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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No.:2022-000092
Case No.: 2021-CP-10-4196

Crescent Homes, SC, LLC,……...…….....Appellant,

v.

City of Charleston Board of Zoning Appeals-Zoning,……..….....Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2021-CP-10-04196
COUNT OF CHARLESTON	)	
	)	
Crescent Homes SC, LLC,	)	
	)	**ORDER GRANTING LEAVE TO**
Appellant,	)	**PARTICIPATE AS AMICUS CURIAE**
	)	
vs.	)	
	)	
The City of Charleston Board of Zoning Appeals – Zoning,	)	
	)	
Respondent.	)	
	)	

THIS MATTER is before the Court on Appellant's Consent Motion for Leave to allow the Charleston Homebuilders Association to participate as Amicus Curiae and filed a brief in support of Appellant. With consent of Appellant Crescent Homes SC, LLC and Respondent The City of Charleston Board of Zoning Appeals – Zoning ("Respondent"), the Court GRANTS the Motion to allow Charleston Homebuilders Association to submit an amicus curiae brief.

IT IS HEREBY ORDERED AND DECREED that Charleston Homebuilders Association may participate in the appeal by filing an amicus curiae brief no later than two (2) days prior to the hearing on Appellant's appeal.

IT IS SO ORDERED.

_____

Judge, Ninth Judicial Circuit

December ____, 2021
Charleston, South Carolina

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Charleston Common Pleas

Case Caption: Crescent Homes Sc Llc VS Board Of Zoning Appeals Zoning Charleston City Of

Case Number: 2021CP1004196

Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

ELECTRONICALLY FILED - 2022 Jan 18 11:45 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Crescent Homes SC, LLC, Appellant, vs. City of Charleston Board of Zoning Appeals - Zoning, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-04196 **ORDER**

This matter came before me on January 6, 2022, as an appeal from a decision of the City of Charleston Board of Zoning Appeals—Zoning.

The Appellant seeks to overturn two related decisions made by the Board. The first decision was an appeal to the Board from the decision of the Zoning Administrator who concluded a proposed drive under the house garage would be a "story" for the purposes of the two and a half story height limit established by the zoning code. Second, the Appellant asked for variances on two adjacent lots to exceed the two and a half story limit if the drive under house garage is considered a "story." The Board denied the request for a variance noting the lack of hardship to the Appellant who was already permitted for a home on each lot without a drive under the house garage.

The Respondent argues this Court sitting as an appellate court should defer "to the decisions of those charged with interpreting and applying local zoning ordinances," as they are in the best position to interpret, consider and apply those local rules. Christ Cent. Ministries v. City of Columbia Bd. of Zoning Appeals , 424 S.C. 358, 818 S.E.2d 30 (Ct. App. 2018) The Appellant argues the interpretation of the language of the ordinance should be a matter of law where no deference is given to the Board's decision. Helicopter Solutions, Inc. v. Hinde, 414 S.C. 1, 776 S.E.2d 753 (Ct. App. 2015). This court concludes that regardless of the standard of deference, the decision of the Board should be affirmed with respect to both decisions.

The City has limitations on the number of stories of buildings which differ depending on the applicable zoning classification of the property. These properties are

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in an SR-1 zoning classification which has a two and a half story limit on homes. Zoning Code § 54-301. The Zoning Administrator determined the proposed drive under the home garage should count as a "story" based on the definition in the zoning code. "Story" is defined in the zoning code as "that portion of a building included between the surface of any floor and the surface of the next floor above." Zoning Code § 54-120. The Appellant would like the Court to borrow from the City's stormwater management ordinance which does not use the word "story" and instead has a definition of "lowest floor" which specifically excludes a garage used solely for parking. But Respondent argues there is no reason to borrow a definition from a different ordinance for a different word. The Respondent also argues the purposes of the zoning ordinance and stormwater ordinances are different. A zoning limit on the number of stories is intended to limit the size and mass of the structure. The purpose of the stormwater ordinance is to comply with the federal flood standards which do not allow significant construction at a level prone to flooding. So, it is understandable the stormwater ordinance declares an area used only for parking does not need to be built above base flood elevation and does not count as the "lowest floor" of the structure. Further, the City notes the entire portion of the stormwater ordinance where the definition of "lowest floor" is found is only applicable in special flood hazard areas, and this is not in one of those areas. See Stormwater Ordinance § § 27-104 and -105.

Overall, the Court agrees with the Zoning Administrator and Board's affirmance of that decision that the definition of the word "story" as defined in the zoning code would seem to apply to the area between the finished concrete garage floor and the next floor above it. The Court agrees with the Respondent's position that differences in the words and purposes of the zoning ordinance versus the stormwater ordinance make it inappropriate to try to reconcile the two ordinances in this respect.

The Appellant makes a policy argument that due to increased flooding in the greater Charleston area, homebuilders should be encouraged to elevate their structures and a drive under the home garage is a popular and desirable design. But the courts cannot override the language provided by City Council on this basis. It is best for City Council to decide where a drive under the house garage design should be encouraged

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or discouraged or whether it should be allowed in all neighborhoods or just some.

To the extent that the Appellants want to claim that homes in special flood zones which are required to be elevated by the stormwater ordinance have not had the lowest elevation counted as a floor by the City, the plaintiffs lack standing to assert that someone else is getting a benefit the Appellant is clearly not entitled to obtain. See ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008) (competitor did not have right to file an appeal a rezoning allowing a cell-phone tower.)

As to the variance, per City of Charleston zoning ordinance § 54-924, which tracks S.C. Code § 6-29-800, the test for a variance is as follows:

> a. there are extraordinary and exceptional conditions pertaining to the particular piece of property;
>
> b. these conditions do not generally apply to other property in the vicinity;
>
> c. because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
>
> d. the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

The Appellant previously obtained approval of a home that did not have a drive under the house garage. The Board discussed that there did not appear to be a showing of hardship. The Appellant also argues variances in the same subdivision were granted to this same builder by the same Board at a prior meeting. However, the Respondent argues those properties are different and the decision it made as to other properties do not necessarily apply to this property. Further there is a potential problem that if Appellant claims the properties are all the same, the standard for a variance includes the requirement that the condition creating the basis for the variance is not generally applicable to other property in the vicinity.

As to the variance portion of the Board's decision, substantial deference must be given to the Board. The Court cannot say that the Board's decision as to the denial of the variances is incorrect as a matter of law or an abuse of discretion. For these reasons, I would affirm the decision of the Board denying the variances.

For the reasons stated above, the decision of the Board of Zoning Appeals is affirmed.

_____

Paul M Burch
Presiding Judge

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Charleston Common Pleas

Case Caption: Crescent Homes Sc Llc VS Board Of Zoning Appeals Zoning Charleston City Of

Case Number: 2021CP1004196

Type: Order/Other

So Ordered

s/Paul M. Burch, Judge #2048

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action No.: 2021-CP-10-04196
COUNTY OF CHARLESTON	)	
	)	
Crescent Homes SC, LLC,	)	
	)	**ORDER**
Appellant,	)	
	)	
vs.	)	
	)	
City of Charleston Board of Zoning Appeals – Zoning,	)	
	)	
Respondent.	)	
_____	)	

Appellant Crescent Homes SC, LLC ("Crescent Homes") initiated this appeal against Respondent City of Charleston Board of Zoning Appeals – Zoning ("BZA") on September 9, 2021. A hearing was held before the undersigned on January 6, 2022 wherein each party presented oral arguments. After careful consideration of the record, law, arguments of counsel, and all matters submitted, this Court makes the following findings of fact and conclusions of law in favor of Appellant Crescent Homes:

FINDINGS OF FACT

1. Crescent Homes SC, LLC is a limited liability company organized and existing under the laws of the State of South Carolina. Crescent Homes is the owner and builder of residential lots in the Avenue of Oaks subdivision in the Maryville neighborhood of West Ashley. (R. p. 10.)

2. The BZA is quasi-judicial body created by the City of Charleston, an incorporated municipality within the State of South Carolina that has adopted zoning and planning ordinances pursuant to enabling legislation, including certain ordinances governing real property within the City of Charleston. Zoning Code Appendix C. The BZA is authorized to hear and decide appeals

of alleged errors in a determination of a zoning official's decision in the enforcement of a zoning ordinance and for variances from the requirements of a zoning ordinance. *Id.*; S.C. Code Ann. § 6-29-800(A)(1)-(2).

3. Avenue of Oaks is in zoning district SR-1, and it was developed subject to the cluster development requirements under Zoning Code §§ 54-299.11, *et seq*. (R. p. 8.) Under the City's zoning code, cluster developments are intended to "[u]tilize creative and flexible site design" and "[p]rovide a mixture of lot sizes and housing options within a development." Zoning Code § 54-299.11.

4. Avenue of Oaks is adjacent to the marshland of Oldtown Creek, which is a relatively low area with a higher risk of flooding. (R. p. 10.) The final plat of Avenue of Oaks, with 42 developable lots, was approved by the City in March 2020. (*Id.* at pp. 15-17.) At the time the final plat was approved, all residential lots were in Flood Zones AE-14 or AE-13, which are special flood hazards under Code § 27-105. (*Id.)*

5. In the SR-1 zoning district, the maximum height for structures is 35' and 2 ½ stories. Zoning Code § 54-301. Under Zoning Code § 54-120, "story" is defined as "that portion of a building included between the surface of any floor and the surface of the next floor above, or if there be no floor above, then the space between such and the ceiling next above it." Although the City has not always interpreted this term consistently, the City's Planning Department recent interpretation of "story" has not included unfinished drive-under areas if such areas are within a flood zone. (R. p. 19.)

6. Based on that interpretation, Crescent Homes designed 22 of the lots with a drive-under design and two stories of livings space over the drive-under area. (*Id.* at p. 11.) Of those,

13 lots had already received building permits from the City before the events giving rise to this appeal occurred. (*Id.*)

7. In January 2021, FEMA's revised flood maps for Charleston County became effective pursuant to City Ordinance No. 2020-140. (*Id.*; Ordinance No. 2020-140.) Under the new flood maps, 25 of the lots in Avenue of Oaks are now within Flood Zone X, and the other 17 lots are now within Flood Zone AE-11. (R. pp. 11, 28-29.) Of the 25 lots that are now within Flood Zone X, 11 lots were planned to utilize the drive-under design but did not have building permits. (*Id*.)

8. On March 29, 2021, Crescent Homes applied for a building permit for 1012 Avenue of Oaks (Lot 6). (*Id.* at pp. 30-32.) The permit application included a schedule of building plans depicting the design for the home. (*Id.* at pp. 35-41.) The building plans show two-stories of living space supported by piers and over a drive-under garage that serves as the home's foundation. (*Id*.) The building plans also show that the drive-under garage is unfinished and unheated. (*Id*.) The garage's side and rear have louvered wood exterior walls, and the front of the home has two garage doors surrounded by brick exterior walls covering the piers. (*Id*.)

9. On April 15, 2021, Sean Killion, Associate Planner for the City, emailed Crescent Homes to provide notice that the building permit was denied because the proposed design for 1012 Avenue of Oaks did not comply with applicable zoning requirements. (*Id*. at p. 43.) According to Mr. Killion, "[T]he proposed design has a drive under in an X flood zone. This would make the house 3 stories and therefore non-conforming to the SR-1 regulations. Please revise for zoning approval." (*Id.*)

10. On May 17, 2021, Crescent Homes submitted to the BZA its appeal of the City's denial of the building permit for 1012 Avenue of Oaks based on the City's interpretation that the

home's designed drive-under garage area is a "story," as defined by the City's zoning code. (*Id.* at pp. 8-9.)

11. The appeal was heard at the BZA's meeting on June 15, 2021. (*Id*. at pp. 2-7, 134-158.) During this meeting, the BZA granted a variance to allow 1012 Avenue of Oaks and eight other lots within the same neighborhood to exceed the 2 ½ story height limitation in the SR-1 zoning district. (*Id.*) Due to this variance, the BZA deferred deciding Crescent Homes' appeal of the denial of the building permit for 1012 Avenue of Oaks at the June 15th meeting. (*Id.* at pp. 157-158.)

12. Following the June 15, 2021 BZA meeting, Crescent Homes submitted separate requests for variances to exceed the 2 ½ story height limitation in the SR-1 zoning district for 1027 and 1029 Avenue of Oaks. (*Id.* at pp. 177-204.) The BZA held a meeting August 3, 2021, during which it considered Crescent Homes' appeal of the denial of building permit for 1012 Avenue of Oaks and the variance requests for 1027 and 1029 Avenue of Oaks. (*Id.* at pp. 206-218.) At that meeting, the BZA denied Crescent Homes' appeal and both requests for a variance. (*Id*.) Notices of the decisions were emailed to Crescent Homes on August 12, 2021. Crescent Homes then timely appealed those decisions pursuant to S.C. Code Ann. § 6-29-820.

CONCLUSIONS OF LAW

I. Appeal of Interpretation of Definition of "Story"

13. This appeal involves the interpretation of the City's zoning ordinance, specifically the definition of "story" under Zoning Code § 54-120. In reviewing a zoning ordinance, courts should give the ordinance a "practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers." *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018). The ordinance's language must

be construed in context, and "the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute. The language must also be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Id.*

14. In analyzing zoning ordinances, courts should be guided by the well-founded principle of law that:

> Statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. It follows that the terms limiting the use of the property must be liberally construed for the benefit of the property owner.

Helicopter Solutions, Inc. v. Hinde, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (2015). Furthermore, zoning ordinances must be construed "to allow people to use their property so as to realize its highest utility" when the ordinances are drafted so that people do not have a clear understanding as to what they are permitted to do with their property. *Kean/Sherratt P'ship by Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987).

15. Under these principles, the City's interpretation of "story" as including unfinished drive-under garages is in error because the City's ordinances demonstrate that City Council did not intend for such areas to be a "story." As stated above, the zoning code defines "story," in pertinent part, to mean "that portion of a building included between the surface of any floor and the surface of the next floor above." Zoning Code § 54-120. Therefore, whether a drive-under garage constitutes a "story" necessarily depends on whether it has a "floor."

16. Although the City's zoning code does not define "floor," City Council defined that term in its stormwater management ordinance. As a result, it is appropriate to look to that ordinance for guidance in determining the meaning of "floor." *See Mathis v. Hair*, 358 S.C. 48, 53, 594 S.E.2d 851, 854 (2003) (considering definitions of term in other statutes to determine

statutory term's meaning); *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) ("Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme."); *Brown v. Gardner*, 513 U.S. 115, 118 (1994) (looking to how ambiguous term is used in analogous statutes). This principle is especially applicable here because the City's interpretation of "story" depends on whether the home is located in a flood zone. *See Boehm*, 423 S.C. at 184, 813 S.E.2d at 881 (stating that a zoning ordinance "must also be read in a sense that harmonizes with its subject matter and accords with its general purpose"). Thus, the City's stormwater management ordinance provides the best guidance as to whether a drive-under garage in a flood zone is a "floor," and thus, a "story."

17. In the stormwater management ordinance, the surface of an unfinished drive-under garage is not a "floor." This ordinance defines "floor" to mean "the top surface of an enclosed area in a building (including basement) i.e., top slap in concrete slab construction or top of wood flooring in wood frame construction. *The term does not include the floor of a garage used solely for parking vehicles*." Zoning Code § 27-103 (emphasis added). The stormwater ordinance further defines "lowest floor" as not including unfinished garages or enclosures. "An unfinished or flood resistant enclosure, usable solely for parking vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevated design requirements of this article." *Id.*

18. Here, the drive-under garage designed for 1012 Avenue of Oaks does not fall within the definitions of "floor" or "lowest floor" because it meets the express criteria for exclusion. It

is an unfinished garage that is only partially enclosed and designed solely for parking vehicles and storage. Therefore, it is not a "floor," and consequently, it is not a "story."

19. Interpreting "story" to not include an unfinished garage is also consistent with the ordinary and legal meaning of this term. For example, Ballentine's Law Dictionary defines "story" as "[a] habitable space between two floors of a building." Ballentine's Law Dictionary, 3rd Ed., p. 1221. In fact, several courts have defined "story" consistently with this definition, thereby requiring a story to consist of habitable space. *See Biber v. O'Brien*, 138 Cal. App. 353, 360 (1st Dist. Ct. App. 1934) ("A story has been defined as the habitable space between two floors."); *Hunter v. Narragansett Electric Lighting Co.*, 50 R.I. 196, 199, 146 A. 624, 625 (1929) ("A story is defined in Webster's Dictionary as the habitable space between two floors."); *BCH Dev., LLC v. Lakeview Heights Addition Prop. Owners' Assoc.*, No. 05-17-01096-CV, 2019 Tex. App. LEXIS 4170, at *17 (Tex. Ct. App. 5th Dist. May 21, 2019) ("The term 'story' refers to the habitable space between two floors."). Because the designed drive-under garages for Avenue of Oaks are unfinished and not habitable, they do not meet the definition of "story" as that term has been commonly defined by courts in other jurisdictions.

20. For these reasons, the City's interpretation of "story" is incorrect as a matter of law, and the BZA's decision affirming that interpretation should be reversed.

21. In addition to being contrary to the intended and ordinary meaning of "story," the City's interpretation of that term is arbitrary and capricious and has no rational relationship to a lawful purpose. Therefore, the BZA's denial of Crescent Homes' appeal and adoption of the City's interpretation was in error.

22. "Arbitrary" means "based alone upon one's will, and not upon any course of reasoning and exercise of judgment; bound by no law; done capriciously or at pleasure, without

adequate determining principle, nonrational; not governed by any fixed rules or standards." *Hatcher v. South Carolina Dist. Council of Assemblies of God*, 267 S.C. 107, 117, 226 S.E.2d 253, 258 (1976).

23. Here, the City's interpretation of "story" is arbitrary and capricious because it is based on an arbitrary distinction of whether the home is in a certain flood zone when there is nothing in the definition of "story" that allows for such a distinction. The City approved building permits for other houses with drive-under garages in Avenue of Oaks on lots that were in Flood Zones AE-14 and AE-13 prior to the issuance of the new FEMA flood maps. In so doing, the City did not consider the drive-under garages on those lots to be a story, thereby concluding that the proposed design did not exceed the 2 ½ story maximum height in the SR-1 zoning district. Now, however, the City takes the position that a drive-under garage is a story if it is located on a lot in Flood Zone X.

24. Nothing in the definition of "story" or any other zoning provision suggests that the term's meaning changes based on the location of a flood zone. In fact, the definition does not use the term "flood zone" in any manner. As a result, if a drive-under garage is not a story when it is in a flood zone, there is nothing in the Zoning Code that renders it a story when it is outside of a flood zone. Put simply, the definition of "story" has one statutory meaning, and the City's attempt to give two inconsistent meanings is not based on any fixed rule or standard.

25. As further evidence of the arbitrary and capricious nature of the City's interpretation, the City's planning department has never articulated in writing which specific flood zones or conditions permit a drive-under garage to be excluded from the definition of "story." Instead, the definition appears to be determined on the whims of the City's planning department, which has failed to provide property owners a clear understanding of what criteria apply for

determining whether a drive-under garage constitutes a "story." This type of decision making is the epitome of arbitrariness as it is determined in the discretion of the zoning administrator without any discernible application of law.

26. Furthermore, the City's interpretation of "story" to exclude some – but not all – drive under garages from its meaning has no rational relationship to any lawful purpose. In fact, the City has failed to explain the purpose of excluding drive-under garages located in non-flood zones from the meaning of "story." Restricting the use of drive-under garages with two stories of living space above them in the SR-1 zoning district does not advance any of the enumerated purposes of zoning ordinances as established in S.C. Code Ann. § 6-29-710(A). Although local governments can enact zoning codes "to facilitate the creation of convenient, attractive, and harmonious communit[ies]" and "to provide for adequate light, air, and open space" (*see* § 6-29-710(A)(1) & (3)), the City's interpretation of "story" does not serve any of those purposes. Rather, these purposes are already accomplished by the City's height restriction of 35' in the SR-1 zoning district.

27. The City's different and inconsistent interpretation of "story" creates the potential that communities will be developed in ways that are not harmonious. For example, in communities that include some lots in a flood zone and others that are not, the City's interpretation of "story" will simultaneously permit and prohibit two-story homes with drive-under garages. The fact that the exact same house can be both permitted and prohibited in the same neighborhood proves that the City's interpretation encourages disharmonious development rather than harmonious communities.

