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Jan 24 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley Price, Circuit Court Judge
Markley Dennis, Circuit Court Judge

Appellate Case No. 2019-001671

J. Doe, Appellant,

v.

Design Review Board (DRB) of the Town of Sullivans Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co., Respondents.

RESPONDENTS SVJETLANA BILIC DAMJANOVIC, INDIVIDUALLY AND D/B/A ALKA CONSTRUCTION CO., BRANKO DAMJANOVIC, INDIVIDUALLY AND D/B/A ALKA CONSTRUCTION CO., AND ALKA CONSTRUCTION CO.'S MOTION TO DISMISS

Respondents Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co, and Alka Construction Co. (collectively, “Alka”) respectfully move to dismiss this appeal on the grounds that the only issues properly raised are moot, as set forth in detail below. Alka also respectfully requests that the deadline for Respondents’ Initial Brief—currently January 21st, 2022—be delayed until the Court has ruled on this motion, pursuant to Rule 240(b), *SCACR*.

Nature of the Appeal and Pertinent Factual and Procedural History

Appellant appeals orders entered by the Circuit Court in the underlying proceedings, which were in exercise of the Circuit Court’s appellate jurisdiction granted by S.C. Code Ann. § 6-29-900(A), part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “Act”), over decisions of Boards of Architectural Review. Specifically, Appellant challenged the decision of the Design Review Board (“DRB”) of the Town of Sullivan’s Island (the “Town”) to grant final approval to an application for DRB approval submitted by Respondent Kenneth Craft Design Co. on behalf of Alka to build a single-family residence at 1606 Poe Avenue, Sullivan’s Island, South Carolina (the “Property”). DRB granted final approval at its regular meeting on May 15th, 2019, (the “Meeting”); Doe appealed to the Circuit Court on June 12th, 2019. The Circuit Court denied all relief requested by the Appellant, who subsequently filed the appeal at hand.

Since the May 15th, 2019, Meeting at which the DRB voted to approve the design for construction of the house at the Property, the following occurrences have rendered it impossible for this Court to grant meaningful relief on Appellant’s claims, which are therefore moot:

- On June 14th, 2019, the Town issued a building permit for construction at the Property (Building Permit p. 10, attached hereto as **Exhibit #1**), and
- On January 30th, 2020, the Town issued a Certificate of Occupancy for the Property (Certificate of Occupancy p. 11, attached hereto as **Exhibit #2**).

Legal Argument and Citation to Authority

Though Appellant asserts entitlement to myriad forms of relief, the only pertinent and material question is whether the DRB’s approval of the plans was legally erroneous. Unfortunately for Appellant, this issue is moot: the sole forms of relief which could be granted in these appellate proceedings—reversal of the DRB decision and/or remand to the DRB for reconsideration—would

have no practical legal effect, because the house has been fully and legally constructed and occupied for two years. Accordingly, upon hypothetical reversal or remand, neither the DRB nor the Town would have a viable tool at their disposal to grant meaningful relief- or any relief at all. Because the questions presented are moot, this appeal should be dismissed.

Appellant's demands for relief in the Circuit Court were as follows:

- a. Reversing or remanding the matter to the DRB on the basis of DRB's alleged errors of law, arbitrary action, and/or abuse of discretion.
- b. An order that the parties engage in mediation.
- c. A jury verdict on a takings claim and other claims for damages.
- d. A declaratory judgment ordering the DRB to develop uniform standards for its application of the Town's comprehensive plan, historic district standards, and zoning ordinances, and announcing that the DRB has authority to consider all of these sources when considering a matter before it.
- e. A declaratory judgment that "the DRB is not bound to 'rubber stamp' the decisions of the zoning administrator] and/or staff" and should instead act in the best interests of the community, "for the judicious development of the Town."

(Circuit Court Appeal Petition, ¶¶44, 60, 62, 64 and "WHEREFORE" Paragraph, p. 12-30, attached hereto as **Exhibit #3**).

Requests for relief (c)-(e) are manifestly improper and subject to dismissal: these claims were not and could not have been before the DRB, a citizen board of limited authority. *See* S.C. Code Ann. § 6-29-880 (board of architectural review "has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance.") *and see* Town of Sullivan's Island Zoning Ordinance, Article XI. HP Historic Preservation Overlay District, Section 21-92 (DRB "shall be responsible for oversight of the HP Historic Preservation District Overlay.") In exercising its narrow responsibility for "oversight of the HP Historic Preservation District Overlay", the DRB's role in the matter at hand was limited to approving the application, approving

the application with conditions, or denying the application. (Zoning Ordinance, Section 21-97(B)(4)). Clearly the DRB lacked authority to grant declaratory relief or to deliver a takings verdict. (Town of Sullivan’s Island Zoning Ordinance, Article XI. HP Historic Preservation Overlay District p. 31-36, attached hereto as Exhibit #4).

Neither did the Circuit Court, sitting as here in exercise of its appellate jurisdiction over the DRB decision. The Circuit Court’s authority is defined by the Act: “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). Having narrowly defined what subject matter falls within the Circuit Court’s appellate inquiry, the Act wisely elaborates on the types of matters that fall without: “Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of architectural review, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.” Thus, while Appellant may, in a standalone civil action, be able to pursue requests for relief (c)-(e)—i.e., takings and other claims for damages, and various forms of declaratory relief—these claims have not been, and could not have been, properly asserted before any of the three tribunals participating in this matter, who lack subject matter jurisdiction over such claims in these circumstances.

Demands for relief (a) and (b), meanwhile, are moot. “A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.” *Mathis v. S.C. State Highway Dep’t*, 260 S.C. 344, 195 S.E.2d 713 (1973). “The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation.” *Sloan*

v. Greenville Cnty., 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003).

Issuance of the Building Permit, construction of the house, and issuance of the Certificate of Occupancy are precisely the type of intervening events that justify application of the mootness principle. The simple fact is that reversal or remand to the DRB cannot possibly yield any effectual relief. With the house constructed and occupied, even outright reversal of the DRB's approval of the plans would bear no legally cognizable fruit: DRB cannot order the house demolished, nor can it order revocation of the building permit on which Alka rightly relied when it went forward with construction. The most that Appellant could obtain via remand to the DRB is whatever measure of personal satisfaction that would attend upon DRB issuing a ceremonial reversal of its prior approval. This hypothetical reversal would be a legal nullity, however, necessitating the conclusion that the issue is moot. At barest minimum, the appeal should be dismissed as to Alka, a private actor who has no proverbial dog in whatever sliver of a fight might remain with construction complete.

Strong and clear authority supports this outcome. In *Christ Central Ministries v. City of Columbia Bd. of Zoning Appeals*, the Court of Appeals addressed a conceptually identical situation. 424 S.C. 358, 818 S.E.2d 30 (Ct. App. 2018). The City, ordered by the Circuit Court to issue a building permit the BZA had initially denied, appealed the order but did not secure a stay of the order pending the outcome of the appellate proceedings. Accordingly, the City's building department issued the building permit as required by the order; as a result, the billboard had been constructed and leased to advertisers by the time the Court of Appeals took up the appeal, and the Court of Appeals found the appeal moot. "[The property owner] has constructed the billboard at significant cost, and has collected rents from a third-party pursuant to a new lease. The City's decision to grant the permit pending appeal has made any grant of effectual relief impossible for

the reviewing court.” *Id.* Respectfully, the Court should reach the same conclusion in the matter at hand. The objective of Appellant’s dispute, at all levels of this litigation, has been to prevent construction of the house on the Property. With the house lawfully built and long since occupied, any justiciable controversy has ceased to exist.

As an aside, Appellant has only herself to blame for this state of affairs. The Act invested Appellant with a specific procedural opportunity to stay the approval and construction processes while this appeal has played out, but she chose not to avail herself of it. S.C. Code Ann. § 6-29-920(B) states that while appealing to the circuit court “does not ipso facto act as a supersedeas” to stay actions in furtherance of or in reliance on the DRB’s approval, “the judge of the circuit court may in his discretion grant a supersedeas” as the Circuit Judge deems it reasonable and proper to do so. A prompt motion under this provision is the standard means of preserving the status quo and of warding off precisely the mootness problem Appellant faces at this time. The consequences of Appellant’s failure to seek prompt relief under S.C. Code Ann. § 6-29-920(B) are chargeable solely to Appellant.

The conclusion that Appellant’s demand for remand to DRB is moot necessitates the same conclusion regarding request for relief (b): an order that the parties engage in the Act’s mediation protocol. We need not dwell, for present purposes, on the entirely obvious fact that Appellant’s demand for mediation was rightly denied. The Act gives the mediation right only to “[a] property owner whose land is the subject of a decision” of the DRB. S.C. Code Ann. § 6-29-900(B). As the owner of the land, Alka would have had the right to demand mediation had DRB denied the application. By contrast mere interested persons, the status claimed by Appellant as a concerned resident of the community, do not have the right to demand mediation. Yet even assuming Appellant had a leg to stand on, the demand for mediation is moot for the same reason that remand

to the DRB is moot: with regard to the Property, and to the house constructed thereon, there is no further action that DRB, the Town as a whole, or Appellant can take- there simply are no issues to mediate.

Conclusion

For the reasons set forth herein, Alka respectfully asks that the Court find that the only issues properly before it are now moot, and on that basis dismiss the appeal.

BEN TRAYWICK LAW FIRM, LLC

s/Benjamin A.C. Traywick

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Damjanovic, Individually and d/b/a Alka
Construction Co., Branko Damjanovic,
Individually and d/b/a Alka Construction Co.,
and Alka Construction Co.***

January 21, 2022
Charleston, South Carolina

EXHIBIT #1

EXHIBIT #2

Town of Sullivan's Island



2056 Middle Street
Sullivan's Island, South Carolina 29482

Certificate of Occupancy

*Issued by the Town of Sullivan's Island
Under the Authority of the Town Building Official and Zoning Administrator*

Pursuant to the Town of Sullivan's Island Municipal Code Chapters 5, 21 and 25, this certifies that the referenced building, or portion thereof, has been inspected and found to be in compliance with the requirements of said code and with the most recently adopted version of the International Code Council building construction codes. Permission is hereby given for the occupancy of said building in compliance with the various conditions of the Zoning Ordinance in addition to the below specified conditions of use.

