals of the BAR decisions of April 6, 2015 and May 4, 2015.

Review and Consideration of the proposed Order of the appeals of BAR decisions of April 6, 2015 and May 4, 2015 . . . final approval for a mixed use development (R. p. 939)(emphasis in original).

No public questions or comments were allowed at this meeting. The BAR provided no recording or transcript of a recording of this meeting to the Circuit Court or to the Appellants. At this meeting the BAR passed a motion to: “approve the order as prepared and presented in response to the appeal of the final decisions of April 6 and May 4, 2015 of the BAR for [the Hotel project], including demolition for the project.” (R. p. 941)(emphasis added).

This “order” of the BAR was signed and submitted 3-4 months after the notices of appeals had been filed and served and only days before the hearing on those appeals was scheduled before the Circuit Court.

ARGUMENT

- I. **The Circuit Court erred by soliciting, receiving, admitting, considering and relying on evidence added to the BAR record by the BAR when the BAR lacked jurisdiction to do so, having been created by the BAR after the Appellants appealed the April 6, 2015 and May 11, 2015 BAR decisions to the Circuit Court.**

Within thirty days from the BAR’s receipt of notice of the appeals on May 5, 2015 and May 22, 2015, the BAR was required to file with the Clerk of the Circuit Court a duly certified copy of the proceedings held before the BAR, including a transcript of the evidence heard before the BAR, if any, and the decision of the board including its findings of fact and conclusions. S.C. Code Ann. § 6-29-920(A). This, the BAR failed to

do. If the BAR had done this, it would have been unable to place in the record of the BAR's proceedings the materials, including most significantly its findings and conclusions, that did not exist at the time of the BAR decisions being appealed and that the BAR manufactured months after their decisions were rendered and the notices of appeal had been filed. By allowing these subsequent materials, created long after the decisions and more than 30 days after the notices of appeal, the Circuit Court erred.

Section 6-29-930(A) requires that when a Circuit Court considers a BAR appeal, "[t]he findings of fact by the [BAR] are final and conclusive on the hearing of the appeal [and] the court may not take additional evidence." (*Id.*)(emphasis added.) The BAR's findings of fact considered by the Circuit Court should have been only those findings, if any, that existed on April 6, 2015 and May 11, 2015, the respective dates the BAR made the decisions that were appealed. However, instead of considering only the findings existing on those dates, the Circuit Court "[took] additional evidence," in violation of Section 6-29-930(A), by allowing the BAR to supplement the BAR record that existed on April 6, 2015 and May 11, 2015, with a 17 page document the BAR misleadingly titled "Decision of the Summerville Board of Architectural Review, Including Findings of Fact and Conclusions of Law," (R. pp. 31-47)("Impermissible BAR Evidence"), with a false certification⁸ of the BAR record and BAR meeting minutes generated on June 1, July 6 and August 3, 2015. The BAR mischaracterized this 17-page document, adopted by the BAR on August 3, 2015, as a "decision" and on August 5, 2015 filed it with the Circuit

⁸ On August 4, 2015, the Town's Director of Planning and Economic Development falsely "certified" that the documents [submitted by the BAR for filing with the] Dorchester County Clerk of Court constitute a complete copy of the proceedings held before the Board with respect to the project at issue in the above-entitled appeal, including a transcript of the evidence heard before the Board and the decision of the Board including its findings of fact and conclusions." (R. p. 30)(emphasis added). Thus, the Town misrepresented to the Circuit Court that the Impermissible BAR Evidence was part of the record of the April 6 and May 11, 2015 BAR decisions being appealed, without disclosing that in fact they were not.

Court claiming it was part of the BAR record for the Appellants' then pending appeals to the BAR's April 6 and May 11, 2015 decisions. However, the Appellants did not appeal a "decision" made by the BAR on August 3, 2015 but appealed decisions made by the BAR only on April 6 and May 11, 2015. Because Appellants appealed BAR decisions on April 6 and May 11, 2015, not a BAR decision on August 3, 2015, this 17-page document was "additional evidence" that should not have been added to the record of the BAR decisions on April 6 and May 11, 2015 that were being appealed. (S.C. Code Ann. § 6-29-930(A)).

The Court's allowing the BAR to certify that Impermissible Bar Evidence as part of the BAR record being appealed and the Court's acceptance of that Impermissible Bar Evidence as part of the BAR record being appealed, were errors because:

- (1) After the BAR decisions made on April 6 and May 11, 2015 were appealed to the Circuit Court on May 5 and May 22, 2015, the BAR lacked jurisdiction to take any additional action regarding those decisions except to furnish the Circuit Court a copy of the "proceedings held [on April 6 and May 11, 2015] before the" BAR as required by S.C. Code Ann. § 6-29-920(A); and
- (2) That Impermissible BAR Evidence did not exist on the dates the April 6, 2015 and May 11, 2015 decisions being appealed were made and, therefore, logically could not be part of the record of those appeals or be consistent with the mandate in S.C. Code Ann. § 6-29-930(A) that the "court may not take additional evidence."⁹

In addition, the Respondents gratuitously sent the Court two Affidavits, dated July 8 and July 9, 2015, to add to the BAR record that were completely irrelevant to the merits of appeal and for the stated purpose of trying to persuade the Judge not to decide

⁹ At oral argument on August 14, 2015, counsel for Appellants asked the Circuit Court to "disregard the findings of fact and conclusions of law . . . filed on August the 5th, 2015 [because] [t]hey're not part of the record . . . are not the contemporaneous findings or determinations of the board, but they are an after-the-fact attempt to clean up the record." (R. p. 752).

adverse the Developer (who was not even a party to the BAR appeal) and, if the Court did so, at least to require a bond. (R. pp. 156-163; R. pp. 164-167; R. pp. 1022-1023).

The Court's taking of this "additional evidence" was extremely prejudicial to the Appellants. The Respondents generated this "additional evidence" after the Appellants had filed both their Petitions for appeals, and literally crafted their purported "findings and conclusions" adopted on August 3, 2015 to rebut, often in conclusory fashion and without supporting evidence, the grounds for appeal stated by the Appellants in their Petitions on May 6 and May 22, 2015. (R. pp. 752-754). As just one of many examples, in response to claims by Appellants in their Petitions on May 6 and May 11, 2015 that the BAR had violated the Freedom of Information Act, the "additional evidence" the BAR adopted on August 3, 2015 and filed with the Court on August 5, 2015 included conclusory and unsupported findings by the BAR that the BAR had not violated the Freedom of Information Act. (See e.g., R. p. 57; R. p. 105; R. p. 46, § 59).

If this precedent of accepting "additional evidence" after final BAR decisions already have been made and after Petitions to appeal those decisions already have been filed with a Circuit Court is allowed to stand, in the future this BAR and other BARs in South Carolina will be able to nullify and render moot judicial appeals of BAR decisions by allowing BARs to create and add to BAR records "additional evidence" "to clean up the record" and to supply "rolling facts and conclusions" rebutting the grounds stated in the Petitions for appeal. The BAR clearly lost jurisdiction over each BAR decision appealed the moment the Appellants filed a Petition with the Circuit Court appealing that decision, and therefore lacked the authority to take any action thereafter to supplement with "additional evidence" the record being appealed.

II. The Circuit Court erred either by not finding the decisions of the BAR appealed to the Circuit Court to be incorrect, or correct without accepting “additional evidence,” or by not remanding those decisions to the BAR for a “rehearing” as required by S.C. Code Ann. § 6-29-930(A).

When the BAR made its decisions on April 6 and May 11, 2015 that Appellants appealed on May 6 and May 22, 2015, respectively, the BAR had made no findings and stated no conclusions except to state, without analysis or justification, that applications to construct and to demolish certain structures were approved. (R. p. 926; R. p. 929; pages 13-14 supra). Further, the BAR record that existed on April 6, 2015 and May 11, 2015 failed to contain evidence that all the grounds for appeal stated in the two Petitions dated May 6, 2015 and May 22, 2015 were not valid. In error, the BAR relied, in its written and oral arguments to the Circuit Court opposing Appellants’ appeals, on the above-referenced Impermissible BAR Evidence incorrectly allowed by the Court as “additional evidence” on the BAR record in violation of Section 6-29-930(A). (R. pp. 114, 120; R. pp. 31-47; R. pp. 752-754, 775-776).

As a matter of law if the Judge believed “the certified record [was] insufficient for review, the matter must [have been] remanded to the [BAR] for rehearing.” S.C. Code Ann. § 6-29-930(A)(emphasis added). The very fact that the Judge did allow this Impermissible Bar Evidence as “additional evidence” on the “certified record” of the BAR despite the Appellants’ objections evidences that the Judge did believe the “certified record” without the Impermissible Bar Evidence he allowed was “insufficient for review.” If the Judge believed the correct BAR record not containing this “additional evidence” was “insufficient for review,” the Court was required to remand the case to the BAR for a “rehearing” but failed to do so. (R. pp. 759, 763-764).

III. The Court erred by approving BAR decisions when the BAR had failed to adopt, develop and comply with procedures and criteria required by law to have been adopted, developed and followed when the BAR made the decisions being appealed.

- A. The BAR did not adopt, develop or use "rules of procedure" as required by S.C. Code Ann. § 6-29-870(D); "reasonable rules concerning time and place of access" as required by S.C. Code Ann. § 30-4-30(a); "prescribed procedures and guidelines" referenced in Sec. 32-175(f); "rules of order" required to be "adopt[ed]" by the BAR by Sec. 32-176(e); "guidelines" required to be "develop[ed]" by the BAR by Sec. 32-176(h)(4); and "established guidelines" referenced in Sec. 32-176(h)(6).

Statutes and ordinances impose the following requirements on the BAR:

- (1) S.C. Code Ann. § 6-29-870(D) expressly requires that: "The [BAR] shall adopt rules of procedure in accordance with the provisions of any ordinance adopted pursuant to this chapter" (*id.*)(emphasis added);
- (2) S.C. Code Ann. § 30-4-30(a) requires that "[a]ny person has a right to inspect or copy any public record of a public body . . . in accordance with reasonable rules concerning time and place of access" (*id.*)(emphasis added);
- (3) Sec. 32-175(f) states that the BAR "shall have the power to approve . . . applications in accordance with prescribed procedures and guidelines" (*id.*)(emphasis added);
- (4) Section 32-176(e) requires that the "[BAR] shall adopt rules of order . . ." (*id.*)(emphasis added);
- (5) Sec. 32-176(h)(4) states that the "[BAR] . . . shall develop guidelines for the administration of the [this] section" (*id.*)(emphasis added); and
- (6) Sec. 32-176(h)(6) states that "[i]t is the duty of the [BAR] to follow the established guidelines governing . . . new construction . . ." (*id.*)(emphasis added).

In violation of these mandates the BAR has adopted no rules, procedures or guidelines. (R. pp. 754-757, 761, 768, 779-780, 787-789). Nothing on the BAR record or any other public record shows that it did. At most, the BAR Chairman verbally, unilaterally and inconsistently pronounced ad hoc during BAR meetings limited requirements governing when and how the public could speak at those meetings, and the sequential order in which the BAR would consider matters on its agenda. (See, e.g., R.

p. 713; pages 9, 11, 13-14, 15-18 supra). The BAR neither adopted nor published any procedure, rule or guideline in writing so the public could know clearly, predictably and timely what conduct was required by applicants, the BAR and the public. Without clear rules and guidelines adopted or developed in writing by the BAR regarding submitting, considering, approving and rejecting approval of applications to the BAR, the public is forced to endure uncertainty because the BAR can follow procedures made up ad hoc, unilaterally, at whim and possibly arbitrarily and abusively by the BAR Chairman, and the BAR can act arbitrarily and capriciously with virtual impunity. Petitioners were left guessing through this entire BAR process on how this decision was proceeding because there were no written rules anywhere. (R. pp. 754-757, 761, 768, 779-780, 787-789).

Even if the Town per se passed ordinances stating some procedures of the BAR, the BAR did not comply with the specific mandates that “[t]he [BAR] shall adopt rules of procedure in accordance with the provisions of any ordinance adopted pursuant to this chapter,” S.C. Code Ann. § 6-29-870(D) (emphasis added); that the “[BAR] shall adopt rules of order . . . ,” Section 32-176(e) (emphasis added); and that the “[BAR] . . . shall develop guidelines for the administration of [this] section,” Town Ordinance, Sec. 32-176(h)(4) (emphasis added). The BAR has adopted and developed no rule or guideline.

At argument, the BAR’s counsel argued that the BAR followed Roberts Rules of Order and that that complied with Section 32-176(e). (R. pp. 755). That claim is not accurate. There is no evidence on the BAR record or on any public record that the BAR followed Roberts Rules of Order; that the BAR “adopted” Roberts Rules of Order as expressly required by Town Ordinance, Sec. 32-176(e); and, if it did, which version of Roberts Rules of Order was adopted and used by the BAR and when. Similarly, the BAR has not

“develop[ed] guidelines” regarding color or any other matter as required by Town Ordinance, Sec. 32-176(h)(4), and nothing on the BAR record or on any other public record shows that it did. Despite the BAR’s failure to have developed these required guidelines, the BAR issued a certificate of appropriateness for the Hotel project. (R. p. 48).

Any rules of procedure that were adopted by the Town or the BAR regarding how or when the BAR should proceed when considering applications to construct or demolish buildings were insufficient as a matter of law. For example, no rule of procedure adopted by the Town or BAR clarifies who must apply for BAR approval of demolition or construction; the time and place of public access to inspect and copy an application to the BAR as required by S.C. Code Ann. § 30-4-30(a); the meaning of the terms “conceptual” and “preliminary” approval; or when, how and on what terms the BAR should consider or grant “conceptual” and “preliminary” approvals versus “final” approval. Town Ordinance, Sec. 32-181(c)(1) states “[t]he application for the certificate of appropriateness must be submitted by the owner or agent of the property in question.” *Id.* (emphasis added). The BAR’s failure to define “owner or agent of the property in question” (emphasis added) to clarify who must apply for new construction results in uncertainty in whether the RDC was required to apply for construction regarding the Hotel project because the RDC, as a signer of the PPPA which authorized the Hotel project, was a legal “owner” of the Hotel project.

The BAR repeatedly uses the terms “conceptual” and “preliminary” but never defines their meaning. (See, e.g., R. pp. 31-36, §§ 2, 8, 14, 17 and 26). The terms “conceptual” and “preliminary” approvals are simply confusing terms the BAR invented

ad hoc and without prior notice to the public as incremental steps in the BAR approval consideration process without the BAR or Town having adopted any rule creating those interim steps and defining the meaning and intended use of those terms. Indeed, BAR members and the Developer were confused over whether the BAR was considering conceptual or both conceptual and preliminary approval. (See R. pp. 459-460). The BAR's use of these interim steps in this manner allowed the BAR to operate arbitrarily, unaccountably, non-transparently, inconsistently and manipulatively, and has caused much public confusion. (See e.g., R. pp. 367-370).

- B. The BAR's Secretary did not receive complete applications from all required parties at least fourteen days before, and the Town's planning department did not receive complete applications at least ten days before, the next regularly scheduled BAR meeting, and those applications did not include items listed on "the current checklist," in violation of Sec. 32-176(i), 32-181(c)(6).

None of the BAR applications submitted regarding the Hotel project is dated and nothing on the BAR record indicates specifically to whom or the date on which each of those Applications was submitted or specifically what, if anything, was attached to each Application. Consequently, there is no evidence on the BAR record that any of these Applications was submitted to the BAR's Secretary and to the Town's Planning Department and, if they were, that they were submitted to each of them within fourteen days and ten days as required by Town Ordinances, Sec. 32-176(i) and 32-181(c)(6), respectively. In addition, there is no evidence on the BAR record that each application was complete and included all items on the "current checklist," as required by Town Ordinance Sec.32-176(i). (R. p. 757). Indeed, neither the BAR record nor any other public record in any way indicates what is the meaning of the term "current checklist;"

what items are on that “current checklist,” or whether in fact “the current checklist” as used in Town Ordinance, Sec. 32-176(i) even exists. (See R. p. 757).

In addition, nothing in the record indicates whether all required persons or entities, including the RDC,¹⁰ signed the applications. Indeed, four Applications, on September 8, 2014; January 5, 2015; January 12, 2015; and April 6, 2015, submitted by the Developer and the Town failed to include as an applicant the RDC, in violation of Town Ordinance, Sec. 32-181(c)(1)¹¹. Because the RDC, as a signer of the PPPA which authorized the Hotel project, was a legal “owner . . . of the property in question,” i.e., of the Hotel project, the RDC was a necessary applicant for all applications regarding the Hotel project. Further, and very significantly, because as a matter of law the entire Hotel project was required to be the product of a Request for Proposal issued by the RDC for a “redevelopment project” that was part of a “redevelopment plan” created by the RDC,¹² the RDC was the true “owner” of the Hotel project. (S.C. Code Ann. §§ 31-10-10(b),(c); 31-10-20(15),(16) and 31-10-100; see S.C. Code Ann. § 31-10-10 *et. seq.*). Because the four applications submitted by the Developer and the Town failed to include as an applicant the RDC, the owner, in violation of Town Ordinance, Sec. 32-181(c)(1), the BAR’s approval of the Hotel project is void.

Based on this inability and failure by the Bar to demonstrate compliance with these requirements in Town Ordinances, Sec. 32-181(c)(1), 32-181(c)(6) and Sec. 32-176(i), and the BAR’s failures to comply with those requirements, the Circuit Court

¹⁰ See fn. 1 *supra*.

¹¹ See page 7 *supra*.

¹² The Respondents did not comply with statutory requirements for involving the RDC in the Hotel project whose approval by the BAR is the subject of this appeal. (R. pp. 956-958). Moreover, the BAR refused to consider evidence from the Appellants that the BAR lacked authority to consider the Hotel project because of these statutory violations regarding the RDC. See p. 11 *supra* and pp. 43-45 *infra*.

either should have reversed the BAR decisions that were being appealed or, at a minimum, remanded the matter to the BAR for a “rehearing” in accordance with S.C. Code Ann. § 6-29-930(A). (See R. pp. 754, 756, 757, 759, 763, 774).

- C. The BAR failed to act upon each application at the BAR’s “next regularly scheduled meeting following receipt of the application,” in violation of Sec. 32-181(c)(6).

In several instances the BAR record fails to show that the BAR acted upon applications regarding the Hotel project at the BAR’s next regularly scheduled meeting following receipt of the applications, as required by Town Ordinance, Sec. 32-181(c)(6). Because none of the BAR applications are marked with individual identifiers such as numbers or dates submitted and because of the confusing, imprecise and inconsistent ways in which applications were identified to the public in agendas, minutes and meetings, it is confusing and uncertain precisely what or whose application the BAR considered or acted upon at BAR meetings and whether specific applications ever were considered or acted on.¹³

- D. The BAR deferred action on Hotel project applications without making findings that the application was incomplete or that unanswerable questions arose during the BAR’s review of each application.

Town Ordinance, Sec. 32-181(c)(6)c states in part that “[i]f the application is found to be incomplete or unanswerable questions arise during the [BAR’s] review of the application, the [BAR] may defer action on the application until the next scheduled meeting.” (*Id.*)(emphasis added).

¹³ For example, there is no evidence in the BAR record that any of the individual Applications for demolition submitted by (1) Gayle F. E. Cates Revocable Trust, (R. p. 856), (2) the Faith Partnership, (R. p. 854), and (3) Anne Gaithers, (R. p. 857), to be considered at the BAR’s meeting on October 6, 2014 were ever considered or acted upon by the BAR. Similarly, there is no evidence on the BAR record that the Application submitted by the Town and the Developer for consideration at the BAR’s September 8, 2014, meeting was ever considered or acted upon by the BAR.

No evidence exists anywhere that the BAR found at any BAR meeting that any of the applications reviewed by the BAR were incomplete or that any unanswerable questions arose during the BAR's review of any of the applications. Therefore, no decision on whether to approve or disapprove any BAR application should have been deferred until the next scheduled meeting. Moreover, no deferment of BAR action on any application should have been until a special meeting of the BAR but, instead, should have been "until the next scheduled meeting". (See **Town Ordinance, Sec. 32-181(c)(6)c**).

Despite these requirements, the BAR expressly deferred action on the Hotel project applications considered at BAR meetings on at least two occasions – October 6 and November 3, 2014 – not because of the incompleteness of an application or the emergence of unanswerable questions, but for alternative reasons not consistent with Town Ordinance, Sec. 32-181(c)(6)c. (See **R. pp. 251-252; R. p. 371**). Moreover, what the BAR did regarding its Hotel project application at its September 8, 2014 meeting is unknown because that is not on the BAR record.

- E. The BAR failed to issue the certificate of appropriateness granted the Town and Developer on May 11, 2015 within "180 days of the time of the filing of the application with the designated town official" as required by Sec. 32-182(c).

According to the BAR record, seven applications regarding the Hotel project were filed with the BAR on unknown dates and with unknown individuals for consideration at BAR meetings to be held on September 8, 2014; October 6, 2014; January 5, 2015; January 12, 2015; and April 6, 2015.¹⁴ The BAR's approvals being appealed occurred on April 6, 2015 and May 11, 2015. (See **pages 15-17 supra**). Because more than 180 days had elapsed between dates of the filing of the four Applications to be heard on September

¹⁴ See page 7 supra.

8, 2014 or October 6, 2014, and the BAR decisions to approve applications on April 6 and May 11, 2015, the BAR could not have granted a certificate of appropriateness for those four Applications.

Moreover, the Town and the Developer could not have circumvented this 180-day time limit by filing multiple successive applications with serial start dates, without violating the letter and the spirit of Town Ordinance, Sec. 32-182(c). That particularly is true because of the BAR's stated policy of not allowing an application to be reinstated until at least 180 days after an application has been rejected, and because the failure to approve an application within 180 days has the effect of that application expiring and thereby being rejected according to Town Ordinance, Sec. 32-182(c). (See R. p. 371). Because the BAR record does not identify which specific applications were considered at the BAR meetings on April 6, 2015 and May 11, 2015, and what happened to the four applications to be heard on September 8, 2014 or October 6, 2014, it is impossible to know from the BAR record whether a certificate of appropriateness was granted for one or more applications whose 180-day deadline had expired. Therefore, the Certificate of Appropriateness issued by the BAR on May 11, 2015 is invalid and, at a minimum, this matter should be remanded to the BAR for a rehearing as provided by S.C. Code Ann. § 6-29-930(A).

- F. The BAR erred by not issuing a separate certificate of appropriateness for demolition and for new construction, and on each property, for which an application was filed regarding the Hotel project.

Town Ordinance, Sec. 32-173 states a "[c]ertificate of appropriateness means [a] document issued by the [BAR] . . . certifying that the proposed actions by an applicant are found to be acceptable in terms of design criteria relating to the individual property or

the historic district." (Id.)(emphasis added). Town Ordinance, Sec. 32-181(a), (b) states "[a] certificate of appropriateness is required from the [BAR] . . . for any construction . . . and any demolition of a building or structure. [. . .] The certificate of appropriateness shall be a standardized format . . . stating that the . . . demolition or changes including . . . proposed construction . . . for which the application has been made are approved by the [BAR]." (Id.)(emphasis added).

The BAR "review criteria" required for BAR approval of "demolition" (see Town Ordinance, Sec. 32-182(b)) are totally different than the BAR criterial for approval of "construction." (See Town Ordinance, Sec. 32-182(d)). A BAR application for and approval of "demolition" of a structure requires a "separate action by the [BAR]" than a BAR application for and approval of "construction" of a new structure. (R. p. 170) ("[d]emolition is also considered as a separate action by the [BAR]" (emphasis added)). That is why separate applications to demolish existing buildings and applications to construct new buildings were submitted by different owners of property for consideration by the BAR and were subsequently received, advertised, considered, voted on and justified with purported findings and conclusions published by the BAR, separately. Applications only for demolition of existing structures for the Hotel project were submitted for the BAR meetings dated September 8, 2014; October 6, 2014; January 5, 2014; and January 12, 2015.¹⁵ (R. p. 853; R. p. 854; R. p. 856; R. p. 857; R. pp. 858-859; R. p. 860) An application for construction only was filed on April 6, 2015. (R. p. 862). Applications for new construction and demolition for the Hotel project were submitted for the BAR meetings dated September 8, 2014 and January 5, 2015.¹⁶ (R. p.

¹⁵ See pp. 8-10, 12-13.

¹⁶ See pp. 8, 11-12.

853; R. pp. 858-859).

Despite this consistent history of processing separately applications for the demolition of buildings and the construction of new buildings, the BAR issued only one Certificate of Appropriateness approving both demolition and construction for the Hotel project instead of separate certificates of appropriateness – one for demolition and one for construction - and separate certificates of appropriateness for each property on which approval to demolish or construct was sought.

This consolidation of approvals for both demolition and construction into one Certificate of Appropriateness has the likely purpose of trying to avoid expiration of the Certificate of Appropriateness that might be caused by the requirement of Town Ordinance, Sec. 32-181(b) that “[t]he activities [i.e., demolition and/or construction] covered by the certificate must be started within six months of the date [sic] issuance, otherwise the certificate expires and the applicant must reapply.” (Id.)(emphasis added). Even if demolition of a building approved by the certificate of appropriateness occurred within six months of its date of issuance, no construction for the Hotel project has occurred and, therefore, the Certificate of Appropriateness issued on May 11, 2015, has expired. Moreover, if two separate certificates of appropriateness were required, one for demolition and one for construction, the failure of construction of the Hotel project to have started within six months of issuance of the certificate of appropriateness has caused that certificate of appropriateness to expire even if some demolition has occurred. The BAR should have rules to clarify these issues, as required by statute and ordinance.¹⁷

¹⁷ See pp. 20-23 supra.

IV. Facts on the BAR record fail to adequately support the decisions of the BAR and the BAR failed to show how facts that are on the record comply with the criteria for BAR approval.

- A. There is not sufficient information and documentation in the BAR record to affirm the decisions of the BAR being appealed.