28. Also, the City's interpretation undermines one of the underlying purposes of zoning ordinances, which is "to secure safety from fire, flood, and other dangers." § 6-29-710(A)(7).

Avenue of Oaks borders a marsh and is in a flood zone. Although the new flood map indicates the flooding risk is less than previously determined under the prior flood map, that risk has not been eliminated. The elevated design that utilizes drive-under garages helps protect property and residents from flooding risk. This fact was recently recognized by the City in its Dutch Dialogues efforts, which encourages using elevated designs to protect the City's residents and their property not just from flooding today but also from the uncertain but growing threats from climate change and sea-level rise in the future. (R. pp. 44-55.) By interpreting "story" to include drive-under garages, the City is discouraging homebuilders and homeowners from using this design feature, thereby increasing the threat to safety and property from flooding. This interpretation is contrary to the purposes of the zoning ordinances and the City's other recent efforts to protect its residents and their property from flooding.

29. The City's interpretation of "story" that is dependent upon the location of a flood zone does not reflect the growing threat of climate change and sea-level rise. Indeed, South Carolina law requires that zoning ordinances "must be for the general purpose of guiding development in accordance with existing and ***future*** needs." S.C. Code Ann. § 6-29-710(A) (emphasis added). Yet the City's interpretation effectively assumes that the flood zones of today will be the flood zones of tomorrow. Recent history has proven that assumption to be incorrect as evidenced by the recent changes in the City's flood maps, from which this matter arises. By discouraging homebuilders and buyers from utilizing the elevated drive-under garage design, the City's interpretation endangers the property of the City's residents, thereby undermining the purposes of zoning ordinances.

30. For these reasons, the City's interpretation of "story" is arbitrary and capricious and is not rationally related to a lawful purpose. Therefore, the BZA's decision denying Crescent Homes' appeal is reversed.

II. Appeal of Denial of Variance

31. In denying Crescent Homes' request for a variance to allow for the construction of three-story homes at 1027 and 1029 Avenue of Oaks, the only rationale articulated by the BZA was that Crescent had failed to demonstrate the strict application of the zoning ordinance would result in an unnecessary hardship. This conclusion was in error and arbitrary and capricious in light of its prior approval of the exact same variance for nine other homes in the same community.

32. To prove unnecessary hardship under S.C. Code Ann. § 6-29-800, "[v]ariance applicants are not required to prove that without the variance there exists no feasible conforming use for the property." *Rest. Row Assocs.*, 335 S.C. at 217, 516 S.E.2d at 446. Consistent with this principle, the BZA previously found that Crescent Homes had established an unnecessary hardship with respect to nine other lots in the same subdivision and thus granted a variance to allow Crescent Homes to construct homes utilizing two stories over a drive-under garage on those lots. (R. pp. 153-156.) Yet for some reason, which the BZA failed to adequately explain, it ruled that there was no unnecessary hardship as to lots at 1027 and 1029 Avenue of Oaks. (R. pp. 213-214, 217-218.)

33. Although governmental bodies are not necessarily bound by their prior decisions, those decisions are entitled to great weight. *Duke Energy Carolinas, LLC v. S.C. Office of Regulatory Staff*, 864 S.E.2d 873, 2021 S.C. LEXIS 145, at *16 (S.C. Oct. 27, 2021). To depart from its prior rule or practice, the body must rationally justify its change in position. *Id.; see also, Nat' l Treasury Employees Union v. FLRA*, 404 F.3d 454, 457 (D.C. Cir. 2005) (stating that "any

agency's unexplained departure from prior agency determinations is inherently arbitrary and capricious.")

34. Here, the BZA failed to adequately explain its departure from its prior decisions approving the decisions. Regardless, the differential treatment between the nine lots that received a variance and the two that were denied the same variance demonstrates that the BZA's denial was not based on any fixed rules or standards and was, therefore, arbitrary and capricious. Indeed, the facts surrounding the variance requests for all eleven lots were exactly the same in all material respects. Like the nine lots that received the variances, 1027 and 1029 Avenue of Oaks were previously in a flood zone that would have precluded the need for a variance prior to the change in the flood maps. (*Id.* at pp. 16-17, 207, 213.) And just as the nine lots that received the variances were originally designed to have homes with two stories over drive-under garages, so were 1027 and 1029 Avenue of Oaks. (*Id*.) As a result, if Crescent Homes sufficiently demonstrated unnecessary hardship to warrant a variance for the other nine lots, it also demonstrated unnecessary hardship for 1027 and 1029 Avenue of Oaks.

35. Although the BZA argues on appeal that Crescent Homes cannot prove unnecessary hardship because it can build two-story homes without drive-under garages or one-story homes over drive-under garages, it never articulated that rationale during the August 3, 2021 meeting. In fact, the BZA offered no specific rationale for its decision, including whether Crescent Homes had satisfied the specific criteria required to be addressed under § 6-29-800(A)(2), either during the meeting or in its written final decision. (*Id.* at pp. 213-218.) By failing to do so, the BZA failed to comply with § 6-29-800(F), which requires that the BZA's "findings of fact and conclusions of law must be separately stated in final decisions or orders . . . which must be delivered to parties of interest by certified mail."

36. Yet even if this argument is considered, it does not change the arbitrariness of the BZA's decision. 1027 and 1029 Avenue of Oaks are no different than the other nine lots which received variances with respect to the use of designs consisting of two stories over drive-under garages. Just as 1027 and 1029 Avenue of Oaks can utilize designs other than two stories over a drive-under garage, the nine lots that received a variance could have as well. So the City's argument on appeal does not explain the differential treatment between the variance requests separated by just a few weeks. Moreover, the fact that other designs can be utilized does not negate the unnecessary hardship imposed on Crescent Homes. The test for determining hardship does not require a variance applicant to prove no other feasible use or design. Instead, it looks to whether the ordinance "unreasonably restricts the utilization of the property." *See* § 6-29-800(A)(2)(c). Because the BZA found that the definition of "story" as interpreted by the City unreasonably restricted the nine lots that received the variance, that conclusion must also hold for 1027 and 1029 Avenue of Oaks as they are all similarly situated.

37. Therefore, the BZA's denial of the variance for 1027 and 1029 Avenue of Oaks was arbitrary and capricious and should be reversed if the Court affirms the City's interpretation of "story."

ORDER

THEREFORE, it is ordered that the August 3, 2021 decisions of the BZA denying the permit for 1012 Avenue of Oaks and denying a request for a variance to allow construction of 3-story single-family residences at 1027 and 1029 Avenue of Oaks are reversed. It is further ordered that the matter be remanded and that the City and/or the BZA process Crescent Homes' application for a building permit and variances consistent with this Order.

AND IT IS SO ORDERED.

_____
The Honorable Paul M. Burch

_____, South Carolina

_____, 2022

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Crescent Homes SC, LLC, Appellant, vs. City of Charleston Board of Zoning Appeals - Zoning, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-04196 **ORDER**

This matter came before me on January 6, 2022, as an appeal from a decision of the City of Charleston Board of Zoning Appeals—Zoning.

The Appellant seeks to overturn two related decisions made by the Board. The first decision was an appeal to the Board from the decision of the Zoning Administrator who concluded a proposed drive under the house garage would be a "story" for the purposes of the two and a half story height limit established by the zoning code. Second, the Appellant asked for variances on two adjacent lots to exceed the two and a half story limit if the drive under house garage is considered a "story." The Board denied the request for a variance noting the lack of hardship to the Appellant who was already permitted for a home on each lot without a drive under the house garage.

The Respondent argues this Court sitting as an appellate court should defer "to the decisions of those charged with interpreting and applying local zoning ordinances," as they are in the best position to interpret, consider and apply those local rules. Christ Cent. Ministries v. City of Columbia Bd. of Zoning Appeals , 424 S.C. 358, 818 S.E.2d 30 (Ct. App. 2018) The Appellant argues the interpretation of the language of the ordinance should be a matter of law where no deference is given to the Board's decision. Helicopter Solutions, Inc. v. Hinde, 414 S.C. 1, 776 S.E.2d 753 (Ct. App. 2015). This court concludes that regardless of the standard of deference, the decision of the Board should be affirmed with respect to both decisions.

The City has limitations on the number of stories of buildings which differ depending on the applicable zoning classification of the property. These properties are

in an SR-1 zoning classification which has a two and a half story limit on homes. Zoning Code § 54-301. The Zoning Administrator determined the proposed drive under the home garage should count as a "story" based on the definition in the zoning code. "Story" is defined in the zoning code as "that portion of a building included between the surface of any floor and the surface of the next floor above." Zoning Code § 54-120. The Appellant would like the Court to borrow from the City's stormwater management ordinance which does not use the word "story" and instead has a definition of "lowest floor" which specifically excludes a garage used solely for parking. But Respondent argues there is no reason to borrow a definition from a different ordinance for a different word. The Respondent also argues the purposes of the zoning ordinance and stormwater ordinances are different. A zoning limit on the number of stories is intended to limit the size and mass of the structure. The purpose of the stormwater ordinance is to comply with the federal flood standards which do not allow significant construction at a level prone to flooding. So, it is understandable the stormwater ordinance declares an area used only for parking does not need to be built above base flood elevation and does not count as the "lowest floor" of the structure. Further, the City notes the entire portion of the stormwater ordinance where the definition of "lowest floor" is found is only applicable in special flood hazard areas, and this is not in one of those areas. See Stormwater Ordinance § § 27-104 and -105.

Overall, the Court agrees with the Zoning Administrator and Board's affirmance of that decision that the definition of the word "story" as defined in the zoning code would seem to apply to the area between the finished concrete garage floor and the next floor above it. The Court agrees with the Respondent's position that differences in the words and purposes of the zoning ordinance versus the stormwater ordinance make it inappropriate to try to reconcile the two ordinances in this respect.

The Appellant makes a policy argument that due to increased flooding in the greater Charleston area, homebuilders should be encouraged to elevate their structures and a drive under the home garage is a popular and desirable design. But the courts cannot override the language provided by City Council on this basis. It is best for City Council to decide where a drive under the house garage design should be encouraged

or discouraged or whether it should be allowed in all neighborhoods or just some.

To the extent that the Appellants want to claim that homes in special flood zones which are required to be elevated by the stormwater ordinance have not had the lowest elevation counted as a floor by the City, the plaintiffs lack standing to assert that someone else is getting a benefit the Appellant is clearly not entitled to obtain. See ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008) (competitor did not have right to file an appeal a rezoning allowing a cell-phone tower.)

As to the variance, per City of Charleston zoning ordinance § 54-924, which tracks S.C. Code § 6-29-800, the test for a variance is as follows:

> a. there are extraordinary and exceptional conditions pertaining to the particular piece of property;
>
> b. these conditions do not generally apply to other property in the vicinity;
>
> c. because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
>
> d. the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

The Appellant previously obtained approval of a home that did not have a drive under the house garage. The Board discussed that there did not appear to be a showing of hardship. The Appellant also argues variances in the same subdivision were granted to this same builder by the same Board at a prior meeting. However, the Respondent argues those properties are different and the decision it made as to other properties do not necessarily apply to this property. Further there is a potential problem that if Appellant claims the properties are all the same, the standard for a variance includes the requirement that the condition creating the basis for the variance is not generally applicable to other property in the vicinity.

As to the variance portion of the Board's decision, substantial deference must be given to the Board. The Court cannot say that the Board's decision as to the denial of the variances is incorrect as a matter of law or an abuse of discretion. For these reasons, I would affirm the decision of the Board denying the variances.

For the reasons stated above, the decision of the Board of Zoning Appeals is affirmed.

_____

Paul M Burch
Presiding Judge

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Crescent Homes SC, LLC, Appellant, vs. City of Charleston Board of Zoning Appeals – Zoning, Respondent.	)	IN THE COURT OF COMMON PLEAS Civil Action No.: 2021-CP-10-_____ **NOTICE OF APPEAL AND PETITION FOR APPEAL PURSUANT TO S.C. CODE ANN. SECTION 6-29-820 OF DECISION OF CITY OF CHARLESTON BOARD OF ZONING APPEALS**

Pursuant to S.C. Code Ann. § 6-29-820, Appellant Crescent Homes SC, LLC ("Crescent Homes") hereby appeals the August 3, 2021 decisions of Respondent City of Charleston Board of Zoning Appeals-Zoning (the "BZA") (1) affirming the denial a building permit for 1012 Avenue of Oaks in the Avenue of Oaks subdivision in the City of Charleston, TMS No. 418-06-00-124, and (2) denying a request for a variance to allow construction of 3-story single-family residences at 1027 and 1029 Avenue of Oaks. As grounds for its appeal, Crescent Homes alleges and states as follows:

1. Crescent Homes SC, LLC is a limited liability company organized and existing under the laws of the State of South Carolina. Crescent Homes is the owner and builder of residential lots in the Avenue of Oaks subdivision in the Maryville neighborhood of West Ashley.

2. The BZA is quasi-judicial body created by the City of Charleston, an incorporated municipality within the State of South Carolina that has adopted zoning and planning ordinances pursuant to enabling legislation, including certain ordinances governing real property within the City of Charleston.

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3. Avenue of Oaks is in zoning district SR-1, and it was developed subject to the cluster development requirements under Zoning Code §§ 54-299.11, *et seq*. The final plat of Avenue of Oaks, with 42 developable lots, was approved by the City of Charleston in March 2020.

4. Avenue of Oaks is adjacent to the marshland of Oldtown Creek, which is a relatively low area with a higher risk of flooding. At the time the final plat was approved, all residential lots were in Flood Zones AE-14 or AE-13, which are special flood hazards under Code § 27-105.

5. In the SR-1 zoning district, the maximum height for structures is 35' and 2 ½ stories. (Zoning Code § 54-301.) Under Zoning Code § 54-120, "story" is defined as "that portion of a building included between the surface of any floor and the surface of the next floor above, or if there be no floor above, then the space between such and the ceiling next above it." Although the City has not always interpreted this term consistently, the City's Planning Department recent interpretation of "story" has not included unfinished drive-under areas if such areas are within a flood zone.

6. Based on that interpretation, Crescent Homes designed 22 of the lots with a drive-under design and two stories of livings space over the drive-under area. Of those, 13 lots had already received building permits from the City before the events giving rise to this appeal occurred.

7. In January 2021, FEMA's revised flood maps for Charleston County became effective pursuant to City Ordinance No. 2020-140. Under the new flood maps, 25 of the lots in Avenue of Oaks are now within Flood Zone X, and the other 17 lots are now within Flood Zone AE-11. Of the 25 lots that are now within Flood Zone X, 11 lots were planned to utilize the drive-under design but did not have building permits.

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8. On March 29, 2021, Crescent Homes applied for a building permit for 1012 Avenue of Oaks (Lot 6). The permit application included a schedule of building plans depicting the design for the home. The building plans show two-stories of living space supported by piers and over a drive-under garage that serves as the home's foundation. The building plans also show that the drive-under garage is unfinished and unheated. The garage's side and rear have louvered wood exterior walls, and the front of the home has two garage doors surrounded by brick exterior walls covering the piers.

9. On April 15, 2021, Sean Killion, Associate Planner for the City, emailed Crescent Homes to provide notice that the proposed design for 1012 Avenue of Oaks did not comply with applicable zoning requirements. According to Mr. Killion, "[T]he proposed design has a drive under in an X flood zone. This would make the house 3 stories and therefore non-conforming to the SR-1 regulations. Please revise for zoning approval."

10. On May 17, 2021, Crescent Homes submitted to the BZA its appeal of the City's denial of the building permit for 1012 Avenue of Oaks based on the City's interpretation that the home's designed drive-under garage area is a "story," as defined by the City's zoning code.

11. The appeal was heard at the BZA's meeting on June 15, 2021. During this meeting, the BZA granted a variance to allow 1012 Avenue of Oaks and eight other lots within the same neighborhood to exceed the 2 ½ story height limitation in the SR-1 zoning district. Due to this variance, the BZA deferred deciding Crescent Homes appeal of the denial of the building permit for 1012 Avenue of Oaks at the June 15th meeting.

12. During its consideration of the appeal, the BZA entered into executive session to receive legal advice from the BZA's lawyer. Upon information and belief, the City's zoning

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administrator improperly participated in executive session and influenced the BZA's ultimate decision on the appeal.

13. Following the June 15, 2021 BZA meeting, Crescent Homes submitted separate requests for variances to exceed the 2 ½ story height limitation in the SR-1 zoning district for 1027 and 1029 Avenue of Oaks.

14. The BZA held a meeting August 3, 2021, during which it considered Crescent Home's appeal of the denial of building permit for 1012 Avenue of Oaks and the variance requests for 1027 and 1029 Avenue of Oaks. At that meeting, the BZA denied Crescent Homes' appeal and both requests for a variance. Notices of the decisions were emails to Crescent Homes on August 12, 2021. (*See Ex. 1 – BZA Results.*)

APPEAL OF DENIAL OF BUILDING PERMIT

15. The BZA's decision on August 3, 2021 denying Crescent Homes' appeal of the City's denial of the building permit for 1012 Avenue of Oaks and adopting the City's interpretation of the term "story" to include drive-under garages was erroneous as a matter of law.

16. In reviewing a zoning ordinance, the BZA should give the ordinance a "practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers." *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018). The ordinance's language must be construed in context, and "the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute. The language must also be read in a sense that harmonizes with its subject matter and accords with its general purpose." (*Id.*)

17. In analyzing zoning ordinances, courts and zoning boards should be guided by the well-founded principle of law that:

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> Statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. It follows that the terms limiting the use of the property must be liberally construed for the benefit of the property owner.

Helicopter Solutions, Inc. v. Hinde, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (2015). Furthermore, zoning ordinances must be construed "to allow people to use their property so as to realize its highest utility" when the ordinances are drafted so that people do not have a clear understanding as to what they are permitted to do with their property. *Kean/Sherratt P'ship by Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987).

18. In this case, the City's and the BZA's interpretation of "story" as including unfinished drive-under garages is in error because the City's ordinances demonstrate that City Council did not intend for such areas to be a "story." As stated above, the zoning code defines "story," in pertinent part, to mean "that portion of a building included between the surface of any floor and the surface of the next floor above." Zoning Code § 54-120. Therefore, whether a drive-under garage constitutes a "story" necessarily depends on whether it is a "floor."

19. Although the City's zoning code does not define "floor," City Council defined that term in its stormwater management ordinance. As a result, it is appropriate to look to that ordinance for guidance in determining the meaning of "floor." *See Mathis v. Hair*, 358 S.C. 48, 53, 594 S.E.2d 851, 854 (2003) (considering definitions of term in other statutes to determine statutory term's meaning); *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd*., 484 U.S. 365, 371 (1988) ("Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme."); *Brown v. Gardner*, 513 U.S. 115, 118 (1994) (looking to how ambiguous term is used in analogous statutes). This principle is especially applicable here because the City's interpretation of "story"

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depends on whether the home is located in a flood zone. *See Boehm*, 423 S.C. at 184, 813 S.E.2d at 881 (stating that a zoning ordinance "must also be read in a sense that harmonizes with its subject matter and accords with its general purpose"). Thus, the City's stormwater management ordinance provides the best guidance as to whether a drive-under garage in a flood zone is a "floor," and, thus, a "story."

20. In the stormwater management ordinance, the surface of an unfinished drive-under garage is not a "floor." This ordinance defines "floor" to mean "the top surface of an enclosed area in a building (including basement) i.e., top slap in concrete slab construction or top of wood flooring in wood frame construction. *The term does not include the floor of a garage used solely for parking vehicles."* (Code § 27-103) (emphasis added). Furthermore, the stormwater ordinance further defines "lowest floor" as not including unfinished garages or enclosures. "An unfinished or flood resistant enclosure, usable solely for parking vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevated design requirements of this article." (*Id*.)

21. Here, the drive-under garage designed for 1012 Avenue of Oaks does not fall within the definitions of "floor" or "lowest floor" because it meets the express criteria for exclusion. It is an unfinished garage that is only partially enclosed and designed solely for parking vehicles and storage. Therefore, it is not a "floor," and consequently, it is not a "story."