Bldg. Permit No. P19-0338

Use Classification: New Construction

Owner Name: Branko Damjanovic Contractor/Builder: Alka Construction

Owner Address: 1616 Poe Avenue Building Address: 1616 POE AV

Sullivans Island SC 29482 Sullivans Island, SC 29482

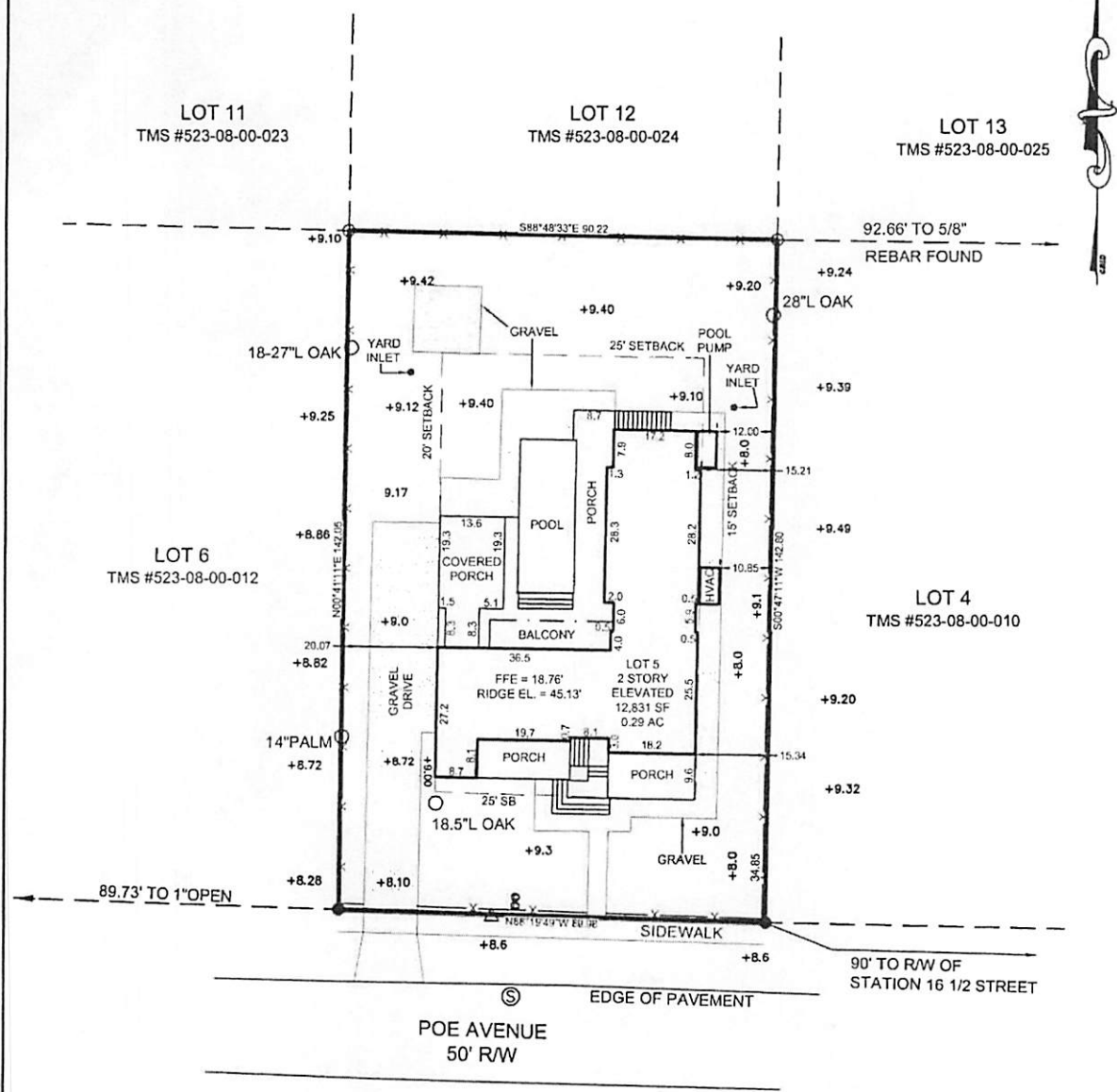
TMS #: 5230800011 Type of Building Single Family Residential

Map Effective Date: 11/17/2004 Flood Zone: VE 15 DFE: 16'
CSM 17.14

Conditions of Use:

By: Thomas R. Arles Date: 01/30/2020
Building Official

By: Joseph R. Henderson Date: 1/30/2020
Zoning Administrator



NOTES:

- PROPERTY IS LOCATED IN FLOOD ZONE VE (EL 15) AS SHOWN OF F.I.R.M. PANEL #45019C0538J. (DATED 11/17/04)
- ELEVATIONS BASED ON NGVD 1929.

LEGEND:

- 1/2" OPEN TOP
- 5/8" REBAR
- ⊙ SEWER MANHOLE
- x- 4' WOOD FENCE
- +9.3 SPOT ELEVATION
- △ WATER METER
- SEWER CLEANOUT

- REFERENCES:**
- | | |
|--------------------|------|
| PLAT BOOK | PAGE |
| S | 111 |
| H | 112 |
| TMS #523-08-00-011 | |

LOT COVERAGE:

HOUSE	1,985 SF	15.4%
PORCHES	655 SF	5.1%
DECK AND STEPS	838 SF	6.5%
POOL	379 SF	2.9%
TOTAL IMPERVIOUS AREA	3,857 SF	29.9%
GRAVEL	2,203 SF	17.1%
LOT TOTAL	12,831 SF	

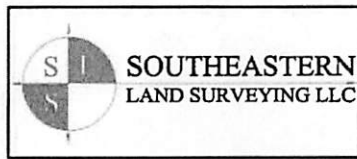
PERMITTED LOT COVERAGE = 3957 SF



I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

Philip R. Bryan, Jr.
 PHILIP R. BRYAN, JR. S.C.P.L.S. No. 28597

AN ASBUILT SURVEY OF
 LOT 5; SECTION G
 1616 POE AVENUE
 LOCATED IN THE TOWN OF SULLIVANS ISLAND
 CHARLESTON COUNTY, SOUTH CAROLINA



DATE: 12-19-19
SCALE: 1" = 30'
DRAWN: DH
DWG: 18153
REV:

ELEVATION CERTIFICATE

Important: Follow the instructions on pages 1-9.

Copy all pages of this Elevation Certificate and all attachments for (1) community official, (2) insurance agent/company, and (3) building owner.

SECTION A – PROPERTY INFORMATION					FOR INSURANCE COMPANY USE
A1. Building Owner's Name Branko Damjanovic					Policy Number:
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 1616 Poe Avenue					Company NAIC Number:
City Sullivan's Island	State South Carolina	ZIP Code 29482			
A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.) TMS#: 523-08-00-011; Lot 5, Section G					
A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) <u>Residential</u>					
A5. Latitude/Longitude: Lat. <u>32°45'30.6"</u> Long. <u>79°51'03.2"</u> Horizontal Datum: <input type="checkbox"/> NAD 1927 <input checked="" type="checkbox"/> NAD 1983					
A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.					
A7. Building Diagram Number <u>5</u>					
A8. For a building with a crawlspace or enclosure(s):					
a) Square footage of crawlspace or enclosure(s) <u>N/A</u> sq ft					
b) Number of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade <u>N/A</u>					
c) Total net area of flood openings in A8.b <u>N/A</u> sq in					
d) Engineered flood openings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
A9. For a building with an attached garage:					
a) Square footage of attached garage <u>N/A</u> sq ft					
b) Number of permanent flood openings in the attached garage within 1.0 foot above adjacent grade <u>N/A</u>					
c) Total net area of flood openings in A9.b <u>N/A</u> sq in					
d) Engineered flood openings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
SECTION B – FLOOD INSURANCE RATE MAP (FIRM) INFORMATION					
B1. NFIP Community Name & Community Number Sullivan's Island 455418			B2. County Name Charleston County		B3. State South Carolina
B4. Map/Panel Number 45019C 0538	B5. Suffix J	B6. FIRM Index Date 11-17-2004	B7. FIRM Panel Effective/ Revised Date 11-17-2004	B8. Flood Zone(s) VE	B9. Base Flood Elevation(s) (Zone AO, use Base Flood Depth) 15
B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9: <input type="checkbox"/> FIS Profile <input checked="" type="checkbox"/> FIRM <input type="checkbox"/> Community Determined <input type="checkbox"/> Other/Source: _____					
B11. Indicate elevation datum used for BFE in Item B9: <input checked="" type="checkbox"/> NGVD 1929 <input type="checkbox"/> NAVD 1988 <input type="checkbox"/> Other/Source: _____					
B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Designation Date: _____ <input type="checkbox"/> CBRS <input type="checkbox"/> OPA					

ELEVATION CERTIFICATE

OMB No. 1660-0008
Expiration Date: November 30, 2018

IMPORTANT: In these spaces, copy the corresponding information from Section A.			FOR INSURANCE COMPANY USE
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 1616 Poe Avenue			Policy Number:
City Sullivan's Island	State South Carolina	ZIP Code 29482	Company NAIC Number

SECTION C – BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building elevations are based on: Construction Drawings* Building Under Construction* Finished Construction
 *A new Elevation Certificate will be required when construction of the building is complete.

C2. Elevations – Zones A1–A30, AE, AH, A (with BFE), VE, V1–V30, V (with BFE), AR, AR/A, AR/AE, AR/A1–A30, AR/AH, AR/AO. Complete Items C2.a–h below according to the building diagram specified in Item A7. In Puerto Rico only, enter meters.

Benchmark Utilized: CJ0162 Vertical Datum: NGVD 1929

Indicate elevation datum used for the elevations in items a) through h) below.

NGVD 1929 NAVD 1988 Other/Source: _____

Datum used for building elevations must be the same as that used for the BFE.


Check the measurement used.

- | | | | |
|---|-------|--|---------------------------------|
| a) Top of bottom floor (including basement, crawlspace, or enclosure floor) | 18.76 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| b) Top of the next higher floor | 30.42 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| c) Bottom of the lowest horizontal structural member (V Zones only) | 17.14 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| d) Attached garage (top of slab) | N/A | <input type="checkbox"/> feet | <input type="checkbox"/> meters |
| e) Lowest elevation of machinery or equipment servicing the building
(Describe type of equipment and location in Comments) | 16.71 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| f) Lowest adjacent (finished) grade next to building (LAG) | 9.30 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| g) Highest adjacent (finished) grade next to building (HAG) | 9.40 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |
| h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support | 9.30 | <input checked="" type="checkbox"/> feet | <input type="checkbox"/> meters |

SECTION D – SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

Were latitude and longitude in Section A provided by a licensed land surveyor? Yes No Check here if attachments.

Certifier's Name Philip R. Bryan, Jr.	License Number 28597	
Title South Carolina Land Surveyor		
Company Name Southeastern Land Surveying, LLC		
Address 1035-B Jenkins Road		
City Charleston	State South Carolina	

Signature: Philip R. Bryan, Jr. Date: 12-12-2019 Telephone: (843) 795-9330 Ext. _____

Copy all pages of this Elevation Certificate and all attachments for (1) community official, (2) insurance agent/company, and (3) building owner.

Comments (including type of equipment and location, per C2(e), if applicable)
 LATITUDE AND LONGITUDE FROM CHARLESTON COUNTY GIS SLAB UNDER HOUSE =9.35' ITEM C2(e) IS AN HVAC PLATFORM PICTURED BELOW.

BUILDING PHOTOGRAPHS

See Instructions for Item A6.

OMB No. 1660-0008
Expiration Date: November 30, 2018

ELEVATION CERTIFICATE

IMPORTANT: In these spaces, copy the corresponding information from Section A.			FOR INSURANCE COMPANY USE
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 1616 Poe Avenue			Policy Number:
City Sullivan's Island	State South Carolina	ZIP Code 29482	Company NAIC Number

If using the Elevation Certificate to obtain NFIP flood insurance, affix at least 2 building photographs below according to the instructions for Item A6. Identify all photographs with date taken; "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View." When applicable, photographs must show the foundation with representative examples of the flood openings or vents, as indicated in Section A8. If submitting more photographs than will fit on this page, use the Continuation Page.

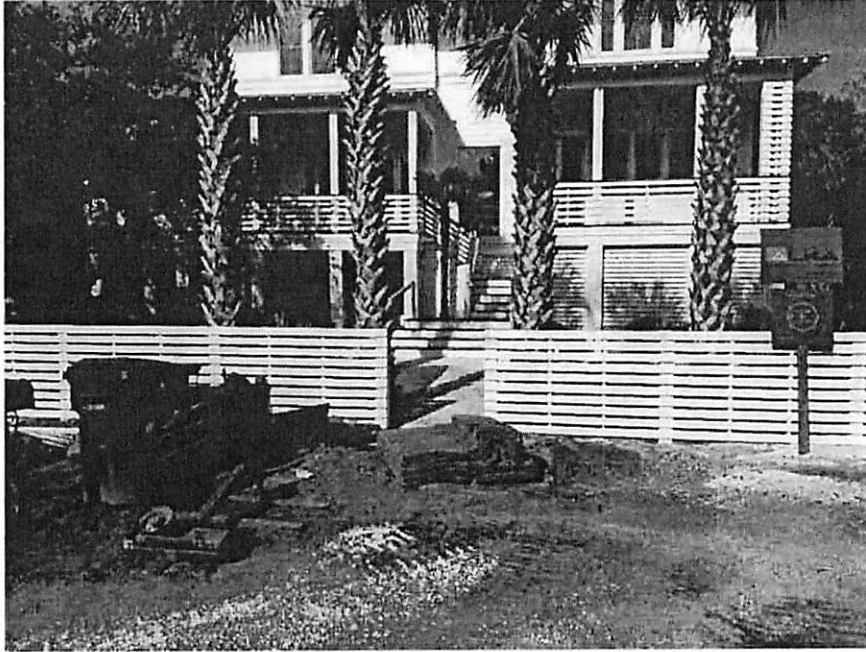


Photo One

Photo One Caption FRONT VIEW (12-12-2019)

Clear Photo One



Photo Two

Photo Two Caption REAR VIEW (12-12-2019)

Clear Photo Two

ELEVATION CERTIFICATE

BUILDING PHOTOGRAPHS

Continuation Page

OMB No. 1660-0008
Expiration Date: November 30, 2018

IMPORTANT: In these spaces, copy the corresponding information from Section A.			FOR INSURANCE COMPANY USE
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 1616 Poe Avenue			Policy Number:
City Sullivan's Island	State South Carolina	ZIP Code 29482	Company NAIC Number

If submitting more photographs than will fit on the preceding page, affix the additional photographs below. Identify all photographs with: date taken; "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View." When applicable, photographs must show the foundation with representative examples of the flood openings or vents, as indicated in Section A8.