The criteria upon which approval or rejection of a BAR application for construction and demolition must be based include the following:

1. Sec. 32-172(a) (“to protect, preserve and enhance the distinctive architectural and cultural heritage of the town; to promote educational, cultural, economic and general welfare of the people of the town; to foster civic pride; to encourage the harmonious, orderly and efficient growth and development of the municipality; . . . to ensure that new buildings . . . will be harmonious with the existing structures and sites);(c) (“to encourage a harmonious . . . outward appearance of structures . . . to preserve property values and continue to attract business and residents); (d) (“encouraging a general harmony [regarding] style, form, proportion, texture and material . . . to contribute to the distinctive character of the town)(id.)(emphasis added);
2. Sec. 32-175(f) (“promote the purposes and objectives of this article”)(id.);
3. Sec 32-176(h) (“make [six] determinations”)(id.);
4. Sec 32-176(h)(6) (“to follow the established guidelines governing . . . new construction . . . ”)(id.); and
5. Sec. 32-182(d) (“use Secretary of the Interior’s Standards for Rehabilitation as guidelines in making its decisions”)(id.).

At the BAR meetings on April 6 and May 11, 2015, at which the BAR made its decisions being appealed, the BAR literally stated no findings, no conclusions of law and no facts to demonstrate compliance with any of the above-stated criteria or to explain the BAR’s rationale for its decisions to approve the applications being appealed. (**R. pp. 761-763**). There is no evidence in the record supporting any finding that the project as presented and the demolition permits as requested satisfy the requirements of Town Ordinance, Sec. 32-182(d)(1) through (10),(40). Indeed, the BAR did not even identify what criteria it used when deciding to approve the applications for the Hotel project. Therefore, those decisions are invalid and should be overturned as a matter of law. (**R. p.**

765) (“if there are no facts upon which to justify their decision, then that is a ground for appeal and is an error of law”); Blind Tiger, LLC v. City of Charleston, 366 S.C. 182, 185, 621 S.E.2d 361, 362 (Ct. App. 2005), citing Gurganious v. City of Beaufort, 317 S.C. 481, 486, 454 S.E.2d 912, 915 (Ct. App. 1995).

Even if the Findings and Conclusions adopted by the BAR on August 3, 2015 were to be considered, the statements in those Findings and Conclusions are completely unsupported and conclusory and fail to identify any facts that support, justify or reasonably lead to the conclusion that the applications approved complied with the criteria required for approval. (R. pp. 761-762, 764)(“The findings must be tied to the evidence and not just conclusory statements without reference to the evidence . . . all of the findings on their compliance with the statute are conclusory. They’re not specific. They don’t say how it is that the project meets any of these criteria”).

For example, although the Findings and Conclusions identify criteria (R. pp. 41-45, §§ 54-57) the BAR may have considered when approving the applications, these Findings and Conclusions say nothing more about BAR compliance with those criteria other than the bald, unexplained, unsupported and conclusory statement that “[t]he BAR complied with all relevant obligations and requirements set forth within the Town of Summerville Code of Ordinances.” (R. pp. 41-45, §§ 54-58). And, not surprisingly, these findings directly respond to the grounds stated in the notices of appeal filed months before. (R. pp. 45-47, §§ 58-70).¹⁸

¹⁸ Similarly, the Findings and Conclusions claim, without explanation, justification or supporting facts, that “[t]he BAR complied with all relevant obligations of the South Carolina Freedom of Information Act” (R. p. 46, § 59); “[c]omplete and timely applications were received by the Town’s planning department” (R. p. 46, § 60); “[a]ppropriate and timely notice of each . . . meeting was given in accordance with Section 32-176(d) . . . and section 30-4-80” (R. p. 46, § 61); “[t]he appropriate ‘review criteria’ as set forth in Section 32-182 . . . including the Secretary of the Interior’s Standards

The Findings and Conclusions do claim the BAR decisions complied with specific criteria where they state that “[i]n accordance with Section 32-176(h) . . . the BAR made determinations in accordance with established guidelines with respect to [four criteria],” (R. p. 47, § 67), and “[t]he mixed use development project . . . is appropriate in terms of aesthetics, design, architecture, height, mass, scale, proportion, arrangement, texture and material, and is compatible with the general character of its immediate neighborhood within the historical district of the Town of Summerville” (R. p. 47, § 70). However, these claims also are invalid because no facts are identified anywhere that evidence or explain how these BAR findings and conclusions specifically comply with these criteria.¹⁹

In addition, some of the statements in the Findings and Conclusions provide no relevant evidence of compliance with the required criteria for BAR approval of the applications. For example, Paragraph 11 of the Findings and Conclusions states that “[T]he Developer] significantly improved the site plans and specifications from the initial submission, making it more pleasing in terms of aesthetics, design, architectures, height, mass, scale and harmony within the historic district.” (R. p. 33, § 11)(emphasis added). These claims that the Developer “improved” plans and specifications from his initial submission and made them “more pleasing” are conclusory, completely unsupported by identified facts and do not constitute evidence of compliance with the

for Rehabilitation, were properly utilized” (R. p. 46, § 62); “[a]ll of the actions of the BAR . . . were in accordance with . . . the ‘purpose and intent’ of . . . Section 32-172” (R. p. 46, § 63); and “with the duties and powers conferred upon it under both South Carolina law and Sections 32-175 and 32-176” (R. p. 46, § 64); “[t]he BAR reviewed and ultimately approved subject plans and applications in accordance with prescribed procedures and guidelines . . . within Section 32-175” (R. p. 46, § 65); “[t]he Project is in compliance with all relevant provisions of the Town of Summerville Historic Preservation Ordinance” (R. p. 47, § 68); and “[t]he BAR’s decisions and determinations regarding demolition of existing structures and salvage of materials where appropriate and practical are in compliance with all relevant provisions of the Town of Summerville Historic Preservation Ordinance” (R. p. 47, § 69).

¹⁹ See pp. 20-23 *supra*.

relevant criteria. Indeed, Appellants contend those “improvements” fall far short of complying with those criteria. The BAR record is clear that the public objected²⁰ to BAR approval of the Hotel project due to its excessive mass, size, noise, traffic, tree cutting, destruction of the Historic District’s ambiance, etc. (R. pp. 767-768; R. pp. 372-373; R. pp. 643-646, 650-651, 655); opposed the demolition or removal of structures (e.g., R. p. 952); and objected to the failure of the Developer to have provided a scale model²¹ of the Hotel project for the BAR and public to review. Nothing in the BAR record demonstrates how these specific objections have been overcome (R. p. 768) and whether and how the applications approved complied with the required criteria. (See R. pp. 566–572).

Important information and documentation in the record is incorrect. For example, contrary to claims (R. p. 46, § 60) stated in the Findings and Conclusions, there is no fact or evidence in the BAR record indicating that the BAR’s Secretary received complete applications from any or all²² the owners of the Hotel project at least fourteen days before the BAR meeting, as required by Town Ordinance, Sec. 32-181(c)(1),(4),(6), or that notices and advertisements regarding BAR meetings about demolition stated that

²⁰ R. pp. 767-768 (“record . . . shows that the BAR members, the public . . . strenuously objected to early designs of the hotel project as being out of character with the historic district, unsightly, not consistent with the designs Applegate showed the Town to obtain Town approval of the project, etc. . . . But there’s no evidence in the record that any of those objections were overcome or dealt with by the BAR in public. . . . There [is] no evidence in the record . . . that supports approval of this project by the criteria . . . in the town ordinance. There is no evidence that the BAR found that the project is . . . compatible with the general character of their immediate neighborhoods and preserves the existing street scene, nor could there be such a finding.”).

²¹ For example, the President of the Summerville Preservation Society told the BAR: “But you didn’t follow-up and insist on that scale model. So there’s a very real possibility that we’re going to get a monstrosity in this community, and not realize what a monstrosity we have until after it’s . . . built. [...] Why don’t you insist upon a scale model? Because it would prevent you from making an even – humongous mistake. . . . I think you should insist on that.” (R. pp. 718-719). Similarly, BAR member John Kwist bitterly objected when neither a scale model nor a sample wall in lieu of a model was provided. (R. pp. 566-571, 643).

²² The applications are undated and there is no record of when or by whom they were received. In addition, the applications failed to list the RDC as one of the owners of the Hotel project. See fn 1 supra.

members of the public could speak at those meetings, as required by Town Ordinance, Sec 32-182(b). On the contrary, the BAR complied with neither of these requirements.²³

B. The BAR refused to consider important information from the public showing that the applications failed to comply with the criteria the BAR was required to follow.

The BAR repeatedly refused to consider design issues the public tried to get the BAR to resolve to cause the Hotel project to comply with the criteria required for approving the Hotel project applications. For example, at the BAR's May 5, 2015 meeting the BAR flatly refused to consider objections by property owners near the proposed Hotel that the restaurant where bands would be playing music nightly on the roof of the Hotel was not being made "soundproof" or the application for the Hotel project was not being rejected to avoid excessive noise in the surrounding residential neighborhood in the Town's Historic District, including at a nearby church. (E.g., R. pp. 714-717; R. pp. 954-955). This refusal, along with public anger and frustration over the BAR's dismissal of the public's concerns and the confusion and arbitrariness caused by the BAR's use of unwritten, ad hoc procedures, are shown clearly by the transcript of the BAR's May 11, 2015 meeting. (R. pp. 714-717, 720).

Similar written objections to noise due to the proposed design of the Hotel project were submitted to the BAR by the owner of the home "right behind the hotel complex running alongside of the proposed 4 story condos with a rooftop bar on top" (R. pp. 954-955). Thus, as shown above, the BAR refused to consider whether the design and materials of the restaurant on top of the roof of the Hotel could be made soundproof to avoid or mitigate noise in the adjoining residential portion of the Town's Historic District. This was the BAR's refusal to comply with its duties to, e.g., to "promote the . .

²³ See pp. 23-25 supra and 42-43 infra.

. general welfare of the people of the town;" (Town Ordinance, Sec. 32-172(a)(emphasis added)); "foster civic pride;" (id.)(emphasis added); "encourage the harmonious, orderly and efficient growth and development of the municipality;" (id.)(emphasis added); "ensure that new buildings . . . will be harmonious with the existing structures and sites;" (id.)(emphasis added); "protect the quality of life for local residents;" (Town Ordinance, Sec. 32-172(b))(emphasis added); "preserve property values and continue to attract business and residents;" (Town Ordinance, Sec. 32-172(c)(emphasis added)); and "encourag[e] a general harmony [regarding] style, form, proportion, texture and material . . . to contribute to the distinctive character of the town" (Town Ordinance, Sec. 32-172(d)(emphasis added)). The reason the BAR may have been deaf to these concerns is that the decision to approve had already been worked out in secret "workshop" BAR meetings held outside the public eye, as described below.

V. The BAR transacted BAR business at secret meetings held deliberately without a quorum, proper prior public notice and public attendance and participation; and without keeping and publishing immediately minutes and records to the public, all in violation of the South Carolina Freedom of Information Act and of other laws.

- A. The BAR transacted BAR business at secret BAR meetings in violation of statutes and ordinances requiring that BAR business be transacted only by a quorum at publicly noticed meetings accessible to the public and for which the BAR kept minutes and records immediately made available to the public.

At the January 5, 2015 BAR meeting BAR member John Kwist ("Kwist") publicly made the following statements about the Hotel to the Developer:

. . . You addressed the height, and I appreciate that. I don't think you've addressed the mass. And as I indicated to you in that workshop, the elevation along Richardson Avenue, best I could tell, is about 320 feet of continuous building. (R. p. 447)(emphasis added).

Totally unknown to the public when BAR member Kwist made that public reference to a "workshop" was that on December 12, 2014 BAR members secretly had met with the Developer in at least two "workshop[s]" "for the Hotel Project" in a Town conference room arranged by official communications to six of the seven²⁴ BAR members from the Secretary of the BAR. (R. pp. 55, 58, 59, 92, 93; R. pp. 102, 103, 106, 107; R. pp. 945, 946). Three members of the BAR attended the first "workshop" and three other members attended the second "workshop," instead of all members of the BAR attending together one "workshop," for the expressed purpose of "avoid[ing] any possibility of a quorum", (R. p. 945), to try to justify meeting secretly without public notice, participation or records (R. pp. 41, § 50; 945). Also attending each of the meetings were the Developer, Arthur Applegate, and the Town Planner, Madelyn Robinson. (R. pp. 55, 58, 59, 92, 93; R. pp. 103, 106, 107; R. pp. 945, 946; R. p. 118).

These documents evidence that the business conducted at these two "workshops" consisted of BAR members and the Town Planner reviewing, discussing and negotiating with the Developer design changes regarding the Hotel project, prior to the public BAR meeting on January 5, 2015, at which the Developer's and the Town's applications regarding the Hotel project would be discussed, considered and possibly approved, delayed or rejected.

This evidence generated by BAR member John Kwist and the BAR Secretary show that at these meetings BAR members were "transacti[ng] business" of the BAR but were doing so deliberately without the quorum expressly required by Sec 32-176(e)²⁵ as a

²⁴ The seventh member of the BAR, Jeff Bowers, attended neither of these "workshops" because he had recused himself from participating in all BAR discussions about the Hotel project due to his conflict of interest. (See R. p. 942; R. p. 943; R. p. 944).

²⁵ Sec 32-176(e) states that "[a] quorum, consisting of a majority of the total membership of the board,

prerequisite to the BAR's 'transact[ing] business.' (R. pp. 92-93, § 66; R. pp. 759-760). In addition, the failures of the BAR to allow members of the public to attend and to give public notice of the time and place of these meetings violated Town Ordinance, Sec 32-176(d), which states in part that "[a]ll meetings of the [BAR] shall be open to the public and reasonable notice of the time and place shall be given to the public." (Id.)(emphasis added). In addition, the failure of the BAR to keep records and minutes of the business it transacted at these secret "workshop" meetings violated Section 6-29-870(D)'s requirement that "[t]he [BAR] shall keep minutes of its proceedings . . . and shall keep records of its examinations and other official actions, all of which immediately must be filed in the office of the [BAR] and must be a public record." (Id.)(emphasis added). Moreover, the failure of the BAR to provide these documents regarding these secret meetings to the Circuit Court as part of the BAR record violated the requirements of Section 6-29-920(A) that the BAR "must file with the clerk a duly certified copy of the proceedings held before the [BAR]." (Id.)

In addition to the above, on July 21, 2014 the BAR Secretary arranged three secret meetings, on July 21, 23 and 29, 2014, each attended by "two [different] BAR] members at a time . . . (no possibility of it looking like a quorum)" (emphasis added) where they discussed the Hotel project with the Mayor of Summerville. (R. pp. 945-946). Those meetings violated the same provisions cited above regarding the secret meetings held on December 12, 2014.

The public's right to comment (Town Ordinance, Sec 32-182(b)) on the demolitions proposed regarding the Hotel project undoubtedly were inhibited by the Town's

shall be required for the transaction of business" Id. (emphasis added).

deliberate orchestration of public unawareness of what transpired at these multiple serial secret meetings of BAR members and BAR staff with the Developer.

B. The BAR deliberately orchestrated the attendance at the secret BAR meetings to avoid a quorum, in violation of the South Carolina Freedom of Information Act.

The secret meetings described above violated provisions of the South Carolina Freedom of Information Act ("FOIA"), including S.C. Code Ann. § 30-4-60, requiring that "[m]eetings of public bodies shall be open" and that "[e]very meeting of all public bodies shall be open to the public . . ." (*Id.*)(emphasis added); S.C. Code Ann. § 30-4-80(a), requiring public notice of all regular meetings and agendas of "[a]ll public bodies" (*Id.*)(emphasis added); S.C. Code Ann. § 30-4-90(a), requiring that "[a]ll public bodies shall keep written minutes of all of their public meetings" (*Id.*)(emphasis added); and S.C. Code Ann. § 30-4-90 (b), requiring that "[t]he minutes shall be public records and shall be available within a reasonable time after the meeting . . ." (*Id.*)(emphasis added).

S.C. Code Ann. § 30-4-20, defines a "[p]ublic body" as including "any public or governmental body or political subdivision of the State, including . . . municipalities . . . including committees, subcommittees, advisory committees, and the like of any such body by whatever name known . . ." (*Id.*)(emphasis added). At a minimum, the above-described meetings attended by less than a quorum of BAR members to transact BAR business constitute de facto committees that are subject to all these requirements of the Freedom of Information Act applicable to public bodies. This conclusion is supported by Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (2001), which held that the secret, non-public meeting of even an advisory committee to a public body was prohibited by the Freedom of Information Act. As in Quality Towing, because the BAR's secret workshops were not open to the public, the public was unable to learn

what design changes and demolitions the Developer was proposing and negotiating with BAR members and therefore was unable to comment on those design changes and demolitions to BAR members.²⁶ As in Quality Towing, the BAR has advanced no valid reason to hold the secret, non-public meetings and discussions by a group of BAR members with the Developer regarding whether the BAR would award the Developer a certificate of appropriateness to which many members of the public objected. As in Quality Towing, the issue being discussed in secret by BAR members involved the expenditure of public funds. As in Quality Towing, the "FOIA was enacted to prevent the government from acting in secret, South Carolina Tax Comm'n v. Gaston Copper Recycling Corp., 447 S.E.2d 843 (1994)" and "[t]his kind of secret determination is exactly what FOIA was designed to prevent." 345 S.C. at 163.

The BAR's manipulatively orchestrating successive secret meetings of BAR members with the Developer, Town Planner and Mayor without a quorum to discuss, plan and negotiate the Hotel project violated S.C. Code Ann. § 30-4-70(c).²⁷

C. The BAR failed to notify the public that it would have an opportunity to comment at BAR meetings considering the demolition of structures; misrepresented at BAR meetings that any comments allowed to be made to the BAR were not required; and unreasonably interfered with the public's rights to comment by imposing unreasonable restrictions and threatening the public.

Town Ordinance, Sec 32-182(b) states in part:

Demolition. . . . Upon receipt of an application to demolish a structure, the secretary to the [BAR] shall published a display advertisement in a newspaper . . . in the town at least 14 days before the meeting informing the public that such application has been received, detailing the date, time and place of the meeting at

²⁶ The public had a right to comment on proposed demolitions (Town Ordinance, Sec 32-182(b)) but could not adequately do so when information about the demolitions was withheld due to "secret" meetings.

²⁷ "[C]ircumvention of chapter . . . (c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction or advisory power." (*Id.*)(emphasis added).

which it will be considered and stating the public will have an opportunity to comment at such meeting. (Id.)(emphasis added).

The BAR record shows that the BAR held meetings at which the BAR considered the demolition of structures on October 6, 2014; November 3, 2014; January 5, 2015; January 12, 2015; April 6, 2015; May 11, 2015; June 1, 2015; July 6, 2015; and August 3, 2015. (R. p. 48; R. p. 854; R. p. 856; R. p. 857; R. p. 860; R. p. 863; R. p. 873; R. p. 875; R. p. 881; R. p. 890; R. p. 904; R. p. 928; R. p. 933; R. p. 935; R. p. 941). The BAR record shows that an advertisement was placed in a newspaper only regarding the BAR meetings on October 6, 2014; January 5, 2015; and May 11, 2015 (R. pp. 864; R. p. 865; R. p. 866; R. p. 867). No advertisement was placed regarding the BAR's consideration of demolition at BAR meetings on November 3, 2014; January 12, 2015; April 6, 2015; June 1, 2015; July 6, 2015; and August 3, 2015. Very importantly, none of the advertisements that were placed stated that "the public [would] have an opportunity to comment" at the meetings, as required by Town Ordinance, Sec 32-182 (b) quoted above. (R. p. 864; R. p. 865; R. pp. 866-867). In addition, none of the letters of notification sent to adjacent property owners as required by Town Ordinance, Sec. 32-176(d) advised that the public could comment at the upcoming BAR meetings where the BAR would consider demolition. (; R. pp. 869-872; R. pp. 873-874; R. pp. 875-876; R. pp. 877-880; R. pp. 881-883).

On the contrary, the BAR Chairman specifically misrepresented to the public in those BAR meetings about demolition that the BAR did not have to listen to comments by the public but was allowing public comments only as a matter of gratuitous grace. (R. p. 32, § 5; R. p. 38, § 38; R. p. 305). In addition, the BAR Chairman made statements threatening and intimidating attendees at BAR meetings and imposing unreasonable

restrictions on the content and time allowed regarding public comments about the Hotel project, thereby limiting the record on appeal.²⁸ (R. pp. 32, § 5; 34, § 13; 38, § 38; 40, § 46; R. pp. 169, 171, 216; R. pp. 304-306).

D. The BAR deliberately withheld applications, notifications, minutes and project designs from the public for the purpose and with the effect of negating or limiting public comment and understanding about proposed demolition and construction and limiting the BAR record available for appeal.

The BAR deliberately obstructed public input and opposition to the Hotel project. For example, on January 2, 2015 members of the public asked the BAR Secretary to be allowed to inspect an application by the Developer and the Town that would be considered by the BAR at its January 5, 2015 meeting. (R. pp. 957-958). The BAR Secretary replied that the application could be viewed by the public only in response to a written Freedom of Information Act request which would not be answered for up to fifteen days after the date of the request. (R. pp. 957-958). Objections that that procedure requiring a fifteen-day delay would not allow the public to inspect the application before it was considered at the BAR's January 5, 2015 meeting were unheeded and no viewing of the application was allowed before the January 5, 2015 meeting. (R. pp. 757, 759, 760; R. pp. 957-958).²⁹

This intentional delaying of the public's ability to inspect the Developer's application to the BAR before the BAR meeting considering that application violates S.C. Code Ann. § 30-4-30(a), which states that "[a]ny person has a right to inspect or copy any public record of a public body . . . in accordance with reasonable rules concerning time and place of access." (Id.) (emphasis added). There is nothing "reasonable" about, for

²⁸ See pp. 7-8, 11, 14, 15, 33-34 *supra*.

²⁹ Similarly, delays in public access to BAR meeting minutes prevented the public from knowing what actions the BAR had taken, what the BAR would do next and what the public needed to do to express their opinions and protect their rights, including on appeal. (R. p. 761).

example, requiring the public to view an application for demolition of a structure only after the BAR's meeting to decide whether to grant that application for demolition, when Town Ordinance, Sec 32-182(b) expressly allows the public to comment to the BAR about that application. Without being able to review an application before a BAR meeting about that application, the public cannot make reasonable comments about that application and, therefore, cannot put on a BAR record a basis for appealing to the Circuit Court an adverse decision of the BAR.

E. Contrary to BAR claims, the BAR refused to allow the public to speak at its meetings and denied and unreasonably restricted public participation, observation, hearing and comments at BAR proceedings.

The January 5, 2015, BAR meeting, rather than being held in the Town Council chambers where BAR meetings usually are held, was held in a very small room which could not accommodate the crowds that appeared to witness the hearing and to speak to the BAR about the Hotel project. Many of the people who attended were elderly. They had no place to sit, had no place to stand in the hall and had to sit on the floor. Many of them had to leave. At that meeting, no public comment was allowed, though the applicant could speak for a long period of time; and there was no amplification or sound system that would allow even people that got in the room to hear what was going on. (See R. pp. 957-958; R. p. 760).

Similarly, the following objections on the BAR record describe how the BAR obstructed public participation in the January 5, 2015 BAR meeting:

The B.A.R. actions at your January 5, 2015 meeting to approve the . . . Dorchester hotel complex without allowing public comment was disrespectful, unkind and demonstrated a disregard for your duty to the citizens of Summerville.

Before the meeting was called to order, it was obvious that there were far too few seats to accommodate the number of people crowded into the second-floor hearing room of the Town Hall. Courtesy dictates that the meeting should have been moved to the third-floor Council chambers, especially since many of the attendees were seniors. Not only did you refuse to move the meeting, you changed the order of the hearing items, forcing approximately 30 people to stand for 90 minutes to await member discussion of the Applegate proposal.

When you opened the meeting, you asked members of the public present to limit their remarks to three minutes and not to repeat previous testimony. Members of the public present had prepared remarks and every expectation that they would be given the opportunity to offer them. Yet, after your committee heard from [the Developer] for 45 minutes and discussed the matter among yourselves, you called for the vote and then declared the meeting closed, effectively denying the public any chance to participate in a decision regarding how their tax money will be spent by the Town. (R. pp. 717-719; R. p. 957; R. p. 760)(emphasis added)).

VI. The BAR wrongfully issued a certificate of appropriateness based on applications that were unqualified, and wrongfully failed to accept and consider public objections to the applications that they were unqualified.

A. The BAR should not have considered the Developer's and the Town's applications because the applicants who submitted those applications had failed to comply with their contractual requirement that prior to their submission for review and approval for a certificate of appropriateness, the Developer must have submitted a final design to the Redevelopment Commission for review and approval.

At the BAR's November 3, 2014 meeting the President of the Summerville Preservation Society objected to the BAR's considering applications by the Developer and the Town for the Hotel project because of the Developer's failure to have complied with Paragraph 8a of the PPPA and, over the objections of the BAR President, read to the BAR Paragraph 8a to support that objection.³⁰ (R. pp. 367-370). In response, the BAR

³⁰ This objection was communicated to the BAR also by the East Historic District Civic Association. (R. p. 958).

President declared “that’s not part of our purview” because that PPPA “agreement is not between us” (R. p. 368); suggested that compliance with Paragraph 8a was not required at this November 3, 2014 BAR meeting because the BAR was not considering “final” plans but was considering only “conceptual” plans at the meeting (R. p. 369); and allowed the BAR to consider those applications even though the Developer had not yet submitted a final design of the Hotel project to the RDC for review and approval as specifically was required by Paragraph 8a of the PPPA. (R. pp. 367-370).

The BAR’s consideration of this application from the Developer at this meeting, and of this and other applications from the Developer at other meetings, was improper³¹ because, in violation of Paragraph 8a of the PPPA, the Developer had not “submit[ted] a final design . . . to the RDC for review and approval” “[p]rior to submission for review and approval to any required public agency for [a] certificate of appropriateness.” (R. p. 798, § 8a). There is no evidence in the BAR record that the RDC approved of any design of the Hotel project prior to the Developer having submitted to the BAR an application for a certificate of appropriateness. The BAR’s reliance on its distinction between “conceptual” and “final” plans to justify considering the application despite non-compliance with the PPPA is confusing and misplaced because those terms are not defined anywhere in the BAR’s procedures or by law, and the plain language of Paragraph 8a of the PPPA requires that a “final” design be reviewed and approved by the RDC “[p]rior to submission for review and approval to any public agency . . .” (Id.) (emphasis added.) Compliance with this Paragraph 8a required that the final version of the plans that existed at the time of any submission of the application to the BAR have

³¹ (R. pp. 78-79 § 42, 101-102 §§ 3A(2),(3),(4),(5)). Other objections were made that the BAR not consider applications by the Developer for the Hotel project because of the Developer’s failure to have complied with Paragraph 8A of the PPPA. (See R. p. 952; R. p. 956; R. pp. 957-958).

been reviewed and approved by the RDC before that submission, and that each new version of the plans be approved by the RDC before submission of that new version of the plans to the BAR for review and approval.