22. Not only does a drive-under garage not meet the definition of "story," the City's interpretation of the term based on its relationship to a flood zone lacks textual support. According to the City, the determination of whether a drive-under garage is a story depends on whether it is in a flood zone and what flood zone it is in. The City approved building permits for other houses

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with drive-under garages in Avenue of Oaks on lots that were in Flood Zones AE-14 and AE-13 prior to the issuance of the new FEMA flood maps. In so doing, the City did not consider the drive-under garages on those lots to be a story, thereby concluding that the proposed design did not exceed the 2 ½ story maximum height in the SR-1 zoning district. Now, however, the City takes the position that a drive-under garage is a story if it is located on a lot in Flood Zone X. Yet nothing in the definition of "story" or any other zoning provision suggests that the term's meaning changes based on the location of a flood zone. In fact, the definition does not use the term "flood zone" in any manner. And the City's planning department has never articulated which specific flood zones or conditions permit a drive-under garage to be excluded from the definition of "story." Instead, the definition appears to be determined on the whims of the City's planning department, which has failed to provide property owners with a clear understanding of what criteria apply for determining whether a drive-under garage constitutes a "story." This type of decision making is the epitome of arbitrariness that cannot be tolerated under the rule of law.

23. In addition, the City's and the BZA's interpretation of "story" undermines the purposes of the zoning code. Zoning ordinances are intended, among other things, "to facilitate the creation of a convenient, attractive, and harmonious community" and "to secure safety from fire, flood, and other dangers." S.C. Code Ann. § 6-29-710. The City's interpretation of "story" advances neither of these purposes.

24. In this case, Avenue of Oaks is an attractive community consisting of several elevated homes that utilize drive-under garages. Allowing other homes in the subdivision to utilize a similar design will support a harmonious community. Neither 1012 Avenue of Oaks nor the other homes planned with drive-under garages will be disproportionately higher than the permitted homes because they are all subject to the same maximum height requirements set forth in the

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zoning code. Put simply, there is no logical reason why some drive-under garages are permitted in Avenue of Oaks and others are not.

25. The City's interpretation of "story" is also contrary to the zoning ordinances' purpose of securing safety from flooding. Avenue of Oaks borders a marsh and is in a flood zone. Although the new flood map indicates the flooding risk is less than previously determined under the prior flood map, that risk has not been eliminated. The elevated design that utilizes drive-under garages helps protect property and residents from flooding risk. This fact has recently been recognized by the City in the Dutch Dialogues efforts. As seen in the Dutch Dialogues report, using elevated designs is a measure that is encouraged to protect our City's residents and their property not just from flooding today but also from the uncertain but growing threats from climate change and sea-level rise in the future.

26. By interpreting "story" to include drive-under garages, the City is discouraging homeowners from using this design feature, thereby increasing the threat to safety and property from flooding. This interpretation is contrary to the purposes of the zoning ordinances and the City's other recent efforts to protect its residents and their property from flooding. Therefore, the City's interpretation of "story" should be rejected for this reason, as well as the others cited above.

27. Finally, the City's zoning administrator improperly participated in the BZA's executive session and influenced the decision of the BZA in its denial of the appeal, thereby depriving Crescent Homes of procedural due process.

APPEAL OF DENIAL OF VARIANCES

28. The BZA's denial of the variance requests to allow for 1027 and 1029 Avenue of Oaks to exceed the 2 ½ story height limitation should be overturned because it was arbitrary,

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capricious, has no reasonable relation to a lawful purpose, and constitutes an abuse of the BZA's discretion.

29. In its June 15, 2021 meeting, the BZA granted the variance requests for other similarly-situated lots in the Avenue of Oaks subdivision to exceed the 2 ½ story height limitation. However, the BZA rejected the same variance requests for 1027 and 1029 Avenue of Oaks at its August 3, 2021 meeting even though they were based upon the same factors and criteria supporting the variances that were previously granted by the BZA.

30. The only purported rationale for the differing treatment of the variance requests was that 1027 and 1029 Avenue of Oaks bordered the Maryville/Ashleyville residential neighborhood and allowing these lots to exceed the 2 ½ story height limitation would be detrimental to the adjacent neighborhood. This rationale was arbitrary and capricious because the applicable zoning for the adjacent neighborhood has the same 35' height restriction as the SR-1 zoning district but has no story limitation. Thus, Crescent Homes' planned home designs for 1027 and 1029 Avenue of Oaks would have been permissible by right and without the need for a variance if they had been built in the adjacent neighborhood, and as a result, they could not have been detrimental to the adjacent property.

31. Therefore, Crescent Homes met all applicable criteria to justify a variance to exceed the 2 ½ story height limitation under S.C. Code Ann. §6-29-800 and the City's zoning code, and the BZA erred in denying the variance requests.

WHEREFORE, Appellant requests the following relief:

1. That this Court reverse the decision of the BZA denying a building permit for 1012 Avenue of Oaks and denying the variance requests for 1027 and 1029 Avenue of Oaks;

2. That Crescent Homes recovers its attorneys' fees and costs under S.C. Code Ann. § 15-77-300;

3. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ E. Brandon Gaskins

E. Brandon Gaskins (S.C. Bar No. 73274)
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Charleston, SC 29413-2828
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Attorney for Appellant
Crescent Homes SC, LLC

September 9, 2021
Charleston, South Carolina

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EXHIBIT 1

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John Tecklenburg
Mayor

City of Charleston
South Carolina

Robert Summerfield
Director

Department of Planning, Preservation & Sustainability

August 11, 2021

Mr. Brandon Gaskins
Attorney at Law
78 Wentworth Street
Charleston, SC 29401

RE: 1012 Avenue of Oaks "Appeal" (TMS# 418-06-00-124)

Dear Mr. Gaskins:

Please see attached document of the decision from the August 3, 2021 meeting of **the Board of Zoning Appeals-Zoning** concerning the above referenced application.

If I may be of any further assistance, you may contact me at (843) 724-7177.

Sincerely,

Pennye Ashby
Senior Zoning Planner

Enclosure

2 George Street · Suite 3100 · Charleston, South Carolina 29401 · Tel. (843) 724-3765 · Fax (843) 724-3772

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Ashby, Pennye

From: Brandon Gaskins <gaskinsb@mvalaw.com>
Sent: Tuesday, August 3, 2021 11:32 AM
To: boards; Ashby, Pennye
Subject: BZA Meeting - August 3rd -1012 Avenue of Oaks
Attachments: CHARLESTON-#825403-v1-2021-8-3 _Crescent_Homes_-_Ave__of_Oaks_-_BZA_Appeal.pdf

CAUTION: This email originated outside of the City of Charleston. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ms. Ashby,

Good morning. I am providing for the BZA's consideration the attached correspondence in support of Crescent Home's appeal related to 1012 Avenue of Oaks. Please forward to the BZA members.

Brandon Gaskins
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Moore & Van Allen

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Moore&VanAllen

August 3, 2021

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Mailing Address:
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VIA EMAIL
Board of Zoning Appeals – Zoning
City of Charleston
2 George Street
Charleston, South Carolina 29401

Re: *Crescent Homes SC, LLC*
Appeal of Denial of Building Permit for 1012 Avenue of Oaks

Dear Members of the City of Charleston Board of Zoning Appeals:

Pursuant to S.C. Code Ann. § 6-29-800(A)(1) and City Zoning Code § 54-926, I am writing in support of Crescent Homes SC, LLC's appeal of the City Planning Department's denial of a building permit for 1012 Avenue of Oaks in the Avenue of Oaks subdivision in the City of Charleston. As you recall, this appeal was heard at the BZA's meeting on June 15, 2021. During that same meeting, the BZA also granted a variance to allow this property and others within the same neighborhood to exceed the 2 ½ story height limitation in the SR-1 zoning district. As a result of this variance, the BZA deferred deciding the appeal.

In the interest of efficiency, I incorporate into this letter by reference the previous legal arguments made in support of the appeal at the June 15th meeting and respectfully request that the BZA refer to those arguments and materials. I am also writing to address the separate issue of whether the issue is moot as the BZA discussed during the June 15th meeting. For the reasons discussed below, declaring the issue moot will not make it go away, and the BZA should decide the appeal because the case falls within the recognized exceptions to the mootness doctrine.

According to the South Carolina Supreme Court, a "case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." *S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 121, 804 S.E.2d 854, 860 (2017). However, the Supreme Court has also recognized the following three exceptions to the mootness doctrine:

> First, if the issue is raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction. Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct. Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.

Id. (citations omitted). In this case, all three exceptions apply.

First, the issue of whether the City's interpretation of "story" is correct is capable of repetition and will likely evade review as demonstrated by other items on the agenda for the BZA's meeting on

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August 3rd. Crescent Homes is applying for a variance to allow for the construction of two three-story (as defined by the City) residences in Avenue of Oaks, which is the same subdivision from which this appeal and the previous variance requests arose. Because this appeal was deferred at the June 15th meeting, Crescent Homes was forced to apply for a variance for these two properties. Also, the issue is capable of repetition because Crescent Homes intends to use the drive-under garage design in other planned developments in the City beyond Avenue of Oaks, such Central Park, Twin Lakes, and Oak Bluff. And by supporting variances whenever its interpretation of "story" is challenged, the City can effectively evade review of its interpretation as demonstrated by this case.

Second, it is imperative that the BZA decide this issue to address the urgent need of protecting property and people from the increasing risks of flooding. As stated in our previous letter in support of the appeal, the drive-under design mitigates the risk of flooding and will help ensure that future homes will be built to withstand future sea-level rise and increased flooding. Consistent with this design, the City's elected officials have embraced elevating homes as a way of combatting the "existential threat" of climate change and sea rise. In fact, Mayor Tecklenburg, in a recent *New York Times* article, emphasized the urgency of elevating homes in Charleston to protect against increasing flooding. (*See New York Times*, July 24, 2021, "In Charleston, S.C. Saving Historic Homes Means Hoisting Them in the Air.")[1]

Despite these proclamations, the City's interpretation of "story" discourages homes from being elevated and increases the likelihood that flooding will threaten property and residents in Avenue of Oaks and other vulnerable neighborhoods. Unlike Crescent Homes, many builders may be unwilling to challenge or go through the time-consuming and uncertain process of seeking a variance from the City's interpretation. The BZA should resolve this issue once and for all so that builders can take necessary action to protect future homeowners from flooding.

Third, a decision on this issue will affect future developments and have collateral consequences for Crescent Homes and the City. As stated above, Crescent Homes desires and intends to utilize the drive-under design for future developments in the City. This design is preferred by consumers not only because it protects against flooding, but also because it maximizes use of lot space and provides the most efficient home product. The demand for this design ensures that the issue is not going away, and it makes little sense to delay resolution any longer, as it is certain that the issue will be subject to further appeal, litigation, and administrative review if not decided now.

For these reasons, Crescent Homes respectfully requests that the BZA consider the appeal, not deem it moot, and reject the City's interpretation of "story."

Sincerely,

E. Brandon Gaskins

[1] https://www.nytimes.com/2021/07/24/us/charleston-sc-flooding-climate-change.html?action=click&module=Well&pgtype=Homepage&section=US%20News&mc_cid=951c064af8&mc_eid=3b75ac2f31.

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For office use only

Property address: 1012 Avenue of Oaks (Maryville/Ashleyville)

TMS # 418-06-00-124 Zoning SR-1

Request an appeal of the Zoning Administrator's decision to deny building permit on the grounds that the proposed home exceeds the 2½ story height restriction for the SR-1 (Single-Family Residential) zone district under Sec. 54-301, because the home's designed drive-under garage constitutes a 3rd story under Sec. 54-120.

Board of Zoning Appeals-Zoning
Order on Appeal

The Board of Zoning Appeals-Zoning held a public hearing on August 3, 2021 to consider the above appeal for reconsideration of a decision of the Board or the zoning administrator alleged to be erroneous by the appellant and affecting the property described above. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions:

1. The Board makes the following findings of fact which are supported by the evidence:

2. The Board concludes the following:

b. In the case of an appeal for **reconsideration of a decision of the Board**, the Board _____ denies the appeal. _____ grants the appeal, withdraws its decision, and agrees to hear the application de novo, as if no hearing, consideration or determination has been previously made or heard.

a. In the case of an appeal for **reconsideration of a decision of the zoning administrator**, the Board orders that the decision of the zoning administrator is ✓ affirmed _____ reversed _____ modified as follows: _____

Date 8/3/21 CHAIRMAN Michael Lennon

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John Tecklenburg
Mayor

City of Charleston
South Carolina

Robert Summerfield
Director

Department of Planning, Preservation & Sustainability

August 11, 2021

Mr. Kelly McGuinn
Crescent Homes
572 Savannah Highway
Charleston, SC 29401

RE: 1027 Avenue of Oaks (TMS # 418-06-00-159)

Dear Mr. McGuinn:

Please see attached document of the decision from the August 3, 2021 meeting of **the Board of Zoning Appeals-Zoning** concerning the above referenced application.

If I may be of any further assistance, you may contact me at (843) 724-7177.

Sincerely,

Pennye Ashby
Senior Zoning Planner

Enclosure

2 George Street · Suite 3100 · Charleston, South Carolina 29401 · Tel. (843) 724-3765 · Fax (843) 724-3772

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BOARD OF ZONING APPEALS — ZONING

ADDRESS 1027 Avenue of Oaks

☒ APPROVED FOR: ☐ SET BACK
☐ DENIED ☐ DENSITY
☐ WITHDRAWN ☐ PARKING
☒ HEIGHT
☒ AS SUBMITTED ☐ LOT OCCUPANCY
☐ W/CONDITIONS ☐ USE/OR SPECIAL EXCER
☐ OTHER

SFH

8/3/21 PA
DATE ZONING OFFICIAL

*THIS APPROVAL EXPIRES WIN TWO YEARS UNLESS AN EXTENSION IS APPROVED PURSUANT TO SEC. 54-962
*THIS DOES NOT CONSTITUTE APPROVAL BY OTHER CITY BOARDS OR DEPARTMENTS.

MONROE DU
FRONT DOOR RIGHT

3-4 BEDROOMS / 2.5-4.5 BATHS

AVO 41

SQUARE FOOTAGE TOTALS	
FIRST FLOOR HEATED	1411
SECOND FLOOR HEATED	916
TOTAL HEATED AREA	2327
FRONT PORCH (ALL ELEVS)	168
REAR COVERED STOOP (ALL ELEVS)	65
TOTAL AREA	2,560

OPTIONS	
BALCONY (ELEV. B&C)	168
OPT. DINING BUMP OUT	+29
OPT. 2ND MASTER SUITE	+443
OPT. 2ND MASTER SUITE BALCONY	+65
OPT. 2ND MASTER SUITE EXT. BALCONY	+95
OPT. EXT. SCREENED PORCH	+95

REVISION LOG

NO.	DATE	DESCRIPTION
1.0	11-07-19	
2.0	11-26-19	
3.0	2-04-20	
4.0	3-09-20	
5.0	4-16-20	
6.0	6-22-20	
7.0	9-09-20	
8.0	7-17-20	
9.0	9-4-20	
10.0	9-10-20	
11.0	10-01-20	
12.0	10-05-21	

SCHEDULE OF DRAWING SET

A0	COVER SHEET
A1	ELEVATIONS - FRONT AND REAR
A2	ELEVATIONS - SIDES
A3	ROOF PLAN
A4	GROUND FLOOR PLAN
A5	FIRST FLOOR PLAN
A6	SECOND FLOOR PLAN
A7	OPT. EXT. SCREENED PORCH ELEVATION AND PLAN
A8	OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELEVATION AND PLAN
E1	GROUND FLOOR ELECTRICAL
E2	FIRST FLOOR ELECTRICAL
E3	SECOND FLOOR ELECTRICAL
E4	OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELECTRICAL
D1	DETAILS
D2	DETAILS

Plans to be Built according to the latest adopted edition of the International Residential Building Code Standard for Single Family Residential Dwellings

3080

1027 AVE OF OAKS

CRESCENT HOMES
572 Savannah Highway Fax (843) 402-0135
Charleston, South Carolina Phone (843) 573-9535

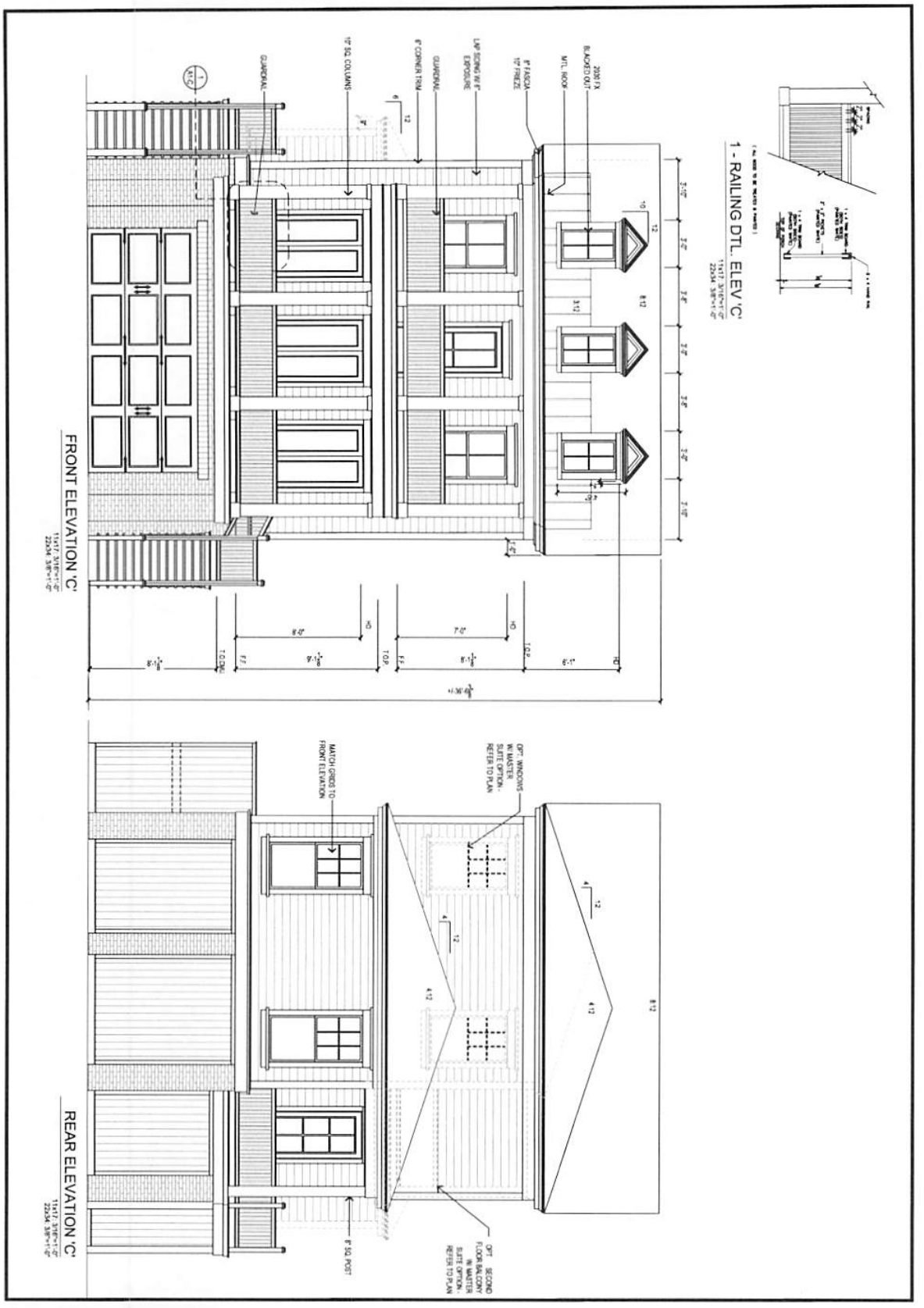
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AVENUE OF OAKS

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REVISIONS:
DRAWN BY: DA
DATE: 02/05/21
JOB NO.:
TITLE: COVER SHEET
SHEET: COVER

RECORD 000044

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PLAN NAME:	
REVISIONS:	
DRAWN BY:	DA
DATE:	02/05/21
JOB NO.:	
TITLE:	FRONT AND REAR ELEVATIONS
SHEET:	A1-C

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PLAN NAME

REVISIONS

DRAWN BY: DA

DATE: 02/05/21

JOB NO.:

TITLE: SIDE ELEVATIONS

SHEET: A2-C

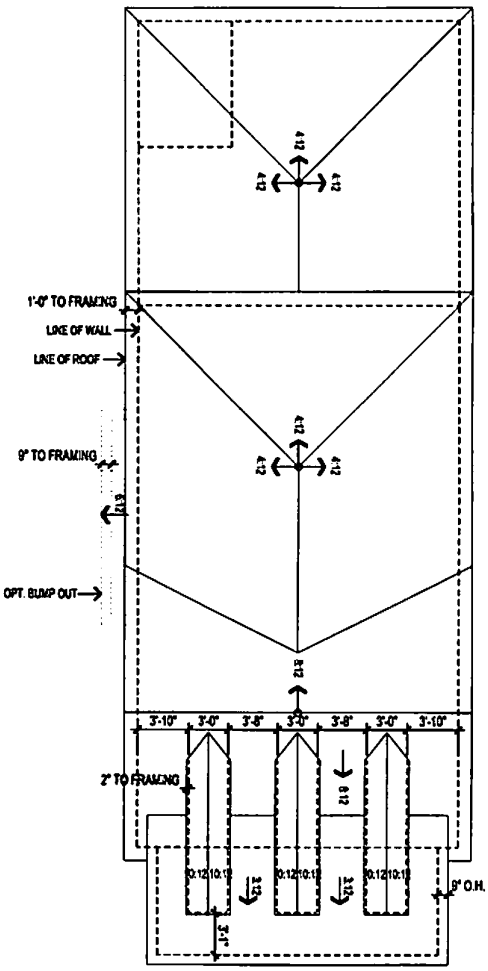
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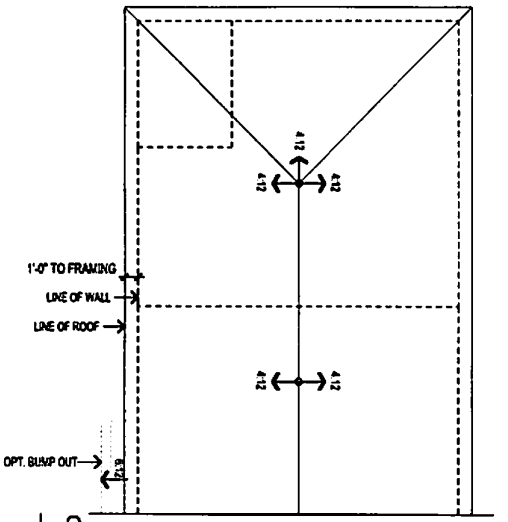
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ROOF PLAN 'C'



OPT. ROOF PLAN @ 2ND FLOOR EXPANSION
2ND MASTER SUITE W/ OPT. BALCONY

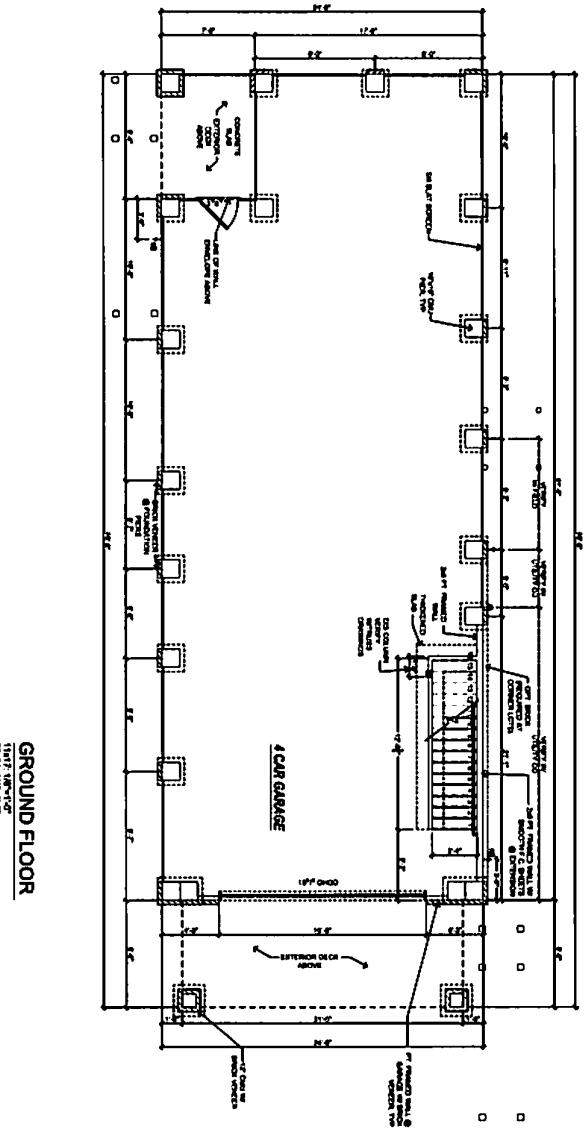
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JOB NO.:	
DATE:	02/05/21
DRAWN BY:	DA
REVISIONS:	
PLAN NAME:	

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GROUND FLOOR

PLAN NAME	
REVISIONS	
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DATE	02/04/21
JOB NO.	
TITLE	GROUND FLOOR PLAN
SHEET	A4

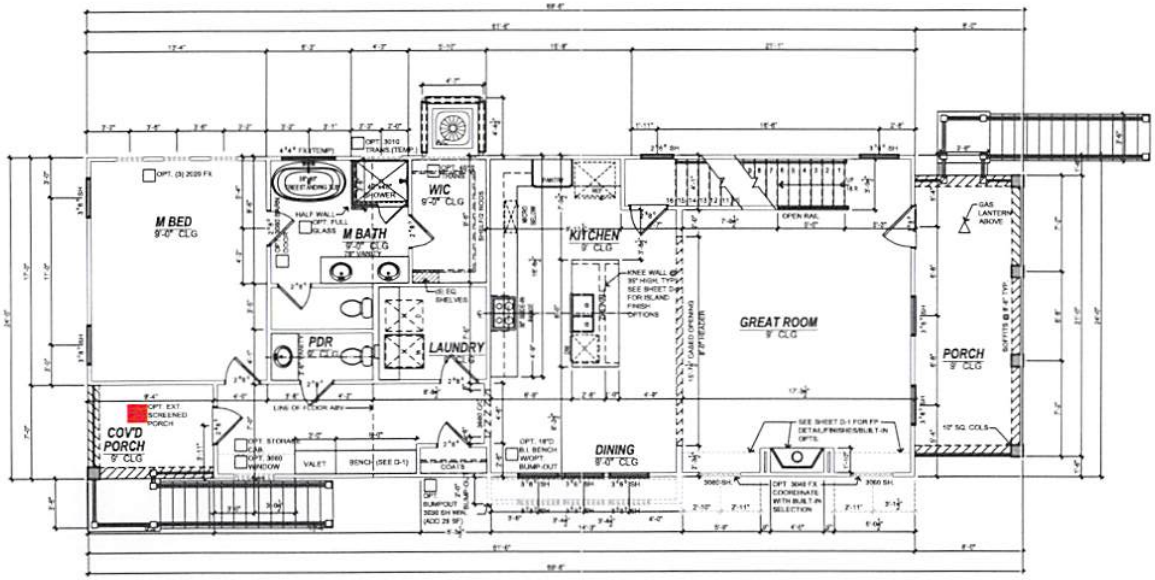
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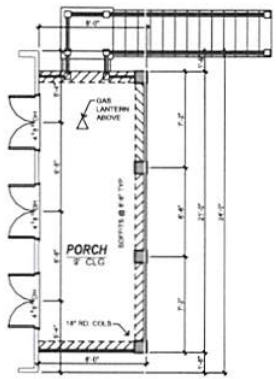
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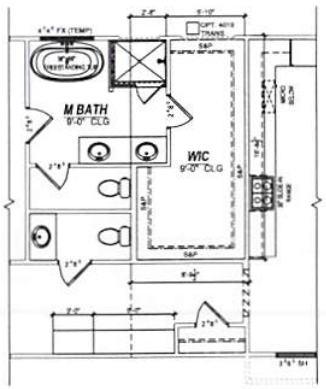
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FIRST FLOOR ELEV. A & B

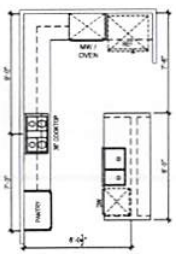


PARTIAL ELEV. C

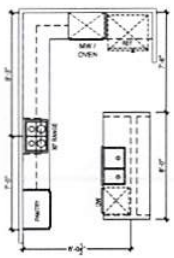


OPT. EXPANDED MASTER CLOSET

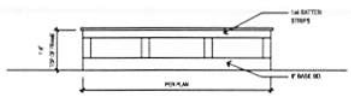
*MUST CHOOSE OPT. LAUNDRY LOCATION UPSTAIRS



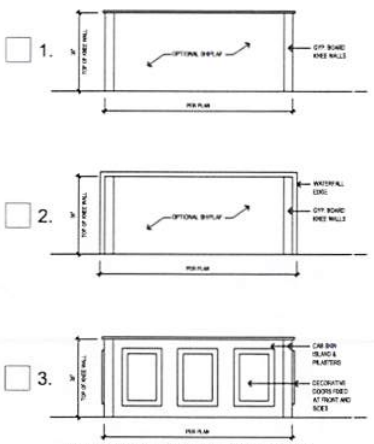
OPT. 2 - KITCHEN



OPT. 3 - KITCHEN



BUILT-IN BENCH DETAIL



KITCHEN ISLAND OPTIONS

N.T.S.

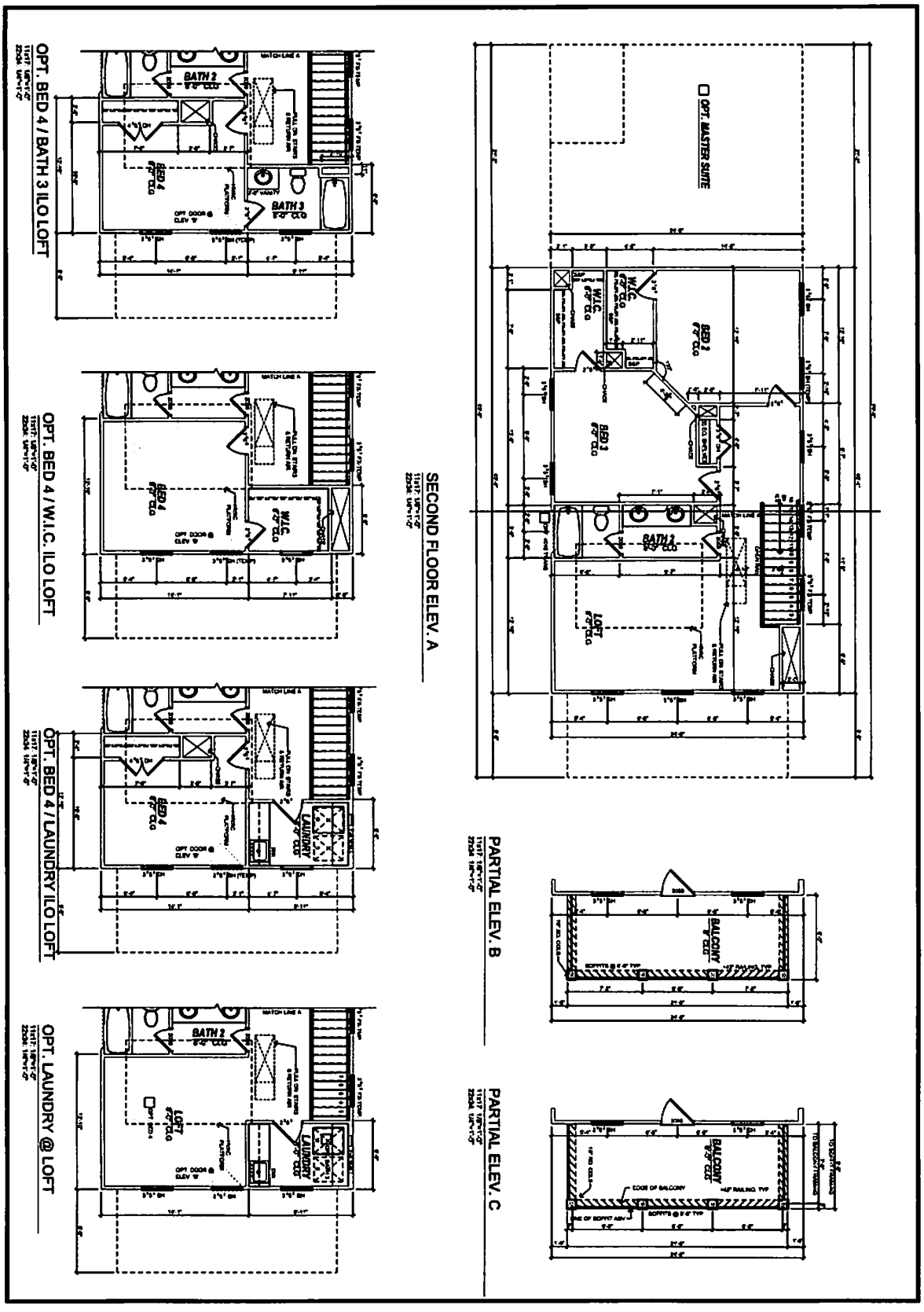
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PLAN NAME:
REVISIONS:
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DATE: 02/05/21
JOB NO.:
TITLE: FIRST FLOOR PLAN
SHEET: A5

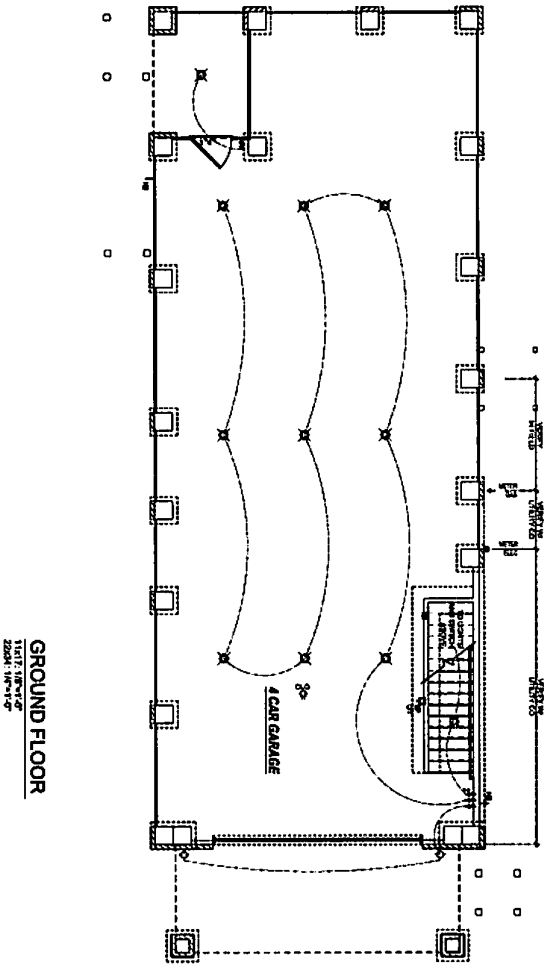
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TITLE: SECOND FLOOR PLAN PERMIT: DATE: 02/05/21 DRAWN BY: DA			CRESCENT HOMES 572 Savannah Highway Fax (843) 402-0135 Charleston, South Carolina Phone (843) 573-9635

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GROUND FLOOR

1/4"=1'-0"
22x34: 1/4"=1'-0"

PLAN NAME:	
REVISIONS:	
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DATE:	02/05/21
JOB NO.:	
TITLE:	GROUND FLOOR ELECTRICAL PLAN
SHEET:	E1

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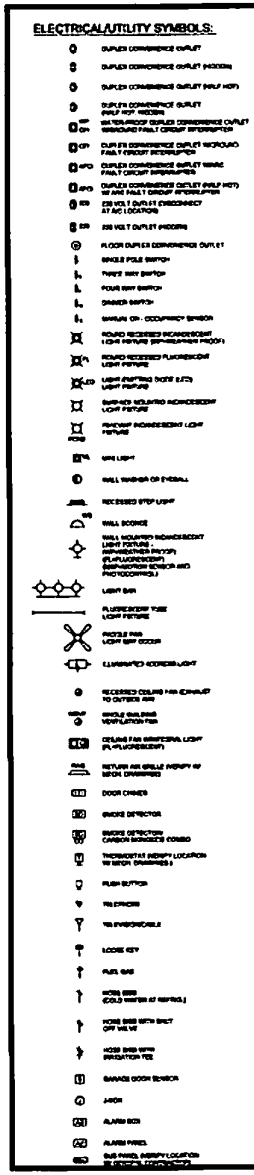
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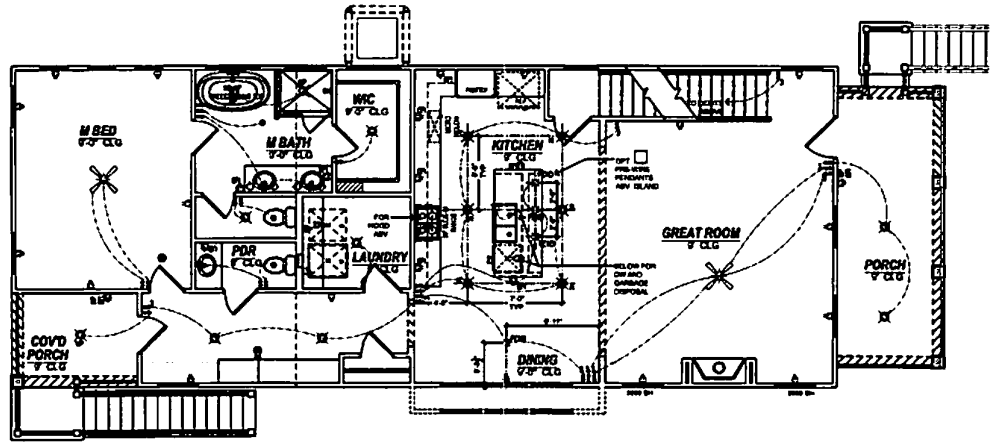
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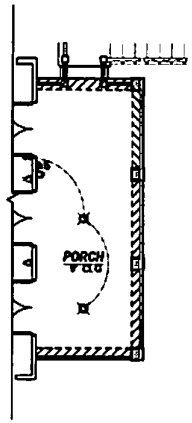
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ELECTRICAL/UTILITY SYMBOLS:

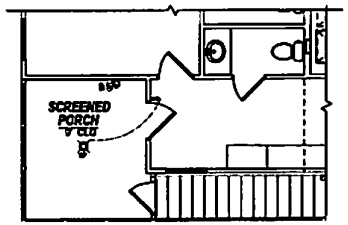




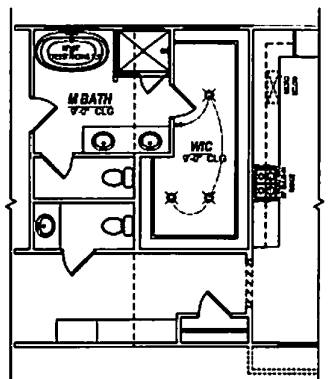
FIRST FLOOR ELEV A & B



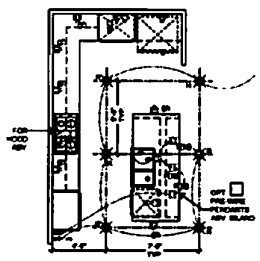
PARTIAL FIRST FLOOR ELEV C



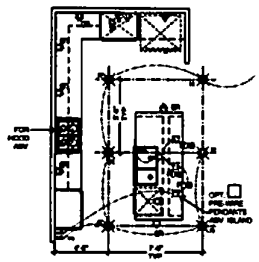
OPT. EXT. SCREENED PORCH



OPT. EXPANDED MASTER CLOSET



OPT. 2 - KITCHEN



OPT. 3 - KITCHEN

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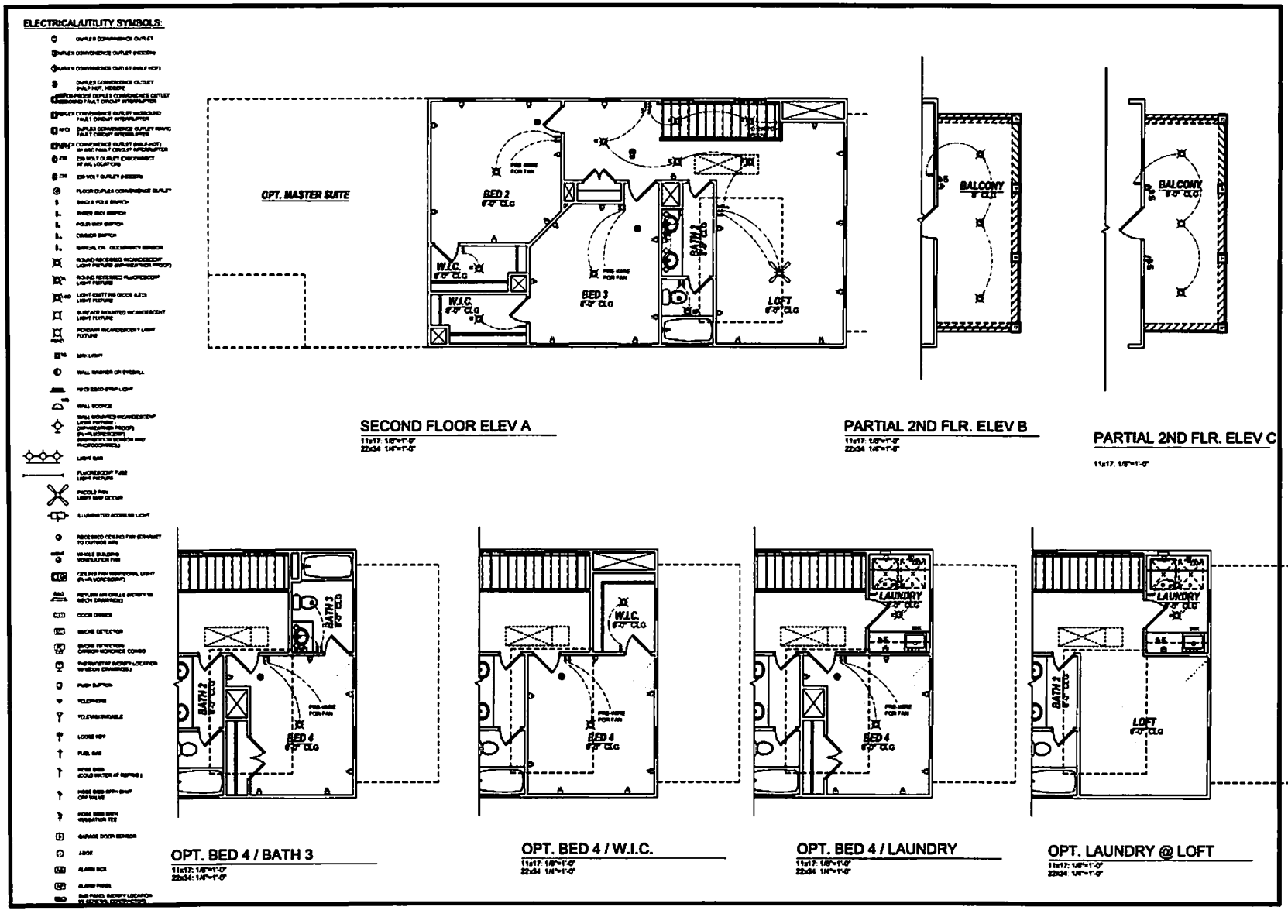
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DATE: 02/05/21
JOB NO.:
TITLE: FIRST FLOOR ELECTRICAL PLAN
SHEET: E2

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Fax (843) 402-0135

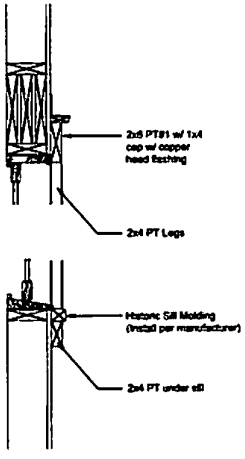
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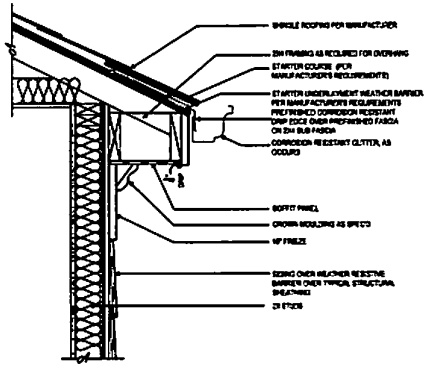
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DATE: 02/05/21
JOB NO.:
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SHEET: E3

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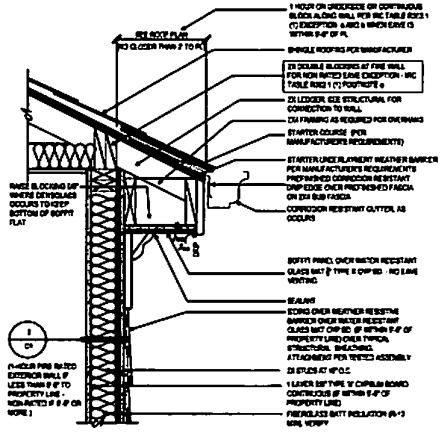
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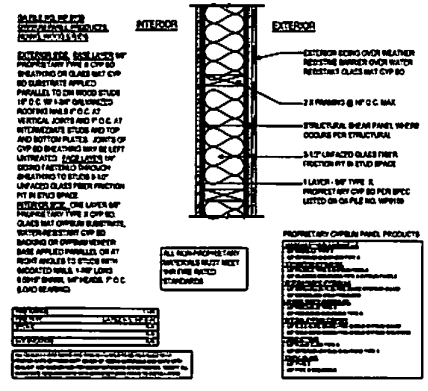
WINDOW TRIM DETAIL
N.T.S.



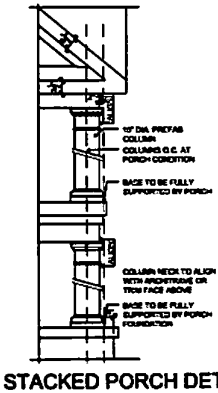
TYPICAL EAVE DETAIL
11x17: 1/4"=1'-0"
22x34: 1/2"=1'-0"



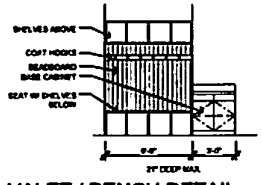
1 - ONE HOUR EXT. EAVE (WITHIN 5' OF PL)
11x17: 3/4"=1'-0"
22x34: 1 1/2"=1'-0"



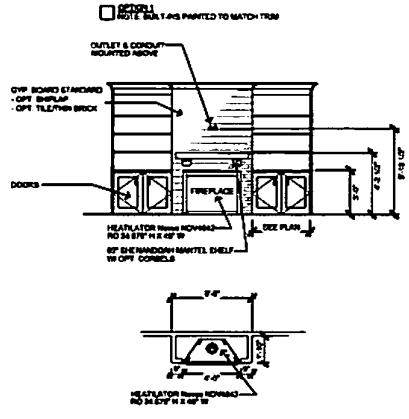
2 - ONE HOUR EXT. WALL ASSEMBLY
11x17: 3/4"=1'-0"
22x34: 1 1/2"=1'-0"

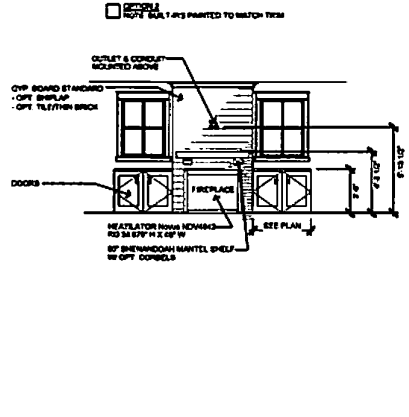


STACKED PORCH DETAIL
N.T.S.



VALET / BENCH DETAIL
N.T.S.





FIREPLACE DETAIL
N.T.S.

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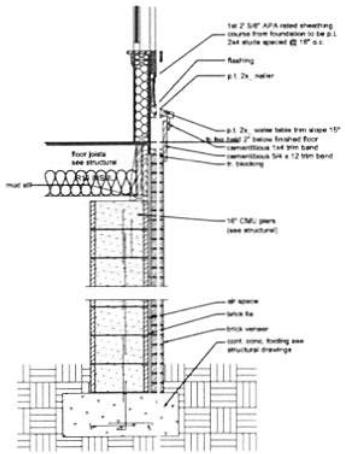
MONROE DU
AVENUE OF OAKS

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PLAN NAME:
REVISIONS:
DRAWN BY: DA
DATE: 02/05/2
JOB NO.:
TITLE: DETAILS
SHEET: D1

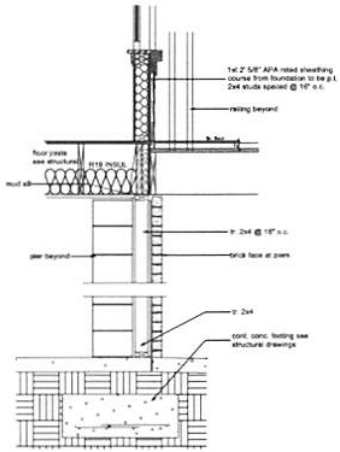
RECORD 000054

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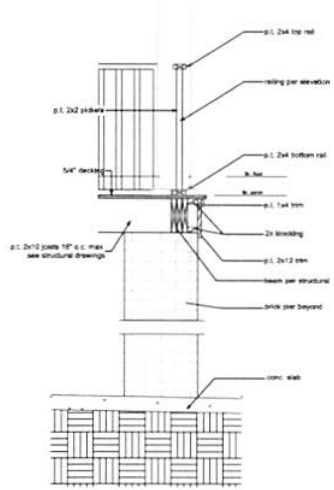
WALL SECTION AT HOUSE PIER

11x17: 1/4"=1'-0"
22x34: 1/2"=1'-0"



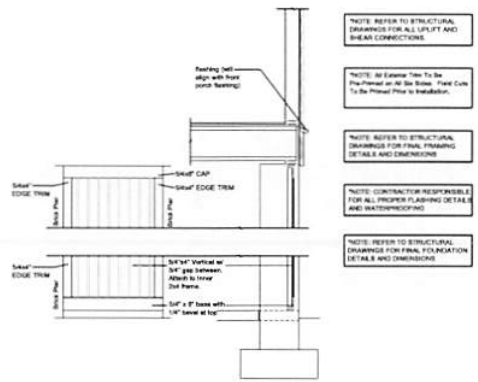
WALL SECTION AT GARAGE DOOR

11x17: 1/4"=1'-0"
22x34: 1/2"=1'-0"



WALL SECTION AT FRONT PORCH

11x17: 1/4"=1'-0"
22x34: 1/2"=1'-0"



FOUNDATION LOUVER DETAIL

N.T.S.

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AVENUE OF OAKS

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DATE: 02/05/2
JOB NO.:
TITLE: DETAILS
SHEET: D2

RECORD 000055

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PROPERTY LOCATION, TMS NUMBER(S) AND DESCRIPTION OF REQUEST(S):

1027 AVENUE OF OAKS (LOT 41) (418-06-00-159)
Request variance from Sec. 54-301 to allow construction of a 3-story single-family residence that exceeds 35-ft. in height (Limit is 2 ½ stories, 35-ft.).
Zoned SR-1

Order on Special Exception Request

The Board of Zoning Appeals-Zoning held a public hearing to consider the above appeal for a special exception which may be permitted by the Board pursuant to the Zoning Ordinance for the property described above. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

☐ **DENIED**. The Board concludes that the standards in the Section(s) of the Zoning Ordinance listed above, which are applicable to the requested special exception(s), have not been met and therefore orders that the special exception(s) be denied.

☐ **APPROVED**. The Board concludes that the standards in the Section(s) of the Zoning Ordinance listed above, which are applicable to the requested special exception(s), have been met and therefore orders that the special exception(s) be granted, subject to the following conditions, if any: _____

_____

_____

_____

Date issued: _____ Chairman _____

Order on Variance Request

The Board of Zoning Appeals-Zoning held a public hearing to consider an appeal for a variance from the strict application of the Zoning Ordinance for the property described above. After consideration of the evidence and arguments presented, the Board makes the following findings of facts and conclusions.

☑ **DENIED**. The Board concludes that the requirements for granting a variance have not been met and, therefore, orders that the variance be denied.

☐ **APPROVED**. The Board concludes that:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. Authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

THE BOARD, THEREFORE, finds that the applicant has an unnecessary hardship and orders that the variance be granted, subject to the following conditions, if any: _____

_____

_____

_____

Date issued: 8/3/21 Chairman Michael Robinson

Approvals of the Board shall remain valid for two (2) years from the approval date, unless extended in accordance with the provisions of Section 54-962. Applicants may not apply for the same request that has been denied by the Board until a period of six (6) months has lapsed.

1/09

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John Tecklenburg
Mayor

City of Charleston
South Carolina

Robert Summerfield
Director

Department of Planning, Preservation & Sustainability

August 11, 2021

Mr. Kelly McGuinn
Crescent Homes
572 Savannah Highway
Charleston, SC 29401

RE: 1029 Avenue of Oaks (TMS # 418-06-00-158)

Dear Mr. McGuinn:

Please see attached document of the decision from the August 3, 2021 meeting of **the Board of Zoning Appeals-Zoning** concerning the above referenced application.

If I may be of any further assistance, you may contact me at (843) 724-7177.

Sincerely,

Pennye Ashby
Senior Zoning Planner

Enclosure

2 George Street · Suite 3100 · Charleston, South Carolina 29401 · Tel. (843) 724-3765 · Fax (843) 724-3772

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BOARD OF ZONING APPEALS — ZONING

ADDRESS 1029 Avenue Of Oaks (Lot 40)

☐ APPROVED
☒ DENIED
☐ WITHDRAWN

☒ AS SUBMITTED
☐ W/CONDITIONS

FOR: ☐ SET BACK
☐ DENSITY
☐ PARKING
☒ HEIGHT
☐ LOT OCCUPANCY
☐ USE/OR SPECIAL EXCER
☐ OTHER

8-3-21 — DATE — ZONING OFFICIAL

*THIS APPROVAL EXPIRES W/IN TWO YEARS UNLESS AN EXTENSION IS APPROVED PURSUANT TO SEC. 54-962
*THIS DOES NOT CONSTITUTE APPROVAL BY OTHER CITY BOARDS OR DEPARTMENTS.

MONROE DU
FRONT DOOR RIGHT

3-4 BEDROOMS / 2.5-4.5 BATHS

AVO 40

SQUARE FOOTAGE TOTALS	
FIRST FLOOR HEATED	1411
SECOND FLOOR HEATED	916
TOTAL HEATED AREA	2327
FRONT PORCH (ALL ELEVS)	168
REAR COVERED STOOP (ALL ELEVS)	65
TOTAL AREA	2,560

OPTIONS	
BALCONY (ELEV. B&C)	168
OPT. DINING BUMP OUT	+29
OPT. 2ND MASTER SUITE	+443
OPT. 2ND MASTER SUITE BALCONY	+65
OPT. 2ND MASTER SUITE EXT. BALCONY	+95
OPT. EXT. SCREENED PORCH	+95

REVISION LOG

NO.	DATE	DESCRIPTION
1.0	11-07-18	
2.0	11-26-18	
3.0	12-04-18	
4.0	3-05-19	
5.0	4-12-19	
5.1	4-30-19	
5.2	5-20-19	
6.0	7-17-19	
6.1	8-7-19	
6.2	8-21-19	
6.3	9-4-19	
6.4	9-18-19	
7.0	10-21-19	
7.1	11-12-19	
7.2	12-05-19	
7.3	12-20-19	
8.0	1-07-20	
8.1	1-21-20	
8.2	2-04-20	
8.3	2-18-20	
8.4	3-03-20	
8.5	3-17-20	
8.6	3-31-20	
8.7	4-14-20	
8.8	4-28-20	
8.9	5-12-20	
9.0	5-26-20	
9.1	6-09-20	
9.2	6-23-20	
9.3	7-07-20	
9.4	7-21-20	
9.5	8-04-20	
9.6	8-18-20	
9.7	9-01-20	
9.8	9-15-20	
9.9	9-29-20	
10.0	10-13-20	
10.1	10-27-20	
10.2	11-10-20	
10.3	11-24-20	
10.4	12-08-20	
10.5	12-22-20	
10.6	01-05-21	
10.7	01-19-21	
10.8	02-02-21	
10.9	02-16-21	
11.0	03-02-21	
11.1	03-16-21	
11.2	03-30-21	
11.3	04-13-21	
11.4	04-27-21	
11.5	05-11-21	
11.6	05-25-21	
11.7	06-08-21	
11.8	06-22-21	
11.9	07-06-21	
12.0	07-20-21	
12.1	08-03-21	

SCHEDULE OF DRAWING SET

A0	COVER SHEET
A1	ELEVATIONS - FRONT AND REAR
A2	ELEVATIONS - SIDES
A3	ROOF PLAN
A4	GROUND FLOOR PLAN
A5	FIRST FLOOR PLAN
A6	SECOND FLOOR PLAN
A7	OPT. EXT. SCREENED PORCH ELEVATION AND PLAN
A8	OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELEVATION AND PLAN
E1	GROUND FLOOR ELECTRICAL
E2	FIRST FLOOR ELECTRICAL
E3	SECOND FLOOR ELECTRICAL
E4	OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELECTRICAL
D1	DETAILS
D2	DETAILS

Plans to be Built according to the latest adopted edition of the International Residential Building Code Standard for Single Family Residential Dwellings

1029 AVE OF OAKS

CRESCENT HOMES
572 Savannah Highway Fax (843) 402-0135
Charleston, South Carolina Phone (843) 573-9635

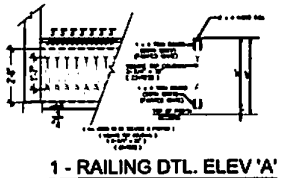
MONROE DU
AVENUE OF OAKS

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PLAN NAME:
REVISIONS:
DRAWN BY: DA
DATE: 02/05/21
JOB NO.:
TITLE: COVER SHEET
SHEET: COVER

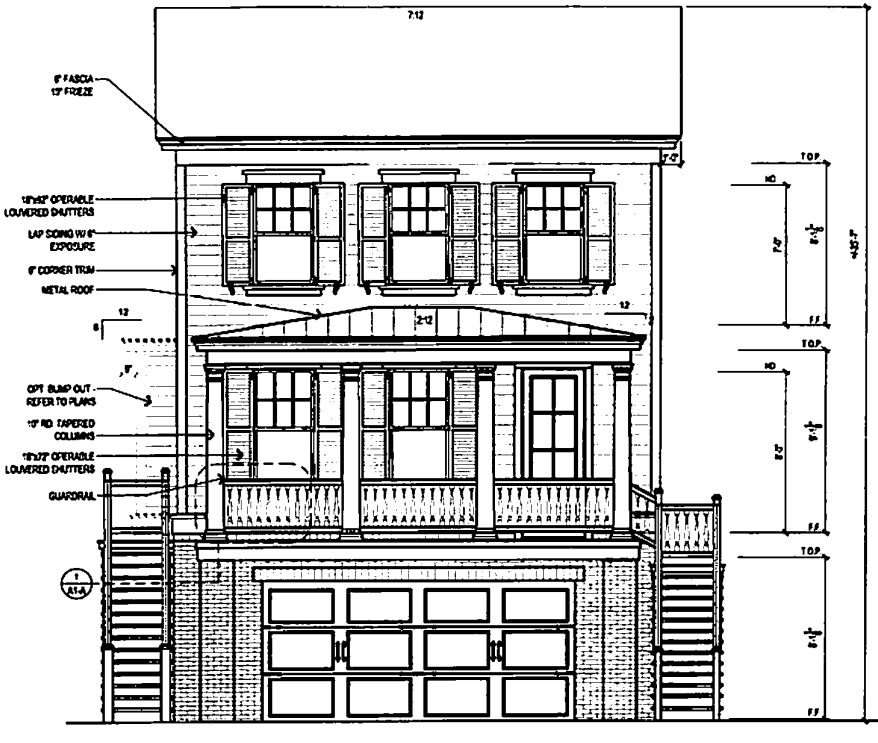
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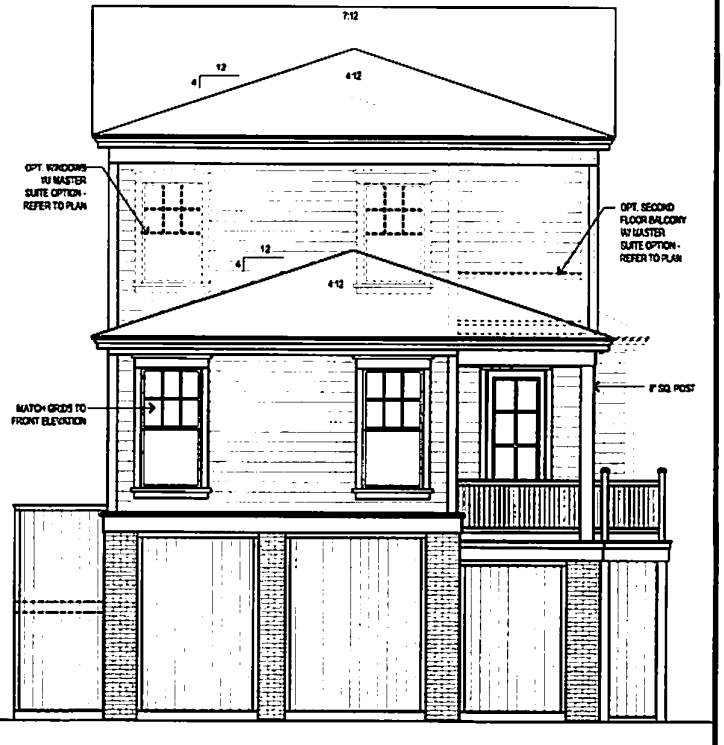
1 - RAILING DTL. ELEV 'A'