Photo Three

Photo Three Caption LEFT VIEW (12-12-2019)

Clear Photo Three



Photo Four

Photo Four Caption RIGHT VIEW WITH HVAC PLATFORM (07-12-2019)

Clear Photo Four

S.I. V-ZONE DESIGN CERTIFICATE
PRE-CONSTRUCTION _____ AS-BUILT ✓

Name of Property Owner Brancko Damjanovic Permit # _____
Street Address (property) 1616 POC AVE TMS# _____
City Sullivan Island State SC Zip Code 29482

FLOOD INSURANCE RATE MAP INFORMATION

Community # 455418 Map & Panel # 45019C 0538 Suffix J
Firm Index Date NOV. 17, 2004

ELEVATION INFORMATION

Required Base Flood Elevation (BFE) 15 Ft.
Finished first floor 18.76 Ft.
Bottom of lowest horizontal structural member 17.14 Ft.
Elevation of slab below Base Flood Elevation 9.5 Ft.
Lowest Elevation of mechanical/electrical equipment 16.71 Ft.
Elevation of lowest adjacent grade 9.3 Ft. Highest adjacent grade _____ Ft.
Elevation of existing grade (Measured at center of structure) 9.3 Ft. *
Elevation of highest roof ridge _____ Ft.
Datum used: NGVD29 X NGVD88 _____

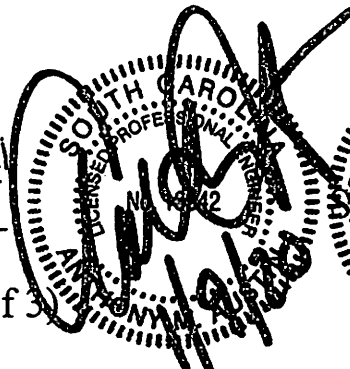
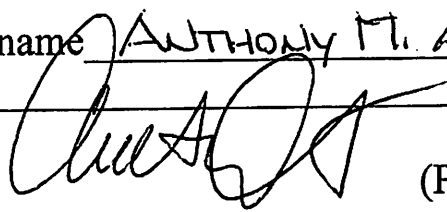
** This elevation must be determined before construction plans are submitted. Building official will determine existing grade using an existing topographic survey supplied by the applicant.*

STRUCTURAL INFORMATION

Building code used to develop and/or review structure 2015 IRC
Basic wind speed 149 MPH (IXT) Exposure category C

Seismic design category D2

Certifiers name ANTHONY M. AUSTIN
Signature _____



S.I. V-ZONE DESIGN CERTIFICATE
PRE-CONSTRUCTION _____ AS-BUILT ✓

Name of Property Owner Branko Domjanovic Permit # _____
Street Address 11616 POC AVE TMS # _____
City Sullivan's Island State SC Zip Code 29482

V-ZONE CERTIFICATION STATEMENT

NOTE: Certificate must be signed and sealed by a registered professional engineer or architect.

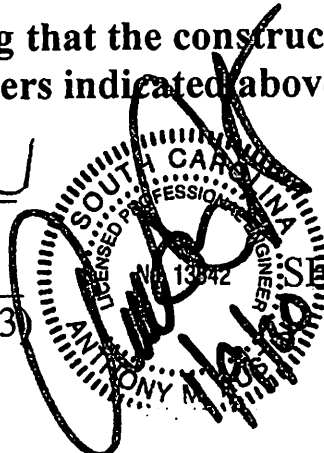
I certify that based upon development and/or review of structural design specifications and plans for construction including consideration of the hydrostatic, hydrodynamic, impact and wind loading involved, the design and methods of construction are in accordance with accepted standards of practice for meeting the following provisions:

1. The finished first floor and all mechanical equipment are elevated to or above the base flood elevation.
2. The pile or column foundation and structure is anchored to prevent flotation, or collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values are those associated with the base flood. Wind loading values are those required by the International Residential Code 2015 Edition as adopted by the Town of Sullivan's Island. The potential for scour has been considered for conditions associated with the base flood. The calculated scour depth for this property is _____ feet.

For "As Built" certifications, I am certifying that the construction has been done in accordance with the design parameters indicated above.

Certifiers Name ANTHONY M. AUSTIN

Signature *[Handwritten Signature]*



S.I. V-ZONE BREAKAWAY WALL CERTIFICATION
PRE-CONSTRUCTION _____ AS-BUILT ✓

Name of Property Owner Bramko Damjanovic Permit # _____
Street Address 16116 Poe Ave TMS # _____
City Sullivan Island State SC Zip Code 29482

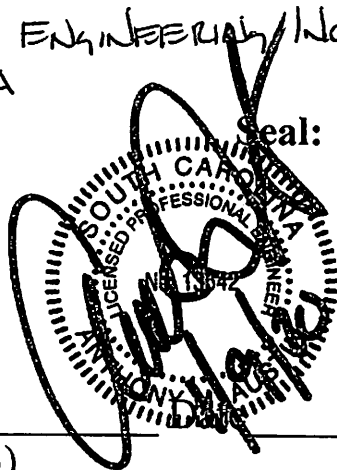
BREAKAWAY WALL CERTIFICATION STATEMENT

I certify that I have developed or reviewed the design, plans and specifications for construction of the breakaway walls for the structure noted above. The design and methods of construction are in accordance with meeting the accepted standards of practice with the following provisions:

1. Breakaway walls have a design safe loading resistance of not less than 20 lbs. and no more than 30 lbs./sq ft
2. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood.
3. The elevated portion of the structure and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the combined effects of wind and water loads acting simultaneously on all building components, structural and non-structural. Wind loading values used shall be those stated in International Residential Code 2015 Edition. Water loading values shall be those associated with the base flood.

Certifier's Name: ANTHONY M. AUSTIN
Company Name SOUTHERN CONSULTING & ENGINEERING, Inc.
Certifier's Address 105 CENTRAL AVE 100-A
City GOOSE CREEK State SC Zip 29445
Zip Code 29445
Telephone (843) 718-2525
Email 2020@SCIEMAIL.COM
License # 13542

Signature _____
(Page 3 of 3)





BP0854266

PGS:

3



TOWN OF SULLIVAN'S ISLAND
NONCONVERSION AGREEMENT
FOR CERTAIN STRUCTURES IN THE FLOOD PLAIN

Whereas, BRANKO DAMJANOVIĆ is the owner of lot 5, Block 9 on a survey by SW SURVEYING recorded in the RMC office for having address 1616 POE AVENUE and TMS# 523-08-00-011. The owner of this property has been issued Permit # P19-0338 to construct, improve, or repair the property indicated above in the Town of Sullivan's Island, South Carolina; and

Whereas, the permitted building has the lowest floor elevated and/or the lowest structural member and all equipment servicing the building above the (*design flood elevation/ base flood elevation plus one (1) foot*), and the design and construction of the building meets current building code and flood damage prevention ordinance requirements; and

Whereas, as a condition of a Certificate of Occupancy, the owner must agree to not alter the building at a later date so as to violate the building code or flood damage prevention ordinance requirements; and

Whereas, the owner places these restrictions on its property for the benefit of the Town of Sullivan's Island and its residents; and

Now, therefore, the undersigned owner of said property hereby agrees to the following:

1. That the enclosed area below the lowest floor shall be used solely for parking of vehicles, limited storage, or access to the building and will never be used for human habitation without first becoming fully compliant with the flood damage prevention ordinance in effect at the time of conversion. An allowable use list is available from the Town of Sullivan's Island.
2. That all interior walls, ceilings, and floors below the (*design flood elevation/base flood elevation plus one (1) foot*) shall be unfinished or constructed of class four (4) or five (5) flood-resistant materials.
3. That mechanical, electrical, or plumbing devices that service the building shall not be installed below the (*design flood elevation/base flood elevation plus one (1) foot*) unless specifically approved and permitted by the floodplain administrator.
4. That the openings in the walls of the enclosed area below the lowest floor shall not be blocked, obstructed, or otherwise altered to reduce the size of the openings or restrict the automatic entry and exit of floodwater.
5. That any breakway wall will not be altered or obstructed by attaching electrical devices or wires, plumbing pipes, irrigation pipes, mechanical equipment or ductwork and any other item or fixture that would impede the breakway capacity of such wall.

6. That the owner and subsequent owners agree to allow a representative of the Town of Sullivan's Island on the premises to verify compliance with this agreement at least once a year. The Town representative will provide at least forty-eight (48) hours' notice of such visit and will provide prompt notice of any violations discovered.
7. These restrictions shall be covenants running with the land and shall be binding on the owners and their heirs, successors or assigns forever.
8. That this agreement shall be recorded with the deed to the above property so that subsequent owners are made aware of these restrictions, and the same may not be modified or cancelled except with the written consent of the Town of Sullivan's Island and recorded in the RMC office for Charleston County, South Carolina.

Town of Sullivan's Island Nonconversion Agreement

ADDRESS: 1616 POE AVENUE TMS#: 523-08-00-011

WITNESS the Grantor's hand(s) and seal(s) this 14 day of January, 2020

SIGNED, sealed and delivered in the presence of:

[Signature]
 (WITNESS #1)
[Signature]
 (WITNESS #1)

BRANKO DAMJANOVIC
 Name: (property owner)
Branko Damjanovic
 Name: (property owner)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 16 day of January, 2020 by The Grantor, who, executed the within written agreement and is a person known to me.

[Signature]
 Notary Public for South Carolina
 My Commission Expires: ABIGAIL PAULUS

This space is reserved for deed Commission Expires 12/11/2025

Definition of "lowest floor"- the top of the slab if concrete slab construction or top of wood flooring if wood framing construction of all interior portions of a building.

NOTE: For V-Zone construction, lowest floor is the bottom of lowest horizontal supporting member.

1. Electric meters should be located at the highest elevation possible to accomplish the requirement of "minimizing or eliminating flood damage". And still meet the utility company's requirement to service the meter. See Electrical Requirements and suggestions.
2. If breakaway walls are utilized for enclosure, the answer is "yes". All materials below base flood elevation must be treated lumber or Class 4 or 5 materials.
- 2A Two hundred (200) square foot maximum. Must have venting no more than twelve (12) inches from grade. Venting must equal one (1) square inch for every square foot of floor area minimum two hundred (200) square inches, Minimum two (2) vents on opposite walls.
- 2B No plumbing, electrical or mechanical equipment or lines may be attached to breakaway walls. Exterior showers and hose bibs below BFE must have cutoffs above BFE.

I have read the above and agree to abide by these restrictions
Pertaining to the Town of Sullivan's Island Flood Damage
Prevention Ordinance.