B. The BAR erred by considering BAR applications regarding the Hotel project because the contract authorizing the Hotel project to which the Developer and Town applicants were parties was illegal, *ultra vires*.

Members of the public made the BAR aware³² of the existence of a lawsuit challenging the legality of the PPPA that authorized the Hotel project for which the Developer and the Town, two of the parties to the PPPA, submitted applications to the BAR for a certificate of appropriateness. In addition, members of the public told the BAR on its record that the BAR lacked jurisdiction to consider applications regarding the Hotel project for the reasons stated in the lawsuit, including that the RDC had not approved the design of the Hotel as specifically was required by a statute.³³ The BAR not only did not consider whether these deficiencies warranted the BAR's refusing to consider those applications, but specifically refused to do so, claiming that the BAR could consider only the design of the project but not the effect of the lawsuit on the applications to the BAR regarding the project.³⁴ Thus, according to the BAR's logic, the BAR automatically must consider any application for demolition or construction no matter how illegal, financially not viable, fraudulent or otherwise ludicrously unfeasible the project is. The BAR's failure to define what makes an application "qualified" and consideration of an application that was not qualified are reversible errors.

C. The BAR decisions are invalid because they fail to include as an applicant each "owner" of the Hotel project, in violation of Sec. 32-181(c)(1).

³² (R. pp. 954-955; R. p. 956; R. pp. 957-958).

³³ S.C. Code Ann. §§ 31-10-100(b),(c),(e),(f),(g); (R. p. 51, §§ 3A(4),(5)).

³⁴ See pp. 7 n1, 11, 22, 24-26 *supra*.

See pages 7, 11-12, 44-46 supra.

D. The BAR erred by refusing to allow evidence supporting public objections that applications being considered by the BAR were not qualified.

Because evidence in addition to the BAR record cannot be considered by a Court when appealing a decision by the BAR, the BAR's exclusion of evidence on the BAR record of objections to the qualifications of an application or an applicant effectively would avoid the ability of a Court to consider the merits of the objections being excluded. Therefore, the BAR must allow at its meetings public comments disputing the qualifications of an application or an applicant. The BAR's refusal to allow on the BAR record objections regarding an application and applicant, so that the BAR and an appeal Court could consider and determine whether the Hotel project that is the subject of the applications was not qualified due to being illegal, financially unsound, fraudulent or otherwise unfeasible are reversible errors.

CONCLUSION

Therefore, for these reasons, this Court should reverse the Circuit Court's Order affirming the BAR's decisions and remand this case to the BAR to issue such decisions as are before it in compliance with the requirements of law stated above.³⁵

Respectfully Submitted,

AUSTEN & GOWDER, LLC

³⁵ The South Carolina Supreme Court has found a remand to consider prospective injunctive relief as an appropriate remedy for FOIA violations. See Donohue v. City of N. Augusta, 412 S.C. 526, 533, 773 S.E.2d 140, 143 (2015).

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March _____, 2017
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2015-002199

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr., South Carolina
Public Interest Foundation; Summerville Preservation Society; and Dorchester County
Taxpayers Association, individually, and on behalf of all others similarly
situated.....Appellants,

v.

Town of Summerville and Town of Summerville Board of Architectural
Review.....Respondents.

RESPONDENTS' FINAL BRIEF

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March 16, 2017

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ISSUES FOR REVIEW ON APPEAL

1. Is there evidence in the record to support the decision of the Summerville Board of Architectural Review to approve "The Dorchester" project?
2. Are Appellants' procedural arguments regarding various points—including the timing of the application and the timing of the decision---without merit, and if any are with merit, should they result in reversal of the decision of the Summerville Board of Architectural Review?
3. Is the Appeal fatally defective as a result of failing to name and serve the permit applicant?

FACTS

The Dorchester project is a multi-use development planned to include a boutique hotel, condominiums, meeting/event space, and a parking garage. It is a joint project of the Town of Summerville, the Town of Summerville Redevelopment Commission and Applegate & Company.

The Summerville Board of Architectural Review (sometimes hereinafter the BAR or Board) held a total of six (6) public meetings related to The Dorchester project, for which the public was duly notified and invited to attend. These meetings were held on October 6, 2014; November 3, 2014; January 5, 2015; January 12, 2015; April 6, 2015; and May 11, 2015. (Decision of BAR, R. pp. 31-41.; Decision of Circuit Court, R. pp. 1-7; Meeting Transcripts for 6 meetings, R. pp. 168-747) During all such meetings, members of the public were invited to view the presentations made by the permittee-applicant Applegate & Company and their architects. At nearly all of these meetings, members of the public were permitted to comment and express concerns openly. The board held two meetings where it made

suggestions to the developer to revise the project in order to address various aesthetic aspects of the project. (Transcript of 10/6/2014, R. pp. 168-270) (Transcript of 11/3/14 meeting R. pp. 294-390) At the third meeting during which the Board heard a presentation about the development, it gave preliminary/conceptual approval. (Meeting transcript, 1/5/2015 R. pp. 47-49; R. pp. 459-461) Further, the conditions of several structures set to be demolished in connection with the Project were discussed at length. It was noted some of these structures were in extremely poor condition, with rotting wood, mold issues, plant material growing within wall cavities, and asbestos materials. (Transcript 1/5/15 p. 16-18, R. pp. 428 to 430)

ARGUMENT

I. **BAR ACTED PROPERLY AND WITHIN ITS BROAD DISCRETION IN APPROVING DEMOLITION AND NEW CONSTRUCTION (RESPONSE TO SECTION IV OF APPELLANT'S BRIEF).**

Of the many arguments raised by the Appellants, the Respondents elect to first address the question of whether there is evidence to support the BAR's decision, as it is the central issue for this Court to consider. Stated another way: is there sufficient evidence in the record to support the decision of the Board of Architectural Review to approve demolition of existing structures and construction of a public-private project called "The Dorchester"—a project which involves a hotel, conference area space, a parking garage, and private condominiums? The standard of review in appeals from decisions of architectural review boards is virtually outcome-determinative, and properly so. The local board of architectural review is in the best position to look at the drawings, hear the presentations, and understand the unique local characteristics of the area where the project is located. In every case, the Board reviews drawings or other representations of the project and uses their knowledge of the area to make a

determination as to whether the project is aesthetically compatible with the surrounding area. Because of this, it is very rare to see a architectural review board's decision reversed. Reversals are typically reserved for decisions in which the Board's comments show a denial was based on things which had nothing to do with aesthetics. Cf. Seabrook Island Prop. Owners Ass'n v. Marshland Trust, Inc., 358 S.C. 655, 661, 596 S.E.2d 380, 383 (Ct. App. 2004) (declaratory judgment ruling it was improper for the BAR to refuse to consider any plan because their erroneous interpretation of the covenants barred on all construction).

The findings of fact by a board of architectural review shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence. See S.C. Code Ann. § 6-29-930; Austin v. Board of Zoning Appeals, Town of Hilton Head Island, 606 S.E.2d 209 (S.C. Ct. App. 2004); see also Heilker v. Zoning Bd. of Appeals for City of Beaufort, 552 S.E.2d 42, 44 (S.C. Ct. App. 2001). In this regard, it is well-settled that "the factual findings of the jury will not be disturbed unless a review of the record discloses there is *no evidence* which reasonably supports the jury's findings." Vulcan Materials Co. v. County of Greenville, 536 S.E.2d 892 (S.C. Ct. App. 2000) (emphasis in original). Further, the court's review is "strictly limited to the facts and arguments raised to the board. Indeed, the circuit court is expressly forbidden from considering any new facts." Austin, 606 S.E.2d at 214. Additionally, "[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." Restaurant Row Assocs. v. Horry County, 516 S.E.2d 442, 446 (S.C. 1999). The statute governing BAR appeals, S.C. Code Ann. § 6-29-930, specifically provides "the findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence.... In determining

the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law.”

The Summerville BAR has broad discretion under both the Summerville Town Code and the law of South Carolina to approve or disapprove demolitions of existing structures and construction of new buildings. See, e.g., Town of Summerville Code of Ordinances §§ 32-175(f) & 32-176(h) (it is the duty of the BAR to determine the appropriateness of moving or demolishing any structure within the historic district upon consideration of historic, architectural and aesthetic features); Austin v. BZA, Town of Hilton Head Island, 606 S.E.2d 209 (S.C. Ct. App. 2004); Gurganious v. City of Beaufort BAR, 454 S.E.2d 912 (S.C. Ct. App. 1995). South Carolina appellate courts repeatedly have held a decision of a board of architectural review is to be given “great deference,” such that it must remain “undisturbed if the propriety of that decision is even ‘fairly debatable.’” Gurganious, 454 S.E.2d at 915 (quoting Knowles v. City of Aiken, 407 S.E.2d 639 (S.C. 1991) (other internal citations omitted)). Further, courts are bound to substantially defer “to the decisions of those charged with interpreting and applying local zoning ordinances,” as they are in the best position to interpret, consider and apply those local rules. Id. at 916; Clear Channel Outdoor v. City of Myrtle Beach, 602 S.E.2d 76 (S.C. Ct. App. 2004). “To this end, a court will uphold the decisions of a reviewing body if there is *any evidence* in the record to support its decision.” Clear Channel, 602 S.E.2d at 79 (emphasis added). An appellate court is therefore not free to substitute its own judgment for that of the BAR, but rather must affirm the board’s decision unless it is clear the BAR’s findings of fact have no evidentiary support or the BAR has committed an error of law. Id.

In the present case, the proceedings before the Summerville BAR demonstrate the existing structures on the premises were in poor condition and need to be demolished. For example, the Summerville Building Official advised the BAR to demolish the structure located at 210 W. Richardson Avenue because it was in bad shape, with mold growing in it and weeds growing inside the walls. (1/5/15 Meeting Transcript, p. 16-18, R. pp. 428-430). Further, as evidenced by the meeting minutes, the Summerville and Applegate Defendants made every effort to salvage entire structures or portions thereof wherever possible or practical, including repeatedly advertising the structures would be given free of charge to any person willing to haul them away (though no one accepted these offers) and by pursuing salvage of the building materials.

As to the new project that was to be built, the transcripts of the hearings, the minutes, and the decision of the BAR show the BAR made numerous suggestions and requests for improvements in the design and aesthetics before final approval was given. (BAR Decision, R. pp. 31-47). It is evident the Board had before it plans and drawings of the project and made appropriate comments regarding the scale and mass of the project and other design features. (Transcript 10/6/14, 11/3/14; R. pp. 168-413). In fact, the first two meetings resulted in suggestions for changes only and not approval. (Id.). Preliminary and conceptual approval was granted on January 5, 2015 on a 4-1 vote with various comments being made about the aesthetics of the project and how the developer had made changes in light of comments made by the Board. (Transcript, 1/5/15, R. pp. 417-419)

There was public opposition. However, the role of the BAR is not to simply count the number of heads "for" and "against" a particular project. Furthermore, the decision of

the Board in no way reflects that the opinions of the Appellants were ignored. Certainly, those persons who wanted the Board to reject the project altogether were not successful in persuading the Board, but the Board duly considered the issues relating to the aesthetics of the structure, including those considerations set forth in Town Ordinance. After the initial submission, the project was scaled back, reducing an entire floor off the project and making other changes.

The Appellants seem to suggest the Board is somehow required to make a specific factual finding with a citation of evidentiary support for each consideration set forth in the Town's ordinances. However, that kind of finding is not required and has never been required. The Board is not required to note why each roof line, shingle color, or window is compatible with the neighborhood. It is sufficient for the Board to conclude the entire project is compatible, which it has done. It is incumbent on the Appellants to show the decision of the Board is unsupported by the evidence, which the Appellants have not done.

II. NONE OF APPELLANTS' OTHER GROUNDS FOR APPEAL WARRANTS ARE MERITORIOUS OR REQUIRE REVERSAL OR REHEARING.

A. The Circuit Court Did Not Err in Considering What the Appellant Calls "Additional Evidence" (Appellants' Issues I and II).

The Appellants claim the Circuit Court relied upon "additional evidence". This appears to be a reference to the "Decision of the Board of Architectural Review, Including Findings of Fact and Conclusions of Law" which the Board signed at a subsequent meeting after the appeal was initiated. The Appellants' argument also appears to relate to an e-mail with attachments from Respondents' counsel to the Circuit Court (and properly copied to opposing counsel). The e-mail and attachments were solely related to a motion for injunction which the Appellants sought from the

Circuit Court to stop the project. Additional evidence is not improper with respect to a separate motion for injunction to the Circuit Court. These are two separate issues which will be addressed individually.

1. The Decision of the Board Was Not Additional Evidence.

The BAR signed an order on August 11, 2015 which included finding of facts and conclusions of law. Appellants claim this amounted to the submission of "additional evidence." Of course, the decision of a board or, for that matter, a court of law, is not evidence. The decision of a Board or court of law is based on evidence, but is not itself evidence. The order of a board or commission may set forth conclusions which were drawn from the evidence. That evidence must ultimately be in the record in order for the board's written decision to be sustained on review. In the present case, there is clearly sufficient evidence in the record to support the BAR's decision.

The Appellants' objection that the order was signed after the appeal is not persuasive. As the Appellants noted, one option of the Circuit Court is to remand the matter for a rehearing to prepare an order with findings. S.C. Code § 6-29-920. However, this is not for a rehearing de novo, unless too much time has passed for the board to be able to render a decision or unless the record itself is unavailable for review. A remand to prepare an order is merely for the purposes of the board expressing its findings and conclusions. Given the complexity of the issue and the amount of opposition, it was entirely reasonable for the Board to sign an order prior to the Circuit Court's hearing the matter. If the Circuit Court had not only the ability, but the duty, to remand if the record was not clear as to the Board's findings and conclusions, how can it be in error for the Board to provide this information to the Court? And where is the prejudice to Appellants from the Board preparing its findings of fact and conclusions of

law for the reviewing Court? If there is evidence in the record that supports the decision of the Board, the reviewing court is required to affirm. See Section I of Respondents' Brief, above. If there is not information in the record to support a point, then the written order of the Board cannot save a lack of evidence.

In Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals, 342 S.C. 480, 536 S.E.2d 892, (Ct. App. 2000), the Court considered and rejected an order signed after the appeal, but rejected it principally because it was not the decision of the body as a result of a meeting with a quorum, but instead was the unilateral decision of the Board Chairman acting in conjunction with the Secretary. In the present case, the BAR's order was signed in a public meeting after all board members reflected on the Order and gave authority to the Chairman to sign the document based on a proper motion and vote. (BAR Minutes 8/3/15 at 3, R. p. 941).

At best, even if Appellants' argument were correct, the BAR's order is a nullity. If the Board's order is a nullity, this Court would be obliged to review the record to see if there was evidence to support the Board's decision. This Court will quickly conclude the BAR decision must be affirmed because there is ample evidence in the record to support the Board's decision. It is clear the Board reviewed the aesthetics of this project and made suggestions—many of which were then incorporated. The Board then used its knowledge of local conditions and found the project was compatible with the surrounding areas. There is nothing to suggest the Board's decision was controlled by a misunderstanding of law or fact.

2. The Affidavits and E-Mail Were Not Additional Evidence.

The Appellants make the argument the Circuit Court was improperly sent Affidavits dated July 8, 2015 and July 9, 2015. (Appellant's Brief at 18-19). These

affidavits were submitted to the Court solely to address a pending motion for an injunction Plaintiff-Appellants filed with the Circuit Court to stop construction of the project. (Motion for Temporary Injunction, filed July 10, 2015, 2015-CP-19-00877 and 2015-CP-18-00991). These affidavits had nothing to do with the issues related to the BAR appeal. However, because the Appellants chose to file a motion for injunction in the BAR appeal action, additional evidence was appropriate as to the injunction. The harm that would have resulted from an injunction is an issue which would not have been decided by the BAR and for which there would be no evidence in the record below. There would be no reason for anyone to present evidence to the BAR relevant only to the issues that go to an injunction in including the harm to the parties and amount of bond for an injunction. There is no indication the affidavits were used to supplant evidence missing from the BAR record. Indeed, there is no indication the Circuit Court relied on these affidavits in any way in deciding the issue of the BAR appeal. The circuit court did not cite the affidavits in any way in its decision affirming the Board. And the affidavits do not relate to the issues addressed by the circuit court.

B. The BAR Did Not Err With Respect to Various Arguments Raised by Appellants in Section III of Its Brief.

1. Rules of Procedure (Response to Appellants' III, A).

The Appellants claim the BAR failed to adopt "rules of procedure" which is generically required by S.C. Code § 6-29-870(D). However, the Appellants go on to cite various procedures they claim were violated. Therefore, Appellants' argument is not truly that there are no procedures, but rather that the Board was obligated to have written regulations regarding all eventualities and problems which might arise—or at least all those which Appellant raises.

Clearly, the BAR does not lack procedural rules. There are rules regarding the

dates of their meeting. Section 32-176(b). There are rules regarding the right of the chairman to call a special meeting. Section 32-176(c) There are rules regarding the public notices required. Section 32-176(d). There are rules regarding BAR keeping records or minutes. Section 32-176(e).

There is a provision in the Town code which states the Board will adopt "rules of order." Section 32-176(e). Each meeting the chairman provides these general rules providing the right of the applicant and any opponents to speak. General parliamentary rules are followed with regard to making and voting on motions.

Part of the Appellants' argument in this section relates to the fact that the Board made decisions for "preliminary approval" and "final approval." The Appellants suggest there must be rules regarding what a "preliminary approval" or a "final approval" entails. The Respondents do not believe there have to be regulations regarding these terms. Additionally, the Board is not prohibited from giving a preliminary approval as to certain aspects such as general size, while withholding approval as it pertains to certain details or until certain conditions, such as providing a color sample, are met.

2. Timely, Completed Application (Response to Appellants' III, B).

The Appellant argues the BAR did not receive completed applications and suggests a rule requiring all applications be signed by all persons who may have interests in the application. First, Appellant's primary argument is, because the receipt dates are not stamped and the attachments to the application are not date-stamped, "there is no evidence on the BAR record that any of these Applications were submitted . . . within fourteen days and ten days as required by Town Ordinance" (Appellants' brief, p. 25). Of course, it is Appellants' duty to show there was some error. There is no evidence the applications were not submitted in a timely fashion.

The appellants also use this section to claim the application needed to be signed by all persons having any legal or beneficial interest in the project. Appellants claim an application signed by the developer is not sufficient. Yet, there is no rule or statute that requires all persons having a legal or beneficial interest in the project must sign the application. In fact, the rule specifically states the application can be signed by the owner or agent of the property. There is no evidence or even an after-the-fact suggestion the developer lacked the authority to submit the application on behalf of the various property owners on whose property the project would eventually be built.

3. Next Regularly Scheduled Meeting (Response to Appellants' III, C).

The Appellants then take the position the BAR was required to hear the matter "at its next regularly scheduled meeting." It submits in this section that, because BAR applications are not marked with "individual identifiers such as number or dates," it is "confusing and uncertain" whether "specific applications were ever considered or acted on." Again, it is Appellants' duty to show error. The Appellant is merely speculating as to when applications were submitted. A footnote states there is no evidence the individual applications for demolition were acted upon, yet the Board did decide to allow demolition of certain structures in poor condition. (BAR Hearing, R. p. 428). What Appellants are attempting to say is that because the Board failed to refer to the application by the specific name on the application, there was potentially no decision on the application. There is no doubt about what the Board decided.

4. Deferral of Application (Response to Appellants' III, D).

Appellants take the position that the BAR is only empowered to defer a decision if it decides the application is "incomplete or [if] unanswerable questions arise," and claim it was error for the BAR to defer the decision in October and November 2014.

During those meetings the Board made comments and suggestions to the developer and asked the developer to consider changes.

First, this presumably would have to have been raised by an appeal of the October and November 2014 decisions. Those decisions were not appealed. Second, the argument is based on the erroneous position that incomplete applications and unanswered questions are the only grounds for a deferral. Respectfully, even if "unanswered questions" were the only grounds for a deferral, the phrase is broad enough to encompass the Board's concern that a project is not compatible unless certain design changes are considered. The "unanswered question" is whether the applicant is willing to submit a design change which will meet the Board's concerns.

5. 180 Days (Response to Appellants' III, E).

The Appellants claim there was a violation of a 180 day rule. Ordinance 32-182(c). The rule, which relates to the demolition of a structure, actually provides a route for the BAR to delay a demolition for 180 days (and even for an additional 180 days for a structure of extreme historical importance) to ascertain whether a historic structure can be preserved. First, this is a rule that gives the Board time to see if there are alternatives to save a historic structure while simultaneously trying to place a reasonable timeline on such efforts. This is not a rule where there is an automatic denial of an application after 180 days. That is not expressed anywhere in the Ordinance. In fact, the ordinance specifies that if the postponement has elapsed and the board has been unable to determine an adequate alternative to demolition, the certificate of appropriateness may be granted.

Appellants then argue that on top of the automatic denial, the application cannot be resubmitted for 180 days in order to address the argument that each modification

could be construed as a new application. (A common rule is that the same application cannot be submitted for 6 months which has been denied, although this rule does not apply to an application which is a change from the prior application). In making this argument, plaintiffs attempt to take a rule designed to give the Town and BAR a bit of additional time investigate alternatives to demolition of a historic structure into a Kafkaesque rule whereby the Board's failure to act in 180 days then blocks the developer from re-submitting for another 180 days.

6. Each and Every Property, Separate Applications, Separate Decisions (Response to Appellants' III, F).

The Appellants take the position that this project, which would span over several TMS numbers (which would later be reconfigured and title vested solely in the hands of the developer and the Summerville Redevelopment Authority), must therefore involve separate decisions, separate hearings and separate certificates of appropriateness. There is nothing in the Ordinances which states this. Furthermore, it is absolutely counter to normal and good planning principles. If a project is going to be built over separate parcels, it is generally wise to consider the whole project. It is nonsensical to have separate hearings and decisions as to each parcel.

C. The BAR Did Not Violate FOIA (Response to Appellants' V).

1. Alleged Secret Meetings.

The Appellants allege there were secret meetings of the BAR to make decisions on this project. This is clearly false. The Circuit Court dealt with this issue, finding there was no evidence in the record to support this decision. (Circuit Court Order, R. pp. 1-7).

The Respondents have admitted there was a gathering of less than quorum to look at the project with the developer. (Respondent's Memorandum in Opposition to Petitions for Appeal, Aug. 11, 2015 p. 9, R. p. 121). However, this was not a "meeting"

under the South Carolina Freedom of Information Act. Under the Act, a "meeting" is defined as "the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power". S.C. Code § 30-4-20.

Such "meetings" must be properly announced and open to the public. S.C. Code § 30-4-60. However, when less than a quorum meets, there is no requirement for a public meeting. The Appellants cite S.C. Code § 30-4-70(c) which prohibits "chance meeting, social meeting, or electronic communication to circumvent the spirit of (sic) requirements of this chapter. . . ." However, this is designed to prohibit a majority of City Council or some other public body from claiming to have met by chance or at a social party.

There has never been and likely will never be a prohibition on two or three members of a public body (so long as that is less than a quorum) meeting to discuss a matter within their jurisdiction and control. It is extremely common and in fact required for good governance that a City Council member or two or three members with common interests may need to meet to discuss an issue which is presented, or that two or more members of a Public Service District or commission or Board may need to meet with staff to discuss to discuss an issue. Appellants' version of the Freedom of Information Act would effectively mean two members of a public body could never talk about any issues except in a public meeting.

There is no evidence a quorum of the BAR ever met to discuss this matter in a non-public meeting. Furthermore, there is no evidence any decisions were made except by a quorum in a public meeting. No decisions could have been made by less than a

quorum of members.

Numerous other jurisdictions throughout the country hold that informal meetings of groups of less than a quorum do not violate FOIA or open meetings requirements. See, e.g., City of Gary v. McCrady, 851 N.E.2d 359 (Ind. Ct. App. 2006) ("The legislature has specifically defined 'meeting' under the Open Door Law as requiring a majority of the governing body; thus, without a majority present, no meeting occurs for purposes of the Open Door Law."); Hispanic Educ. Comm. v. Houston Indep. Sch. Dist., 866 F. Supp. 606 (S.D. Tex. 1995) (school district board of trustees, meeting in numbers less than quorum, did not violate Open Meetings Act; "limiting board members' ability to discuss school district issues with one another outside formal meetings would seriously impede the board's ability to function," reasoning that "with fewer than a quorum present, nothing can be formally decided; without a formal decision, no act is taken. Without action, there is no illegality"); Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983) ("it is important that the rule not be so restrictive as to lose the public benefit of personal discussion between public officials"); Britt v. County of Niagara, 82 AD.2d 65 (N.Y. Sup. Ct. 1981) (the statutory requirement of a quorum is paramount; where no quorum was present at the meetings, there was no violation of the law).

The Appellants' reliance on Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2s 862 (2001) is misplaced. In that case, an advisory committee was formed. The entire advisory committee met in secret and made decisions and recommendations. The Court determined the advisory committee was a "public body" and, therefore, its meetings were subject to FOIA. This is an entirely different question from the issue of whether less than a quorum of a public body can meet (with or without

a third party) to discuss important matters within their jurisdiction.

2. Opportunity to Comment.

The Appellants allege the Town failed to comply with its demolition rules by publishing a meeting notice in the newspaper without expressly stating "the public would have an opportunity to comment" and letters did not specifically note persons could comment. Not only is this reasonably inferable from a public meeting notice, it is also clear that the BAR did allow public comment, and no person established on the record they attended but failed to understand they could comment. Finally, this is an entirely new issue not raised to the Circuit Court.