11x17: 3/16"=1'-0"
22x34: 3/8"=1'-0"



FRONT ELEVATION 'A'

11x17: 3/16"=1'-0"
22x34: 3/8"=1'-0"



REAR ELEVATION 'A'

11x17: 3/16"=1'-0"
22x34: 3/8"=1'-0"

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575 Savannah Highway
Charleston, South Carolina
Phone (843) 573-8535
Fax (843) 402-0135

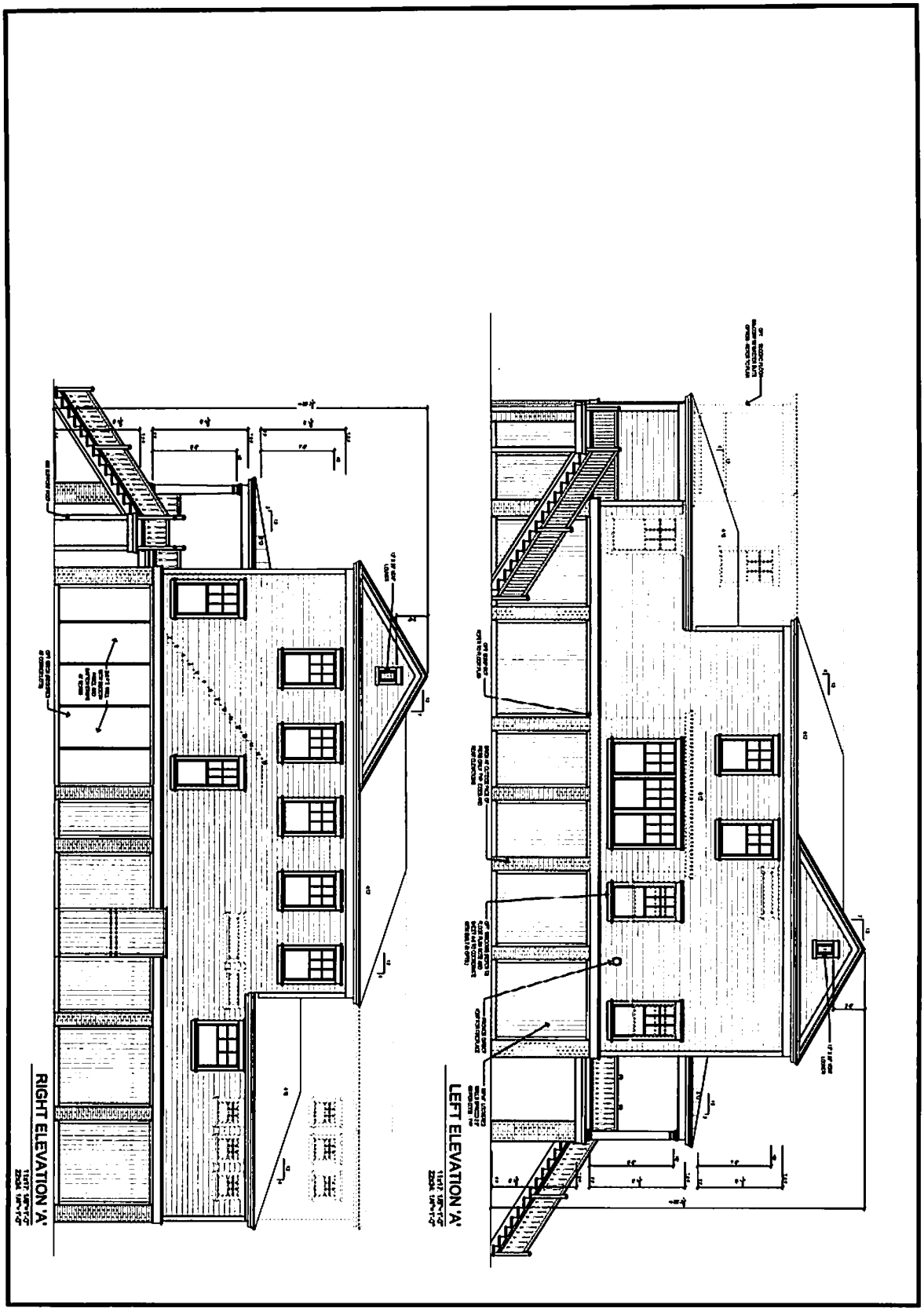
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PLAN NAME:
REVISIONS:
DRAWN BY: DA
DATE: 02/05/21
JOB NO.:
TITLE: FRONT AND REAR ELEVATIONS
SHEET: A1-A

RECORD 000059

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SHEET: A2-A

FOR PERMIT

REVISIONS

DRAWN BY: DA

DATE: 02/05/21

JOB NO.

TITLE: SIDE ELEVATIONS

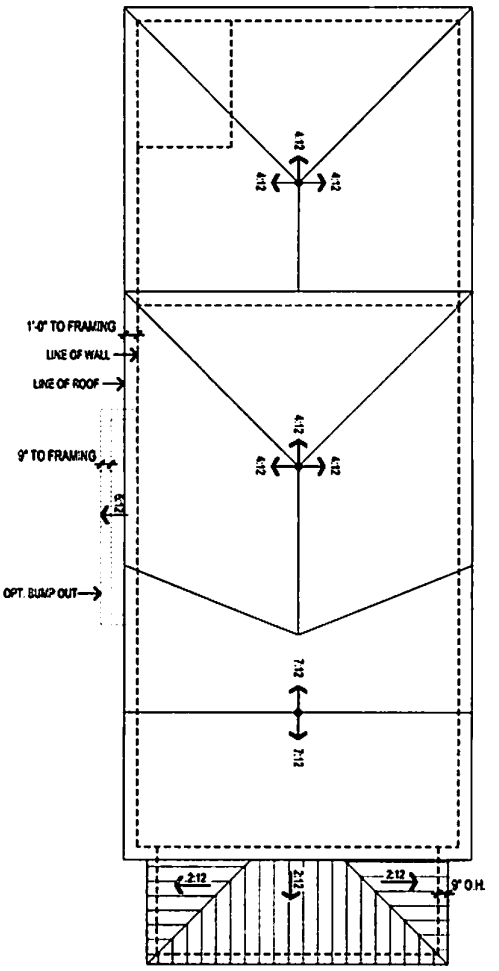
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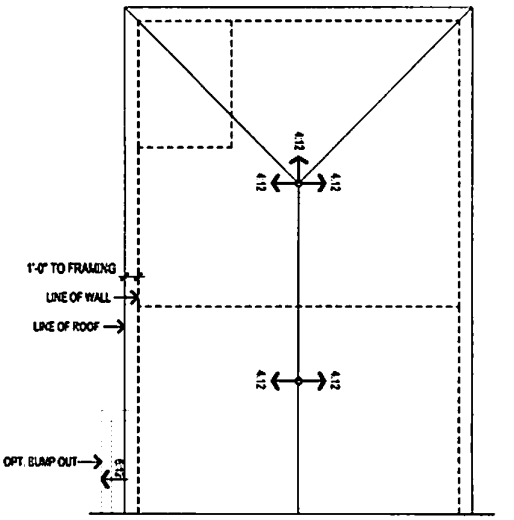
AVENUE OF OAKS

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Charleston, South Carolina
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ROOF PLAN 'A'



OPT. ROOF PLAN @ 2ND FLOOR EXPANSION
2ND MASTER SUITE W/ OPT. BALCONY

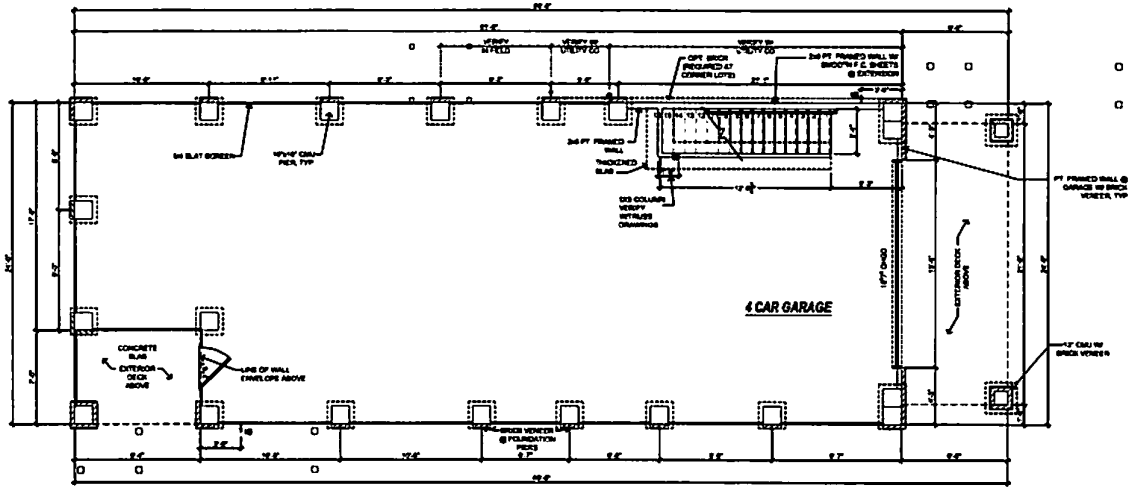
SHEET	A3-A
TITLE	ROOF PLAN
JOB NO.	
DATE	02/05/21
DRAWN BY	DA
REVISIONS	
PLAN NAME	

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GROUND FLOOR

11x17 1/8"=1'-0"
22x34 1/4"=1'-0"

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Charleston, South Carolina
Phone (843) 572-2535
Fax (843) 402-0135

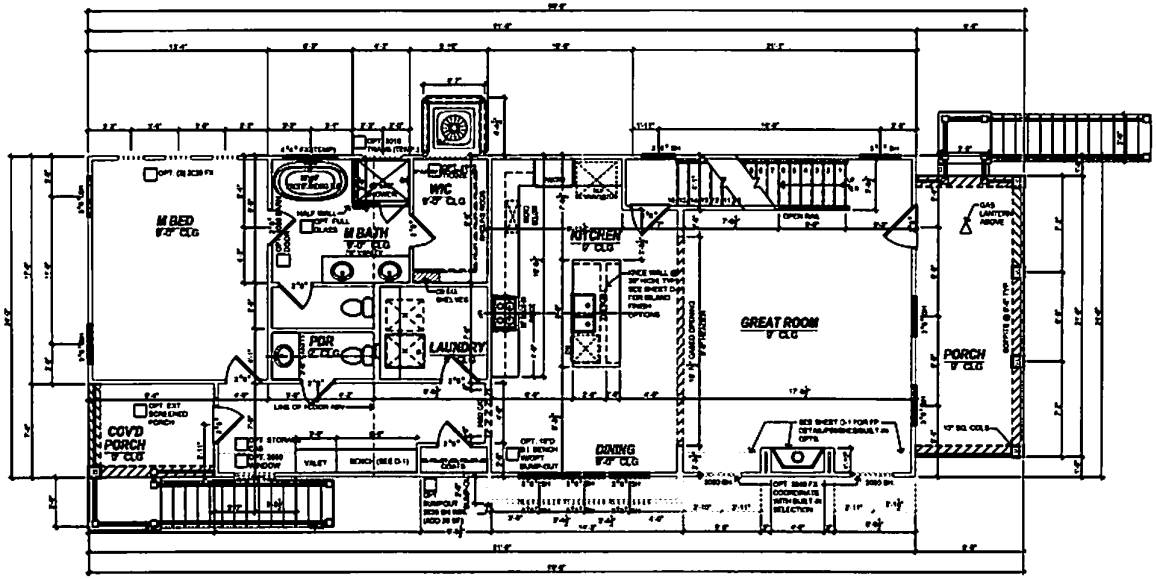
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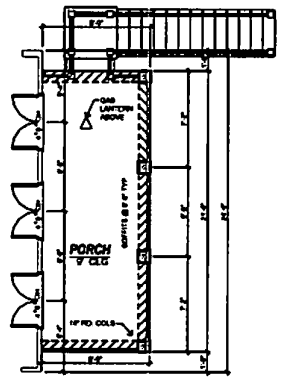
PLAN NAME:
REVISIONS:
DRAWN BY: DA
DATE: 02/05/21
JOB NO.:
TITLE: GROUND FLOOR PLAN
SHEET: A4

RECORD 000062

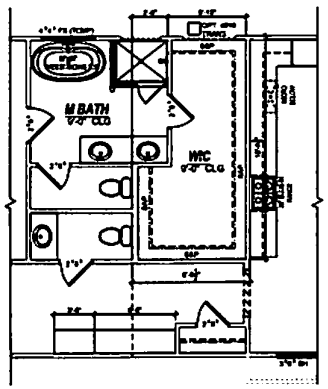
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FIRST FLOOR ELEV. A & B

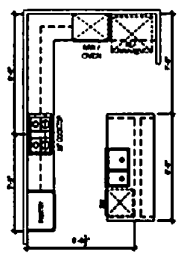


PARTIAL ELEV. C

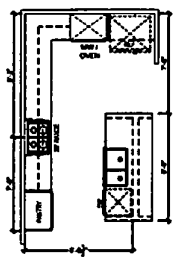


☐ OPT. EXPANDED MASTER CLOSET

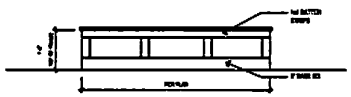
*MUST CHOOSE OPT. LAUNDRY LOCATION UPSTAIRS



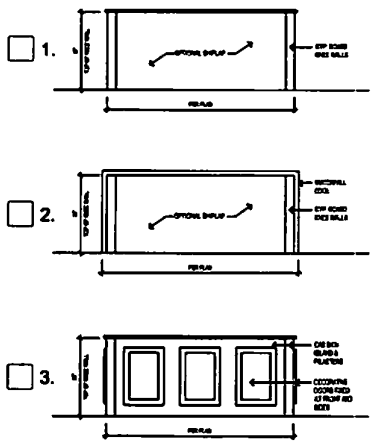
☐ OPT. 2 - KITCHEN



☐ OPT. 3 - KITCHEN



☐ BUILT-IN BENCH DETAIL



KITCHEN ISLAND OPTIONS

N.T.S.

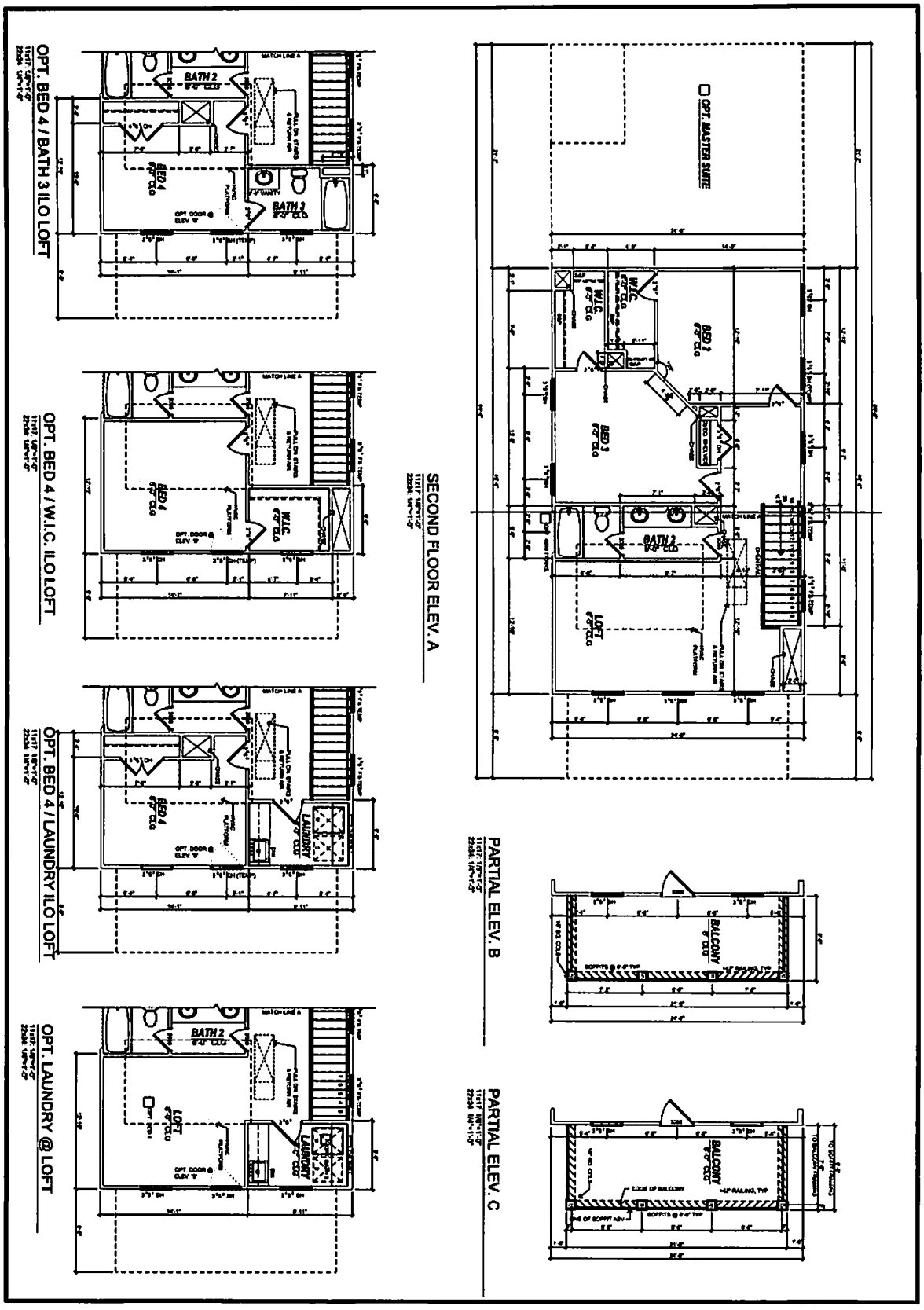
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572 Savannah Highway
Charleston, South Carolina
Fax (843) 402-0135
Phone (843) 572-0535

MONROE DU
AVENUE OF OAKS

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PLAN NAME:
REVISIONS:
DRAWN BY: DA
DATE: 02/05/21
JOB NO.:
TITLE: FIRST FLOOR PLAN
SHEET: A5