OWNER: (Finished Construction) BRAUNO DAN DANOVIC

Contractor: (Pre Construction) _____

STREET ADDRESS: 1616 POE AVENUE SI 29482

DATE: 1/6/20

Special Flood Hazard Areas Zone V-1 thru 30

	<u>YES</u>	<u>NO</u>
1) Garage, residential (see note 2B)	<u> X </u>	<u> </u>
2) Unfinished storage (see note 2,2A&2B)	<u> X </u>	<u> </u>
3) Breakaway walls for enclosing items #1	<u> X </u>	<u> </u>
4) Flood proof walls (non-breakaway)	<u> </u>	<u> X </u>
5) Electrical outlets (see note 2B) (SEE Electrical Requirements)	<u> </u>	<u> X </u>
6) Electrical meters (see note 1 & 2B) (see Electrical Requirements)	<u> X </u>	<u> </u>
7) Automatic washer	<u> </u>	<u> X </u>
8) Dryers	<u> </u>	<u> X </u>
9) Air conditioning equipment & Ductwork	<u> </u>	<u> X </u>
10) Heating Equipment & Ductwork	<u> </u>	<u> X </u>
11) Water heater or tank	<u> </u>	<u> X </u>
12) A second refrigerator in storage areas or garage for cold storage	<u> </u>	<u> X </u>
13) Bathrooms, including sinks & showers	<u> </u>	<u> X </u>
14) Central vacuums	<u> </u>	<u> X </u>
15) Elevator Equipment and Hydraulic Tanks	<u> </u>	<u> X </u>



EARTHSOURCE ENGINEERING

CIVIL ENGINEERING | SITE PLANNING | LANDSCAPE DESIGN | LEED DESIGN

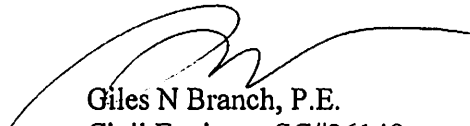
January 20, 2020

Town Staff
Sullivan's Island

Re: **Engineer's Certification**
1616 Poe Ave, Sullivans Island SC

Please accept this as my certification for the above referenced project in the Town's jurisdiction. The storm system including the roof collection and subsurface french drains appear to have been completed and constructed to provide necessary storage to meet the Town and SCDHEC stormwater ordinances for the residential construction. It is my opinion that the contractor used acceptable construction practices and any deviations between the system as constructed and the original design plans and specifications do not appear to impact capacity or capability of the system. If there is any further information needed from our office, please let me know.

Respectfully Submitted,

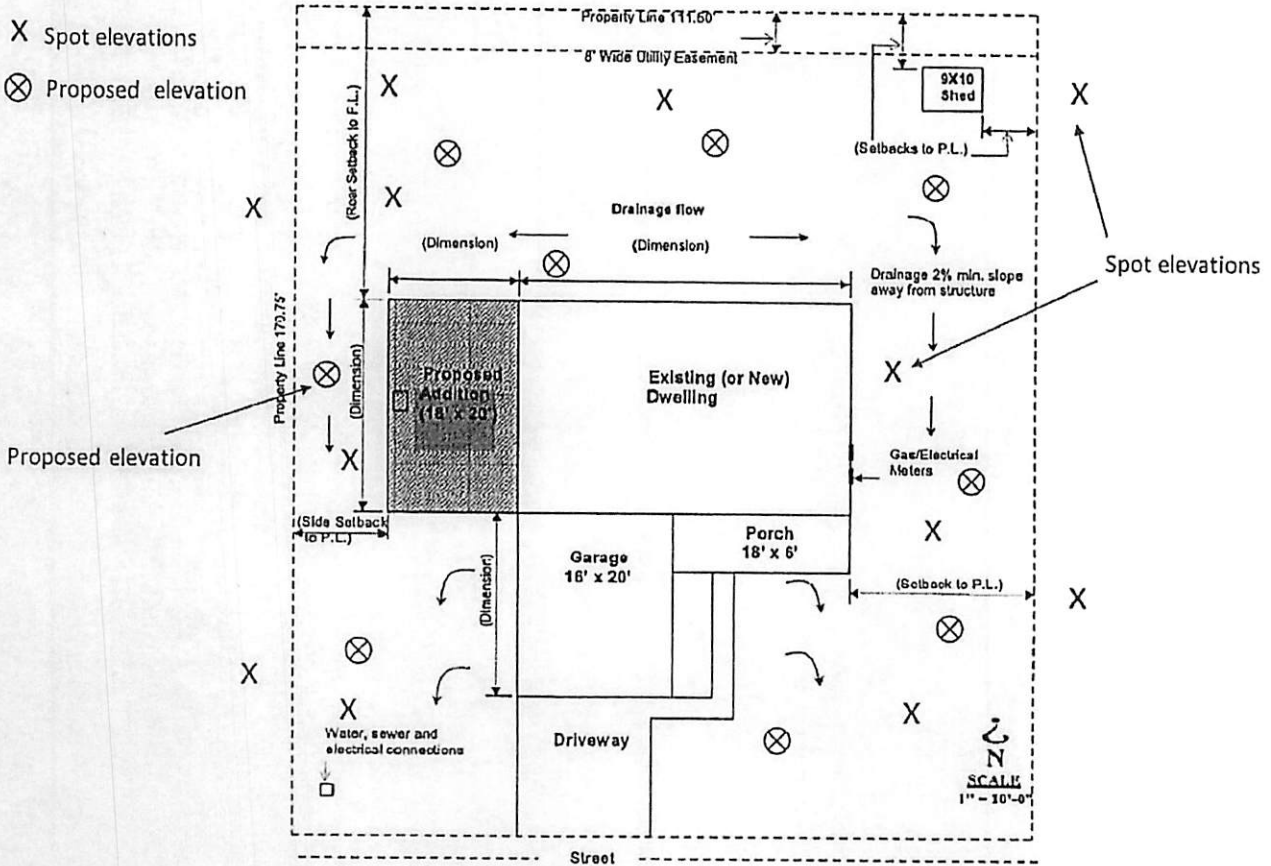


Giles N Branch, P.E.
Civil Engineer-SC#26148



SITE PLAN
(Sample Only)

- X Spot elevations
- ⊗ Proposed elevation



Owner's Name Branko Damjanovic Building Permit # P19-0338
 Project Address 1616 Poe Avenue Sullivan's Island, SC TMS# 523-08-00-011
 Contractor Name ALKA Construction Inc. 29482

Under my credentials as a licensed professional engineer, or SC registered landscape architect, I hereby certify that the stormwater control measures, and the final grading for this project, will be completed in accordance with the plan and specifications detailed. I further certify that a post-development as-built survey will confirm compliance with the approved stormwater management plan prior to receiving a *Certificate of Completion* or prior to the issuance of a *Certificate of Occupancy*.

Property Owner's Signature [Signature] Date: 1/24/2020

Professional Engineer/ RLA Signature: [Signature] Giles M. Brand Date: May 2019

Professional Engineer/ RLA Signature: [Signature] Giles M. Brand Completion Date: 1.1.2020

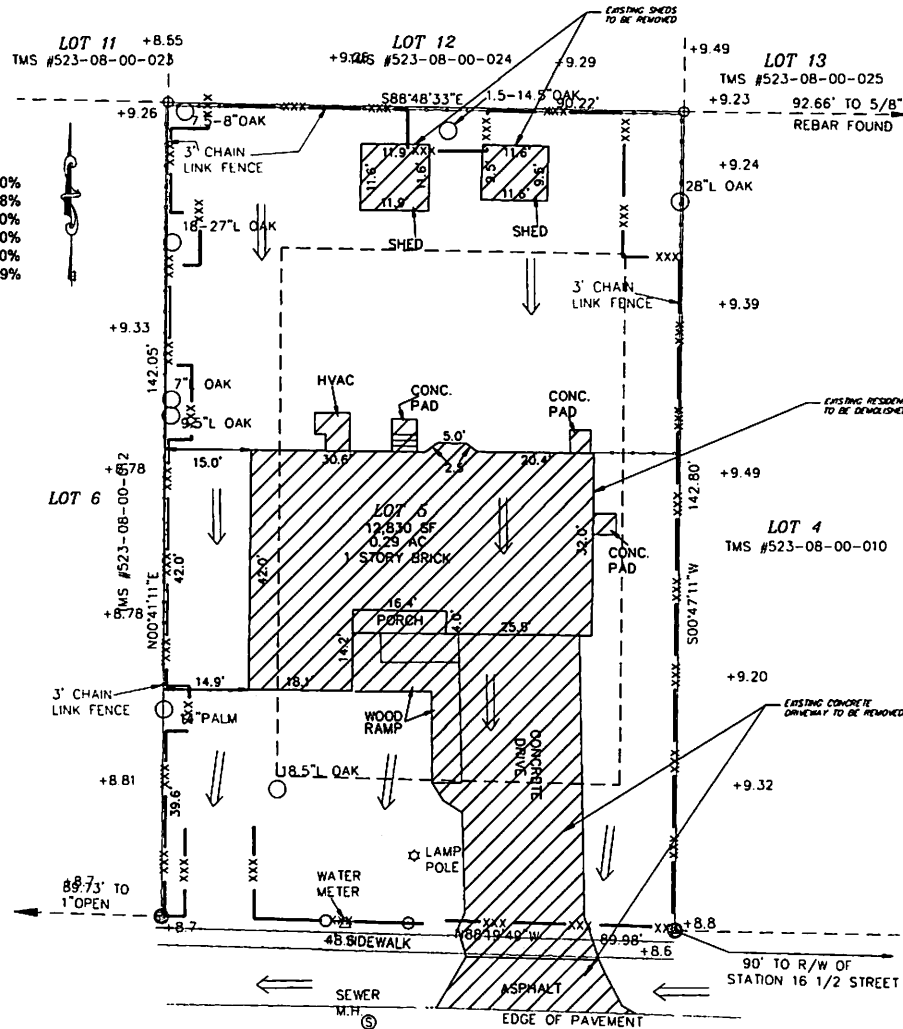
LEGEND:

- EXISTING PROPERTY LINES
- EXISTING ADJACENT PROPERTY
- x - EXISTING FENCE LINE
- PROPOSED FENCE
- EXISTING SWALE
- PROPOSED STORM DRAIN
- 5 PROPOSED CONTOURS
- /// PROPOSED DEMOLITION
- ← EXISTING DRAINAGE FLOW
- SILT FENCE

EXISTING AREA CALCULATIONS:

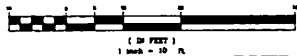
LOT SIZE= 12,830 SF
 BUILDING COVERAGE= 2292 SF
 PORCH COVERAGE= 65 SF
 DECKING AND STEP COVERAGE= 288 SF
 DRIVEWAY COVERAGE= 1070 SF
 TOTAL COVERAGE= 3715 SF

100%
 18%
 0.50%
 2.20%
 8.30%
 29%



SITE DATA
 LOT 622E (TOTAL) 0.29 ACRES
 12,830 SQ-FT
 ZONING RS- SINGLE FAMILY RESIDENTIAL
 TMS #: 523-08-00-011
 FLOOD ZONE VE
 FROM PANEL# 45019C 0533J
 NOVEMBER 17, 2004

GRAPHIC SCALE



EARTHSOURCE
 ENGINEERING
 4400 Park Road
 Raleigh, NC 27604
 www.earthsource.com



1616 POE AVE
RESIDENCE
 SOUTH CAROLINA
 EXISTING CONDITIONS

NO.	DATE	REVISIONS
1	05-17-19	PER BUILDING DEPT (S.I.)