3. Withholding of Applications, Project Designs.

The Appellants maintain they were denied access to the applications. This is incorrect. All applications are available to anyone willing to come to the office in person. The Appellants make the assertion they were denied access, but the record and the citations to the record do not support their position.

4. Claims of Refusing to Allow Persons to Speak.

Again, the record here does not support the Appellants' claims. They cite a letter from Peter Gorman offering his interpretation of what happened. But if the January 5, 2015 transcript is reviewed, the BAR chairman did not stop anyone from speaking and did not even prevent persons from discussing matters which were entirely outside the jurisdiction of the BAR. The Chairman did request persons limit their remarks to the issues the BAR had jurisdiction to decide (aesthetics, not the legality of the contract) and requested the persons not repeat one another and limit their remarks to three minutes. This is not improper and is not a violation of the Freedom of Information Act or any other law. This is customary at across the state at various BAR meetings, BZA

meetings, and meetings of other Boards and Commissions. There is no requirement that every person who wishes to speak against the project be collectively or individually given the same amount of time as the applicant to outline their position.

D. The BAR Did Not Err in Refusing to Consider Arguments that the Developer's Contract to Build the Project Was Invalid.

The agreement between the Town, Summerville Redevelopment Corporation, and the developer to build this project is the Public Private Partnership Agreement, or PPPA. The Appellants have filed a separate suit attempting to void the PPPA as an ultra vires contract. (Croft v. Town of Summerville, 2014-CP-10-7739) They also simultaneously allege the BAR was in error for failing to address issues of the PPPA including the Appellants' argument that the agreement was improperly entered into and ultra vires. The Appellants also allege the Board should have considered issues of compliance with the agreement. They state the Board should also have considered the qualification of the applicant without explaining as to what "qualifications" issues they believe the Board was to address.

The Appellants arguments as to the PPPA and the qualifications of the developer are without merit. A board of architectural review is meant to address the issue of the aesthetics of a new building and the appropriateness of demolition of existing structures. It is not the role of a board of architectural review to consider the legalities of whether the developer has a proper contract and whether there has been compliance or non-compliance with the private contract.

There are typically a variety of business relationships underlying any given development project—from lenders, to construction firms, architects, business partners, property owners, and joint venturers. It is certainly not the role of a board of architectural review to attempt to determine the legalities of all of those relationships, even in the

face of some dispute. A Board of Architectural Review is not qualified to decide whether a contract was properly bid, or whether a party to a contract is properly bound. These Appellants have filed an action to declare the contract invalid and ultra vires with the Circuit Court. The Summerville BAR is not the proper place to decide those issues.

Nor is it the place of the BAR to decide the applicant or developer is "unqualified" to build the project. This is a matter which is entirely up to the parties to the underlying development, whether public or private.

Appellants also use this section to repeat their argument that each owner of the project had to sign the application. This is addressed above at pages 10-11 of Respondents Brief.

III. THE APPEAL IS FATALY DEFECTIVE AS A RESULT OF FAILING TO NAME THE PERMITEE APPLICANT.

In the present case, the appellants made a decision to name only the Town of Summerville and the Summerville Board of Architectural Review as a party to the appeal. The appellants did not name Applegate and Company as a party to this appeal. It is impossible to conclude Applegate and Company is not a permittee applicant. In Spanish Wells Property Owners Ass'n v. Bd. of Adjustment of the Town of Hilton Head Island, 295 S.C. 67, 69, 367 S.E.2d 160, 161 (1988) the South Carolina Supreme Court determined the permittee applicant was a necessary party. In Spanish Wells, the circuit court dismissed an appeal from a decision of the Hilton Head Island Planning Commission for failure to name the development permittee, but allowed the appellant fifteen days leave to add the permittee as a party. Instead, the appellant appealed the court's ruling that a development permittee is a necessary party. The Supreme Court, addressing only that issue, adopted the majority view that a development permittee is a necessary party to an appeal of its permit. Id. at 69, 367 S.E.2d at 161.

Problematically, there is no means by which the appellant can cure this issue. Respondent cannot amend their appeal as it is untimely and there is no procedure by which they can do so. Under Austin v. Board of Appeals, 362 S.C. 29, 38, 606 S.E. 2d 208, 214 (Ct. App. 2004), the court concluded the statute makes no provision for "amendment of the grounds set forth in the petition," nor is there any way for the Appellants to add the permittee applicant to the appeal. Id. at 37, 606 S.E.2d at 213.

The only remedy is for the appeal to be dismissed as not having been perfected in a timely manner.

Although this issue was not raised and ruled upon by the lower court, the issue of whether the appeal was properly made is a jurisdictional issue which can be raised at any time. Although the appellate court can only reverse based on issues raised in to the lower tribunal, it can affirm on any grounds shown by the record. I'On, LLC v. Town of Mount Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000).

CONCLUSION

For all of these reasons, the decision of the Summerville Board of Architectural Review should be affirmed.

(Signature on next page)



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March 16, 2017

**IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas**

**Edgar W. Dickson, Circuit Court Judge
Case No. 2015-CP-18-00991**

Appellate Case No. 2015-002199

**Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr.; South Carolina Public
Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers
Association, individually, and on behalf of all others similarly situated, Appellants,**

v.

Town of Summerville and Town of Summerville Board of Architectural Review, Respondents.

REPLY BRIEF

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The Appellants hereby reply to the Initial Brief of the Respondents by referring to Appellants' Revised Initial Brief, and documents listed in Appellants' Designation of Matter, and by stating the following:

FACTUAL ERRORS AND OMISSIONS BY RESPONDENTS

A. Section 32-1 82(b) Is Not a New Issue

The Respondents claim in their Brief that Appellants' complaint that the Town failed to comply with Section 32-1-82(b) of the Town of Summerville's Code of Ordinances "is an entirely new issue not raised to the Circuit Court." Respondent's Brief at 16. That claim is incorrect. Appellants raised that issue specifically in Section 3W on pages 6-7 of the Petition Appellants filed in Civil Action Case No. 2015-CP-18-877 on May 5, 2015, and in Section 3X on page 7 of (R. pp. 98-111).

B. Applegate Is Not the Sole Permittee-Applicant

The Respondents state in their Brief that Applegate & Company ("Applegate") was "the permittee-applicant" "related to The Dorchester project." Respondent's Brief at 1 (emphasis added). That statement is incorrect and misleading. The Town of Summerville was also a permittee-applicant jointly with Applegate each time Applegate was a permittee-applicant to the BAR regarding The Dorchester project. That is significant because one of the two permittee-applicants, i.e., the Town of Summerville, is a respondent in this appeal and, as shown below, the other permittee-applicant, Applegate, represented to the Circuit Court in a related case that Applegate did not want to defend against allegations regarding the BAR and, instead, wanted to be bound by any court rulings against the Town, thereby waiving any right Applegate had to defend the actions of the BAR regarding The Dorchester project. See, Order of Judge Edgar W. Dixon,

September 25, 2015, Faye Croft, et. al. v. Town of Summerville, et. al. (Case No. 2015-CP-18-00713).

C. The BAR Violated the Sec 32-176(e) Quorum Requirement and FOIA

The Respondents argue that the South Carolina Freedom of Information Act does not apply to meetings of three of seven members of the BAR when those meetings lacked a quorum. That argument omits the inconvenient truths that Section 32-176(e) of the Town of Summerville's Code of Ordinances states that "[a] quorum, consisting of a majority of the total membership of the board, shall be required for the transaction of business" of the BAR. Id. (emphasis added), and that BAR business was transacted in at least two secret, non-public meetings attended by Applegate, the Developer; the Town Planner; and three members of the BAR not comprising a quorum. The specific business transacted at those meetings included the review, negotiation and approval of changes to the design of the Hotel project, which is the central business and purpose of the BAR. This business conducted at those meetings was so significant that John Kwist, a BAR member, referred in an official public meeting of the BAR on January 5, 2015, to the business that has been conducted at one of those non-public, secret meetings, Appellants' Brief at 36-37, leaving the members of the public hearing Kwist's statements perplexed about what was the meeting and business to which Kwist was referring.

Further evidence of the business purpose and nature of these meetings conducted without a quorum in violation of Sec 32-176(e) include the facts that the meetings were conducted in Summerville Town Hall, a public building, and called by official written communications from a Town employee, the BAR Secretary, to each member of the BAR. Thus, these meetings were not merely discussions by two or three members of the BAR to discuss among themselves pending

issues, as the Respondents portray. Rather, they were joint meetings between the developer, the Town Planner and three of seven BAR members to negotiate and make decisions and agreements regarding the design of the Hotel project, which is the core business of the BAR. Everything about these successive meetings had the characteristics of a public meeting of the BAR, but the BAR unlawfully treated the meetings as non-public meetings by deliberately avoiding a quorum, which was a deliberate, orchestrated evasion and circumvention the SC Freedom of Information Act in violation of the specific non-circumvention requirements of S.C. Code Ann. § 30-4-70(c). As a result, the public was not allowed to view or participate in these discussions about the design of the Hotel project; no record has been kept by the BAR of the discussions, agreements and negotiations at the meetings; and the Appellants are deprived of evidence and a record of what transpired at those meetings upon which to base this appeal.

All the above is explained and documented in pages 36-44 of the Appellants' Brief.

D. The BAR Must Obey the Governing Statutes and Ordinances as Written.

The Respondents argue that (1) the BAR decisions should be upheld if "any" evidence on the record supports those decisions; (2) the Court of Appeals automatically should defer to the BAR to uphold the BAR's decisions regardless of the incorrectness of the procedure followed by the BAR in reaching those decisions; (3) the burden is on the public to show the BAR violated the law instead of the burden being on the BAR to show it complied with specific legal requirements; (4) all BAR decisions should be upheld due to lack of evidence of invalidity even when the BAR illegally caused that lack of evidence due to its failure to keep required records, its curtailment of public input, its holding meetings in secrecy contrary to law, etc.; (5) because the BAR created and complied with some laws, it does not matter that the BAR failed to create and/or abide by all

the other laws the BAR was required to follow; and (5) it was acceptable for the BAR to justify their decisions with findings and conclusions created months after the decisions being appealed had been made and after Appellants had filed their appeal of those decisions with the Circuit Court, because those findings and conclusions are "not evidence," while simultaneously claiming the Courts should not overturn but must defer to those findings and conclusions.

None of the above is correct. As with a jury or any other government body, the BAR must comply with applicable laws when making its decisions and if the BAR does not comply with applicable laws, its decisions must be invalidated. If Courts will not enforce the rules, there is no point in having them, the BAR will continue to violate them, the public will be deprived of its protections and the BAR can simply justify any of its decisions/actions regardless of its law violations by identifying some evidence it puts somewhere on the record to justify any of its decisions while simultaneously excluding from the record evidence opposing its decisions, as it did with the Appellants. If the BAR does not document its compliance with legal requirements and the public can appeal a BAR decision based only on evidence the BAR chooses to allow on its record, the BAR effectively can avoid any overruling of its decisions simply by controlling what is and is not put on the BAR's record.

Numerous failures by the BAR to obey the law, as documented in Appellants' Revised Initial Brief, violated the Appellants' constitutional rights to due process, skewed the BAR's decisions and decision-making process and otherwise harmed the Appellants and the Town of Summerville, in numerous respects, including the following:

1. Failing to create and abide by numerous specific rules required by law, see Appellants' Brief, at 20-28;
2. Failing to notify adjoining property owners by letter and the public by advertisements that the public had a right, pursuant to Section 32-1 82(b) of the Town of Summerville's

Code of Ordinances, to comment at each BAR meeting where an application for demolition was considered,

3. Failing to even consider whether the design of the Hotel project allowed too much noise for the surrounding residents, see Appellants' Brief, at 33-36;
4. Failing to allow to speak members of the public who wished to speak against demolitions at BAR meetings, including to explain that the demolitions were not warranted because alleged blight did not exist and that if it did exist, it was blight by neglect by the Town;
5. Telling members of the public who wished to speak against demolition at BAR meetings at the beginning of those BAR meetings that they did not have a right to speak, when they did have a right to speak;
6. Limiting what members of the public could say when they were allowed, on occasion, to speak at a BAR meeting;
7. Prohibiting members of the public from providing evidence on the record of the BAR proceedings, thereby preventing those members from having a BAR record which they could appeal;
8. Failing to document and make records of the BAR's examinations and other official actions, and to immediately file them in the office of the BAR as a public record, contrary to S.C. Code Ann. §6-29-870(D), thereby depriving Appellants of evidence of law violations to support Appellants' appeal, regarding, inter alia, each of the following: (a) dates of BAR applications; (b) names of applicants; (c) content of BAR applications; (d) dates action was taken regarding BAR applications; (e) whether the applicant seeking permission to demolish a building was an agent of property owners; and (f) what action, if any, was taken by the BAR on each of the applications;
9. Failing of the BAR Secretary to receive complete applications from all required parties at least fourteen days before the next regularly scheduled BAR meeting;
10. Failing of the Town's planning department to receive complete applications at least ten days before the next regularly scheduled BAR meeting;
11. Failing to have applications include items on "the current checklist;"
12. Failing to take action upon each application at the BAR's "next regularly scheduled meeting;"
13. Failing to issue the certificate of appropriateness granted the Town and Developer on May 11, 2015 within "180 days of the time of the filing of the application with the designated town official" as required by Sec. 32-182(c); and
14. Failing to issue a separate certificate of appropriateness for demolition and for new construction, and on each property, for which an application was filed regarding the Hotel project.

E. Applegate Is Not a Necessary Respondent and, In Any Event, Respondent Waived This Argument by Not Raising It Below

As shown above, the Town of Summerville and Applegate are joint permittee-applicants regarding the BAR decisions that are the subject of this appeal. As such, the Town can represent, and is representing, the interests of Applegate regarding this appeal.

Indeed, Applegate has consented to relying on the Town to defend against allegations of illegal conduct by the BAR regarding The Dorchester project. Judicial notice should be taken that on September 25, 2015 Circuit Court Judge Edgar W. Dixon signed an Order granting a motion by Applegate to dismiss Applegate from Civil Action No. 2015-CP-18-00713 based on the stipulation by Applegate that it would be bound by orders of the Circuit Court in that lawsuit. That lawsuit, which is still pending, contains substantially the same claims by many of the same plaintiffs against the Town and the BAR that are pending in this appeal. Applegate voluntarily disavowed and waived its interest in defending against Appellants' claims that decisions about The Dorchester project were invalid due to law violations by the BAR and agreed to be bound by whatever decisions the Circuit Court made regarding those allegations if Applegate were dismissed from the lawsuit. In reliance on those representations by Applegate, the Court dismissed Applegate from the lawsuit and included Applegate's stipulation that it consented to be bound in the order dismissing Applegate.

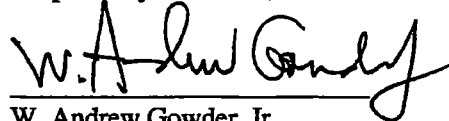
Most significantly, the Respondents waived any right they had to object to Applegate not being a respondent in this appeal, by failing to raise that issue when the decisions of the BAR were being appealed to the Circuit Court, see, e.g., Roche v. South Carolina Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975) (purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and when appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal). Not including this party is not jurisdictional, as the Respondent contends, and the Respondent's failure to raise this

issue below deprived the Appellant the ability to address it and the lower court the ability to rule on that question. See Spanish Wells Property Owners Ass'n v. Board of Adjustment, 295 S.C. 67, 367 S.E.2d 160 (1988)(respondent raised the argument that the permittee was a necessary party at the hearing before the trial court and the trial court allowed Appellant an opportunity to amend to add the permittee before the appeal).

CONCLUSIONS

For all the reasons stated herein and in the Appellants' Revised Initial Brief, the decisions of the BAR should be reversed.

Respectfully submitted,



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March 15, 2017
Charleston, S.C.

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge
Case No. 2015-CP-18-00991

Appellate Case No. 2015-002199

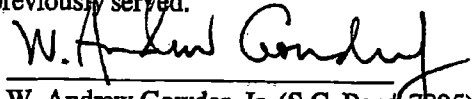
Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr.; South Carolina Public
Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers
Association, individually, and on behalf of all others similarly situated, Appellants,

v.

Town of Summerville and Town of Summerville Board of Architectural Review, Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Reply Brief complies with Rule 211(b) that the
final Reply Brief is identical to the brief(s) previously served.


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr.; South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated, Appellants,

v.

Town of Summerville and Town of Summerville Board of Architectural Review, Respondents.

Appellate Case No. 2015-002199

Appeal From Dorchester County
Edgar W. Dickson, Circuit Court Judge

Opinion No. 5687
Heard February 15, 2018 – Filed October 9, 2019

AFFIRMED

Michael T. Rose, of Mike Rose Law Firm, PC, of Summerville, and W. Andrew Gowder, Jr., of Austen & Gowder, LLC, of Charleston, for Appellants.

G. Waring Parker, of G. Waring Parker Law Firm, LLC, of Summerville, and Timothy Alan Domin, of Clawson & Staubes, LLC, of Charleston, for Respondents.

MCDONALD, J: This appeal addresses two decisions issued by the Town of Summerville Board of Architectural Review (the Board) in its consideration of a mixed-use development project proposed for downtown Summerville. Appellants contend the circuit court erred by (1) considering new evidence submitted after Appellants appealed the Board's decisions, (2) failing to remand the case for the parties to develop a sufficient record, and (3) approving the decisions despite the Board's failure to adopt, develop, and comply with established rules of procedure as required by town ordinance. Appellants further assert the Board's decisions lacked the necessary factual support, the Board held meetings in violation of the South Carolina Freedom of Information Act (FOIA),¹ and the Board erroneously issued a certificate of appropriateness for the project without considering public objections. We affirm.

Facts and Procedural History

On July 9, 2014, the Town of Summerville and Town of Summerville Redevelopment Corporation entered into a public-private partnership agreement (the Agreement) with Applegate & Co. (the Developer) to develop 1.58 acres in downtown Summerville. The proposed mixed use development (the Project), to be called "The Dorchester," included a conference center, parking deck, hotel, restaurant with rooftop bar, and condominiums. The Developer subsequently applied to the Board for design approval.

At an October 6, 2014 Board meeting, Architect Hank D'Antonio presented the Project's conceptual plan. D'Antonio explained that although some elements were not yet fully designed, he believed the design as a whole emulated the surrounding buildings of historic downtown Summerville and Summerville's other residential areas. He emphasized the Developer sought only conceptual design approval at that point and would consider the Board's comments and concerns in rendering the final design.

The Board expressed concerns about the height, mass, and scale of the Project, specifically noting the proposed hotel seemed too large for the space. In discussing the aesthetics of the Project, Board members contended the design did not "represent Summerville" and the hotel looked too much like a commercial building. The Board took public comments, and the chairman explained that each speaker would be limited to three minutes. Members of the public raised concerns

¹ S.C. Code Ann. § 30-4-10 to -165 (2007 & Supp. 2018).

similar to those of the Board, providing comments about mass, scale, height, aesthetics, and traffic. Although some commenters liked the overall concept of the Project, they expressed that modifications were needed to make the Project more compatible with downtown Summerville. Faye Croft, an appellant in this case, complained that people in the residential units would be able to look into her house. Ultimately, the Board chose not to vote at the October 2014 meeting; the chairman explained, "[T]his is not unusual [E]very large project that we've had in the Town of Summerville, we've gone through a series of meetings with the architect and developers to come up with a plan that works for Summerville."

The Board again discussed the Project at its November 3, 2014 meeting. In response to the concerns previously raised by the Board and the public, the Developer presented certain design changes, including the following alterations to the design of the hotel: a reduction in scale and height, modifications to the cornice, and changes to the top of the building. According to the Developer, the design of the Project as a whole was modified to achieve a more "residential feel."

Professional engineer Rick Reif presented a traffic study, which found "the location of [the] [P]roject meets all the applicable SCDOT standards for spacing along [the s]treet." Although the traffic study found the affected intersections would continue to "operate at an acceptable level of service," the Board expressed concern about the Project's potential impact on traffic.

The Board acknowledged the design improvements to the hotel were significant and more representative of the downtown area. However, it expressed continued concern about the height, mass, and scale of the residential units, specifically referencing Croft's comment that people in the residential units would be able to see into her home. Several members of the public spoke about the Project's impact on traffic and parking and agreed with the Board's concern that the proposed design for the residential units was incompatible with the historic area.

Referencing the Agreement, the Board reiterated that many of the traffic and parking concerns were not within its jurisdiction and recommended that concerned citizens contact the town council. The president of the Summerville Preservation Society raised questions regarding the demolition needs of the Project, which would require the demolition of an older home within the historic district. He preferred that the house be cleaned up, or in the alternative, moved. The Board deferred ruling, stating it was still in "the negotiating stage" with the Developer. Still, the Board encouraged the Developer to revisit the design to address the concerns raised at the meetings.

By a vote of five to one, the Board preliminarily approved the Project design at its January 5, 2015 meeting. Prior to the vote, the Developer noted it had again made significant changes to the Project. The Developer reported it had contracted to purchase a neighboring property—which would provide for an additional driveway—in an effort to allay traffic and parking concerns. The Developer explained the additional property also allowed it to address the height, mass, and scale objections to the Project by redesigning the conference center to one story and reducing the height of the residential units. The Board expressed concerns about the size and appearance of one large "block" building, but the Developer explained it was infeasible to break up the building because the parking garage was located behind it.

The Board also discussed demolition needs for the Project and approved demolishing an old gas station. The Developer advertised four other structures it proposed to demolish so interested parties could move the structures elsewhere, as one property owner proposed to do. However, the Developer had not received commitments from anyone to move the structures, and two different companies found this would be very difficult to accomplish. The Developer agreed, upon the Board's suggestion, to contact salvage companies to inspect the structures for the purpose of saving historic materials and to have two of the structures inspected for potential relocation. The Board did not take public comment at this meeting.

The Board approved demolition of the structures upon final approval of the Project at a January 12, 2015 meeting. The Board emphasized there would be an ongoing opportunity for the structures to be moved and materials to be salvaged.

At its April 6, 2015 meeting, the Board discussed concerns about siding and window materials, the transition area between the residential units and hotel, and the overall design of the project. The Board also raised questions about the materials and colors used for the exterior, particularly the use of HardiePlank siding and vinyl windows. The Developer agreed to build a wall sample and allow the Board to inspect the color samples once the Project was built, but prior to painting it. The Board disagreed about whether it should require the Developer to create a scale model. At the close of the April meeting, the Board gave the Project conditional final approval, subject to the Board's further review of the exterior materials and color, by a vote of five to one. Appellants petitioned the circuit court for review of the Board's decision on May 5, 2015.

The Board gave the Project final approval at its May 11, 2015 meeting, again by a vote of five to one. The Developer presented a revised design based on the concerns raised at the April meeting. When members of the public again questioned the Project's use, the chairman explained, "The zoning is B-3. I have no control over that . . . it's been that way for a long time." Another Board member moved for a vote stating,

I move that we proceed with the final approval based upon the fact that we did conditional final approval. And I feel that the contractor—or the [D]eveloper has answered the questions we asked him to answer and provided us with material choices that we asked him to deliver to us.

One Board member explained, "I did have some initial issues about the plan, but all those were answered by the architect tonight." On May 22, 2015, after the Board issued a certificate of appropriateness for the Project, Appellants again petitioned the circuit court for review.

The Board adopted an order setting out its findings of fact and conclusions of law at its August 3, 2015 public meeting. The Board found the Project was "appropriate in terms of aesthetics, design, architecture, height, mass, scale, proportion, arrangement, texture and material, and is compatible with the general character of its immediate neighborhood within the historical district of the Town of Summerville." The Board also filed a memorandum in opposition to Appellants' petitions on August 3, 2015. On August 5, 2015, the Board filed and served a certified copy of the Board proceedings, which included a transcript of matters heard before the Board as well as the Board's decision adopting its findings of fact and conclusions of law.

After hearing arguments, the circuit court affirmed the Board's April 6, 2015 and May 11, 2015 decisions.²

Standard of Review

"The appellate court gives 'great deference to the decisions of those charged with interpreting and applying local zoning ordinances.'" *Arkay, LLC v. City of*

² The circuit court consolidated the appeals by consent order.

Charleston, 418 S.C. 86, 91, 791 S.E.2d 305, 308 (Ct. App. 2016) (quoting *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995)). "The appellate court is not free to substitute its judgment for that of the [Board]. Accordingly, we will not reverse the circuit court's affirmance of the [Board] unless the [Board's] findings of fact have no evidentiary support or the [Board] commits an error of law." *Gurganious*, 317 S.C. at 487, 454 S.E.2d at 916.

Law and Analysis

I. Board's Order and Sufficiency of the Record

Appellants argue the circuit court erred in requesting and considering the Board's findings and conclusions because the Board's order was not prepared and approved until after Appellants had petitioned the circuit court for review of the Board's oral decisions. Similarly, Appellants contend the circuit court erred in considering the Board's meeting minutes because the minutes were not approved until the Board's August 2015 meeting, after Appellants had appealed the April and May decisions. Appellants further argue the circuit court should have remanded the case for rehearing if it believed the record was insufficient. Finally, Appellants argue the Board's decision lacks factual support. We disagree.

Section 6-29-870(A) of the South Carolina Code (2004) authorizes a local government to create a board of architectural review when it has enacted a zoning ordinance related to "the preservation and protection of historic and architecturally valuable districts and neighborhoods." "The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance." S.C. Code Ann. § 6-29-880 (2004).

The findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter must be remanded to the board of architectural review for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law.

S.C. Code Ann. § 6-29-930(A) (Supp. 2018).

The duty of the Board is "to promote the purposes and objectives of this article [addressing historic preservation] through the review of plans and applications, as provided in this article, for all construction within the historic districts or historic properties, including both modifications to existing buildings, demolition and construction of new buildings." Summerville, S.C., Code of Ordinances § 32-176(f). The purpose of Summerville's historic preservation ordinances

is to protect, preserve and enhance the distinctive architectural and cultural heritage of the town; to promote the educational, cultural, economic and general welfare of the people of the town; to foster civic pride; to encourage the harmonious, orderly and efficient growth and development of the municipality; to ensure that new buildings and developments will be harmonious with the existing structures and sites; and to establish a mechanism for accomplishing these objectives.

Summerville, S.C., Code of Ordinances § 32-172(a).