RECORD 000063



SHEET A6	TITLE: SECOND FLOOR PLAN	JOB NO.	DATE: 02/05/21
DRAWN BY: DA	REVISIONS	PLAN NAME	

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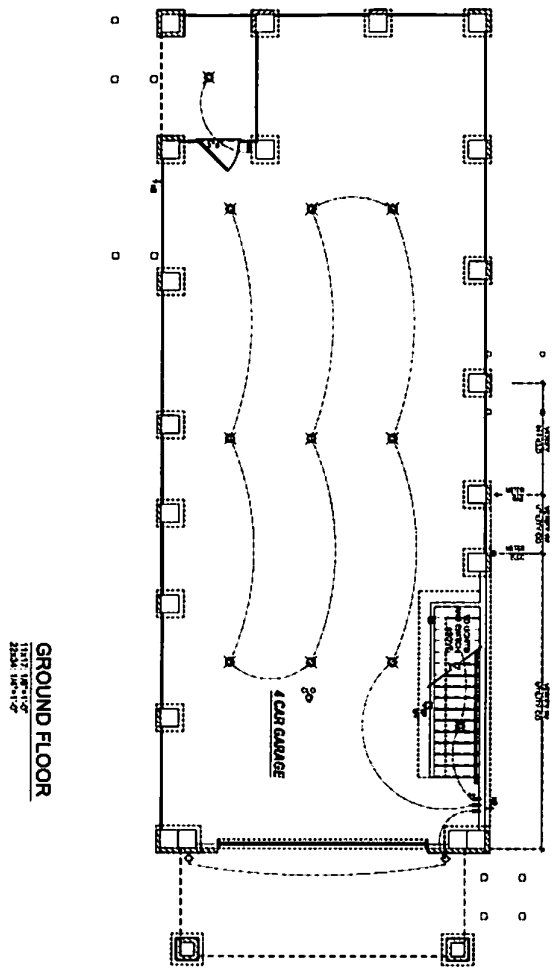
MONROE DU

AVENUE OF OAKS

CRESCENT HOMES
572 Savannah Highway Fax (843) 402-0135
Charleston, South Carolina Phone (843) 573-9635

ELECTRONICALLY FILED - 2021 Sep 09 5:17 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196

ELECTRONICALLY FILED - 2021 Sep 09 5:17 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196



GROUND FLOOR

PLOT NAME:	
REVISIONS:	
DRAWN BY: DA	
DATE 02/05/21	
JOB NO	
TITLE GROUND FLOOR ELECTRICAL PLAN	
SHEET: E1	

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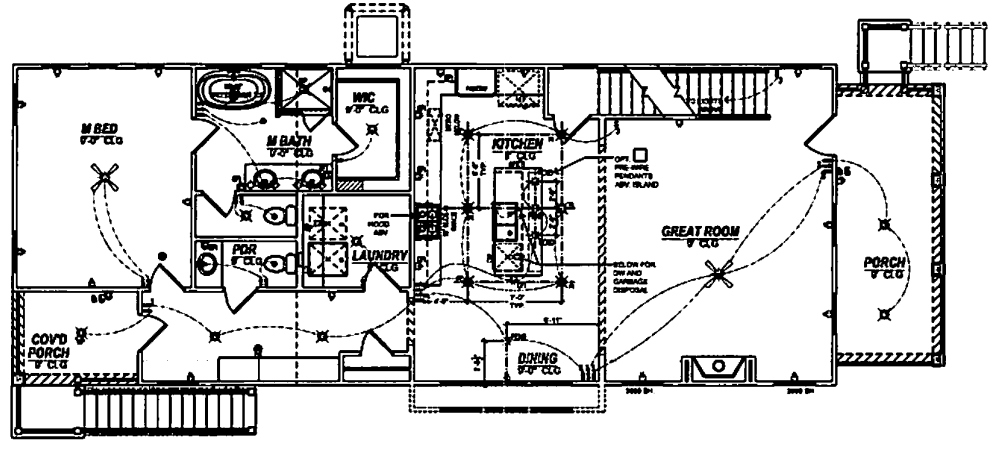
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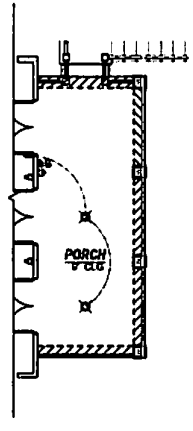
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ELECTRICAL/UTILITY SYMBOLS:



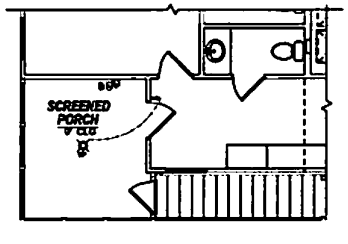
FIRST FLOOR ELEV A & B

11x17: 1/8"=1'-0"
22x34: 1/4"=1'-0"



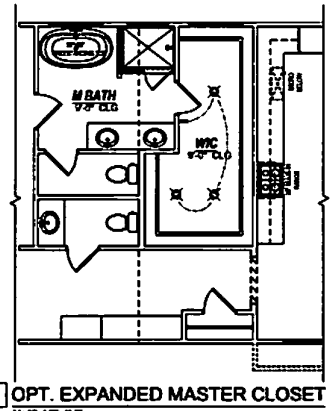
PARTIAL FIRST FLOOR ELEV C

11x17: 1/8"=1'-0"
22x34: 1/4"=1'-0"



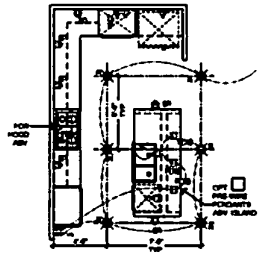
☐ OPT. EXT. SCREENED PORCH

11x17: 1/8"=1'-0"
22x34: 1/4"=1'-0"



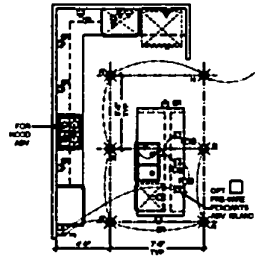
☐ OPT. EXPANDED MASTER CLOSET

11x17: 1/8"=1'-0"
22x34: 1/4"=1'-0"



☐ OPT. 2 - KITCHEN

11x17: 1/8"=1'-0"
22x34: 1/4"=1'-0"



☐ OPT. 3 - KITCHEN

11x17: 1/8"=1'-0"
22x34: 1/4"=1'-0"

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372 Savannah Highway
Charleston, South Carolina
Phone (843) 573-0635
Fax (843) 402-0135

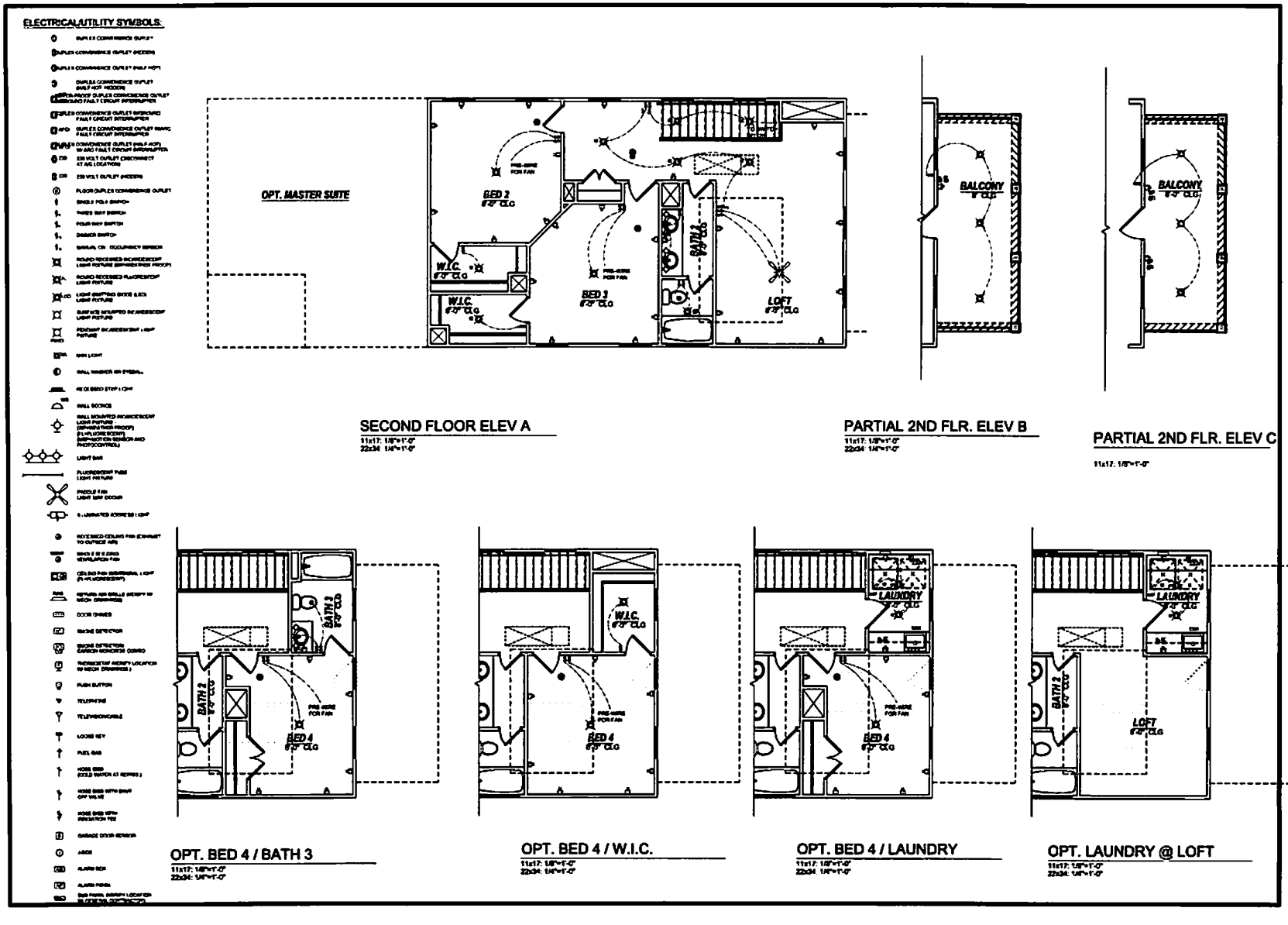
MONROE DU
AVENUE OF OAKS

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PLAN NAME:
REVISIONS:
DRAWN BY: DA
DATE: 02/05/21
JOB NO.:
TITLE: FIRST FLOOR ELECTRICAL PLAN
SHEET: E2

RECORD 000066

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Charleston, South Carolina Phone (843) 573-4656

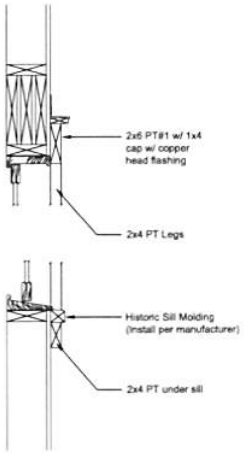
MONROE DU
AVENUE OF OAKS

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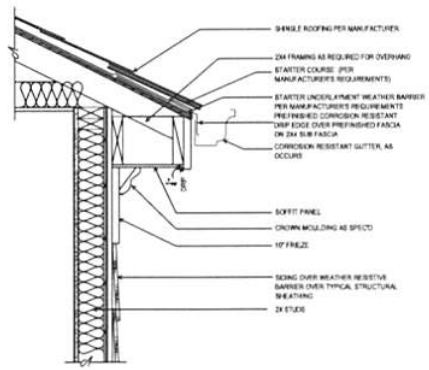
PLAN NAME:
REVISIONS:
DRAWN BY: DA
DATE: 02/05/21
JOB NO.:
TITLE: SECOND FLOOR ELECTRICAL PLANS
SHEET E3

RECORD 000067

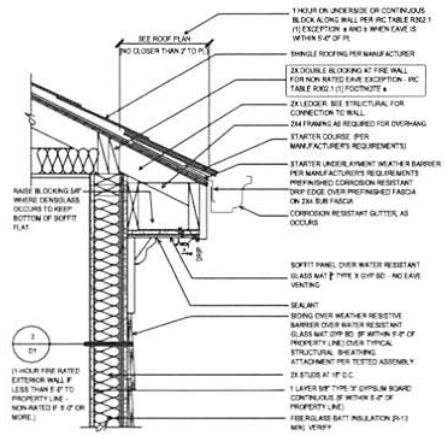
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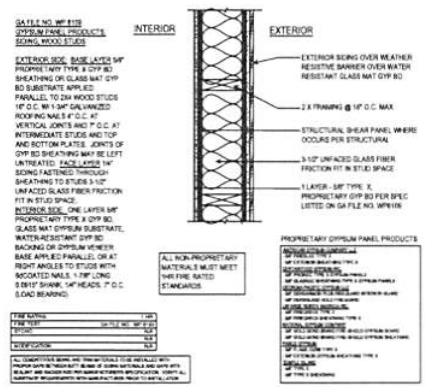
WINDOW TRIM DETAIL
N.T.S.



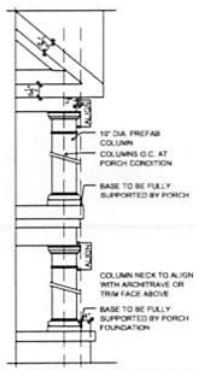
TYPICAL EAVE DETAIL
11x17: 1/4"=1'-0"
22x34: 1/2"=1'-0"



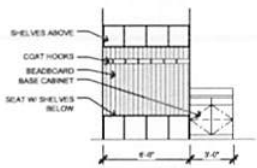
1 - ONE HOUR EXT. EAVE (WITHIN 5' OF PL)
11x17: 3/4"=1'-0"
22x34: 1 1/2"=1'-0"



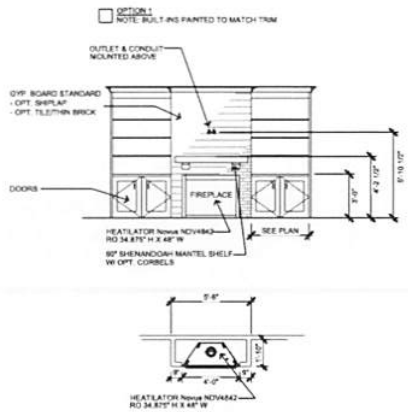
2 - ONE HOUR EXT. WALL ASSEMBLY
11x17: 3/4"=1'-0"
22x34: 1 1/2"=1'-0"



STACKED PORCH DETAIL
N.T.S.



VALET / BENCH DETAIL
N.T.S.



FIREPLACE DETAIL
N.T.S.

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572 Savannah Highway Fax (843) 402-0135

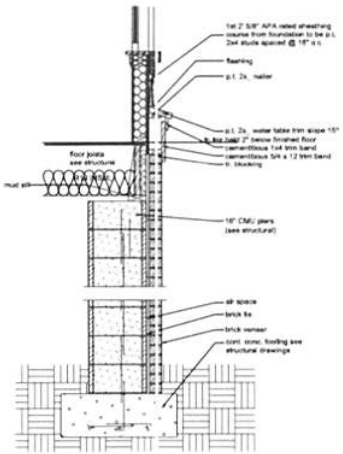
MONROE DU
AVENUE OF OAKS

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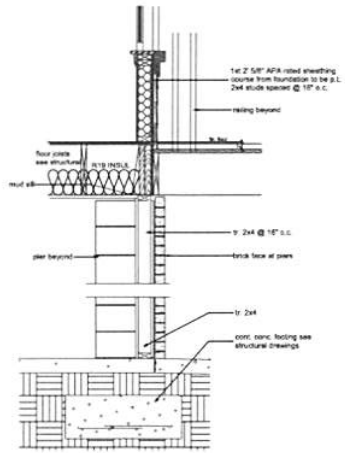
PLAN NAME:
REVISIONS:
DRAWN BY: DA
DATE: 02/05/2
JOB NO.:
TITLE: DETAILS
SHEET: D1

RECORD 000068

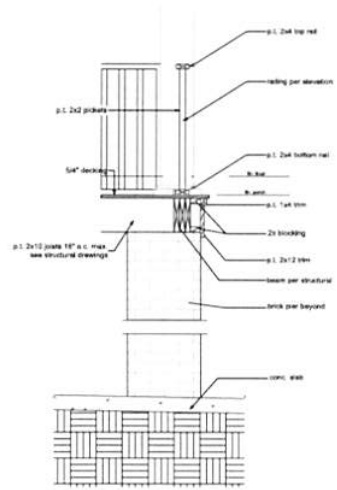
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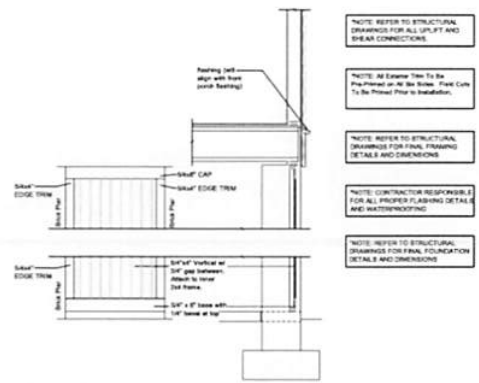
WALL SECTION AT HOUSE PIER
11x17: 1/4"=1'-0"
22x34: 1/2"=1'-0"



WALL SECTION AT GARAGE DOOR
11x17: 1/4"=1'-0"
22x34: 1/2"=1'-0"



WALL SECTION AT FRONT PORCH
11x17: 1/4"=1'-0"
22x34: 1/2"=1'-0"



FOUNDATION LOUVER DETAIL
N.T.S.

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AVENUE OF OAKS

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PLAN NAME:
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DRAWN BY: DA
DATE: 02/05/2
JOB NO.:
TITLE: DETAILS
SHEET: D2

RECORD 000069

ELECTRONICALLY FILED - 2021 Sep 09 5:17 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196

PROPERTY LOCATION, TMS NUMBER(S) AND DESCRIPTION OF REQUEST(S):

1029 AVENUE OF OAKS (LOT 40) (418-06-00-158)
Request variance from Sec. 54-301 to allow construction of a 3-story single-family residence that exceeds 35-ft.in height (Limit is 2 ½ stories, 35-ft.).
Zoned SR-1

Order on Special Exception Request

The Board of Zoning Appeals-Zoning held a public hearing to consider the above appeal for a special exception which may be permitted by the Board pursuant to the Zoning Ordinance for the property described above. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

☐ **DENIED**. The Board concludes that the standards in the Section(s) of the Zoning Ordinance listed above, which are applicable to the requested special exception(s), have not been met and therefore orders that the special exception(s) be denied.

☐ **APPROVED**. The Board concludes that the standards in the Section(s) of the Zoning Ordinance listed above, which are applicable to the requested special exception(s), have been met and therefore orders that the special exception(s) be granted, subject to the following conditions, if any: _____

_____

_____

_____

Date issued: _____ Chairman _____

Order on Variance Request

The Board of Zoning Appeals-Zoning held a public hearing to consider an appeal for a variance from the strict application of the Zoning Ordinance for the property described above. After consideration of the evidence and arguments presented, the Board makes the following findings of facts and conclusions.

☑ **DENIED**. The Board concludes that the requirements for granting a variance have not been met and, therefore, orders that the variance be denied.

☐ **APPROVED**. The Board concludes that:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. Authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

THE BOARD, THEREFORE, finds that the applicant has an unnecessary hardship and orders that the variance be granted, subject to the following conditions, if any: _____

_____

_____

_____

Date issued: 8/3/21 Chairman Michael Robinson

Approvals of the Board shall remain valid for two (2) years from the approval date, unless extended in accordance with the provisions of Section 54-962. Applicants may not apply for the same request that has been denied by the Board until a period of six (6) months has lapsed.

1/09

ELECTRONICALLY FILED - 2021 Dec 24 11:22 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Crescent Homes Sc, LLC, Appellant, Vs. City Of Charleston Board Of Zoning Appeals - Zoning, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-04196 **MATERIALS FROM CITY OF CHARLESTON RELATIVE TO APPEAL**

1. June 15, 2021 Meeting
2. August 3, 2021 Meeting

CLAWSON and STAUBES, LLC

s/Timothy A. Domin

Timothy A. Domin
Bar No.: 65264
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: tdomin@clawsonandstaubes.com
Attorney for Respondents City of Charleston and City of Charleston Board of Zoning Appeals

Charleston, South Carolina
December 24, 2021

City of Charleston

BOARD OF ZONING APPEALS-ZONING

June 15, 2021

5:15 PM

DEPARTMENT OF PLANNING, PRESERVATION & SUSTAINABILITY

www.charleston-sc.gov/bza-z

****Video and microphone is currently disabled for all attendees.****

This meeting is being recorded.