DRAWN: WLS
 CHECKED: CMB
 DATE: 05-17-19
 JOB NO:
19-140

PERMIT REVIEW DOCUMENTS
 SHEET NUMBER
C-100



EXHIBIT #3

PARTIES and JURISDICTION

1. Petitioner/Appellant John Doe, full-time resident and property owner in the affected Historic District, whose land in the vicinity is subject to a decision by the above-named DRB and who has a substantial interest in the decision, is adversely impacted by the DRB's approval of the application for 1616 Poe Avenue by oral vote on May 15, 2019.
2. Defendant DRB is an appointed board of architectural review for the Town of Sullivans Island, as defined in South Carolina Code § 6-29-900, et seq., South Carolina Code of Laws, also known as the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and was created pursuant to that legislation.
3. Defendant Alka Construction Co. is, upon information and belief, a South Carolina corporation, and is a necessary party to this action.
4. Defendant Svjetlana Bilic Damjanovic is, upon information and belief, a managing partner and principal of Alka Construction Co., and is a necessary party to this action.
5. Defendant Branko Damjanovic is, upon information and belief, a principal of Alka Construction Co., the owner of 1616 Poe Avenue, and a necessary party to this action.
6. Kenneth Craft, III, is, upon information and belief, architect and principal of Craft Design Studio and is a necessary party to this action.
7. The property at 1616 Poe Avenue on Sullivans Island is located in the Historic District and covers approximately one quarter acre in a block of five quarter acre lots. Four out of the five properties have ground floor residential square footage. Poe Avenue runs parallel to Atlantic Avenue and the property at 1616 Poe Avenue is in the fourth row from the ocean.
8. This Court has personal jurisdiction over the parties due to their location or activities in Charleston County.
9. Venue is proper as the real property involved is situated within Charleston County, the DRB is an appointed board of architectural review for the Town of Sullivans Island, in Charleston County, and the Appellant is a full-time resident and property owner in Charleston County. On information and belief, the individual defendants reside in Charleston County and Alka Construction Co. is, upon information and belief, a South Carolina corporation doing business in Charleston County.
10. This Court has subject matter jurisdiction of this action pursuant to South Carolina Code of Laws, Section 6-29-900, 1976, as amended, and other laws.

STATEMENT OF FACTS

11. Kenneth Craft III d/b/a Craft Design Studio, architect, applied for approval of unnecessary variances for plans for new construction at 1616 Poe Avenue, Sullivans Island, SC.

12. The 1616 Poe Avenue application has come before the DRB four times, specifically in December 2018, March 2019, April 2019, and most recently on May 15, 2019, as set forth below and throughout the petition.

13. Many members of the community attended the meetings in opposition and spoke against the application for reasons including inconsistency with the Comprehensive Land Use Plan, incompatibility with the Historic District and surrounding community in a flood zone, violations of the Zoning Ordinances (ZO's), failure to address stormwater drainage and flooding issues with hard rain events, and public health and safety including flooding of roads with hard rain events and environmental concerns.

14. In December 2018, the DRB denied the application because of, including but not limited to, violations of the Historic District standards in a flood zone, violations of the ZO's, and adverse impact on the neighboring properties and community regarding mass, height, scale, character, and incompatibility.

15. At the March 2019 meeting of the DRB, members of the community attended and presented opposition, including but not limited to, the applicant failed to comply with legal notice by failing to provide a complete application and publishing on the Town's website an incomplete application, thereby denying full and fair notice to the community and the public at large. The application itself provides that "incomplete submittals ... will not be part of the meeting agenda." Further, the applicant, who is the architect, failed to certify the veracity of the application. After considering objections of property owners behind, in front, to either side, contiguous, surrounding, in the vicinity, and in the community, conceptual approval was given with express directions for corrections to the plans. While some minor changes were made thereafter, the DRB's recommendations were materially and substantially ignored. Members of the DRB erroneously stated they believed they could not deny the application which is error of material fact and law. That approval was based on error of law. Moreover, failure to comply with legal notice and/or certification invalidates the approval.

16. That March 2019 DRB meeting began an hour earlier than usual and continued late into the evening until one board member jumped up and walked out stating, "I can't take this anymore." On information and belief, in the history of the DRB over 15 years or more, there has never been a board member who walked out stating, "I can't take this anymore." The integrity of the DRB application process is threatened when applications cannot be given the thorough review and attention each application deserves due to inadequate/unreasonable time constraints. Objection to the "marathon" session was

placed on the record and supports request for rehearing which was unreasonably denied. That objection also supports request herein for remand.

17. In April 2019, members of the community timely submitted information to the DRB prior to the April meeting; that information was not forwarded to the DRB in the usual and customary manner as had been done prior to previous meetings on 1616 Poe Avenue. It is unclear why. Members of the community in attendance were not aware of this material fact until after the meeting. As such, the decision of the DRB was uninformed because the DRB and the community were deprived of material information and opposition at a critical time which could have and should have led to a different result and denial. Despite notice the application was incomplete, the applicant once again failed to provide a complete application. Many members of the community mistakenly believed that the applicant had incorporated the DRB's requested corrections and were in compliance with the ZO's in good faith. Because the applicant published an incomplete and inconsistent application, many members of the community were misled. Failure to comply with legal notice invalidates the decision.

18. On May 15, 2019, members of the community appeared and information was presented to the DRB in opposition. It was explained that because the previous information submitted to the DRB in advance of the April meeting never made it to the DRB without explanation, the copy of additional new information was submitted to each member at the meeting. This time a member of the DRB stated he was dismissing and not considering the community's material opposition because it was not submitted in advance. Under these circumstances, it was arbitrary and/or unreasonable to ignore the neighborhood's and the community's meritorious concerns and proffered evidence. Moreover, lack of transparency and failing to submit property owners' documents to the DRB is unreasonable/arbitrary. Failure to provide advance notice that opposition would be wholly dismissed if not submitted in advance is unreasonable and sets a trap for the unwary. The DRB is negatively reinforcing community input and applying rules in an arbitrary manner without prior notice; objection is hereby entered which supports request for remand. Last minute submissions by applicants have been accepted, considered, and even encouraged while submissions by members of the community have been cavalierly dismissed in violation of equal protection for members of the community and in violation of notice requirements. Appellant asserts prejudicial error.

19. At the May 15, 2019, DRB meeting, a neighboring property owner who had spoken at a previous meeting was out-of-state. His position was entered into the record:

My wife and I are looking forward to meeting our new neighbors. Our hopes and expectation are they respect the setback and height restrictions that are in place and our expectation of the DRB is they do their part to enforce the guidelines so we maintain our great island. My main points are as follows...

i. There are setback requirements in place for a reason. If the homeowner wants to achieve a certain size house, then the DRB should deny their request and encourage

them to find a lot on the island that suits their square footage requirements. There are other lots on the island.

ii. What is the real reason why the homeowners need the variance? The only logical reason I can see is they want more space. If it's not for space purposes, then they should design something in accordance with the building guidelines. It's that simple. If it is for space, the DRB should deny their request and encourage the property owners to obtain a larger property on the island to build their ideal home.

iii. What are the guiding principles that the DRB uses to determine when a setback or height restriction should be granted versus denied? What are the extenuating circumstance for this homeowner where they need to go beyond the setback and height restrictions? Knowing this would be beneficial. I have not heard or read anything that makes this a unique situation. This looks to be a situation where the homeowner is doing this for either (a) an investment / future profit potential via a sale or (b) trying to get the best deal possible by purchasing a smaller lot and building a larger home or (c) disregarding the rules and guidelines that have been established to maintain the historic and consistency of our unique island. If any of these is the case, then the homeowner should be denied and encouraged to re-submit their plans once they have obtained a lot that can support their larger design where setback or height exceptions aren't needed.

iv. Lastly, I'm not a lawyer however does the Town open itself up to potential lawsuits by approving some exceptions and denying others under similar circumstances? It is my understanding that some homeowners have been denied variances similar to this, so if this is approved, are we at at risk?

20. On May 15, 2019, one or more members of the DRB expressed the erroneous belief that the members of the DRB were compelled by law to approve the subject application before it; and such belief was an error of law. The DRB did not adequately consider the requirements of the Historic District standards and the DRB was denied material information timely submitted at a critical point prior to preliminary approval and again prior to final approval. As a result, the DRB was denied the opportunity to adequately consider the best interests of the community at large. Multiple members of the DRB expressed concerns. It was noted for the record there was "a lot of opposition" to this application. It was also noted by members of the DRB for the record that approval of the application for 1616 Poe Avenue would forever mar the Historic District, the mass, scale, density, character, and compatibility, and establish bad precedent out of character for the existing Historic District neighborhood. All done over the timely objections of and to the extreme prejudice of the adversely affected property owners, including those behind, in front, to either side, contiguous, neighboring, and surrounding properties. Some members of the DRB expressed the erroneous belief that they were technically bound to approve the application and that members of the DRB were compelled by law to approve the application before it, thereby changing the Historic District neighborhood in perpetuity on the applicant's incomplete/inconsistent application. The Appellant asserts error of law.

21. Over objections by adjacent, contiguous, and surrounding property owners, despite objections to yet another incomplete application, over objections to failure to comply with notice requirements, and over objections to failure to comply with Historic District standards and the ZO's, the incomplete, inconsistent application was approved. An accurate and complete application creates a record for future property owners, for the Town, and for future reference; that consideration alone supports remand which is hereby requested. After timely request for rehearing was unreasonably denied, timely appeal followed.

22. Jury trial is demanded on taking claims.

STANDARD OF REVIEW

23. The standard of review for statutory interpretation is as follows. "An issue regarding statutory interpretation is a question of law." *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017) (quoting *Univ. of S. California v. Moran*, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005)). As to questions of law, this court's standard of review is de novo. *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009).

24. The standard of review for declaratory judgment is as follows. "The decision to grant a declaratory judgment is a matter [that] rests in the sound discretion of the trial court and will not be disturbed absent a clear showing of abuse."⁴ *Eargle v. Horry Cty.*, 344 S.C. 449, 453, 545 S.E.2d 276, 279 (2001) (quoting *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 319 S.C. 388, 390, 461 S.E.2d 819, 820 (1995)). "An abuse of discretion occurs [when] the trial court is controlled by an error of law or [when] the [c]ourt's order is based on factual conclusions without evidentiary support." *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 521 (2000). *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Planning Comm'n* (S.C. App., 2019)

25. The Court may apply the same standard to appeal of DRB decisions that it would apply to Zoning Board decisions. "A decision of a zoning board will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the board acts arbitrarily or unreasonably, or where, in general, the board has abused its discretion." *Peterson Outdoor Advertising v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997), cited in *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 173-74, 656 S.E.2d 346, 351 (2008) (applying Zoning Board standards). Further, "a decision of a municipal [Z]oning Board will be overturned if it is arbitrary, capricious,

has no reasonable relation to a lawful purpose, or if the board has abused its discretion.” *Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

26. Although a review Court gives deference to those applying local zoning ordinances, ordinances are subject to “a broader and more independent review . . . when the issue concerns the construction of an ordinance.” *Eagle Container LLC v. County of Newberry*, 379 S.C. 564, 568 666 S.E.2d 892 894 (2008), cited in *Mikell v. County of Charleston*, 386 S.E.2d 326, 687 S.E.2d 326, 329 ((2009).

GROUND FOR APPEAL

I. Error of Law

27. The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

28. On information and belief, the applicant failed to remit all or part of the required application fee, which is jurisdictional. Accordingly, without the required fees paid in full prior to the hearing, there is no jurisdiction and the decision is invalid.

29. As a threshold matter, the applicant is required to submit a complete application which was not done. The application itself states incomplete submittals **WILL NOT BE PART OF THE MEETING AGENDA**. As such, no valid decision can be made on an incomplete application. An incomplete application is not a mere technicality because, including but not limited to, it provides notice to members of the DRB and the public and it creates an accurate record for future reference.

30. Moreover, notice requirements were not met because, including but not limited to, the applicant published an incomplete application on the Town’s website which is not fair notice to adjacent and neighboring property owners, to the community, or to the public at large.

31. It was error of law for the DRB to deny Appellant’s timely request for rehearing. Granting constituents the right to request rehearing is in the best interests of the Town, is consistent with the letter and spirit of the Zoning Ordinances (ZO’s), and assists the intended beneficiaries of the ZO’s, i.e., members of the community. The right to request rehearing should not be limited to developers especially where the DRB was denied material information submitted by members of the community. Remand is hereby requested.

32. Significantly and materially, the subject property located at 1616 Poe Avenue, Sullivans Island (SI), SC, is in the Historic District with more stringent guidelines, requirements, and strict compliance under the Historic District standards and zoning

ordinances in effect. Regrettably, there is material and/or substantial non-compliance to the extreme prejudice of the Historic District, adjacent and neighboring property owners, and the community of Sullivans Island, if not locals, the tourist industry, and the State.