It shall be the duty of the board of architectural review to make the following determinations with respect to the historic districts or historic properties:

- (1) Appropriateness of altering, moving or demolishing any designated building or structure within a designated historic district. The board shall consider the historic, architectural and aesthetic features of buildings, their relationship and importance to the district.
- (2) Appropriateness of exterior architectural features[,] including signs and other exterior fixtures of any new buildings and structures to be considered within the historic district.
- (3) Appropriateness of exterior design of any new extension of any existing building or structure within the historic district.

(4) Appropriateness of the general exterior design, scale, proportion, arrangement, texture, and material of the building or structure in question and the relation of such factors to the street scene and to similar buildings in the immediate vicinity. The board's concern shall be exterior features so that they will be compatible with the general character of their immediate neighborhood and preserve the existing street scene. The board shall have the right to review and approve colors of structures in the historic district and shall develop guidelines for the administration of the section. The board shall not make requirements as to the use of structures as long as this use is not in violation of existing zoning requirements.

(5) Appropriateness of site development features including driveways, fences, outbuildings or other site appurtenances.

(6) It shall be the duty of the board of architectural review to follow the established guidelines governing modifications, rehabilitations, additions and new construction within the boundaries of the town historic districts or historic properties.

Summerville, S.C., Code of Ordinances § 32-176(h).

Upon receiving the completed application [for a certificate of appropriateness], the board shall consider, among other things, the historic, architectural and aesthetic features of the building, the nature and character of the area or any new design or addition as stated in the application. In passing upon the application, the board shall consider the general design scale, proportion, material and setback of the building or structure in question or proposed building or addition as more completely defined in subsection 32-176(h) and the relation of such factors to the surrounding area.

Summerville, S.C., Code of Ordinances § 32-181(c)(4).

The discretion of a board of architectural review to approve proposed construction is "constrained only by reasonableness and good faith." *Seabrook Island Prop. Owners Ass'n v. Marshland Tr., Inc.*, 358 S.C. 655, 662, 596 S.E.2d 380, 383 (Ct. App. 2004) (quoting *River Hills Prop. Owners Ass'n v. Amato*, 326 S.C. 255, 259, 487 S.E.2d 179, 181 (1997)). Decisions from a board of architectural review are appealed to the circuit court. S.C. Code Ann. § 6-29-900(A) (Supp. 2018).

Upon filing of an appeal with a petition as provided in Section 6-29-900(A) . . . the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of architectural review, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

S.C. Code Ann. § 6-29-920(A) (Supp. 2018).

"Generally, the format of a final decision is immaterial as long as the substance of the decision is sufficiently detailed so as to allow a reviewing court to determine if the decision is supported by the facts of the case." *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 494, 536 S.E.2d 892, 899 (Ct. App. 2000) (rejecting a document purporting to set forth a zoning board's findings where the document's stated findings differed materially from findings reached during the hearing of the matter); *see also Wyndham Enterprises, LLC v. City of N. Augusta*, 401 S.C. 144, 149, 735 S.E.2d 659, 662 (Ct. App. 2012) (explaining that usually a board's minutes constitute its final findings; however, a transcript can constitute final findings if the minutes are found invalid).

Our appellate courts have not addressed the statutory requirements for decisions of boards of architectural review. However, in the context of zoning appeals, this court has held that a transcript can constitute a board's decision under certain circumstances. *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 35, 606 S.E.2d 209, 212 (Ct. App. 2004). In *Austin*, which involved the denial of an application for a building permit, the board of zoning appeals rendered its decision by letter—in one sentence. *Id.* at 34, 606 S.E.2d at 212. The applicant argued the letter did "not

satisfy the statutory requirement that the board's decision be in writing with findings of fact and conclusions of law separately stated." *Id.* This court found no reversible error because "it is well-settled that courts reviewing the decisions of zoning boards and other administrative agencies may look to written documents as well as records of proceedings as sufficient formats for final decisions." *Id.* The court explained the evidence the board considered was "clearly laid out in the transcript of the hearing," which, when read together with the letter, provided a sufficient basis to determine whether the board's decision had factual support. *Id.* at 35, 606 S.E.2d at 212.

In *Massey v. City of Greenville Board of Zoning Adjustments*, this court held that a document titled "Findings of Fact and Conclusions" could not constitute the zoning board's final decision because only two of the five board members had seen the document. 341 S.C. 193, 200, 532 S.E.2d 885, 888 (Ct. App. 2000). As the hearing transcript was also inadequate, the matter was remanded to the board of zoning appeals to promulgate and ratify written findings of fact and conclusions of law before providing written notice of its decision to the applicant. *Id.* at 201, 532 S.E.2d at 889.

Appellants contend the circuit court erred in considering the Board's findings of fact and conclusions of law because the Board's order was prepared and approved after Appellants filed their circuit court appeal. We disagree because the Board properly voted and ratified its order at its August 2015 meeting. Thus, this situation differs from that in *Massey*, in which only two board members considered the document at issue. And, significantly, the record here—specifically the hearing transcripts—provides factual support for the Board's decision. *See Austin*, 362 S.C. at 34, 606 S.E.2d at 212 ("[I]t is well-settled that courts reviewing the decisions of zoning boards and other administrative agencies may look to written documents as well as records of proceedings as sufficient formats for final decisions."). The evidence indicates the Board considered all of the factors it was required to weigh in reviewing the Project's applications, including "general design scale, proportion, material and setback of the building or structure in question or proposed building." Summerville, S.C., Code of Ordinances § 32-181(c)(4).³

³ As to Appellants' request for remand, the circuit court explained: "Appellants argue that the Court should not consider the written BAR order prepared after the filing of the appeal and yet also argue the record contains inadequate findings for review. Appellants suggest the matter be remanded for the Board to prepare another order. The Court rejects this position. The statute governing BAR appeals allows the Court to remit the matter so an order with findings of fact and law can

At the October 6, 2014 meeting, the Board expressed concerns about the height, mass, and scale of the Project, noting the hotel seemed too large for the space. The Board addressed additional aesthetics, specifically its concerns that the Project's design was not representative of downtown Summerville and the hotel looked too much like a commercial building. After the Developer presented a revised design at the November meeting—and the Board acknowledged the design had improved—the Board raised concerns about the height, mass, and scale of the residential units. At the January 5, 2015 meeting, the Developer's representative reported it had a contract to acquire additional property to alleviate Board concerns that the Project was too large for the space. The Developer presented further revised plans, and the Board continued to raise its—and the community's—concerns about the mass of the Project in that it consisted of one long blockish structure. Again, the Developer revised the design, presenting a new design at the Board's April 6, 2015 meeting. Even then, the Board took issue with the Project proposal, this time with respect to the building materials to be used and the proposed transition from the commercial section of the Project to the residential area. The Board gave only conditional approval, pending further review of the exterior materials and colors to be used on the Project.

At the May 11, 2015 meeting, the Developer again presented a revised design in an effort to address the Board's concerns. The Developer and the Board extensively discussed the exterior materials, and the Developer brought material samples for the Board to examine. Board members explained the Developer had addressed their concerns and approved the Project by a vote of five to one. Ample evidence establishes the Board considered exactly the factors required by the ordinance through its extensive discussions at the various meetings about the Project's mass, scale, height, and exterior materials. *See* S.C. Code Ann. § 6-29-930(A) ("In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law."); Summerville, S.C., Code of Ordinances § 32-176(h) (instructing the Board to consider factors such as the "[a]ppropriateness of the general exterior design, scale, proportion, arrangement, texture, and material of the building or structure in question and the relation of such factors to the street scene and to similar buildings in the immediate vicinity" in reviewing an application for new construction).

be prepared. S.C. Code Ann. § 6-29-930. However, the Court cannot find any reason why it should remand to the Board with directions to prepare an order when it has already done so. There is nothing in the statutes prohibiting the BAR from preparing an order after the notice of appeal is filed."

Throughout this process, Appellants worked to defeat the Project, but—as the Board's chairman repeatedly explained—because the property was zoned for the proposed business uses, Summerville's own ordinance prevented the overreach Appellants sought from the Board. *See* Summerville, S.C., Code of Ordinances § 32-176(h)(4) ("The board shall not make requirements as to the use of structures as long as this use is not in violation of existing zoning requirements."). There is no evidence the Board acted unreasonably or in bad faith in approving the Project's design, and the record supports the Board's findings. *See Seabrook Island Prop. Owners Ass'n*, 358 S.C. at 662, 596 S.E.2d at 383 (providing the Board's discretion in approving proposed construction is "constrained only by reasonableness and good faith"). Therefore, the circuit court properly affirmed the Board's decisions.

II. Compliance with the Freedom of Information Act

Appellants contend the Board violated South Carolina's FOIA by (1) holding secret meetings about the Project, (2) not properly keeping or immediately publishing meeting minutes, (3) not notifying members of the public that they would have an opportunity to speak at the meetings, (4) placing unreasonable restrictions on the public's right to comment at meetings, and (5) deliberately withholding relevant information from the public. We disagree.

"Every meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter." S.C. Code Ann. § 30-4-60 (2007).

"'Meeting' means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power." S.C. Code Ann. § 30-4-20(d) (2007). "'Quorum' unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body." S.C. Code Ann. § 30-4-20(e) (2007).

"No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." S.C. Code Ann. § 30-4-70(c) (2007). Summerville's own town ordinance provides,

Upon receipt of an application to demolish a structure,
the secretary to the board shall publish a display
advertisement in a newspaper of general circulation in
the town at least 14 days before the meeting informing

the public that such application has been received, detailing the date, time and place of the meeting at which it will be considered and stating the public will have an opportunity to comment at such meeting. In addition, any group or organization which requests in writing to the secretary that they be informed of any demolition applications shall be sent a notice in the form of a letter to the address provided by the organization to the secretary.

Summerville, S.C., Code of Ordinances § 32-182(b).

In July 2014, the Developer held a series of "workshops" with members of the Board to discuss the Project. In an email to the Board, a Town employee reminded members that two members would meet with the Developer at a time so there would be "no possibility of it looking like a quorum." In December 2014, the Developer held workshops with three Board members at a time. The Town employee again reminded Board members, "To avoid any possibility of a quorum (as this is not a public meeting), please stay within your agreed time frame."

We acknowledge the problematic nature of these emails and note that "workshops" should not be used to circumvent FOIA requirements. However, we find these workshops between Board members and the Developer did not constitute "meetings" under the plain language of our FOIA statutes. See S.C. Code Ann. § 30-4-20(d). As defined, a "meeting" specifically requires the presence of a quorum. There is no evidence a quorum was present during any of the workshops. *Id.*

Nor were the workshops violative of § 30-4-70(c)'s "chance meeting" prohibition as it is clear from the minutes and transcripts of the Board meetings that the Board did not "act upon" the matter of the Project—or any other matter within the Board's purview—during these workshop sessions. Significantly, all six public meetings about the Project took place after the July workshops, and the Board held four public meetings after the December workshops. The Developer continually revised its plans throughout the consideration process in response to concerns raised by the Board and the public's comments; it then presented these revised plans at subsequent Board meetings—where the Board took additional public comment. The meeting transcripts and minutes reflect the Board took public comment at no less than four meetings during its consideration of the Project.

Contrary to Appellants' claim, our FOIA does not require the Board to *immediately* publish meeting minutes. Rather, the FOIA requires the Board to publish its minutes within a reasonable time. See S.C. Code Ann. § 30-4-90(a) (2007) ("All public bodies shall keep written minutes of all of their public meetings."); S.C. Code Ann. § 30-4-90(b) (2007) ("The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosures would be inconsistent with § 30-4-70 of this chapter."). Here, the Board's process was to approve a meeting's minutes at the next convened meeting. This is the standard practice for governing bodies across the State, and Appellants have failed to demonstrate this process is unreasonable or otherwise statutorily violative.

Likewise, we find Appellants' argument that the Board unreasonably restricted the public's right to comment at meetings is without merit. Specifically, Appellants challenge the time limit placed upon individual commenters at hearings and argue the Board unreasonably moved one meeting from council chambers to the Town Hall hearing room, contending "there were far too few seats to accommodate the number of people crowded into the second-floor hearing room of the Town Hall." But nothing in our FOIA statutes nor Summerville's own ordinances and regulations prohibited the Board from holding the meeting in the hearing room. Clearly, members of the public still attended the January meeting despite the challenged room change. See *Wiedemann v. Town of Hilton Head Island*, 344 S.C. 233, 240, 542 S.E.2d 752, 755 (Ct. App. 2001) (holding a town council's three-day, out-of-town workshop did not violate the FOIA because the town's "interest in increased attention and focus outweighed the small cost and delay to the public in attending the workshop"). Moreover, the applicable statutes and regulations do not require that a government body allow the public unlimited speaking time or discussion of matters outside the body's jurisdiction. One can easily anticipate the problematic results of such a requirement.

We also find Appellants' argument that the Board did not notify the public of the opportunity to comment on demolition to be without merit. Although Appellants contend the newspaper advertisements announcing Board meetings did not state the public would be allowed to comment on the proposed demolition, the evidence in the record indicates otherwise. At least one of the advertisements provided in the record announced the Board would be meeting on May 11, 2015 at 6:00 p.m.; stated the Board would "hear the final approval request for demolition of all existing structures" listed by tax map number in the ad; and noted the Board would "accept public comment." And, a December 2014 advertisement in The Summerville Journal Scene announced "Free Houses in Summerville!!!" in an

effort to encourage relocation of two "beautiful historic houses" slated for demolition.

Appellants' other complaints of lack of notice are similarly without merit. In addition to advertisements in the local newspaper of upcoming Board meetings, Summerville's planning department sent courtesy notice letters to property owners surrounding the Project. These letters, sent one week before each meeting, notified potentially affected citizens of upcoming meetings and informed property owners that the Project's application materials were available for review online. The record establishes that the Board received applications for new construction at least seven days before the next regularly scheduled meeting, as required by ordinance. *See* Summerville, S.C., Code of Ordinances § 32-181(c)(6) (requiring applications for new construction to be submitted to the Board's secretary at least seven days prior to the next regularly scheduled meeting). Appellants have failed to provide any evidence to the contrary, other than noting the lack of a stamped date of receipt on the applications, which we find insufficient to show error. *See Solley*, 397 S.C. at 214, 723 S.E.2d at 608 ("[T]he appellant has the burden of providing an adequate record on appeal."); Rule 210(h), SCACR (T]he appellate court will not consider any fact which does not appear in the Record on Appeal.").

Appellants also contend the Board unreasonably restricted access to the Developer's applications because the Town required that they file a FOIA request to view the documents. The circuit court did not rule on this question, and no Rule 59(e) motion was filed. Thus, this issue is unpreserved. *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (in order for an issue to be properly preserved for appeal, it must have been both raised to and ruled upon by the trial court). In any event, the Town's response was consistent with State law, and we find no Freedom of Information Act violation. *See* S.C. Code § 30-4-30 (addressing the right of the people to access and inspect the public records of a public body and setting out the procedure for a public body's response to such a records request).

III. Adoption of Procedures

Appellants next argue the circuit court erred in affirming the Board's decisions because the Board failed to adopt and adhere to acceptable rules of procedure and failed to provide a specific rule defining "conceptual" or "preliminary" approval. Appellants further assert the Board failed to comply with relevant ordinances in receiving and acting upon the Developer's various applications. We disagree.

While Appellants correctly argue S.C. Code § 6-29-870(D) requires that a board of architectural review "shall adopt rules of procedure in accordance with the provisions of any ordinance adopted pursuant to [the South Carolina Local Government Comprehensive Planning Enabling Act of 1994]," they have provided no evidence to support their claim that the Board failed to do so. Indeed, the record and Summerville's Code of Ordinances establish otherwise. *See e.g.*, Summerville, S.C., Code of Ordinances § 32-174 (discussing the creation, membership and composition of the Board, terms of office, and duties of the Board); § 32-175 (providing for regular and special meetings, requiring that the Board shall adopt rules of order and keep minutes, and setting out additional powers and duties).

The record reflects that in addition to the rules set forth by ordinance, the Board conducted its business pursuant to general parliamentary procedure, according to the order of business explained by the chairman at the beginning of Board meetings. For example, prior to discussion of the Project at the Board's October 6, 2014 public meeting, the chairman explained:

Although we are not required to solicit comments from anyone other than the applicant and the board members, we have chosen based on the great interest expressed both for and against this project to allow others to express comments that might help influence our decision making. For this purpose, we place a sign-in sheet down below, and we will call you in the order that you signed in.

Although Appellants contend the Board's rules on public comment were inconsistent, the chairman of the Board explained the comment procedure, including the three-minute limit, prior to the public comment periods. Several of the Board's sign in sheets have "3 minute limit" printed at the top. At times, the chairman had to remind those commenting that the Board had no power to change the B-3 general business zoning of the area or to venture into those areas subject to town council—not Board—authority.

As Appellants have failed to support their position that the Board unreasonably restricted public comment, lacked appropriate rules of procedure, or prejudiced their opposition to the Project through its conduct of the public meeting process, we affirm the circuit court's findings on these issues. *See Snyder's Auto World*,

Inc., 315 S.C. at 186, 434 S.E.2d at 312 ("The burden is on the appellant to show not only error, but also prejudice.").⁴

IV. Certificate of Appropriateness and Validity of the Agreement

Appellants argue the Board erroneously issued a certificate of appropriateness based on an unqualified development application. Appellants further contend the Board erred in considering the Project design because the public-private partnership Agreement was illegal and the applicants failed to submit the final design to the Redevelopment Corporation for review and approval. As the circuit court did not consider and rule upon this question, it is not properly before us.⁵ See *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (in order for an issue to be properly preserved for appeal, it must have been both raised to and ruled upon by the trial court).

Conclusion

Based on the foregoing, we affirm the circuit court's order affirming the challenged Board decisions.

AFFIRMED.

HUFF and GEATHERS, JJ., concur.

⁴ The circuit court aptly noted that many of Appellants' grounds for appeal, "such as issues related to the Town's request for proposal process or to the funding for the project, were matters beyond the purview of the Board and accordingly would have been inappropriate for the Board's or this Court's consideration." Appellants have raised similar issues before this court, along with matters they did not raise before the circuit court and arguments for which there is no support in the record.

⁵ Appellants have challenged the validity of the Agreement in a separate civil action, and this court previously ordered Appellants to strike from their designation of matter items relating only to the challenge of the Agreement because these items were part of the record in the separate action before the circuit court. See Rule 210(c), SCACR ("The Record, shall not, however, include matter which was not presented to the lower court or tribunal).

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge
Case No. 2015-CP-18-00991

Appellate Case No. 2015-002199

RECEIVED
OCT 24 2019
SC Court of Appeals

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr.; South Carolina Public
Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers
Association, individually, and on behalf of all others similarly situated, Appellants,

v.

Town of Summerville and Town of Summerville Board of Architectural Review, Respondents.

PETITION FOR REHEARING BY APPELLANTS

Pursuant to Rule 221, Appellants hereby petition for a rehearing of the Court's decision in
this appeal, Opinion No. 5678, filed on October 9, 2019.

The opinion of the Court, respectfully, overlooks and misapprehends the following
particular points at issue in this appeal:

1. In ruling that the Circuit Court properly affirmed the Board's decisions based on the
transcript of the Summerville Board of Architectural Appeal's ("BAR")
deliberations, the Court overlooked that the BAR failed to comply with S. C. Code

Ann. § 6-29-900(A) that the Court quoted verbatim in the Opinion and which requires that the BAR provide a duly certified copy of the proceedings, including a transcript of the evidence heard before the BAR and the decision of the board including its findings of fact and conclusions within 30 days of notice of appeal, which the BAR did not do.

2. The Court's opinion mistakenly asserts that the "workshops" by Board members in numbers of less than a simple majority of the Board did not violate the provisions of S.C. Code Ann. §30-4-70(c)(2007) because the Board did not "act upon" the matter before them. The Court's opinion also did not consider or rule on whether those "workshop" meetings violated Sec. 32-176(e) by "transact[ing] [BAR] business" without a quorum of the total membership of the Board. The Board did indeed act upon and transact business regarding the matter by taking information from the applicant and discussing, negotiating and considering that information; "act upon" and "transact[ing] business" cannot simply mean voting upon, since public bodies cannot vote on matters with less than a quorum.
3. The Court misapprehended that the Record demonstrates that the BAR received applications for new construction at least seven days before the next regularly scheduled meeting; there is nothing in the record to support this finding, despite its being raised in the Petitions of the Appellants and the BAR having not provided such evidence in the Record on Appeal that the BAR had the sole ability and responsibility to prepare.
4. The Court overlooked the fact that the Circuit Court did in fact rule on the Appellants' argument that the BAR unreasonably restricted access to the Developer's

- applications and so was mistaken in ruling that since the Appellants had not filed a Rule 59(e) motion, the Court would not consider this argument
5. The Court's opinion overlooked key facts when concluding that the public's rights to appear and speak at the public meetings of the BAR were not abridged.
 6. The Court's opinion overlooked the fact that the BAR failed to promulgate any rules of procedure on which the public could rely in participating in its proceedings, as required by the Town's ordinances and state law.
 7. The Court's opinion did not address the BAR's failure to create and follow a checklist for BAR applications.
 8. The Court's opinion overlooked the BAR's failure to notice and allow the public to speak regarding demolition of buildings.
 9. The Court's opinion did not address the BAR's failure to take action at the BAR's "next regularly scheduled meeting" in violation of Ord. Sec. 32-181(c)(6).
 10. The Court's opinion did not address the BAR's failure to issue the Certificate of Appropriateness within 180 days of the time of the filing of the application with the designated Town Official in violation of Ord. Sec. 32-182 (c).
 11. The Court's opinion did not address the BAR's failure to issue a separate certificate of appropriateness for demolition and for new construction on each property
 12. The Court's opinion did not address the BAR's failure to submit the final design to the Redevelopment Corporation for review and approval.
 13. The Court misapprehended the facts and the law in finding that the BAR decisions were adequately supported by the facts.

14. The Court's opinion mistakenly shifted the burden of preserving the record before the BAR on the Appellants, when the statute places that burden on the BAR.

Law/ Analysis

"In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument." Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). When the Court fails to address some of the arguments raised in the appeal, "a *prima facie* case for rehearing has been made." Covar v. Sallat, 22 S.C. 265, 272 (1885).

In this petition, Appellants respectfully contend that the opinion of the Court overlooks or misapprehends the following particular points and further fails to address some of the arguments raised in the appeal:

1. In ruling that the Circuit Court properly affirmed the Board's decisions based on the transcript of the Summerville Board of Architectural Appeal's ("BAR") deliberations, the Court overlooked that the BAR failed to comply with S. C. Code Ann. § 6-29-900(A) that the Court quoted verbatim in the Opinion and which requires that the BAR provide a duly certified copy of the proceedings, including a transcript of the evidence heard before the BAR and the decision of the board including its findings of fact and conclusions within 30 days of notice of appeal, which the BAR did not do.

The Record is clear that the BAR failed to comply with this state statute governing boards of architectural review. The Court's opinion overlooked the plain language in this statute and the BAR's failure to comply with it in affirming the Circuit Court. The Court should address this

matter in a revised opinion and hold that the BAR's failure to comply with this statute invalidated its decisions under appeal.

2. The Court's opinion mistakenly asserts that the "workshops" by Board members in numbers of less than a simple majority of the Board did not violate the provisions of S.C. Code Ann. §30-4-70(c)(2007) because the Board did not "act upon" the matter before them. The Court's opinion also did not consider or rule on whether those "workshop" meetings violated Sec. 32-176(e) by "transact[ing] [BAR] business" without a quorum of the total membership of the Board. The Board did indeed act upon and transact business regarding the matter by taking information from the applicant and discussing, negotiating and considering that information; "act upon" and "transact[ing] business" cannot simply mean meeting voting upon, since public bodies cannot vote on matters with less than a quorum.

a. The BAR "acted upon" and "transacted" business before it at the "secret meetings" or "workshops."

In addition to the South Carolina Freedom of Information Act ("FOIA"), the Town adopted separate Town ordinances imposing special requirements regarding how the BAR considers and documents its consideration of construction and demolition applications, presumably to facilitate public accountability and to enable the public to be informed and to be able to comment to the BAR intelligently about BAR applications, as expressly allowed by Sec. 32-182(b).

Specifically, Sec. 32-176(e) states that "[a] quorum, consisting of a majority of the total membership of the [BAR], shall be required for the transaction of business." (Emphasis added.) In

addition, Sec. 32-176(d) requires that “[a]ll meetings of the [BAR] shall be open to the public and reasonable notice of the time and place shall be given to the public.” (Emphasis added.)

In addition, separate from FOIA, the State of South Carolina adopted:

- S.C. Code Ann. § 6-29-870(D) requiring that “[t]he [BAR] shall keep minutes of its proceedings . . . and shall keep records of its examinations and other official actions, all of which immediately must be filed in the office of the [BAR] and must be a public record” (emphasis added); and
- S.C. Code § 6-29-920(A), which says that the BAR “must file with the clerk a duly certified copy of the proceedings held before the [BAR].”

The Court’s opinion did not address the applicability of any of these two Town ordinances and two state statutes regarding the two sets of secret¹ BAR meetings ((1) set one: two successive, back-to-back meetings on December 12, 2014, and (2) set two: three meetings on July 21, 23 and 29, 2014) identified on the record by the Appellants, choosing instead to address only the applicability of FOIA regarding those secret meetings.

Both of these two secret BAR meetings on December 12, 2014, and of these three secret BAR meetings on July 21, 23 and 29, 2014, violated the two Town ordinances and two state statutes cited above. For example, the BAR arranged that different sets of three members of the BAR meet on December 12, 2014, at a Town office in two different successive back-to-back meetings with the developer and at least one Town official in charge of planning. The record shows that at these two December 12, 2014, meetings the BAR members, the Town planner and

¹ The Court used the term “secret” when referring to these meetings. *Faye P. Croft, et. al. v. Town of Summerville and Town of Summerville Board of Architectural Review*, Appellate Case No. 2015-0021-00 (“Decision”), at 12. The Appellants do also.

the developer negotiated changes to the design of the Hotel project which the developer had submitted to the BAR at two prior public BAR meetings² but which the BAR had not found satisfactory. That the content of these meetings was a transaction of BAR business is evidenced by the record including, with regard to the December 12, 2014, BAR meeting attended by BAR member John Kwist ("Kwist"), by the statements³ made at the January 5, 2015, BAR meeting by Kwist. This negotiation between the developer, the Town planner and the BAR members attending the December 12, 2014, meeting was the transaction and "act[ing] upon" of BAR business and, therefore, should not have been conducted by BAR members without a quorum as required by Sec. 32-176(e). In addition, the July 21, 23 and 29, 2014, meetings at which the Mayor negotiated or discussed with BAR members the design of the Hotel project also was the transaction of BAR business and, therefore, should not have been conducted by BAR members without a quorum as required by Sec. 32-176(e).

All of these secret meetings should have been open to the public and reasonable notice of the time and place of the meetings given to the public, as required by Sec. 32-176(d). In addition, the BAR should have kept minutes of the meetings and records of its "examinations" of the new designs proposed by the developer at the December 12, 2013, meetings regarding which the developer sought BAR approval, as required by S.C. Code Ann. § 6-29-870(D).

In addition, the BAR was required to submit "minutes of its proceedings" and "records of its examinations and other actions" "immediately" (emphasis added) as a "public record" "in the office of the [BAR]." SC Code Ann. § 6-29-870(D). Despite this clear mandate, the Court stated

² Those two BAR meetings occurred on October 6, 2014, and November 3, 2014. See *Decision*, at 2-3.

³ See Brief of Appellants, Appellate Case No. 2015-002199, March 15, 2017, at 35, citing BAR Minutes, January 5, 2015, at 33 (R. p. 447). These statements by Kwist at the public BAR meeting on January 5, 2015, were the first indication to the public that the BAR's secret December 12, 2014, meetings had occurred.

that minutes need not be filed “immediately” but only within a reasonable period of time including after the next BAR meeting.⁴ However, that is not what SC Code Ann. § 6-29-870(D) says, and this requirement to file minutes and records “immediately” means what it says, i.e., “immediately,” not after the next BAR meeting after perhaps the passage of one or two months. Thus, according to this statute, the BAR must publish its minutes and other records right away, thereby enabling the public to access and use that information. The fact that the BAR or other bodies have adopted a custom of waiting until after the next meeting to approve minutes does not alter the intent and meaning of SC Code Ann. § 6-29-870(D) that publication of BAR minutes and records be immediate.

b. The Court mistakenly excluded material evidence on this issue that the Appellants designated to be included in the Record on Appeal.

On March 22, 2016, Appellants filed with the Court their initial Designation of Matter, which included two items, #5 and #12, which the Court later required Appellants to omit⁵ from the record in response to a motion to exclude that evidence by the Respondents. Appellants vigorously objected to the exclusion of item #12, which are detailed notes handwritten by BAR member Kwist (“Kwist notes”) describing the content of the secret meeting he attended on December 12, 2014, referenced above.

Appellants objected to exclusion of this item #12 from the BAR record in a filing⁶ with the Court, due to Respondents’ concealment of the existence of the notes, thereby preventing

⁴ See Decision, at 14.

⁵ Appellants’ Revised Designation of Matter clearly shows that items #5 and #12 were withdrawn from the record, as the Court instructed. See Order of the Court of Appeals, November 22, 2014.

⁶ Appellants’ Opposition to Respondents’ Motion to Require Appellants to Remove from Their Designation of Matter Materials Which Are Not Related to This Appeal and Which Post-Date This Appeal and to Order Appellants to Remove All References to the Same From Their Initial Brief and to Extend Time for Filing Respondents’ Initial Brief and Designation of Matter Pending Ruling on This Motion, Appellate Case No. 2015-002199, especially at pp. 1-5.

Appellants from including these Kwist notes in the BAR record and the Circuit Court record, and Respondents' failing to provide those notes as part of the BAR record as required by S.C. Code § 6-29-920. Appellants told the Court that the Kwist notes strongly evidence that the BAR conducted BAR business at the December 12, 2014, meeting by examining developer plans, discussing disqualifying conflicts of interest of two BAR members and taking other official actions without the quorum required by law, without keeping records as required by law and without public knowledge and participation as required by law.⁷ Further, Appellants told the Court that the BAR failed to provide those notes as part of the copy of the proceedings held before the BAR, as required by SC Code § 6-29-920(A), and argued that the BAR must not be rewarded for its misconduct by allowing it to obtain the dismissal then of relevant evidence that the BAR illegally failed to submit as part of the public BAR record to the Circuit Court as required by law.⁸

The BAR's evidence exclusion efforts were rewarded. By excluding item #12 from the record, the BAR succeeded in avoiding the Court considering relevant and material evidence that the BAR was "transact[ing] business" without a quorum of the entire BAR membership in violation of Sec. 32-176(e) and "acting upon" BAR business in violation of SC Code Ann. § 30-4-70(c) (2007).

It is true that there exists another lawsuit related to this BAR case, as shown in Item #5 that the Court excluded. It also is true that Item #12 provides evidence in that other lawsuit. Nevertheless, item #12 also is evidence highly relevant and material to this BAR proceeding and should not have been excluded from the record. By excluding it, the Court has rewarded the

⁷ See *id.*

⁸ See *id.*

Respondents for their concealment and failure to produce item #12 timely and enabled the Respondents to persuade the Court, based on an incomplete record, that the secret meetings of BAR members on December 12, 2014, were not violations of law.

c. **The Court mistakenly allowed extraneous evidence created after the Appellants filed the Petitions appealing the BAR decision.**

The Circuit Court erred by soliciting, receiving, admitting, considering and relying on evidence added to the BAR record by the BAR when the BAR lacked jurisdiction to do so, having been created by the BAR after the Appellants appealed the April 6, 2015 and May 11, 2015 BAR decisions to the Circuit Court.⁹ The record on appeal should have contained only the record that existed on the dates when the BAR made the approval decisions the Appellants appealed, and not the additional evidence consisting of findings of fact and conclusions of law created by the BAR on August 3, 2015, after the Appellants had filed their appeals. At an absolute minimum, the BAR was prohibited by the thirty day deadline stated in S.C. Code Ann. § 6-29-900(A)(Supp. 2018) from submitting to the Circuit Court any document that did not exist within thirty days of the dates Appellants filed their notices of appeal (May 5, 2015, and May 22, 2015), and the documents excluded by this thirty day deadline includes the additional evidence consisting of findings of fact and conclusions of law created by the BAR on August 3, 2015.

d. **The BAR violated the South Carolina Freedom of Information Act in several respects, as follows:**

(1) **Illegal Secret Meetings**

The documents cited by the Appellants in its filings with the Court show that the two successive, back-to-back secret meetings of BAR members without a quorum of the entire BAR membership on December 12, 2014, in a Town conference room as arranged by the

⁹ See Decision, at 5, 11; Brief of Appellants, at 1, 15-19..

BAR consisted of BAR members, the developer and the Town Planner reviewing, discussing and negotiating design changes¹⁰ regarding the Hotel project, prior to and in preparation for the January 5, 2015, public BAR meeting at which the applications for construction and demolition for the Hotel project would be discussed, considered and possibly approved, delayed or rejected. Item #12 excluded by the Court would have provided evidence of the above if the Court had not excluded it, wrongfully, from the record.

Those December 12, 2014, meetings, and the meetings of BAR members on July 21, 23 and 29, 2014, described above, were all by "public bodies" as defined by S.C. Code Ann. § 30-4-20(a), which defines a "[p]ublic body" as including "any public or governmental body or political subdivision, including . . . municipalities . . . including committees, subcommittees, advisory committees, and the like of any such body by whatever name known"¹¹" (Emphasis added.)

Very significantly, the Court was mistaken when it relied on its interpretation¹² of the word "meeting" in SC Code Ann. § 30-4-20(d) without simultaneously utilizing this definition of a "public body" as defined in SC Code Ann. § 30-4-20(a). If the Court had used the definition of "public body" stated in SC Code Ann. § 30-4-20(a) when interpreting the meaning of "meeting"

¹⁰ The BAR and members of the public had rejected or criticized the developer's design proposals at BAR meetings on October 6, 2014, and November 3, 2014, see Decision, at 2-3; BAR Minutes, October 6, 2014, at 3 (R. 909); BAR Minutes, November 3, 2014, at 3 (R. 913). These secret meetings of BAR members on December 12, 2014, were for the purpose of trying to rectify or placate the criticisms of the developer's design proposals the BAR and members of the public had expressed at and after the October 6, 2014, and November 3, 2014 BAR meetings. See Decision, at 2-3. Design changes negotiated at these December 12, 2014, meetings were adopted by the BAR at its January 5, 2015, meeting. Decision, at 4. Those secret meetings on December 12, 2014, should have been held in public as required by the FOIA, by Sec 32-176(e) and by Sec. 32-176(d).

¹¹ S.C. Code Ann. § 30-4-20(a). The South Carolina General Assembly amended the definition of "public body" in 1987 by adding the phrase "including committees, subcommittees, advisory committees, and the like of any such body by whatever name known." *Id.* Thus, clearly the Legislature intended for subgroups of public officials discussing or acting on public business to be covered by this definition.

¹² See Decision, at 12.

as used in SC Code Ann. § 30-4-20(d), the Court should have recognized that a quorum of the subgroups of the Bar membership attended these secret meetings as de facto "committees" of the BAR and therefore were subject to all the requirements of the FOIA. The Legislature clearly intended to require a quorum of any subgroup of a "public body" created as a "committee, subcommittee, advisory committee and the like of any such body by whatever name known"¹³ to be subject to the FOIA. When on December 12, 2014, and July 21, 23 and 29, 2014, the BAR members divided themselves into subgroups that met with the developer and the Town planner at a public building to discuss and negotiate design changes and to meet with the Town's Mayor to discuss the BAR members' positions regarding the Hotel project's design, they formed "committees, subcommittees, an advisory committee and the like" of the BAR "by whatever name known," and any meeting of a quorum of those individual subgroups was subject to the requirements of the FOIA.

Thus, while a quorum of the entire BAR did not meet at the December 12, 2014, and July 21, 23 and 29, 2014, secret meetings, a quorum of the "committees" or "subcommittees" of the BAR "by whatever name known" did meet at the December 12, 2014, and July 21, 23 and 29, 2014, secret meetings. Based on the definition of "meeting" in SC Code Ann. § 30-4-20(d) in conjunction with the definition of a "public body" as defined in SC Code Ann. § 30-4-20(a), the December 12, 2014, and July 21, 23 and 29, 2014, secret meetings were subject to the requirements of the FOIA.

Therefore, as such "public bodies," the FOIA required that all of those secret BAR meetings attended by subgroups of the BAR referenced above be "open to the public," S.C. Code

¹³ S.C. Code Ann. Sec. 30-4-20(a).

Ann. § 30-4-60; that public notice of the meetings and their agendas be published, S.C. Code Ann. § 30-4-80(a); that written minutes of those meetings be kept, S.C. Code Ann. § 30-4-90(a); and that those minutes be public records and available within a reasonable time after the meeting, S.C. Code Ann. § 30-4-90. In violation of FOIA, none of these requirements was complied with by the BAR regarding the BAR's secret meetings on December 12, 2014, and on July 21, 23 and 29, 2014.

This conclusion is supported by the South Carolina Supreme Court in *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001), which held that a secret, non-public meeting of even an advisory committee to a public body was prohibited by the FOIA. The Court recognized that it does not need to look any further than the language of this statute to find the committees of BAR members who attended these secret meetings were subject to FOIA. See *Quality Towing, Inc. v. City of Myrtle Beach*, *supra* at 162, citing *Miller v. Doe*, 312 S.C. 444, 441 S.E.2d 319 (1994) ("If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing the rules of statutory interpretation. The court has no right to look for or impose another meaning.").

Moreover, it is very clear from the Record that Town and BAR employees deliberately sought to circumvent the FOIA by scheduling small groups of BAR members to meet in these successive secret meetings so there would be "no possibility of it looking like a quorum"¹⁴ or "[t]o avoid any possibility of a quorum (as this is not a public meeting)".¹⁵ This violated the requirement of SC Code Ann. § 30-4-70(c) (2007) that: "No chance meeting, social meeting, or electronic

¹⁴ *Decision*, at 13. The Respondents expressly stated by emails that the purpose of BAR members meeting in small groups at the December 12, 2014 and July 21, 23 and 29, 2014, meetings was to avoid any possibility of there being or looking like a quorum. *Id.*

¹⁵ *Id.*

communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.”

The July 21, 23 and 29, 2014, meetings were “social meetings,” at the home of the Town’s Mayor, as referenced in SC Code Ann. § 30-4-70(c) (2007) above.

The Court “acknowledge[d] the problematic nature” of the BAR’s attempts to circumvent the requirements of FOIA by holding meetings with BAR subgroups and characterizing the secret meetings as “workshops,” and “not[ed] that ‘workshops’ should not be used to circumvent FOIA requirements.”¹⁶ Nevertheless, the Court in its decision allowed the BAR to get away with doing exactly that – circumventing FOIA requirements. The BAR and the Town deliberately violated the FOIA by meeting secretly to discuss BAR business, for which they could be guilty of a misdemeanor. See S.C. Code Ann. § 30-4-110.

The Court also misapprehended the facts and the law when it stated that the secret meetings did not violate S.C. Code Ann. § 30-4-70(c) (2007) because “it is clear from minutes and transcripts of the [BAR] meetings that the [BAR] did not “act upon” the matter of the project.”¹⁷ On the contrary, there is nothing anywhere on the BAR record evidencing that the BAR members who attended those secret meetings did not “act upon” Hotel project matters at the secret meetings. It is hard to know what exactly transpired at those secret meetings when they were secret, the public did not attend, and no public record of the secret meetings was made. However, statements made by John Kwist at the January 5, 2015, BAR meeting show that Kwist thought actions and discussions had occurred at the secret meeting he attended on December 12, 2015. The Kwist

¹⁶ Decision at 13.

¹⁷ Id.

notes, which the Court excluded from the BAR record, show in detail what transpired at the December 12, 2014, BAR meeting Kwist attended. By discussing and negotiating with the developer and the Town planner the design changes that would be presented at the next BAR meeting on January 5, 2015, the BAR members attending the secret meetings on December 12, 2014, did “act upon” the matter of the project¹⁸ at those meetings. The facts that at public BAR meetings the BAR members discussed the Project, made changes to the design of the Project, etc., after the secret BAR meetings evidence that the BAR members attending the meetings could have “act[ed] upon” the matter of the project” by reaching a consensus or agreement on changes manifested at subsequent public BAR meetings.¹⁹

Very significantly, SC Code Ann § 30-4-20(d)(2007) clearly states that a “meeting” “means the convening of a quorum of the constituent members of a public body . . . to discuss or act upon a matter . . .”²⁰ (emphasis added), and the record shows that at the secret meetings the BAR members in fact did “discuss” the business of the BAR, i.e., design changes to the Hotel project. In particular, the BAR members attending those “secret” meetings did “act upon” the business of the BAR by discussing and negotiating at the meeting design changes with the developer and the Town planner; by clarifying which BAR members supported and did not support certain design features; and by reaching a consensus on certain issues.

Nothing in the BAR record shows that actions were not taken or decisions were not made at the December 12, 2014 meetings, or that the BAR did not rely upon or be influenced by what transpired (actions and discussions) at the secret meetings when making subsequent decisions that

¹⁸ Decision, at 13.

¹⁹ Id. Design changes negotiated at the December 12, 2014, meetings were adopted by the BAR at its January 5, 2015, meeting. Decision, at 4.

²⁰ SC Code Ann § 30-4-20(d)(2007), Decision, at 12.

were on the public record. Indeed, the transcript of the January 5, 2015, BAR meeting expressly refers to what was discussed at one of the two secret BAR meeting on December 12, 2014. Moreover, item #12 excluded from the BAR record by the Court shows actions taken at the December 12, 2014 secret meeting attended by John Kwist. The fact that BAR member John Kwist specifically referenced²¹ at the January 5, 2015, public BAR meeting what he heard discussed at the secret December 12, 2014, meeting he attended shows that John Kwist, and perhaps other BAR members, relied upon and were influenced by what occurred at that secret December 12, 2014, meeting.

The Court was also mistaken in stating that the fact that public BAR meetings were held after the secret meetings on December 12, 2014, and on July 21, 23 and 29, 2014, precluded those secret meetings from violating the FOIA. Nothing in the FOIA in any way exempts the BAR from the requirements of FOIA because the BAR held subsequent public meetings, especially when the public was not allowed to speak at some of those subsequent BAR meetings and had not been noticed of their right to speak about demolition at some of those meetings as required by Sec. 32-182(b).

- 3. The Court misapprehended that the Record demonstrates that the BAR received applications for new construction at least seven days before the next regularly scheduled meeting; there is nothing in the record to support this finding, despite its being raised in the Petitions of the Appellants and the BAR having not provided such evidence in the Record on Appeal that the BAR had the sole ability and responsibility to prepare.**

²¹ Brief of Appellants, Appellate Case No. 2015-002199, March 15, 2017, at 35, citing BAR Minutes, January 5, 2015, at 35 (R. p. 447).

Sec. 32-176(i) states:

Submittal requirements. Complete applications must be received by the town's planning department at least ten days prior to the regularly scheduled meeting and shall include items listed on the current checklist. (Emphasis added.)

Sec. 32-181(c)(6) states:

Certificate of appropriateness—Procedure

The board shall take action upon such applications at the next regularly scheduled meeting following receipt of the application, which should be submitted to the board's secretary at least seven days before that meeting unless the application is for new construction of 700 or more square feet or for a demolition then the application should be submitted to the board's secretary at least 14 days before the meeting. (Emphasis added.)

Contrary to statements by the Court, the Sec. 32-181(c)(6) deadline for submitting the application(s) in this case was fourteen days, not seven days,²² and there is no evidence in the Record, that the applications were submitted to the BAR at least seven²³ days, to the Town's planning department at least ten days and to the BAR secretary at least fourteen days before the next BAR meeting. None of the applications to the BAR nor any other document shows the dates the applications were received by the BAR or the Town, and the BAR did not identify any such evidence. In fact, there is no evidence on the Record about the date on which any of the BAR applications about the Hotel project were submitted, because the BAR failed to document when the BAR received those applications. Because the BAR record on appeal was created and

²² Because the Hotel project that is the subject of the BAR decision being appealed involves new construction of 700 or more square feet and for demolition, the application regarding the Hotel project was required to have been submitted to the BAR secretary at least 14 days before the meeting at which the application would be considered. That is contrary the seven day deadline stated by the Court. *Decision*, at 15. Again, there is no evidence on the record of any kind whatsoever that applications were submitted to the BAR within seven days of the meeting at which the BAR considered the applications. The finding by the Court that applications were submitted within seven days is completely unsupported.

²³ The Court stated "[t]he record establishes that the [BAR] received applications for new construction at least seven days before the next regularly scheduled meeting" *Decision*, at 15. There is absolutely no evidence on the record that this statement is correct, and it not correct. If the Court still finds there is evidence supporting this statement, Appellants ask the Court to identify that evidence so Appellants can clear up any misunderstanding, because Appellants are severely prejudiced when the Court makes findings wholly unsupported by the record.

controlled exclusively by the BAR,²⁴ the burden should be on the Respondents to show they complied with these time requirements, and all other BAR requirements, when the Appellants have provided evidence of non-compliance, such as the lack of dates on the applications the BAR did put on the record. Failure to submit applications within these ten-day and fourteen-day deadlines was prejudicial and significant because that resulted in the public having insufficient time to inspect or copy those applications before they were considered by the BAR at a BAR meeting. That particularly is true given the Town's policy of not allowing inspection or providing a copy of applications until fifteen days after receipt of a written Freedom of Information Act application.

4. **The Court overlooked the fact that the Circuit Court did in fact rule on the Appellants' argument that the BAR unreasonably restricted access to the Developer's applications and so was mistaken in ruling that since the Appellants had not filed a Rule 59(e) motion, the Court would not consider this argument.**

S.C. Code Ann § 30-4-30(a) requires that "[a]ny person has a right to inspect or copy any public record of a public body . . . in accordance with reasonable rules concerning the time and place of access." (Emphasis added.) Neither the BAR nor the Town created those reasonable rules regarding public requests to inspect or copy BAR applications, and the Court should take judicial notice that no such reasonable rules exist. The record shows that the Respondents would not allow the public to inspect and to copy BAR applications before the BAR meetings at which the applications would be considered and at which the public had a right to speak according to Sec.

²⁴ If the Appellants have evidence of non-compliance with these required deadlines, they could not submit that evidence to the Court because only the evidence considered by the BAR when making its decision was allowed to be considered on appeal. The best evidence available showing non-compliance with the deadlines is the absence of any date on any document considered by the BAR. The BAR should have the responsibility of proving its compliance with applicable laws, given that the BAR controls and can and does exclude evidence of non-compliance from its BAR record.

32-182(b).²⁵ That denied the public the right to inspect or copy those public records in accordance with reasonable rules concerning the time and place of access, and to comment on those documents as allowed by Sec. 32-182(b). It was not reasonable for Respondents to refuse to allow the public to inspect a BAR application before the BAR meeting at which the application would be considered and, instead, to require Appellants and the public to file a written FOIA request for a BAR application and to wait fifteen days to receive a copy of the application after the BAR meeting at which the BAR application would be considered.

The Court stated that the "circuit court did not rule on [the] question" of whether the BAR "unreasonably restricted access to the Developer's applications."²⁶ That is not correct. The Circuit Court stated in its opinion the following:

"Many 'grounds for appeal' raised by the Appellants, such as issues related to the Town's request for proposal process or to the funding of the project, were matters beyond the purview of the [BAR] and accordingly would have been inappropriate for the [BAR's] or this Court's consideration. [. . .] None of the grounds for appeal warrants this Court's reversal of the decisions of the [BAR]. The [BAR] had the authority to act as it did, and the [there is no basis to reverse the decisions of BAR]." (Emphasis added.)

By ruling that none of the grounds for appeal warrants reversal of the decisions of the BAR, the Circuit Court clearly ruled against all of the grounds for appeal. Based on that ruling and representations by the Circuit Court quoted above, the Circuit Court did rule on all grounds stated by the Appellants in their petitions to the Circuit Court; there was no need, therefore, to file a

²⁵ Brief of Appellants, Appellate Case No. 2015-002199, March 15, 2017, at 2,4,40-41, 43

²⁶ Decision, at 15.

Rule 59(e) motion to preserve any issue for appeal; and all issues stated in Appellants' petitions are reviewable on appeal as a matter of law.

Moreover, the Court of Appeals also specifically ruled that "the Town's response [to these requests to inspect and copy BAR applications] was consistent with State law" and "[found] no Freedom of Information Act violation."²⁷ That ruling and that finding were misapprehensions of the Record, because the BAR and the Town denied the right to inspect or copy the BAR applications before the BAR meetings at which the applications were considered, which was not a reasonable rule and therefore was a violation of S.C. Code Ann § 30-4-30(a).

5. The Court's opinion overlooked key facts when concluding that the public's rights to appear and speak at the public meetings of the BAR were not abridged.

At a public meeting on January 5, 2015, the BAR approved unanimously demolition of a structure at 200 W. Richardson Avenue, Summerville, and approved by a 5-1 vote "conceptual/preliminary approval" of the Hotel project.²⁸ Thus, this was a critical meeting at which the BAR made very important decisions approving demolition and construction of the Hotel project. However, no member of the public was allowed to speak at this meeting,²⁹ including about demolition about which the public had a right to speak according to Sec. 32-182(b), even though the advertisement the BAR published noticing that meeting specifically represented that at that meeting the BAR would "accept public comment."³⁰

Very significantly, the BAR deliberately arranged for this meeting to occur in a room too small to contain the crowds attending the meeting, causing the crowds to stand in a hallway without

²⁷ *Decision*, at 15.

²⁸ BAR Minutes, January 5, 2015, at 2 (R, p. 922).

²⁹ *Id.* *Decision*, at 6 ("The [BAR] did not take public comment at this meeting.")

³⁰ Advertisement in Summerville Journal Scene, 12/19/14.

any sound or amplification system causing the public not to be able to see, hear or participate in the meeting.³¹ That violated the Freedom of Information Act. See Wiedemann v. Town of Hilton Head, 330 S.C. 532 (1998).

The Court's opinion mistakenly stated that the FOIA did not require the BAR to provide an available meeting room where the public could hear, see and participate in the BAR meeting at which they had a right to speak about demolition.³² The Court's opinion misinterpreted the decision in Wiedemann v. Town of Hilton Head, 344 S.C. 233, 542 S.E.2d 752 (Cl.App. 2001) to excuse the BAR of responsibility under the FOIA to provide a meeting place where the public could hear, see and participate in the meeting at which the public had a right to speak, because the Wiedemann case pertained to the right of a Town council to hold a meeting out-of-town if doing so was not an undue burden to the public, not to whether a meeting could be held so that the public could not see, hear or participate in the meeting.

Moreover, the Supreme Court in Wiedemann³³ issued a ruling specifically relying on the facts that "there was no evidence any members of the public were prevented from attending the meeting"³⁴ and "no undue burden to the public."³⁵ However, the record in this case shows that many members of the public were prevented from attending the January 5, 2015, BAR meeting in the room where the meeting was held because the meeting was held in a tiny room too small for the crowd wanting to attend the meeting, and those forced to stand or sit on the floor in the hallway

³¹ Brief of Appellants, Appellate Case No. 2015-002199, March 15, 2017, at 41-43; R. pp. 957-958; see also pp. 717-719, 760, 956. Documents evidencing these facts were submitted on the record by the Appellants and not objected to by the Respondents. Therefore, that evidence should be considered valid and correct, as with other evidence submitted on the record by the Respondents.

³² Decision, at 14.

³³ Wiedemann v. Town of Hilton Head, 330 S.C. 532, 537 (1998).

³⁴ Wiedemann v. Town of Hilton Head, 330 S.C. at 537.