33. Adjacent and neighboring full-time residents, including the petitioner, have a substantial interest in and are adversely affected by non-compliance with, including but not limited to, the Historic District standards, the comprehensive plan, and the zoning ordinances.

34. The applicant requested variances unnecessarily. Requirements for the requested variances have not been met, and there are no obvious obstacles to respecting the Town's zoning ordinances, thoroughly researched, vetted, and voted. Variances beget variances.

35. Moreover, the anticipated change from V to AE Flood Zone has not been sufficiently considered, if at all.

36. The developers and/or their investors refused the Board's reasonable request for the developers to meet with members of the community.

37. The applicant wrongfully characterized the Historic District community as a teardown and for the record, the last application in the neighborhood was not a teardown.

38. The decision of the DRB was based on an error of law, in that some members of the DRB stated they believed they had no legal basis on which they could deny the plans because, including but not limited to, the applicant had been given approval for non-compliance with the Zoning Ordinances (ZO) by the Zoning Administrator (ZA) or the staff and/or the Zoning Administrator (ZA) misconstrued/misrepresented that all the technical requisites of the ZO had been met. The record reflects the requirements of the ZO had not been met, including but not limited to, the requirements for legal notice and the requirements for a complete application prior to the public hearing. The plaintiff is prejudiced thereby.

39. The DRB is the appeal mechanism for ZA and/or staff decisions. Clearly, if the DRB has authority to hear and act on an appeal, it has authority to disagree with a ZA and/or staff decision. The DRB has authority to approve or deny actions or decisions made by the ZA and/or staff.

40. Contrary to the mistaken belief of some or all of the members, the DRB does have authority to deny plans that they believe are not in the best interests of the community.

41. The Comprehensive Land Use Plan. The DRB has authority to deny applications.

a. The Charleston County Comprehensive Land Use Plan is mandated by South Carolina Code of Laws Section 6-29-510, et. seq. and provides that, "All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the

future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners.” S. C. Code Section 6-29-510(E).

b. The Comprehensive Plan is adopted by Ordinance and mandated by State law, as S.C. Code Ann. 6-29-510 which provides “the local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re-evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its jurisdiction”. Pursuant to state law, the DRB has every right to consider the applicable portions of the Comprehensive Plan while deciding matters before it. The Comprehensive Plan is a policy document which contains, including but not limited to, density considerations.

c. The 1616 Poe Avenue property and Appellant’s property are located in the Historic District.

d. All of the area concerned with this appeal is designated a V Flood Zone, transitioning to AE.

e. The density is the requirement for maintaining the character of the area and defining potential impacts on the infrastructure. Allowable density is defined by the citizens (property owners) in a zoned area using a legally approved process. The applicant failed to meet the requirements for the requested variances which adversely affect density and, therefore, should be denied.

f. The Plan is a tool to promote and maintain future growth and improve the quality of life for all residents of Charleston County, and serves as a reference guide and a decision making tool for local government officials.

g. The DRB has, in fact, ignored guidelines which would have and should have led to a different outcome with denial of unnecessary variances. Variances beget variances.

42. It was clear from more than one statement from members of the DRB during the hearings that they desired to deny approval of the application, but believed they were compelled by law to approve it; and such belief was an error of law.

43. Moreover, applicants knowingly made material misrepresentations and/or material omissions which were not known until after the approval and which could have and would have led to a different result. The decision is based on error of material fact and/or law and should be reversed.

44. Appellant requests that this Court remand the decision to the DRB with instructions that the DRB can and should consider the policies in the comprehensive plan, Historic District standards, and the ZO’s as guidelines for decisions, and the DRB is not bound by the recommendations of the Zoning Administrator (ZA) and/or staff, particularly given that the Applicant has not met the requirements for the variances he requested.

II. Abuse of Discretion

45. The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

46. The decision of the DRB giving preliminary approval of the application for 1616 Poe Avenue was an abuse of discretion.

47. The members of the audience in opposition were clearly within the description of “residents of Sullivans Island” for whom the Plan is intended to preserve and promote the quality of life; the developer property owner and architect are registered S.C. corporations. The residents of Charleston County described for the Commission the detriment to their “public health, safety, economy, good order, appearance, convenience, morals, and general welfare” that the application would cause, as stated above, yet the DRB seemingly failed to give consideration to the impact on the Sullivans Island residents behind, in front, to either side, contiguous, and surrounding 1616 Poe Avenue. If the future residents are considered in absentia, their public safety is in jeopardy, including but not limited to, based upon testimony given at the hearings regarding Historic District standards in a flood zone with extreme stormwater drainage issues adversely affecting the adjacent and surrounding full-time residential neighborhood and property owners as well as plaintiff’s ingress and egress and motor vehicle access to garage, home, and property along with impaired and/or unsafe navigation of and impaired evacuation via streets, roads, and thoroughfares on the island which flood when there is a hard rain.

48. The DRB ignored a most important part of the Historic District standards. The application is incomplete, including but not limited to, regarding compliance with the Historic District standards. The applicant has not met the requirements for Historic District standards and is materially non-compliant. The DRB failed to comply with the state statute for “the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners.”

49. Land development regulations were authorized by state government, among other reasons, “to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.” SC Code 6-29-1120(5), 1976, as amended. Aerial maps shown by the applicant and pointed out by statements of the community demonstrate that this application is out of harmony and incompatible with the existing Historic District, with the smaller lot size, and with the applicable ZO. The applicant has failed to meet the requirements for the requested variances.

i. Evidence was provided that clearly indicated a density and usage out of harmony with the Historic District.

ii. Aerial maps and testimony demonstrated the existing Historic District in a flood zone. Four out of five properties on that block of smaller lot sizes have ground floor living

space; the application is not in harmony with either the comprehensive plan or the current usage. Testimony included adverse impact on the plaintiff and other full-time residents and surrounding property owners resulting in wrongful regulatory taking.

iii. A professional engineer has concluded the following:

1. Impermissible alteration of the historical drainage patterns, including but not limited to, direction and/or flow rate will adversely impact neighboring properties in a flood zone. The neighbors' request for evaluation of the drainage issues fell on deaf ears though such evaluations and certifications have been routinely requested and granted to others.
2. Inadequate stormwater management and excess stormwater discharge in a flood zone causes adverse effects on, including but not limited to, the water supply, water quality, and environmental concerns.
3. It was pointed out that because of the slope, any excess stormwater runoff would exacerbate existing flooding with hard rains, including but not limited to, threatening existing single story, ground floor living space and homes in close proximity and in the vicinity where all are in a flood zone.

50. The application wrongfully claims the established neighborhood of full-time residents is a tear-down. For the record, the last application was not a tear-down and was compatible with the existing scale and character.

51. In failing to, including but not limited to, require a complete application with adequate notice for the benefit of interested parties, the DRB ignored the comprehensive plans, reference guides, and standards for the Historic District in a flood zone, and approved an incompatible application which is inconsistent with Historic District standards, and thereby abused its discretion.

III. Arbitrary

52. The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

53. The decision of the DRB in ignoring concerns voiced by property owners behind, in front, on either side, contiguous, surrounding, and in the vicinity of 1616 Poe Avenue ignores the comprehensive plan, Historic District standards in a flood zone, and the ZO's and guidelines and, therefore, is arbitrary.

54. A previous application had been denied. With the next application, the DRB requested changes to mass, size, scale, character, and compatibility. The approval of the incomplete May 15, 2019, application without substantive measures to bring mass, height, scale, character, and compatibility into compliance, all with sustained community opposition, was arbitrary.

55. One or more members of the DRB expressed the false belief and wrongfully stated that the DRB could not or should not deny the application in order to comply with the comprehensive plan, Historic District standards, and/or ZO's.

56. The application as approved is internally inconsistent, incomplete, and includes attributes and elements which were previously denied. The DRB's denial of the neighbors' reasonable request for a complete application was arbitrary and in violation of governing law.

57. A community member noted that the DRB's denial of another applicant's variance requests while granting the developer's unsubstantiated and unnecessary variance requests is arbitrary and contrary to applicable law.

58. It was arbitrary for the DRB to deny Appellant's timely request for rehearing. Granting constituents the right to request rehearing is in the best interests of the Town, is consistent with the letter and spirit of the Zoning Ordinances (ZO's), and assists the intended beneficiaries of the ZO's, i.e., members of the community. The right to request rehearing should not be limited to developers especially where the DRB was denied material information submitted by members of the community which could have and would have led to a different result. Remand is hereby requested.

TAKING CLAIMS

59. The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

60. Jury trial is demanded on, including but not limited to, taking claims for actual, special, compensatory, punitive, and other damages against the above-named Respondents as the trier of fact may deem just and proper.

REQUEST FOR DECLARATORY RELIEF

61. The Appellant, complaining of the defendants, reiterates all of the allegations set forth in the petition as if fully repeated herein.

62. The Appellant has standing to request a Declaratory Judgment pursuant to S. C. Code Section 15-53-10 et seq. based upon the full-time resident's interests which are adversely affected by the decision of the DRB.

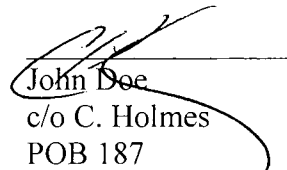
63. The Appellant has standing under the Declaratory Judgment Act to seek a uniform standard for the DRB's application of the comprehensive plan, Historic District standards, ZO's, and applicable law, including but not limited to, design standards under state law for, including but not limited to, roadways.

64. The Appellant requests that this Court make a finding that the DRB has authority to and should take into consideration the comprehensive plan, the Historic District standards, the purposes and intent of the land development regulations, and the ZO's, all as adopted by the governing bodies, when making decisions regarding applications to the DRB. Moreover, the Appellant requests that this Court make a finding that the DRB is not bound to "rubber stamp" the decisions of the ZA and/or staff, but rather to act in the best interests of the Historic District, residents, and community to assure, in general, the prudent and judicious development of the Town.

WHEREFORE, your Appellant requests that this Court:

- a. issue its order reversing the decision of the DRB approving the 1616 Poe Avenue application or in the alternative, issue order for remand,
- b. issue a declaratory judgment providing relief requested,
- c. issue order for good faith mediation,
- d. jury trial is demanded on, including but not limited to, taking claims for actual, special, compensatory, punitive, and other damages against the above-named respondents as the trier of fact may deem just and proper, and
- e. for costs of this action and such other and further relief as this Court finds just and appropriate.

Respectfully submitted,


John Doe
c/o C. Holmes
POB 187
S.I., SC 29482-0187
843.883.3010

Sullivans Island, South Carolina

Dated 6/2/19

2 April 2019

Design Review Board (DRB)
Town of Sullivans Island
Sullivans Island Town Hall
2056 Middle Street
Sullivans Island, SC 29482

Re: 1616 Poe Avenue

Dear Mr. Chairman and Honorable Members of the DRB:

Thank you for your kind deliberation of this worthwhile request. We, the residents and property owners living in the surrounding area, respectfully ask this request be entered into the record when you consider the pending requests for the above property. We believe there is precedent for the DRB acknowledging the existing, more modest scale for houses in our neighborhood. We request that any decisions made with regards to proposed new construction on the above property:

- i. respect the stated zoning standards without authorizing changes to accommodate increase;
- ii. require strict adherence to existing zoning standards regarding the adding of additional fill to any properties; and
- iii. require maintenance of the historical drainage patterns in all respects.

If you have any questions or would like for a representative from the neighborhood to appear and testify in person, please contact us. Again, thank you for your consideration. With best personal regards, we remain

Yours very truly,



2002 Middle Street - built 1885



2673 Atlantic Avenue - built 1889

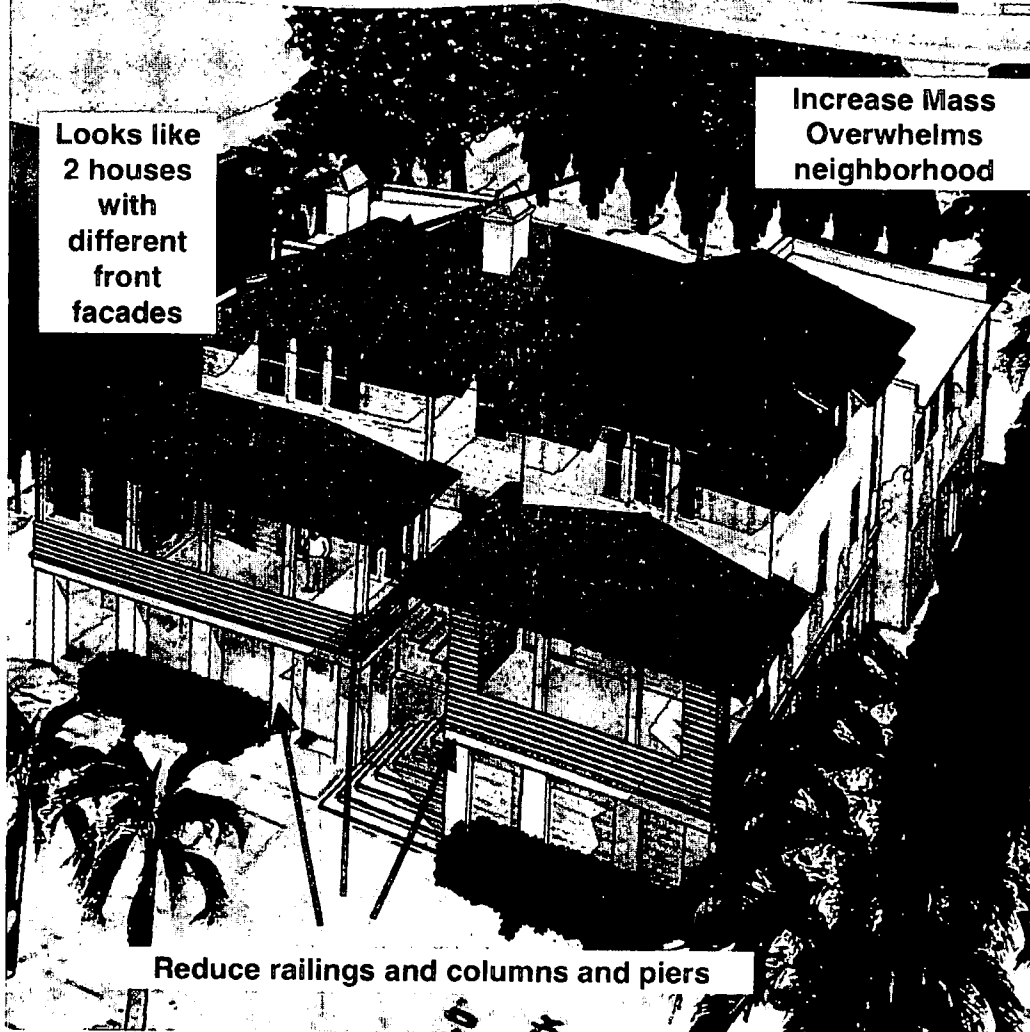
The design for 1616 Poe does not meet these DRB standards and other DRB guidelines.

Sec. 21-111. Standards of Neighborhood Compatibility

Where this Ordinance grants the Design Review Board discretion to modify a Zoning Standard or a Design Standard, the Board shall determine whether or not the proposed modification is compatible with the neighborhood. In making this determination the Board shall consider, with reference to adjoining lots, lots facing across the street, and lots in the immediate vicinity:

- A. The pattern of setback, foundation elevations and building heights;
- B. The massing and orientation of structures;
- C. Fenestration (windows) and doorway spacing and alignment patterns;
- D. The placement and use of porches, decks and patios;
- E. The placement and alignment of driveways;
- F. The treatment of front and side facades;
- G. Where appropriate, the types of roofs, the roof pitches, and other aspects of roof design;
- H. Where appropriate, distinctive architectural styles that characterize a street or neighborhood; and
- I. Such other factors as the Board may consider relevant to defining the character of the neighborhood.

Does not meet the minimum of standards: A, B, D, F, G, H,



Looks like
2 houses
with
different
front
facades

Increase Mass
Overwhelms
neighborhood

Reduce railings and columns and piers

G. Does not meet standards of: Flat roofs, multiple roof styles, incongruous architectural styles, Side facades are not articulated

With all due respect this design needs to go back to the drawing board and we request the DRB to deny the application.

- (6) If the Design Review Board finds that the application is inconsistent with one or more of the Zoning Ordinance Standards which it does not have the power to modify, or if the Design Review Board determines that a requested application does not meet the Standards of neighborhood Compatibility as described in Sec. 21-111, the Design Review Board shall
- (a) Deny the application accompanied by suggested changes that might be made to the application and/or variances that might be sought that would make the application more appropriate and consistent with the spirit of the Zoning Ordinance; or,
 - (b) ~~Approve~~ the application subject to a variance being granted by the Board of Zoning Appeals ~~modifying~~ the required standards.

Our neighborhood as stated before is more than happy to work with the applicant in achieving a great design for Sullivan's Island and our historic neighborhood.

EXHIBIT #4

ARTICLE XI. HP Historic Preservation Overlay District

Sec. 21-90. Statement of purpose and findings.

- A. The HP Historic Preservation Overlay District is designed to protect properties that have been determined architecturally, archaeologically, culturally or historically significant to the Town of Sullivan's Island, South Carolina. The Town Council finds that the historic, architectural, cultural, and aesthetic features of the Town represent valuable resources of the Town. Therefore, it is hereby declared that the purpose of this Article to be known as the HP Historic Preservation Overlay District shall be as follows:
- (1) To promote the designation of historic properties, landmarks, and contributing structures and the creation of historic overlay districts for the educational, cultural, economic and general welfare of the public;
 - (2) To preserve, protect and enhance those structures and area that reflect outstanding elements of the Town's cultural, architectural, historic or other heritage;
 - (3) To promote the Island's outstanding historic or architectural structures by providing civic pride on the history and accomplishment of the past;
 - (4) To promote the sound and orderly preservation of historic areas as a whole, and of the individual properties therein for the education, pleasure and enrichment of all citizens; and
 - (5) To enhance property values within historic areas.
- B. It is the Town of Sullivan's Island desire that by encouraging a general harmony of style, form, proportion and material between buildings of historic design and those of contemporary design, the Town's historic buildings and historic area will continue to be a distinctive aspect of the Town of Sullivan's Island and will serve as visible reminders of its significant historical and cultural heritage and that of the State of South Carolina.

Sec. 21-91. HP Overlay District applicability.

The HP Historic Preservation Overlay District is intended to be an overlay zoning district, and the regulations imposed by such district shall be in addition to the regulations of the underlying zoning district applicable to the subject Lot or area. All provisions of this Article, including the definitions contained therein shall be applicable to this district.

Sec. 21-92. Role of design review board.

- A. In accordance with SC Title 6, Chapter 29-870, local governments that enact a Zoning Ordinance which makes specific provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas, may provide for appointment of a board to oversee these responsibilities.
- B. The Design Review Board shall be responsible for oversight of the HP Historic Preservation Overlay District.
- C. The Design Review Board shall work with the Planning Commission and the Town Council to effect the creation and maintenance of HP Overlay Districts.

Sec. 21-93. Definitions.

For the purpose of this Article, the following terms shall have the meaning as indicated.

Board. The Design Review Board of the Town of Sullivan's Island.

Certificate of Appropriateness. The official document issued by the Design Review Board, approving and/or concurring in any application for permit for erection, demolition, moving, reconstruction, restoration or alteration of any structure designated historic property.

Historic District: An area, designated by the Town Council pursuant to the provisions of this Article. The District may contain one or more significant historic structures and landmarks and may have within its boundaries other property or structures that are not of such historic and/or architectural significance to be designated as landmarks, nevertheless, contribute to the overall visual characteristics of the District.

Historic Property. Any place (including an archaeological site or the location of a significant historical event), building, structure, work of art, fixture or similar object that has been individually designated by the Town

Council of Sullivan’s Island, within or without an Historic District, or designated as a contributing property within a historic district.

National Register of Historic Places. The national list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, or culture, maintained by the Secretary of the Interior under authority of the National Historic Preservation Act, as amended.

Ordinary Maintenance and Repairs. Any work on which a Building Permit or any other Town permit or certificate is not required and where the purpose is stabilization, and further, where such work will not noticeably change the exterior appearance of the resource. Any work not satisfying all of the above requirements shall not be considered ordinary maintenance and repair.

Sec. 21-94. Historic property designation criteria

- A.** Upon the effective date of this ordinance, historic properties shall be those so designated previously by chapter 21 of the Town Ordinance as in effect immediately prior to the effective date of this Ordinance including Articles XI and XII as adopted on August 17, 2004 subject to any appropriate changes approved by the Design Review Board subsequent thereto. Those historic properties were those depicted as “Sullivan’s Island Landmarks” and “Traditional Island Resources” on the map entitled “Historic Resources of Sullivan’s Island South Carolina Field Evaluation Map”, revised 30 June 2003, and also those identified on a list of properties entitled “Sullivan’s Island Historic Resource Designation Study List”, dated September 24, 2003, as Number One “Sullivan’s Island Landmarks” and Number Two “Traditional Island Resources”, both map and list prepared by Schneider Historic Preservation, LLC, and which are specifically incorporated herein by reference.
- B.** The Town Council, Planning Commission, the Design Review Board or owners of one or more Lots of land within an area may propose additions to or deletions from the list of designated historic properties. If initiated by the property owners, the application shall be made upon forms or pursuant to standards set by the Design Review Board for this purpose.
- C.** The Design Review Board shall determine whether a property shall be designated an historic property or shall no longer be considered an historic property.
 - 1. If the Town Council, Planning Commission or Design Review Board proposes an addition to the list of historic properties, the property proposed shall be subject to and controlled by the Town’s ordinances governing designated historic properties from the time of such proposal until final determination by the Design Review Board. (3-18-08)
 - 2. The final determination provided above will be accomplished within a reasonable timeframe. (3-18-08)
- D.** In determining whether a property should be designated an historic property, it should be considered whether the property:
 - (1) Has significant inherent character, interest, or value as part of the development or heritage of the Town, state, or nation;
 - (2) Is the site of an event significant in history;
 - (3) Is associated with a person or persons who contributed significantly to the culture and development of the Town, state, or nation;
 - (4) Exemplifies the cultural, political, economic, social, ethnic, or historic heritage of the Town, state, or nation;
 - (5) Individually, or as a collection of resources, embodies distinguishing characteristics of a type, style, period, or specimen in architecture or engineering;
 - (6) Contains elements of design, detail, materials, or craftsmanship which represent a significant innovation;
 - (7) Represents an established and familiar visual feature of a neighborhood or the Town; or
 - (8) Has yielded, or may be likely to yield, information important in pre-history or history.
- E. Owner notification.**

Owners of property proposed to be designated as historic or to be no longer designated as historic shall be notified in writing thirty (30) days prior to consideration by the Design Review Board. Owners may appear before the Design Review Board to voice approval or opposition to such designation and inclusion. Objections shall be based on procedural nonconformities in the designation process or on the misapplication of the criteria for designation as specified in this Ordinance.

Sec. 21-95. Creation or modification of HP Overlay District.

- A.** Upon the effective date of this Ordinance, the districts shall be those so designated previously by Chapter 21 of the Town Ordinance as in effect immediately prior to the effective date of this Ordinance including Articles XI and XII as adopted on August 17, 2004 subject to any appropriate changes approved by the Design Review Board subsequent thereto. The initial boundaries of the district were those shown as “Potential National Register or Local Historic District” on the map entitled “Historic Resources of Sullivan’s Island South Carolina Field Evaluation Map”, revised 30 June 2003, prepared by Schneider Historic Preservation, LLC, and which is specifically incorporated herein by reference. Upon the effective date of Article XI and Article XII, the Design Review Board will be vested with the authority to make recommendations to add or delete districts or to change the boundaries of districts.
- B.** The Town Council, Planning Commission, the Design Review Board or owners of one or more Lots of land within an area may propose the creation or modification of an HP Overlay District. If initiated by the property owners, the application shall be made upon forms or pursuant to standards set by the Design Review Board for this purpose.
- C.** The procedure for creating or amending an HP Overlay District applicable to an area of the Sullivan’s Island shall be the same as for any other zoning amendment, provided that, if the proposal for creating a HP Overlay District does not originate with the Design Review Board, the proposal shall be forwarded to the Design Review Board for its review and comment prior to the holding of a public hearing by the Planning Commission.
- D.** The proposal shall include a rationale for the designation or modification of the proposed HP Overlay District related, to the maximum extent practicable, to the Historic Property Designation Criteria as set forth in Section 21-94.