³⁵ Wiedemann v. Town of Hilton Head, 330 S.C. at 537.

outside that room could not see, hear or otherwise participate in the meeting, given that no chairs and no audio or visual equipment were provided enabling them to do so.³⁶ Because many members of the public could not hear, see or participate in the January 5, 2015, BAR meeting, the BAR placed an “undue burden”³⁷ on the public, totally unnecessarily and with the effect and possible purpose of curtailing public attendance, observance and input at the meeting, and therefore violated the FOIA. That is evidenced by the Supreme Court’s specific reliance in Wiedemann on Sovich v. Shaughnessy, 705 A.2d 942 (Pa.Cmwlt. 1998), which held that there was “no violation of the Sunshine Act where members of the public were placed in an adjoining facility with speakers and microphone”³⁸ and the fact that the BAR placed members of the public in a hallway not containing speakers, a microphone or audio or visual equipment enabling the public to hear and see the BAR meeting.

Thus, the point made regarding the Wiedemann case in this Court’s decision³⁹ is not relevant to the facts regarding the January 5, 2015 BAR meeting at which many members of the public were excluded.

Applying the “balancing test” mandated by Wiedemann, there simply was no necessity and no reasonable basis for the BAR not to simply move its January 5, 2015, meeting to the adjoining larger room where other meetings routinely had been held, as requested by the public at the January 5, 2015, meeting, instead of insisting that the meeting remain in the room that obviously was too

³⁶ Brief of Appellants, Appellate Case No. 2015-002199, March 15, 2017, at 41-43; R. pp. 957-958; see also pp. 717-719, 760, 956.

³⁷ Wiedemann v. Town of Hilton Head, 330 S.C. at 537.

³⁸ Wiedemann v. Town of Hilton Head, 330 S.C. at 535 fn2.

³⁹ Decision, at 14.

small to contain the large crowd trying to attend the meeting at which the BAR would decide whether to allow demolition and construction for the Hotel project.

The fact that the amount of time a member of the public speaks may be limited to a reasonable time, e.g., three minutes, as stated by the Court, has nothing to do with the issue of whether the BAR deliberately could hold a meeting in a room too small to hold members of the public wanting to attend the meeting and not provide the means to speak and to hear and see what transpired at the meeting to the members of the public in the hallway adjoining the room because they were unable to fit in the small room. While limiting the amount of time a person speaks to three minutes may not be unreasonable, requiring the public to sit or stand in a hallway without being able to hear or see what transpired or to speak at the public meeting they sought to attend clearly was unreasonable and an "undue burden"⁴⁰ on the public.

6. **The Court's opinion overlooked the fact that the BAR failed to promulgate any rules of procedure on which the public could rely in participating in its proceedings, as required by the Town's ordinances and state law.**

The BAR failed to adopt and to follow the specific rules and guidelines which South Carolina law required that the BAR adopt and follow. For example, S.C. Code Ann § 6-29-870(D) required that "[t]he [BAR] shall adopt rules of procedure . . ." (emphasis added), but the BAR *per se* utterly failed to do so. The BAR has not and cannot cite or provide any specific rule or rules that the BAR *per se* adopted or followed. The record shows, for example, the BAR did not create or use a "checklist" as required by Sec. 32-176(i); did not define the meaning, criteria or procedure for critical terms, including "conceptual approval" and "preliminary approval;" and did not adopt

⁴⁰ Wiedemann v. Town of Hilton Head, 330 S.C. at 537.

or publish in writing any rules for the conduct of BAR meetings. The BAR did not publish any rules, reasonable or otherwise, allowing the public to inspect or copy BAR applications before the BAR meetings at which those applications would be considered, in violation of S.C. Code Ann § 30-4-30(a), and did not publish any rule or guideline requiring the BAR to document whether and when BAR applications were received as required by law and what information was provided by the developer with those applications. As a result of all of this, the BAR acted on an *ad hoc* basis and it was impossible for the public to determine what the BAR was required to do, to learn what it was doing timely, to effectively influence what the BAR was doing and to hold the BAR accountable for not doing what it was required to do.

Further, Sec. 32-176(h)(4) requires that the "[BAR] shall develop guidelines for the administration of [this] section" (emphasis added), but the BAR failed to do so. Sec. 32-175(f) authorized the BAR to approve applications "in accordance with prescribed procedures and guidelines" (emphasis added), but the BAR never prescribed procedures and guidelines. Sec. 32-176(h) states that "[i]t is the duty of the [BAR] to follow the established guidelines governing . . . new construction . . ." (emphasis added), but the BAR did not follow guidelines established by the BAR because none had been established by the BAR. Sec. 32-176(e) required the BAR to "adopt rules of order," but it failed to do so and there is no record of its having done so or of specifically what it did "adopt" when if it did so. SC Code Ann § 30-4-30(a) requires that "[a]ny person has a right to inspect or copy any public record of a public body . . . in accordance with reasonable rules concerning the time and place of access" (emphasis added), but neither the BAR nor the Town created those reasonable rules. The fact that state law and Town ordinances impose some requirements on a BAR is not a substitute for the specific mandates that the BAR itself adopt specified rules. As a result of all of this, the BAR acted *ad hoc* and it was impossible for the

public to determine what the BAR was required to do, to learn what it was doing timely, to effectively influence what the BAR was doing and to hold the BAR accountable for not doing what it was required to do.

The Court's opinion mistakenly stated that Sec. 32-174 and Sec 32-175 show that the BAR adopted rules of procedure.⁴¹ The Town, not the BAR, promulgated those ordinances, which are not rules of procedure. The BAR itself has not promulgated or adopted any rule of procedure or guidelines.

Moreover, the Court's opinion mistakenly placed the burden of providing evidence that the BAR failed to adopt rules of procedure as required by SC Code Ann § 6-29-870(D)⁴² on the Appellants. The Appellants cannot possibly prove that something does not exist, and the Court should take judicial notice that in fact the BAR per se never adopted any rules of procedure, prescribed procedures or guidelines, "adopt[ed] rules of order" or created "reasonable rules concerning the time and place of access" to "inspect or copy" BAR documents. The fact is that the BAR never "adopted" or promulgated any rule, guideline or procedure, and there is no record, in any minutes, resolution or otherwise, that the BAR did so, when it did so and what is the specific content of any said rule, guideline or procedure. The BAR itself selected and controlled all evidence allowed on the record on appeal, and never has identified any specific "rules of procedure" or "rules of order" that the BAR claims the BAR itself formally adopted. While the BAR does claim it follows parliamentary procedure, there is no evidence of when or exactly what the BAR adopted or of which version of such procedure the BAR follows. The public is left to simply guess at what specific rules or procedures the BAR claims it must follow, while at the same

⁴¹ Decision, at 16

⁴² Id.

time not being able to obtain a copy of said rules or procedures because none has been promulgated by the BAR. The BAR should be required to identify, publish and prove it has adopted the specifically required rules and guidelines it claims to have adopted and the law requires it to adopt, since it controls the evidence on the record, the BAR has not identified any specific rule or guideline "adopted" by the BAR and no document showing the BAR adopted rules or guidelines exists.

7. The Court's opinion did not address the BAR's failure to create and follow a checklist for BAR applications.

Sec. 32-176(i) requires that BAR applications include all items on the "current checklist." However, no record exists that a "checklist" of the BAR exists and, therefore, the public could not determine whether the applicants complied with Sec. 32-176(i). Moreover, there was no checklist for the developer to follow and, instead, the BAR made up *ad hoc* the requirements for BAR applications, making it impossible for the public to determine what the developer was supposed to provide the BAR and whether the developer provided what was required. The failures of the BAR to have a checklist,⁴³ to document that it had a checklist and to require compliance with the checklist violated Sec. 32-176(i).

8. The Court's opinion overlooked the BAR's failure to notice and allow the public to speak regarding demolition of buildings.

Sec. 32-182(b) states in part:

"Demolition. . . Upon receipt of an application to demolish a structure, the secretary to the [BAR] shall publish a display advertisement in a newspaper . . .

⁴³Appellants have evidence the BAR did not have a "checklist" as required by Sec. 32-176(i), but cannot submit it because the BAR failed to include that evidence on the BAR record. The BAR should be required to disprove credible allegations of law violations or at least to allow in the record evidence of the BAR's law violations, instead of avoiding accountability for its illegal actions by simply omitting evidence of the illegalities on the record. See Decision, at 12-13.

stating the public will have an opportunity to comment at such meeting.⁴⁴
(Emphasis added.)

The BAR record shows that (1) seven separate applications seeking approval of demolition of multiple structures for the Hotel project were submitted to the BAR;⁴⁵ (2) the BAR held meetings at which the BAR considered the demolition of structures on nine different dates;⁴⁶ and (3) an advertisement was placed in a newspaper only regarding only three of those nine BAR meetings.⁴⁷

The Court stated that “[a]t least one of the advertisements provided in the record announced the Board would be meeting on May 11, 2015 at 6:00 pm . . . and noted the [BAR] would ‘accept public comment.’”⁴⁸ It appears that BAR advertisement did state the BAR would “accept public comment” at BAR meetings considering two of those applications, i.e., for the BAR meetings on January 5, 2015, and May 11, 2015. However, that leaves five other applications and seven other BAR meetings regarding requested demolitions for which no advertisement was published by the BAR stating the public would have an opportunity to comment about demolition at a BAR meeting. In addition, none of the letters sent to property owners surrounding the Project states that the public could comment at a meeting about demolition. The record shows those letters failed to inform the public it had a right to speak to the BAR about proposed demolitions, in violation of Sec. 32-182(b).

Moreover, the advertisement published in December 2014 regarding “Free Houses in Summerville!!!” and the publication of notices about meetings on line, if any, are not relevant

⁴⁴ See Decision, at 12-13.

⁴⁵ Brief of Appellants, Appellate Case No. 2015-002199, March 15, 2017, at 8-15.

⁴⁶ Brief of Appellants, Appellate Case No. 2015-002199, March 15, 2017, at 8-15, 39-40.

⁴⁷ BAR Minutes, January 5, 2015, at 2 (R. p. 922).

⁴⁸ Decision, at 14.

to the issue of whether the BAR complied with the requirement in Sec. 32-182(b) that advertisement be published notifying the public of its opportunity to comment about a proposed demolition at an upcoming BAR meeting.

Very significantly, as the Court's opinion recognized,⁴⁹ the BAR failed to allow any member of the public to speak at its January 5, 2015, meeting, even though the BAR had represented to the public in its advertisement that the BAR would "accept public comment" at that meeting.⁵⁰ The BAR's refusal to allow the members of the public who attended the January 5, 2015, BAR meeting to speak at that meeting, especially against demolition, was highly significant and prejudicial, because at that meeting the BAR "unanimously approved demolition of the structure at 200 W. Richardson Avenue contingent upon final approval of the entire project" and voted to give "conceptual/preliminary approval of [the entire] project."⁵¹ Moreover, the BAR's failing to allow the public to speak at the BAR's January 5, 2015, meeting is a far worse violation of law than any failure by the BAR to state in an advertisement that the public would be allowed to speak at the meeting as required by Sec. 32-182(b).

Indeed, at some BAR meetings the BAR Chairman stated the public had no right to speak,⁵² even though the public did have a right to speak and to be informed of that right as stated above. At other meetings the BAR Chairman objected to members of the public making statements for the record.⁵³

⁴⁹ Decision, at 4 ("The [BAR] did not take public comment at this meeting.")

⁵⁰ Advertisement in Summerville Journal Scene, 12/19/14 (R. p. 865).

⁵¹ BAR Minutes, January 5, 2015, at 2 (R. p. 922).

⁵² See R. pp. 957-958; 989 (BAR Chairman tells public at BAR meeting that BAR "not required to solicit comments"); see also R. p. 956.

⁵³ Brief of Appellants, Appellate Case No. 2015-002199, March 15, 2017, at 43.

- 9. The Court's opinion did not address the BAR's failure to take action at the BAR's "next regularly scheduled meeting" in violation of Ord. Sec. 32-181(c)(6).**

The Court's opinion did not address but should address on its merits whether the BAR violated Sec. 32-181(c)(6). The BAR violated this ordinance and the Appellants and other members of the public were prejudiced thereby, unable to follow and to respond to the progress of the BAR applications at issue.

- 10. The Court's opinion did not address the BAR's failure to issue the Certificate of Appropriateness within 180 days of the time of the filing of the application with the designated Town Official in violation of Ord. Sec. 32-182 (c).**

The Court of Appeals did not address but should address on its merits whether the BAR violated Sec. 32-182(c). The BAR violated this ordinance and the Appellants and other members of the public were prejudiced thereby, unable to follow and to respond to the progress of the BAR applications at issue.

- 11. The Court's opinion did not address the BAR's failure to issue a separate certificate of appropriateness for demolition and for new construction on each property.**

The Court of Appeals did not address but should address on its merits whether the BAR issued a certificate of appropriateness improperly, as stated above and in Section III F of its Brief. The BAR issued the certificate of appropriateness improperly and the Appellants and other members of the public were prejudiced thereby.

- 12. The Court's opinion did not address the BAR's failure to submit the final design to the Redevelopment Corporation for review and approval.**

The Court of Appeals did not address but should address this issue, and all other issues raised by the Appellants, on their merits because the Circuit Court did rule on those issues and the Appellants and other members of the public were prejudiced by this BAR action, as explained in Appellants' appeal to the Court of Appeals.

13. The Court misapprehended the facts and the law in finding that the BAR decisions were adequately supported by the facts.

The BAR decisions being appealed were insufficiently supported for two reasons.

First, while the BAR did engage in a lot of discussion and other activity regarding the BAR applications whose approvals are being appealed, the BAR did not create a record showing that specific facts support, or specifically how specific facts support, the specific criteria the BAR was required by law to use when determining whether to approve the applications. Thus, while the Court stated that "the [BAR] considered exactly the factors required by the ordinance through its extensive discussions at the various meetings about the Project's mass, scale, height, and exterior materials,"⁵⁴ neither the Court nor the BAR identified specific facts supporting or justifying the BAR's approvals, conclusions and decisions about those "factors" the BAR "considered" or discussed. Instead, the BAR members merely voted to approve the project and/or said in a conclusory manner they were satisfied with the project, without specifying what facts or how any facts supported that vote or conclusion.

Moreover, the BAR made no findings of fact and conclusions at the time it decided to approve the demolition and constructions applications for the Hotel project and, instead, created and

⁵⁴ Decision, at 11.

published purported findings and conclusions only months after the BAR had been served the specific grounds for appeal filed with the Circuit Court by the Appellants.

Secondly, any facts or conclusions supporting the BAR decisions being appealed are invalid and fatally flawed because they were obtained using procedures in violation of law, as stated in this Motion and otherwise in the record, resulting in facts and conclusions based on partial, incomplete and distorted information not considered at the appropriate time, by the appropriate persons and in the appropriate manner.

14. The Court's opinion mistakenly shifted the burden of preserving the record before the BAR on the Appellants, when the statute places that burden on the BAR.

The Court stated that the burden of proving its claims was on the Appellants.⁵⁵ That statement is not completely accurate, given the special legal requirements imposed on the BAR.

South Carolina law allows the Appellants to appeal to this Court based only on the BAR record considered by the Circuit Court and requires the BAR to submit to the Circuit Court the complete record considered by the BAR when making its decisions being appealed.⁵⁶ Thus, the BAR controls the record considered on appeal and makes it impossible for the Appellants to prove law violations if the Respondents exclude relevant evidence of the violations from the record. The BAR had the duty to provide the Circuit Court and the Court of Appeals the complete record of what the BAR considered when making its decisions, including the identity of all rules, regulations, guidelines, statutes and other laws the BAR claims to have followed, the existence of the BAR's secret meetings and what was discussed, provided and negotiated in the BAR's secret meetings. The BAR failed to identify those laws it claims to have followed and which the

⁵⁵ Decision, at 15.
⁵⁶ Brief of Appellants, Appellate Case No. 2015-002199, March 15, 2017, at 15-19.

Appellants claim do not exist and were not followed. The burden of proof that those laws disputed by the Appellants in fact do exist and were followed by the BAR and about what actions were taken and information discussed and shared at the BAR's secret meetings rests with the Respondents, not the Appellants, and the Respondents have failed to sustain that burden of proof, as required by due process of law.

CONCLUSION

The Court's opinion acknowledged that "[t]he discretion of a [BAR] to approve proposed construction is 'constrained only by reasonableness and good faith.'"⁵⁷ In addition, the BAR must comply with all legal requirements imposed by the United States and South Carolina statutes, and by applicable state statutes, Town ordinances and BAR ordinances, regulations and guidelines. The BAR has failed to comply with all of these requirements, as shown above and in the record before the Court.

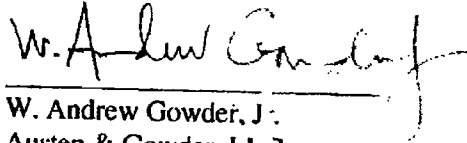
The fact that the BAR complied with some of the applicable legal requirements does not excuse the BAR's non-compliance with other applicable legal requirements. The developer and the BAR gamed the process by selectively laying a record appearing to comply with some requirements while utterly failing to comply with other requirements to the prejudice of the public including the Appellants. The fact that the developer submitted a grossly inappropriate design inconsistent with what it had represented in writing it would submit and later changed it bit-by-bit to obtain BAR approval does not change the fact that the process followed by the BAR was legally flawed and resulted in prejudice to the public including the Appellants.

⁵⁷ Decision, at 9 (citations omitted).

The Court should require the BAR to comply with all applicable laws and not reward its non-compliance with those laws in this case by affirming its illegally obtained decisions.

For all the reasons stated herein and in the record of this case, including in the Appellants' briefs submitted to the Court, the decision of the Circuit Court should be reversed.

Respectfully submitted,



W. Andrew Gowder, J.
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(843) 727-2229
Attorney for Appellants

Michael T. Rose
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Attorney for Appellants

October 24, 2019
Charleston, S.C.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge
Case No. 2015-CP-18-00991

RECEIVED
OCT 24 2019
SC Court of Appeals

Appellate Case No. 2015-002199

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr., South Carolina Public Interest Foundation; Summerville Preservation Society; and
Dorchester County Taxpayers Association, individually, and on behalf of all others
similarly situated Appellants.

v.

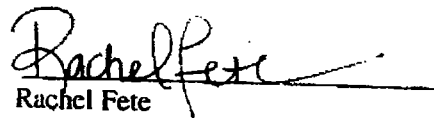
Town of Summerville and
Town of Summerville Board of Architectural Review Respondents.

PROOF OF SERVICE

I, Rachel Fete, of Austen & Gowder, LLC hereby certify that I have served a true and accurate copy of the REPLY TO RESPONDENTS' INITIAL BRIEF by U.S. Mail on October 24, 2017 to counsel of record as shown below:

Timothy A. Domin
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144

G. W. Parker
200 South Main Street
Summerville, SC 29483



Rachel Fete
Assistant to W. Andrew Gowder, Jr.
Austen & Gowder, LLC
1629 Meeting Street
Charleston, SC 29405
(843) 727-2215

October 24, 2019
Charleston, South Carolina

The South Carolina Court of Appeals

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr.; South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated, Appellants,

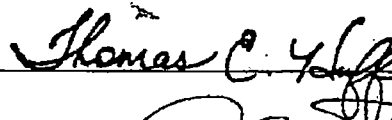
v.

Town of Summerville and Town of Summerville Board of Architectural Review, Respondents.

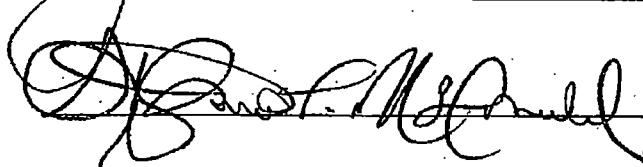
Appellate Case No. 2015-002199

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

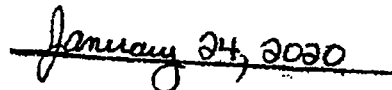
 J.

 J.

 J.

Columbia, South Carolina

FILED



cc:

W. Andrew Gowder, Jr., Esquire

Michael T. Rose, Esquire

Timothy Alan Domin, Esquire

G. Waring Parker, Esquire

The South Carolina Court of Appeals

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr., South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated, Appellants,

v.

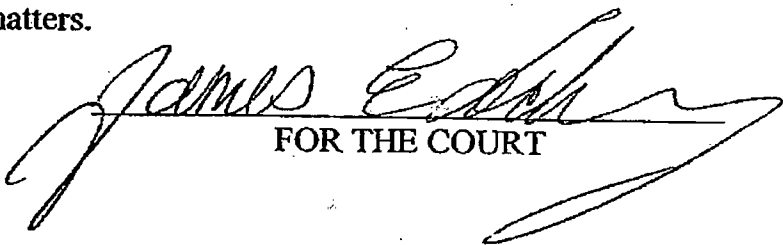
Town of Summerville and Town of Summerville Board of Architectural Review, Respondents.

Appellate Case No. 2015-002199

ORDER

Respondents have filed a motion to strike items 5 and 12 from Appellants' designation of matter, arguing the items were not presented to the lower court. Appellants filed a return, and Respondents filed a reply.

After careful consideration, Respondents' motion is granted. Items 5 and 12 shall not be included in the record on appeal. Further, within twenty days of this order, Appellants shall serve and file an amended initial brief which excludes all references to the stricken matters.


FOR THE COURT

Columbia, South Carolina

FILED

November 22, 2016

cc:

W. Andrew Gowder, Jr., Esquire

Michael T. Rose, Esquire

Timothy Alan Domin, Esquire

Laura Simons Greaver, Esquire

G. Waring Parker, Esquire

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge
Case No. 2015-CP-18-00991

Appellate Case No. 2015-002199

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr.; South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated, Appellants,

v.

Town of Summerville and Town of Summerville Board of Architectural Review, Respondents.

DESIGNATION OF MATTER BY APPELLANTS
TO BE INCLUDED IN THE RECORD ON APPEAL

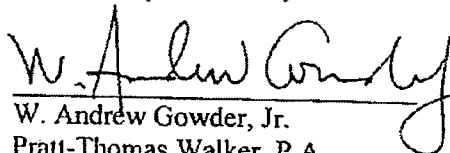
Appellants propose the following be included in the Record on Appeal:

1. Order of Circuit Court, signed September 24, 2015, filed October 22, 2015.
2. Notice of Appeal by Appellants filed October 20, received October 22, 2015 by SC Court of Appeals.
3. Duly Certified Copy of the Proceedings Held Before the Town of Summerville Board of Architectural Review for Filing in Case No.: 2015-CP-18-00877.
4. Duly Certified Copy of the Proceedings Held Before the Town of Summerville Board of Architectural Review for Filing in Case No.: 2015-CP-18-00991.
5. Amended Complaint and Plaintiffs' Motion for Partial Summary Judgment and Memorandum of Law, October 19, 2015 and Plaintiffs' Motion for Partial Summary Judgment and Memorandum of Law, November 30, 2015 in Faye P. Croft, et al., vs. Town of Summerville, et al., Civil Action No.: 2015-CP-10-00713.
6. Petition and Notice of Appeal of Decision of Town of Summerville Board of Architectural Review, dated May 5, 2015, Civil Action No. 2015-CP-18-877.
7. Petition and Notice of Appeal of Decision of Town of Summerville Board of Architectural Review, dated May 22, 2015, Civil Action No. 2015-CP-18-991.

8. Decision of the Summerville Board of Architectural Review, Including Findings of Fact and Conclusions of Law, dated August 11, 2015.
9. Minutes BAR Meeting 6/1/15.
10. Minutes BAR Meeting 7/6/15.
11. Minutes BAR Meeting 8/3/15.
12. Notes John Kwist, BAR Member, dated 12/12/14.
13. Recording of BAR Meeting 9/8/14.
14. Transcript of BAR Meeting 9/8/14.
15. Minutes of BAR Meeting 9/8/14.
16. Respondents' Memorandum In Opposition To Petitions for Appeal, August 11, 2015, C.A. No.: 2015-CP-18-877 and C.A. No.: 2015-CP-18-991.
17. Affidavit of William C. Collins, July 9, 2015.
18. Affidavit of Defendants Applegate & Co.; The Dorchester, LLC and Arthur H. Applegate, July 8, 2015.
19. Consent Order for Consolidation of Cases, September 4, 2014. Case Nos.: 2015-CP-18-00877 and 2015-CP-18-00991.
20. Public-Private Partnership Agreement Between [sic] Town of Summerville, Town of Summerville Redevelopment Corporation and Applegate & Co.
21. E-mail dated August 17, 2015, from Laura Greaver to Jenny Pittman, Law Clerk, Judge Edgar W. Dickson.
22. Transcript Circuit Court Hearing, August 14, 2015.
23. E-mail dated December 5, 2014, from Lucy Dreyer to six BAR members.
24. Hotel Workshop Notes, dated Dec. 12, 2014, by BAR Member John Kwist.
25. Minutes BAR Meeting 4/6/15.
26. Minutes BAR Meeting 5/11/15.
27. Certificate of Appropriateness. May 11, 2015.
28. Minutes, Special Summerville Town Council Meeting 12/18/13.
29. Application, undated, for 9/8/14 BAR Meeting.
30. Minutes BAR Meeting 10/6/14.
31. Application Gayle F. E. Cates Revocable Trust, undated, for 10/6/14 BAR Meeting.
32. Application Faith Partnership, undated, for 10/6/14 BAR Meeting.
33. Application Anne Gaithers, undated, for 10/6/14 BAR Meeting.
34. Agenda BAR Meeting 10/6/14.
35. Transcript BAR Meeting 10/6/14.
36. Agenda BAR Meeting 11/3/14.
37. Minutes BAR Meeting 11/3/14.
38. Transcript BAR Meeting 11/3/14.
39. Application, undated, for 1/5/15 BAR Meeting.
40. Transcript BAR Meeting 1/5/15.
41. Minutes BAR Meeting 1/5/15.
42. Agenda BAR Meeting 1/12/15.
43. Minutes BAR Meeting 1/12/15.
44. Transcript BAR Meeting 1/12/15.
45. Application, undated, for 1/12/15 BAR Meeting.
46. Application, undated, for 4/6/15 BAR Meeting.
47. Minutes BAR Meeting 4/6/15.

48. Agenda BAR Meeting 5/11/15
49. Transcript BAR Meeting 5/11/15
50. Minutes BAR Meeting 5/11/15
51. Agenda BAR Meeting 6/1/15
52. Minutes BAR Meeting 6/1/15
53. Minutes BAR Meeting 7/6/16
54. Minutes BAR Meeting 8/3/15
55. Certification of Record, August 4, 2015
56. Transcript Part II BAR Meeting 5/11/15
57. Transcript BAR Meeting 4/16/15
58. Letter dated January 12, 2015, from Heyward Hutson, President, President Summerville Preservation Society, to BAR
59. Transcript BAR Meeting 4/6/15
60. Letter, undated, from Faye Croft to BAR
61. Recusal Statement, dated 10/28/14, by Jeff Bowers
62. E-mail dated July 21, 2014 from BAR Secretary Lucy Dreyer to Six BAR Members
63. Letters from BAR Secretary Lucy Dreyer, Planning Department, dated 9/9/14; 10/27/14; 12/29/14; 3/30/15; and 4/23/15
64. Ad dated 9/9/14 in Post and Courier for 10/6/14 BAR Meeting
65. Ad dated 12/29/14 in Summerville Journal Scene for 1/5/15 BAR Meeting
66. Ad dated 4/2/15 in Summerville Journal Scene for 5/11/15 BAR Meeting
67. Letter dated 1/7/15 from Peter Gorman, East Historic District Civic Association, to Phillip Dixon, Chairman, BAR
68. Letter dated 1/7/15 from Peter Gorman, East Historic District Civic Association, to Phillip Dixon, Chairman, BAR

Respectfully submitted,



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Attorney for Appellants

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(843) 871-1821
Attorney for Appellants

March 22, 2016
Charleston, S.C.

12/12/14

HOTEL WORKSHOP

Notes

JK

1st group 11:00 - 12:00 noon

Phil Dixon

Cecile Cothran

Rachel Burton

2nd group 1 PM - 2 PM

David Price

John Kvist

Beth Huggins

Also present are: Arthur Applegate - DEVELOPER
Madelyn Robison - TOWN PLANNER

I

Meeting started w/ cordial exchanges between Applegate and David Price.

David indicated that while some opposed the project and thought it would harm other businesses in the hospitality business, he himself thought that by bringing more tourists to Seasideville, his bed and breakfast business would thrive because of it. Applegate indicated that those opposed to this project are the minority, few

and unfortunately got all the "press".
David did not disagree with him on that.

II

- Applegate presented the revised drawing:
- ① The Purchase of Ann Gaither's house
 - ② Condo height reduction and retention
 - ③ On-site storm water management will save the town \$1,000,000 in infrastructure
 - ④ Retention pond to be "water feature"
 - ⑤ X-tra driveway to ease traffic on site will exit on 2nd Smith street

III

Both asked if there was room on site for a "TENT EVENT".
She is in the event planning business, and would like to see that if possible

IV

JK acknowledged improvement, but still feels that the mass is a problem.
Asked if the Hotel and Condo can be separated with a drive/alley for use by the Condo owner.

Applegate said maybe, but not to get my hopes up.

~~then~~ David said he did not necessarily agree with me.

Applegate changed his tune quickly

He said he would not consider it.

I feel betrayed by the chairman

The meeting adjourned around 2:15 PM

Overall this was not a workshop. It was a "show and tell"

David and Beth clearly ~~have their~~
~~own agendas~~ and seem to be
too eager to endorse the revised plan.

I will e-mail the other members and explain my recommendation. Maybe they will listen and support me at the next BAR meeting on 1/5/15.

HVAC

hotel
restaurant
condos (CENTRAL LOBBY)?
shops

NOISE POLLUTION

Delivery trucks: beverage, food, laundry, florists
retail shops

Maintenance trucks: all structures

Garbage trucks: location of dumpsters

TRAFFIC

hotel guests, condo ~~guests~~ residents and guests,
shuttle services, conference center attendees,
retail shoppers

ENTRANCE & EGRESS

to and from property; too much
development on too little property

HEIGHT, MASS, & SCALE

AESTHETICS - tower

Truly AN URBAN PROJECT ??? metropolitan
Service Drive? - Dumpster

- Deliveries

- Maintenance

Size + scale - too much building on too
small property

Preserve the neighborhood - and quality of life

Noise Ordinance is difficult to enforce

Entrance and Egress - drop off area

Tower is inappropriate - does not relate
to St. Louis Architecture

HVAC - Turn the wall units (hotel) BEALY?
not high end ~~and~~ hotel

Demo - certain cottages should be moved to
appropriate sites and should be
responsibility of developer

- Building should be set back or recessed
to preserve grand trees.

Top level of condos should be set back

Corner column @ balcony appear too fat
Base overhang ~~to~~ the edge of the slab
Column should reduce in size as they go up.

Height limit 55'
Just because you can - doesn't mean you should

Conference Center 60' x 120'
on 80' wide lot

Should be heavily buffered w/ plant
material

- (1) Scale models
— Mike Bennett / Maya Kelly — Hotel
— Mt. Pleasant town hall

"We're not Chas." — I agree, but
we can learn from the success and
failure of other

- (2) Mass —

How does this relate to the neighborhood?

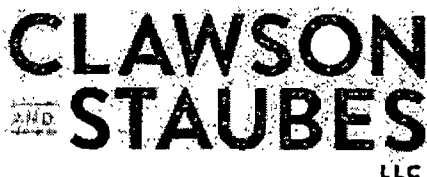
- (3) Hardie plank riding —

- (4) Lack of reputation

- (5) Traffic & parking / Safety

No real traffic study

- (6) Fire safety — ??



Timothy A. Domin
Licensed In SC
tdomin@clawsonandstaubes.com

September 22, 2016

File No.: 20150083.000

VIA US MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629

Re: Faye P. Croft, Personally and as Trustee of the James A. Croft Trust v. Town of
Summerville and Town of Summerville Board of Architectural Review
Case No.: 2015-CP-18-991
Claim No.: SF150012

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondents' Motion to Require Appellants to Remove from their Designation of Matter Materials which Are Not Related to this Appeal and which Post-Date this Appeal and to Order Appellants to Remove All References to the Same from their Initial Brief and to Extend Time for Filing Respondents' Initial Brief and Designation of Matter Pending Ruling on this Motion, along with the Certificate of Service. Please file the original documents and return a stamped, filed copy in the self-addressed, stamped envelope provide for your convenience. Also enclosed is our check in the amount of Twenty-Five (\$25.00) Dollars representing the administrative fee for this request.

Very truly yours,

CLAWSON and STAUBES, LLC

A handwritten signature in black ink, appearing to read "Timothy A. Domin".

Timothy A. Domin

TAD/paa
Enclosures

cc: W. Andrew Gowder, Esq.
Michael T. Rose, Esq.
G. Waring Parker, Esq.
(All via US Mail & w/enclosures)

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Office: (843) 577-2026 / Fax: (843) 722-2867

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2015-002199

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr., South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated.....Appellants,

v.

Town of Summerville and Town of Summerville Board of Architectural Review.....Respondents.

Respondents' Motion to Require Appellants to Remove from their Designation of Matter Materials which Are Not Related to this Appeal and which Post-Date this Appeal and to Order Appellants to Remove All References to the Same from their Initial Brief and to Extend Time for Filing Respondents' Initial Brief and Designation of Matter Pending Ruling on this Motion

This case is an appeal of a decision of the Summerville Board of Architectural Review (hereinafter Board or BAR). The decision relates to project called "The Dorchester" which includes a hotel, conference center, parking garage, and private condominiums. The Town itself and the Town's Redevelopment Corporation (Summerville Redevelopment Corporation) are a party to what is called a "Public Private Partnership Agreement" to build the hotel. In addition to this Appeal of the BAR Decision Appellants have also filed a lawsuit attempting to declare the contract void and

ultra vires, Faye P. Croft, et. al v. Town of Summerville, et al, Civil Action No. 2015-CP-10-00713. That action is still pending in Circuit Court.

The Appellants have filed a brief and designation of matter containing materials which are not in the record and which were not available to the Circuit Court. In particular, the Appellants attempt to interject into the record and their initial brief the notes obtained from a single board member, John Kwist, who voted against the project. These notes contain Kwist's subjective interpretation of certain discussions, including some comments he has since renounced. These are not discussions of the Board or even notes of a meeting of a quorum of the Board. These materials were not presented to the BAR or Circuit Court in connection with this appeal. This is an attempt to use the raw notes prepared at an unknown time of one board member who was against the project to undermine the decision of the Board in the eyes of the Court of Appeals. The argument relating to these notes is largely contained starting the bottom of page 37 of Appellants' Initial Brief and extending to 39. Not only were these notes not submitted to the Circuit Court, there was no argument regarding the notes to the Circuit Court.

In addition, Appellant's designation of matter contains reference to other materials which do not relate to this appeal. In particular, Appellants attempt to designate for the Record on Appeal the Amended Complaint and Plaintiff's Motion for Summary Judgment and Memorandum of Law, October 19, 2015 and Plaintiff's Motion for Partial Summary Judgment and Memorandum of Law, November 30, 2015 in Faye P. Croft, et. al v. Town of Summerville, et al, Civil Action No. 2015-CP-10-00713 (All contained at Item 5 of Appellants' Designation of Matter). These materials are not from the instant case. They are an effort to bootstrap the issues in the other case relating to the validity of the developer's contract with the Town and Redevelopment Authority into

the appeal of a Board of Architectural Review Decision. As can be seen by the dates, the memorandum did not even exist when the Circuit Court signed its order September 24, 2015. These matters should not be included in the record on appeal and all references to the same in the briefs should be deleted.

It is axiomatic that the record on appeal can only contain those materials which were presented to the lower tribunal, Rule 210(c), SCACR. This is also true where the Circuit Court sits in an appellate capacity over the decision of the Board of Architectural Review. The only matters that should be included are those matters submitted to the Board. The findings of fact by a board of architectural review shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence. See S.C. Code Ann. § 6-29-930 ("the findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence. . . . In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law."); Austin v. Board of Zoning Appeals, Town of Hilton Head Island, 606 S.E.2d 209 (S.C. Ct. App. 2004); see also Heilker v. Zoning Bd. of Appeals for City of Beaufort, 552 S.E.2d 42, 44 (S.C. Ct. App. 2001). Further, the court's review is "strictly limited to the facts and arguments raised to the board. Indeed, the circuit court is expressly forbidden from considering any new facts." Austin, 606 S.E.2d at 214.

For the reasons stated, this Court should order the Appellant to take out all materials from its designation of matter and Respondent's brief which were not materials of the Board or submitted as part of the record of the Board. This would include the entirety of Item number 5 of Appellants Designation of Matter and also any of John Kwist's notes.

Further, Respondents request that the time for filing their Initial Brief and Designation of Matter be held in abeyance pending this decision as Respondents do not know whether to respond or ignore those sections of Appellants' Initial Brief.

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Attorneys for Respondents

September 22, 2016

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2015-002199

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust;
William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr., South Carolina
Public Interest Foundation; Summerville Preservation Society; and Dorchester County
Taxpayers Association, individually, and on behalf of all others similarly
situated.....Appellants,

v.

Town of Summerville and Town of Summerville Board of Architectural
Review.....Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2016, I have mailed, regular first class
mail, postage prepared, one copy of Respondents' Motion to Require Appellants to
Remove from their Designation of Matter Materials which Are Not Related to this Appeal
and which Post-Date this Appeal and to Order Appellants to Remove All References to
the Same from their Initial Brief and to Extend Time for Filing Respondents' Initial Brief
and Designation of Matter Pending Ruling on this Motion to:

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October 3, 2016

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The Honorable Jenny Abbott Kitchings
P.O. Box 11629
Columbia, SC 29211

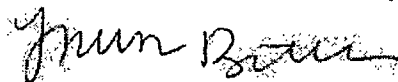
RE: BAR Appeal
Case No: 2015-002199
Our File: 7754.001

Dear Sir or Madam,

Enclosed please find the original and six copies of the Appellants' Opposition to Respondents' Motion to Require Appellants to Remove from Their Designation of Matter Materials Which Are Not Related to This Appeal and Which Post-Date This Appeal and to Order Appellants to Remove All References to the Same From Their Initial Brief and to Extend Time for Filing Respondents' Initial Brief and Designation of Matter Pending Ruling on This Motion and also find the Proof of Service. Also enclosed is our firm's check in the amount of \$25.00. Thank you for your assistance and please let me know if you have any questions.

Sincerely,

PRATT-THOMAS WALKER, P.A.



Frances Butler

Assistant to W. Andrew Gowder Jr.

/hfb

Enclosures as stated.

cc: Timothy Domin, Esq.
G. Waring Parker, Esq.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2015-CP-18-991

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr., South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated Appellants,

v.

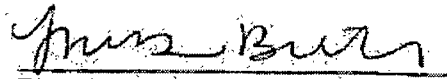
Town of Summerville and
Town of Summerville Board of Architectural Review Respondents.

PROOF OF SERVICE

I, Frances Butler, of Pratt-Thomas Walker, P.A., hereby certify that I have served a true and accurate copy of the APPELLANTS' OPPOSITION TO RESPONDENTS' MOTION TO REQUIRE APPELLANTS TO REMOVE FROM THEIR DESIGNATION OF MATTER MATERIALS WHICH ARE NOT RELATED TO APPEAL AND WHICH POST-DATE THIS APPEAL AND TO ORDER APPELLANTS TO REMOVE ALL REFERENCES TO THE SAME FROM THEIR INITIAL BRIEF AND TO EXTEND TIME FOR FILING RESPONDENTS' INITIAL BRIEF AND DESIGNATION OF MATTER PENDING RULING ON THIS MOTION by U.S. Mail on October 3, 2016 to counsel of record as shown below:

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Charleston, SC 29492-8144

G. W. Parker
518 W. Carolina Avenue
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Frances Butler

Assistant to W. Andrew Gowder, Jr.

Pratt-Thomas Walker, P.A.

P.O. Drawer 22247

Charleston, SC 29413-2247

October 3, 2016
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge
Case No. 2015-CP-18-00991

Appellate Case No. 2015-002199

Faye P. Croft, Personally and as Trustee of the James A. Croft Trust; James A. Croft Trust; William A. Harbeson; Heyward G. Hutson; James Stephen Greene, Jr.; South Carolina Public Interest Foundation; Summerville Preservation Society; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated, Appellants,

v.

Town of Summerville and Town of Summerville Board of Architectural Review, Respondents.

Appellants' Opposition to Respondents' Motion to Require Appellants to Remove from Their Designation of Matter Materials Which Are Not Related to This Appeal and Which Post-Date This Appeal and to Order Appellants to Remove All References to the Same From Their Initial Brief and to Extend Time for Filing Respondents' Initial Brief and Designation of Matter Pending Ruling on This Motion

Appellants object to Respondents' motion because, as explained below, Respondents (1) have failed to comply with this Court's Order dated August 30, 2016; (2) have concealed and failed to include in the Circuit Court's BAR record a document as required by law; (3) incorrectly claim that publicly existing judicial pleadings referenced in the Circuit Court appeal should not be included in Appellants' Designation of Matter; and (4) simultaneously, unlawfully

and inconsistently have added to the BAR record a material document (Facts and Conclusions, Item #8 Appellants' Designation of Matter; see Appellants Amended Initial Brief, at 2-3, 18-27, 39-43) that did not exist at the time of the BAR decisions that are the subject of Appellants' appeal.

A. Violations of Court of Appeals Order

Appellants' Designation of Matter, Initial Brief and Motion to Expand the Page Limitation were filed on March 22, 2016. Appellants' Amended Initial Brief was filed, as order by the Court, on June 24, 2016.

In response, the Respondents requested by motions and were granted by this Court two successive thirty (30) day extensions by which to file their initial brief and designation of matter. The Order, dated August 30, 2016, granting this last extension states in its entirety:

"The time for serving and filing the respondents' initial brief and designation of matter is hereby extended until September 23, 2016. No further extensions will be granted absent extraordinary circumstances." (Emphasis added.)

The Respondents have not filed their initial brief or designation of matter, in violation of this September 23, 2016 Order's deadline for doing so. Instead, the Respondents waited until September 22, 2016, the last day before the September 23 deadline, to file the above-referenced Motion as a substitute for complying with the Court's August 30, 2016 Order by filing their initial brief and designation of matter. Time limits under the court's rules are generally not stayed by the filing of a motion or petition. Rule 240(b), SCACR.

No "extraordinary circumstances" exist or even are alleged by the Respondents to exist as an excuse not to have filed their initial brief and designation of matter within the Court's September 23, 2016 deadline. Rather, the Respondents move that the Court delete merely two

(Items #5 and #12) of the sixty-eight items (68) listed in Appellants' Designation of Matter, as an apparent justification for completely having failed to file the Respondents' initial brief and designation of matter, and, at the last possible day before the September 23 deadline, have asked the Court for permission to again extend the deadline again hoping that the Court will agree.

Respondents submit that the Appellants have not complied with the Court's August 30, 2016 Order, thereby unnecessarily delaying these proceedings, and should not be rewarded by being given another extension of time to make those filings. Respondents obviously could have filed its initial brief and designation of matter based on the amended initial brief and designation of matter submitted by the Appellants on June 24, 2016, and could have argued in Respondents' filings against consideration of anything submitted by the Appellants to which the Respondents objected. In the alternative, the Respondents could, and should, have filed a motion to delete the two items in Appellants' Designation of Matter weeks before the Court's September 23, 2016 deadline, instead of further delaying this appeal by waiting to do so at the last possible moment before the September 23, 2016 deadline.

B. DESIGNATION OF MATTER

None of the materials listed in the Appellants' Designation of Matter should be deleted, and the Respondents motion to do so should be denied.

1. Concealment of Notes of John Kwist, BAR Member, dated 12/12/14 -- (Item #12 Appellants' Designation of Matter)

Respondents first ask the Court to strike item #12 from the Appellants' designation of matter, which consists of detailed notes contemporaneously handwritten by a BAR member.

about illegal secret meetings of the BAR held on 12/12/14 (a date written on the document) at which the BAR conducted business, and about other illegal conduct by members of the BAR that Appellants contend should invalidate the BAR decisions being appealed. The Respondents illegally secreted and withheld these notes by failing to provide them as part of the BAR record as required by SC Code § 6-29-920, and now, in a kind of circular logic, ask the Court of Appeals to refuse to consider this illegally secreted evidence now by summarily excluding it from the BAR record based on the fact that the Respondents had succeeded in secreting it from the BAR record before the Circuit Court.

The Respondents complained at the Circuit Court hearing on August 14, 2015, that the Respondents had held BAR meetings at which BAR business intentionally and secretly had been conducted without the quorum and public notice required by law. Transcript of Circuit Court Hearing, August 14, 2015, at 10-14. Similarly, Appellants stated as grounds for appeal to the Court of Appeals its objections to those illegal meetings and why those illegal meetings were harmful and should render the BAR decisions invalid. Amended Initial Brief, at 36-41.

BAR member John Kwist mentioned the existence of one of these illegal secret meetings at a BAR meeting on January 5, 2015, Transcript BAR 1/15/15, at 35, quoted in Amended Initial Brief, at 37. The BAR produced as part of the BAR record submitted to the Circuit Court Findings and Conclusions disputing the Appellants' claims that the BAR illegally had conducted business without a quorum and in violation of the Freedom of Information Act. Findings and Conclusions, §§ 50, 51, 53, 56, 59 (Appellants' Designation of Matter #8).

The BAR was required by SC Code § 6-29-870(D) to "keep records of its examinations . . . which immediately must be filed in the office of the board and must be a public record." Id. (Emphasis added.) Sec 32-176(e) requires that "[a] quorum, consisting of a majority of the total

membership of the board, shall be required for the transaction of business" *Id.* (emphasis added). SC Code § 6-29-920(A) requires that the BAR "must file with the clerk a duly certified copy of the proceedings held before the" BAR. (Emphasis added.)

The Kwist notes strongly evidence that the BAR conducted BAR business by examining developer plans, discussing disqualifying conflicts of interest of two BAR members and taking other official actions without the quorum required by law, without keeping records as required by law and without public knowledge and participation as required by law. Further, the BAR failed to provide those notes as part of the copy of the proceedings held before the BAR, as required by S.C. Code § 6-29-920(A). The BAR must not be rewarded for its unlawful misconduct by allowing it to obtain the dismissal now of highly relevant evidence that the BAR failed to submit as part of the public BAR record to the Circuit Court as required by law.

2. Judicial Notice of Public Pleadings, Civil Action No: 2015-CP-10-00713 (Item #5 Designation of Matter)

Respondents secondly ask the Court to strike item #5 from the Appellants' designation of matter, which consists of the following: "Amended Complaint [dated February 23, 2015] and Plaintiffs' Motion for Partial Summary Judgment and Memorandum of Law, October 19, 2015, and Plaintiffs' Motion for Partial Summary Judgment and Memorandum of Law, November 30, 2015 in Faye P. Croft, et al., vs. Town of Summerville, et al., Civil Action No: 2015-CP-10-00713."

The existence and significance of this lawsuit, Civil Action No: 2015-CP-10-00713, including six reasons Appellants argue the BAR lacked jurisdiction to consider the subject matter of the decisions appealed by Appellants to the Circuit Court, are stated in Paragraphs 2 and 3A on pages 1-3 of both Appellants' Petition (Item #6 Designation of Matter) filed with the BAR on

May 5, 2015, and Appellants' Petition (Item #7 Designation of Matter) filed with the BAR on May 22, 2015. Thus, the Appellants brought up this lawsuit in its two Petitions to the Circuit Court appealing the BAR decisions, and thereby made that lawsuit part of the BAR record considered by the Circuit Court Judge and that should be considered now by the Court of Appeals.

In response to Appellants' Petitions to the Circuit Court, the Respondents filed with the Circuit Court Respondents' Memorandum in Opposition to Petitions for Appeal ("Memorandum"), dated August 11, 2015, which is Item #16 of Appellants' Designation of Matter. On pages 1-2 in that Memorandum Respondents cite and discuss the identical lawsuit, Civil Action No: 2015-CP-10-00713, which Respondents now want stricken from Appellants' Designation of Matter. Thus, the Respondents brought up this lawsuit in the Memorandum in Opposition to Petitions for Appeal they filed with the Circuit Court and Respondents thereby made that lawsuit part of the BAR record considered by the Circuit Court Judge and that should be considered now by the Court of Appeals.

Indeed, this portion of this Memorandum by the Respondents referring to this lawsuit, Civil Action No: 2015-CP-10-00713, is specifically cited on pages 6-7 of Appellants' Amended Initial Brief, as follows:

On December 19, 2014 the Appellants, and others, filed a lawsuit, captioned Faye P. Croft, et al., vs. Town of Summerville, et al., Civil Action No.: 2015-CP-10- 00713 ("Croft Lawsuit"), alleging, *inter alia*, misuse of public funds and violations of law by the BAR that are alleged in this appeal. (Id.; **Respondents' Memorandum In Opposition to Petitions for Appeal, August 11, 2015, at 1-2**). (Emphasis added.)

Thus, the Respondents are objecting now to Appellants including in the record the Amended Complaint of lawsuit Civil Action No: 2015-CP-10-00713 that existed on February 23, 2016, when the Respondents filed with the Circuit Court a Memorandum In Opposition to Petitions for Appeal specifically referencing that lawsuit on August 11, 2015.

That is wrong-headed. When, as here, both the Appellants and the Respondents filed documents with the Circuit Court discussing the lawsuit Civil Action No: 2015-CP-10-00713 regarding a BAR appeal, the Amended Complaint in that lawsuit existing at the time of the Circuit Court Order being appealed should be considered part of the BAR record on appeal to the Court of Appeals. Moreover, the Circuit Court Judge and the Court of Appeals should take judicial notice of each document that was part of the lawsuit, Civil Action No: 2015-CP-10-00713, at the time of the Circuit Court Order being appealed, and thereafter.

The Amended Complaint that the Respondents move to strike is dated February 23, 2015. It existed when the Circuit Court received the above referenced documents from the parties discussing the lawsuit that is the subject of the Amended Complaint and that existed at the time the Circuit Court issued its Order being appealed now by the Appellants. As a result, the Amended Complaint was and is part of the BAR record and should be allowed as part of Appellants' Designation of Matter.

The two Motions for Partial Summary Judgment in the above-referenced lawsuit did not exist on the date of the Circuit Court Order being appealed, but were filed subsequently with the Court. Those two motions are mentioned in the Amended Initial Brief only once, by citing them in footnote 13 on page 25 thereof, and can be deleted, if required, without changing anything else in the Amended Initial Brief. The two motions are mentioned in the Appellants' Designation of

Matter only once, and simply can be deleted, if required. Thus, if the Court determines that these two Motions for Partial Summary Judgment should be deleted, there is no need to rewrite any other part of the Amended Initial Brief or of the Designation of Matter. Instead, those two references to those two Motions simply can be deleted. The remaining part of footnote 13 in the Amended Initial Brief can remain with the citations deleted or, preferably, with the words "Amended Complaint" substituted for the two Summary Judgment Motions cited. By making these two simple changes continued delay of this appeal by rewriting and refileing Appellants' initial brief and restarting the timetables to respond can be avoided.

CONCLUSION

The Respondents rely in this appeal on a key document entitled Facts and Conclusions which Appellants vigorously object should not be part of the BAR record because it was created after the BAR made its decisions which the Appellants are appealing and after the Appellants had filed with the Circuit Court its pleadings appealing those BAR decisions. (See Facts and Conclusions, Item #8 Appellants' Designation of Matter; Appellants Amended Initial Brief, at 2-3, 18-27, 39-43).

Inconsistently, the Respondents object to the Appellants' inclusion on the BAR record of documents that were created before the BAR decisions being appealed and that either were referenced to the Circuit Court by the Appellants and/or Respondents before the Circuit Court Order now being appealed, or were concealed and wrongfully withheld from the BAR record by the Respondents.

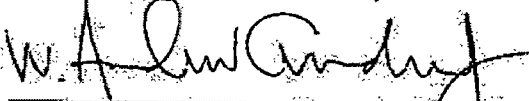
For the reasons stated above, the Court should exclude from the BAR record none of the documents Respondents have moved to exclude, and should not allow Respondents to continue

to delay these proceedings by failing to file its initial brief and designation of matter as previously ordered by the Court of Appeals.

At a minimum, the Court of Appeals should wait to consider the facts regarding all these documents before making a final determination in the future about whether any of them should be excluded, instead of summarily excluding any of them at this stage of this appeal.

Respectfully submitted,

PRATT-THOMAS WALKER, PA



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October 3, 2016
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