E. Findings

In recommending the application of the HP Overlay District to an area of Sullivan’s Island, the Design Review Board or other recommending body shall express findings regarding the specific structures, landscapes or other physical aspects of the proposed HP Overlay District on which it bases the determination required by the criteria in Section 21-94. Where the designation is made based on the general character of the proposed district, these findings may include, but shall not necessarily be limited to:

- (1) Height, scale or mass of buildings and structures typical of the area;
 - (2) Architectural style(s) and periods typical of the area;
 - (3) Building materials and colors typical of the area;
 - (4) Landscapes typical of the area;
 - (5) Typical relationships of buildings to the landscapes or to the streets in the area;
 - (6) Setbacks and other physical patterns of building in the area;
 - (7) Typical patterns of rooflines of buildings in the area; and/or
 - (8) Typical patterns of porch and entrance treatments of buildings in the area or height and mass of the buildings.
- F.** The proposal for creation or amending of the HP Overlay District shall include a map and legal description of the area and addresses of properties to be included.
 - G.** Owners of property proposed to be included in or removed from an HP Overlay District shall be notified in writing thirty (30) days prior to consideration by the Design Review Board. Owners may appear before the Design Review Board to voice approval or opposition to such changes. Objections shall be based on procedural nonconformities or to misapplication of the criteria specified in this ordinance.
 - H.** The Design Review Board shall complete its review of the HP Overlay District and shall forward its recommendation regarding any proposed deletion, addition or change to the HP Overlay District to the Planning Commission.
 - I.** The Design Review Board shall hold an open meeting or public hearing on the proposed HP Overlay District. The process for notice and public hearing shall be the same as that for notice and a hearing before the Planning Commission.
 - J.** The Design Review Board shall recommend to the Planning Commission that:
 - (1) The proposal to create the HP Overlay District for the proposed area of the Town be approved;

- (2) The proposal be approved subject to specified conditions; or,
- (3) The proposal be denied.

K. Maintenance of inventory and map.

Where a HP Overlay District is created, it shall be given a unique name that shall include the words “Historic Preservation” and shall be used to identify it on the map and in the Zoning Ordinance.

Sec. 21-96. Effect of creation of HP Overlay District.

The creation of a HP Overlay District shall have the following effects:

- A. The regulations of the HP Overlay District shall be applicable to all designated properties within and without the district;
- B. Because it is an overlay district, the regulations for the underlying zoning district shall remain in effect, except as provided in the next paragraph;
- C. In case of any conflict between the regulations applicable in the underlying district and the regulations of the HP Overlay District, the regulations of the HP Overlay District shall apply, even where the applicable regulation may not be the higher standard;
- D. The findings adopted by the Town Council, in accordance with the previous section, shall define the scope of the Town’s interest in protecting the historic resource and shall provide the guidelines to be used by the Design Review Board, along with the applicable regulations, in considering whether to grant or deny a Certificate of Appropriateness within the district; and,
- E. Nothing in this Article shall be construed as reason for an increased evaluation of property for purposes of ad valorem taxation because of historic designation.

Sec. 21-97. Certificate of appropriateness.

A. When Required.

- (1) A Certificate of Appropriateness shall be required before the commencement of work upon any historic property or on any building or structure located within the HP Overlay District.
- (2) A Certificate of Appropriateness for such work includes the erection, reconstruction, restoration or alteration of the exterior of any structure or site, except when such work satisfies all the requirements of ordinary maintenance and repair as defined in this Article.
- (3) Neither a Certificate of Zoning Compliance nor a Building Permit shall be issued within the HP Overlay District until the Design Review Board has approved a Certificate of Appropriateness.

B. Procedures.

- (1) An application shall be completed for a Certificate of Appropriateness in accordance with the Design Review Board’s submittal requirements. An application shall not be considered complete until all the required data have been submitted. The application for a Certificate of Appropriateness shall be filed with the Zoning Administrator. The Zoning Administrator shall forward to the Design Review Board the complete application for a Certificate of Appropriateness, accompanied by an application for a Certificate of Zoning Compliance.
- (2) The applicant shall be informed of the hearing date at which the applications for a Certificate of Appropriateness shall be considered. The applicant shall have the right to be heard and may be accompanied or represented by counsel and/or one or more construction or design professionals at the hearing.
- (3) After hearing the applicant, and any others wishing to speak, the Board shall take one of the following actions:
 - (a) Approve the application for a Certificate of Appropriateness;
 - (b) Place conditions on the application and approve a Conditional Certificate of Appropriateness; or
 - (c) Deny the application for Certificate of Appropriateness.
- (4) In the case of the disapproval of plans by the Design Review Board, the Board shall state in writing the reasons for such disapproval and may include suggestions in regard to actions the applicant might take to secure the approval of the Board concerning future issuance of a Certificate of Appropriateness.

- (5) Work performed pursuant to the issuance of a Certificate of Appropriateness shall conform to the requirements of such Certificate, if any. It shall be the duty of the Building Official to inspect from time to time any work performed pursuant to a Certificate of Appropriateness to assure such compliance.
- (6) It shall be the responsibility of the Zoning Administrator to issue the actual Certificate of Appropriateness, with any designated conditions, and to maintain a copy of the Certificate of Appropriateness, together with the proposed plans. These shall be public documents for all purposes.

C. Criteria for certificate of appropriateness. (6/20/17)

The Board shall determine whether to grant a Certificate of Appropriateness based on the following:

- (1) Consistency of the proposed work with the applicable HP Overlay District regulations;
- (2) Consistency of the proposed work with the regulations of the underlying zoning district;
- (3) Consistency of the proposed work with the findings adopted by the Town Council in designating HP Overlay District;
- (4) For an historic property, consistency of the proposed work with the findings in designating it a historic structure, or comparable record of findings from a state or federal listing; and
- (5) For an historic property, consistency with the following ten preservation standards, and the most recent version of the Secretary of Interior's Standards for the Treatment of Historic Properties: Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings:
 - (a) Using a property as it was used historically or giving a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships;
 - (b) Retaining and preserving the historic character of a property; avoidance of the removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property;
 - (c) Avoiding changes that create a false sense of historical development, such as adding conjectural features or elements from other buildings;
 - (d) Retaining and preserving changes to a property that have acquired historic significance in their own right;
 - (e) Preserving distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property;
 - (f) Repairing rather than replacing deteriorated historic features; or where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials;
 - (g) Utilizing the gentlest means of chemical or physical treatments;
 - (h) Protecting and preserving the archeological resources in place, and if disturbing, mitigation measures will be undertaken;
 - (i) Not destroying historic materials, features, and spatial relationships that characterize the property; differentiating the new work from the old and making it compatible with the historic materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment; and,
 - (j) Undertaking new construction in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

D. Notification of affected property owners.

Prior to the issuance of an approval or denial of a Certificate of Appropriateness, the Board shall inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard.

E. Staff Approval of Minor Refinements (7/21/09)

Notwithstanding provisions to the contrary in this chapter, the Zoning Administrator or his/her designee may modify Certificates of Appropriateness previously approved by the Design Review Board for minor refinements, as allowed in Section 21-109(F)(9 and 10). (7/21/09)

Sec. 21-98. Certificate of appropriateness for moving, demolition or removal.

No designated historic property within or without any HP Overlay District shall be demolished, moved or removed unless such demolition, moving or removal shall be approved by the Design Review Board and a Certificate of Appropriateness for Demolition, Moving or Removal shall be granted. The procedure for issuance of a Certificate of Appropriateness for Demolition, Moving or Removal shall be the same as for the issuance of other Certificates of Appropriateness with the following modifications:

- A. After the hearing, the Design Review Board may approve the Certificate of Appropriateness for Demolition, Moving or Removal thereby authorizing the demolition moving or removal, or the Board may deny the Certificate of Appropriateness for Demolition Moving or Removal, or postpone the demolition or removal for a period not to exceed sixty (60) days.
- B. In determining whether to issue a Certificate of Appropriateness, the Board shall consider the following criteria, in addition to the other criteria above:
 - (1) The contribution which the structure makes to the historic and architectural nature of the town, individually and/or in its relation to other structures and properties in the area.
 - (2) The condition of the structure from the standpoint of structural integrity and the extent of work necessary to stabilize the structure; and,
 - (3) The economically viable alternatives available to the demolition.

Sec. 21-99. Property owned by public agencies.

The requirements, provisions, and purposes of this Article apply to all property owned by the Town or any other public agency; provided, however, designation pursuant to this Article shall not affect the validity of prior actions of the Town Council approving plans, programs, or authorizations for public trusts, agencies or authorities of the Town without an express amendment of such plan, program or authority.

Sec. 21-100. Maintenance, repair, and interior projects.

- A. Nothing in this Article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of structures designated as historic when that repair does not involve a change in design, material, or outer appearance of the structure.
- B. The Board shall not consider the interior arrangements or alterations to the interior of a building unless they have an impact on the exterior appearance of the building or unless the interior of a public building or the public space of a private building is specifically described and designated as historic.
- C. The Board may authorize a Town staff or a Board member or subcommittee to approve minor projects involving repairs and ordinary maintenance that do not alter design, materials, or the outer appearance of a structure or interior projects not subject to design review.

Sec. 21-101. Fines and penalties.

The system of fines applied by the Town of Sullivan’s Island for violation of the building code will apply to violations of this Article or other relevant sections of this Zoning Ordinance.

Sec. 21-102. Reserved

Sec. 21-103. Reserved.

Sec. 21-104. Reserved.

Sec. 21-105. Reserved

RECEIVED

Jan 24 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley Price, Circuit Court Judge
Markley Dennis, Circuit Court Judge

Appellate Case No. 2019-001671

J. Doe, Appellant,

v.

Design Review Board (DRB) of the Town of Sullivan's Island (S.I.), Svjetlana Bilic Damjanovic, Individually and d/b/a Alka Construction Co., Branko Damjanovic, Individually and d/b/a Alka Construction Co., Kenneth Craft, III, Individually and d/b/a Craft Design Co., and Alka Construction Co., Respondents.

PROOF OF SERVICE

I certify that I have served **RESPONDENTS SVJETLANA BILIC DAMJANOVIC, INDIVIDUALLY AND D/B/A ALKA CONSTRUCTION CO., BRANKO DAMJANOVIC, INDIVIDUALLY AND D/B/A ALKA CONSTRUCTION CO., AND ALKA CONSTRUCTION CO.'S MOTION TO DISMISS** on all parties of record as follows:

Via U.S. Mail on Appellant, J Doe, by depositing a copy of it in the United States Mail, postage prepaid, on January 21, 2022, addressed as follows:

J. Doe
c/o C. Holmes, P.O. Box 187, Sullivan's Island, SC 29482-0187

Via Email, on Respondent, Design Review Board (DRB) of the Town of Sullivan's Island (S.I.), addressed as follows:

John Phillips Linton, Jr. (SC Bar No. 79130)
G. Trenholm Walker (SC Bar No. 5777)
Walker Gressette Freeman & Linton, LLC, PO Box 22167, Charleston, SC 29413
linton@wgflaw.com
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s/Alexandra Scott Williams

***Attorney for Respondents Sjetlana Bilic
Damjanovic, Individually and d/b/a Alka
Construction Co., Branko Damjanovic,
Individually and d/b/a Alka Construction
Co., and Alka Construction Co.***