Go to www.charleston-sc.gov/bza-z for instructions to join. Call (843) 724-3770 if you are experiencing technical difficulties

RECORD 000072

FILED ELECTRONICALLY IN CCP 2021 Oct 26 2:16:02 PM - CHARLESTON - COMMON PLEAS - CASE # 2021CP1004986

Zoom Meeting Protocol

Order on Each Application:

- Chair announces each application followed by staff presentation and recommendation
- Staff presents application and City's recommendation. Staff will control slide presentation
- Staff announces comments received and whether anyone has signed up to speak
- Applicant, after being sworn in, will be allowed to present their application if opposition or questions are raised, followed by public comments from pre-registered attendees in favor. Each speaker will be sworn in before speaking
- Staff then recognizes registered attendees for public comments in opposition. Each speaker will be sworn in
- Staff then recognizes the applicant for a short rebuttal before Chair closes public comments and begins Board discussion

Providing Comment:

- People who sign up to speak prior to the 12 noon deadline will be called on when it is your turn to speak and your microphone will be enabled. You may only speak once on each item.
- Your microphone will be disabled after you are finished speaking.

Go to www.charleston-sc.gov/bza-z for instructions to join. Call (843) 724-3770 if you are experiencing technical difficulties

RECORD 000073

EFILED - 2021Oct 26 2:02PM - CHARLESTON - COMMON PLEAS - CASE# 2021CP1004986

Board of Zoning Appeals-Zoning

Your Board of Zoning Appeals-Zoning Members are:

Michael Robinson - Chair
John Bennett
Allison Cannon Grass
Walter Jaudon
Howell Morrison
Robben Richards
Geiza Vargas-Vargas

Your City of Charleston Staff are:

Lee Batchelder, *Zoning Administrator*
Scott Valentine, *TRC Coordinator*
Pennye Ashby, *Senior Planner*
Vanessa Ellington, *Clerk*

The Board of Zoning Appeals—Zoning has the authority to do three things:

1. Hear appeals to decisions of the Zoning Administrator;
2. Grant special exceptions, a fact finding function of the Board; and
3. Grant variances to the Zoning Ordinance if the application meets the hardship test outlined in Section 54-924 of the ordinance.

RECORD 000074

EFILED-2021Oct 26 2022PAM-COMMONPLEAS-CCASE#2021CP1004986

Board of Zoning Appeals-Zoning

Requirements for Granting a Variance

A variance may be granted by the Board of Zoning Appeals in an individual case of unnecessary hardship if the Board makes the following findings:

a. there are extraordinary and exceptional conditions pertaining to the particular piece of property;

b. these conditions do not generally apply to other property in the vicinity;

c. because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

d. the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

RECORD 000075

Go to www.charleston-sc.gov/bza-z for instructions to join. Call (843) 724-3770 if you are experiencing technical difficulties

Agenda Item #B-2

1012 AVENUE OF OAKS

(MARYVILLE/ASHLEYVILLE)

TMS # 418-06-00-124

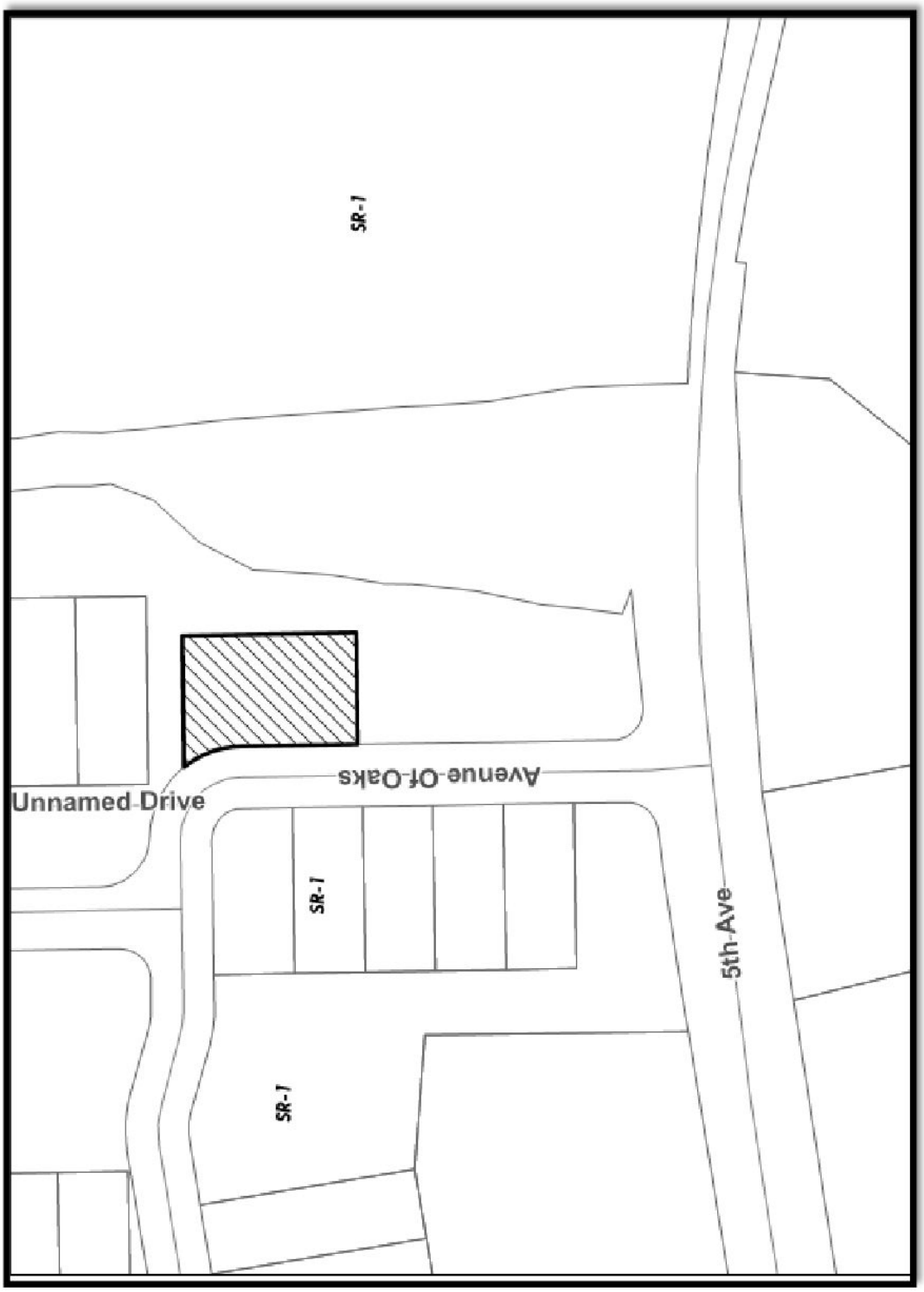
Request an appeal of the Zoning Administrator's decision to deny building permit on the grounds that the proposed home exceeds the 2 ½ story height restriction for the SR-1 (Single-Family Residential) zone district under Sec. 54-301, because the home's designed drive-under garage constitutes a 3rd story under Sec. 54-120.

Zoned SR-1

RECORD 000076

FILED ELECTRONICALLY IN CCP 10-Dec-2021 2:16:02 PM - CHARLESTON - COMMON PLEAS - CASE # 2021CP1004186

ELECTRONICALLY FILED - 2021 Oct 26 12:22 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196



7

RECORD 000078

FILED IN THE OFFICE OF THE CLERK OF COURT - 2021 Oct 26 12:02 PM - CHARLESTON COUNTY - CASE # 2021CP1004186

Application for Variance, Special Exception, Reconsideration, or Extension to the **Board of Zoning Appeals – Zoning (BZA-Z)** **Page 1 of 2**

City of Charleston

Instructions – This application, along with the required information and fee, must be submitted to the Permit Center at 2 George Street. **Applications are due by 12 Noon on the deadline date and must be complete to be accepted and placed on an agenda.** A sign will be posted on the property, and a public hearing will be conducted by the Board of Zoning Appeals – Zoning. **Permits authorized by the Board cannot be issued during a five (5) business day appeal period following the decision of the Board, except for use variances, the appeal period shall be fifteen (15) calendar days.** An appeal to the Board during this appeal period stays all further action on the application.

THE APPLICANT HEREBY REQUESTS:

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

MEETING DATE REQUESTED: __June 15, 2021_____

Property Address _1012 Avenue of Oaks, Charleston, SC 29407_____ TMS # __418-06-00-124_____

Property Owner __Crescent Homes SC, LLC_____ Daytime Phone _843-573-9635_____

Applicant __E. Brandon Gaskins, Esq., Moore & Van Allen PLLC_____Daytime Phone _843-579-7038_____

Applicant's Mailing Address _PO Box 22828, Charleston, SC 29413_____

_____ E-mail Address _gaskinsb@mvalaw.com_____

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

Zoning of property __SR-1_____

Information required with application: (check information submitted)

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

Optional but very helpful information:

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

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

Applicant __/s/ E. Brandon Gaskins_____ Date__5/17/2021_____

For office use only
Date application received _____ Time application received _____
Staffperson _____ Fee $ _____ Receipt # _____

Appeal for Reconsideration to the
Board of Zoning Appeals – Zoning (BZA-Z)

City of Charleston

Applicants appealing for reconsideration of a Board decision or decision of the zoning administrator must submit the following information with the BZA-Z application and fee, to the Permit Center at 2 George Street:

In the case of an appeal for **reconsideration of a Board decision**, applicant shall state below the grounds upon which it is considered that the Board misapprehended or misconceived the question or questions involved, or the ground or grounds upon which it is considered that the Board has erred in its finding or disposition of the appeal, application or matter (add as an attachment if necessary). **THE DEADLINE FOR SUBMITTING THIS APPEAL FORM WITH THE BZA-Z APPLICATION AND FEE IS THE CLOSE OF BUSINESS ON THE 5TH BUSINESS DAY FOLLOWING THE DATE OF THE BOARD DECISION BEING APPEALED:**

In the case of an appeal for **reconsideration of a decision of the zoning administrator**, applicant shall state below the interpretation(s) of the Zoning Ordinance being appealed, how the applicant is aggrieved by the interpretation(s), and what the applicant contends is the correct interpretation of the Zoning Ordinance (add as an attachment if necessary):

The City has denied a building permit for 1012 Avenue of Oaks on the grounds that the designed home exceeds the 2 1/2 story height restriction for the SR-1 zoning district under Zoning Code Section 54-301 because the home's designed drive-under garage constitutes a "story" under Zoning Code Section 54-120. For the reasons set forth in the attached letter, a drive-under garage should not be considered a story, and the City's interpretation is in error and contrary to the purposes of the zoning ordinances.

Signature of Applicant __/s/ E. Brandon Gaskins_____ Date _5/17/2021____

For office use only
Date application received 5/17/21 Time application received 11:47 Staffperson DA

Department of Planning, Preservation & Sustainability 2 George Street Charleston, South Carolina 29401
(843) 724-3781 www.charleston-sc.gov/zoning

RECORD 000079

FILED IN COMMON PLEAS-CCA#2021CP1004186 Oct 26 2021 02:22PM - CCH-MARRIETTA

RECORD 000080

FILED ELECTRONICALLY IN THE CHARLESTON COUNTY COURT OF COMMON PLEAS - CASE # 2021CP1004186 - Oct 26 2021 02:02PM

Moore&VanAllen

May 17, 2021

E. Brandon Gaskins
Attorney at Law

T 843 579 7038
F 843 579 8738
brandongaskins@mvalaw.com

Moore & Van Allen PLLC

78 Wentworth Street
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

VIA EMAIL
Board of Zoning Appeals – Zoning
City of Charleston
2 George Street
Charleston, South Carolina 29401

Re: *Crescent Homes SC, LLC*
Appeal of Denial of Building Permit for 1012 Avenue of Oaks

Dear Members of the City of Charleston Board of Zoning Appeals:

Pursuant to S.C. Code Ann. § 6-29-800(A)(1) and City Zoning Code § 54-926, I am writing in support of Crescent Homes SC, LLC's appeal of the City Planning Department's denial of a building permit for 1012 Avenue of Oaks in the Avenue of Oaks subdivision in the City of Charleston. As explained in more detail below, the City denied Crescent Homes' building permit application because the designed plan purportedly exceeds the 2 ½ story limitation for the SR-1 zoning district. This conclusion is based on the interpretation that the home's designed drive-under garage area is a "story," as defined by the City's zoning code. This interpretation impacts not only 1012 Avenue of Oaks but eight other lots that are planned to have drive-under garages.

The City's interpretation is in error because it conflicts with the City's ordinances and is not supported by the text of the applicable zoning provisions. Moreover, the City's interpretation is contrary to the purposes of the City's zoning ordinances because it will encourage inconsistency in the subdivision's home designs as a result of the City's prior approval of other homes with drive-under garages. In addition, it will discourage elevated home designs intended to protect property and residents from the threat of flooding.

I. Factual Background

Crescent Homes is the owner and builder of residential lots in the Avenue of Oaks subdivision in the Maryville neighborhood of West Ashley. Avenue of Oaks is in zoning district SR-1, and it was developed subject to the cluster development requirements under Zoning Code §§ 54-299.11, *et seq*. The final plat of Avenue of Oaks with 42 developable lots was approved by the City in March 2020. (Ex. 1 – Final Plat.)

Avenue of Oaks is adjacent to the marshland of Oldtown Creek. As a result, it is in a relatively low area and has a higher risk of flooding. At the time the final plat was approved, all residential lots were in Flood Zones AE-14 or AE-13, which are special flood hazard areas under Code § 27-105. (*Id.*)
In the SR-1 zoning district, the maximum height for structures is 35' and 2 ½ stories. (Zoning Code § 54-301.) Under Zoning Code § 54-120, "story" is defined as "that portion of a building included between the surface of any floor and the surface of the next floor above, or if there be no floor above, then the space between such and the ceiling next above it." Although the City has not always interpreted this term consistently, the City's Planning Department recent interpretation of

"story" has not included unfinished drive-under areas if such areas are within a flood zone. (Ex. 2 – Email re: Past Interpretation of Story; Ex. 3 - Email from L. Batcheldor, 3/8/21.)

Based on that interpretation, Crescent Homes designed 22 of the lots with a drive-under design and two stories of livings space over the drive-under area. Of those, 13 lots have already received building permits from the City.

In January 2021, FEMA's revised flood maps for Charleston County became effective pursuant to City Ordinance No. 2020-140. Under the new flood maps, 25 of the lots are now within Flood Zone X, and the other 17 lots are now within Flood Zone AE-11. (Ex. 4 – Plat w/ New Flood Zones.) Of the 25 lots that are now within Flood Zone X, 9 lots utilize the drive-under design but do not have building permits.

On March 29, 2021, Crescent Homes applied for a building permit for 1012 Avenue of Oaks (Lot 6). (Ex. 5 – Permit Application.) The permit application included a schedule of building plans depicting the design for the home. (Ex. 6 – Building Plans.) The building plans show two-stories of living space supported by piers and over a drive-under that serves as the home's foundation. (*Id.*) The building plans also show that the drive-under garage is unfinished and unheated. The garage's side and rear have louvered wood exterior walls, and the front of the home has two garage doors surrounded by brick exterior walls covering the piers. (*Id.*)

On April 15, 2021, Sean Killion, Associate Planner for the City, emailed Crescent Homes to provide notice that the proposed design for 1012 Avenue of Oaks did not comply with applicable zoning requirements. According to Mr. Killion, "[T]he proposed design has a drive under in an X flood zone. This would make the house 3 stories and therefore non-conforming to the SR-1 regulations. Please revise for zoning approval." (Ex. 7 – Killion Email.)

This appeal challenges the City's determination that the drive-under garage for 1012 Avenue of Oaks, as well as any other unpermitted lots in the subdivision with a drive-under garage in Flood Zone X, is a story under the City's zoning ordinances.

II. Argument

This appeal raises the issue of whether the City's planning department erred in denying the building permit for 1012 Avenue of Oaks based on its interpretation of the term "story," as defined by Zoning Code § 54-120. As such, this case involves a matter of construction of the City's zoning ordinances.

In reviewing a zoning ordinance, the Board should give the ordinance a "practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers." *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018). The ordinance's language must be construed in context, and "the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute. The language must also be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Id.*

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In analyzing zoning ordinances, courts and zoning boards should be guided by the well-founded principle of law that:

> Statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. It follows that the terms limiting the use of the property must be liberally construed for the benefit of the property owner.

Helicopter Solutions, Inc. v. Hinde, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (2015). Furthermore, zoning ordinances must be construed "to allow people to use their property so as to realize its highest utility" when the ordinances are drafted so that people do not have a clear understanding as to what they are permitted to do with their property. *Kean/Sherratt P'ship by Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987).

In this case, the City's interpretation of "story" as including unfinished drive-under garages is in error because the City's ordinances demonstrate that City Council did not intend for such areas to be a "story." As stated above, the zoning code defines "story," in pertinent part, to mean "that portion of a building included between the surface of any floor and the surface of the next floor above." Zoning Code § 54-120. Therefore, whether a drive-under garage constitutes a "story" necessarily depends on whether it is a "floor."

Although the City's zoning code does not define "floor," City Council defined that term in its stormwater management ordinance. As a result, it is appropriate to look to that ordinance for guidance in determining the meaning of "floor." *See Mathis v. Hair*, 358 S.C. 48, 53, 594 S.E.2d 851, 854 (2003) (considering definitions of term in other statutes to determine statutory term's meaning); *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) ("Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme."); *Brown v. Gardner*, 513 U.S. 115, 118 (1994) (looking to how ambiguous term is used in analogous statutes). This principle is especially applicable here because the City's interpretation of "story" depends on whether the home is located in a flood zone. *See Boehm*, 423 S.C. at 184, 813 S.E.2d at 881 (stating that a zoning ordinance "must also be read in a sense that harmonizes with its subject matter and accords with its general purpose"). Thus, the City's stormwater management ordinance provides the best guidance as to whether a drive-under garage in a flood zone is a "floor," and, thus, a "story."

In the stormwater management ordinance, the surface of an unfinished drive-under garage is not a "floor." This ordinance defines "floor" to mean "the top surface of an enclosed area in a building (including basement) i.e., top slap in concrete slab construction or top of wood flooring in wood frame construction. *The term does not include the floor of a garage used solely for parking vehicles.*" (Code § 27-103) (emphasis added). Furthermore, the stormwater ordinance further defines "lowest floor" as not including unfinished garages or enclosures. "An unfinished or flood resistant enclosure, usable solely for parking vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is

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not built so as to render the structure in violation of the applicable non-elevated design requirements of this article." (*Id.*)

Here, the drive-under garage designed for 1012 Avenue of Oaks does not fall within the definitions of "floor" or "lowest floor" because it meets the express criteria for exclusion. It is an unfinished garage that is only partially enclosed and designed solely for parking vehicles and storage. Therefore, it is not a "floor," and consequently, it is not a "story."

Not only does a drive-under garage not meet the definition of "story," the City's interpretation of the term based on its relationship to a flood zone lacks textual support. According to the City, the determination of whether a drive-under garage is a story depends on whether it is in a flood zone and what flood zone it is in. The City approved building permits for other houses with drive-under garages in Avenue of Oaks on lots that were in Flood Zones AE-14 and AE-13 prior to the issuance of the new FEMA flood maps. In so doing, the City did not consider the drive-under garages on those lots to be a story, thereby concluding that the proposed design did not exceed the 2 ½ story maximum height in the SR-1 zoning district. Now, however, the City takes the position that a drive-under garage is a story if it is located on a lot in Flood Zone X.

Yet nothing in the definition of "story" or any other zoning provision suggests that the term's meaning changes based on the location of a flood zone. In fact, the definition does not use the term "flood zone" in any manner. And the City's planning department has never articulated which specific flood zones or conditions permit a drive-under garage to be excluded from the definition of "story." Instead, the definition appears to be determined on the whims of the City's planning department, which has failed to provide property owners with a clear understanding of what criteria applies for determining whether a drive-under garage constitutes a "story." This type of decision making is the epitome of arbitrariness that cannot be tolerated under the rule of law.

In addition, the City's interpretation of "story" in this case undermines the purposes of the zoning code. Zoning ordinances are intended, among other things, "to facilitate the creation of a convenient, attractive, and harmonious community" and "to secure safety from fire, flood, and other dangers." S.C. Code Ann. § 6-29-710. The City's interpretation of "story" advances neither of these purposes.

In this case, Avenue of Oaks is an attractive community consisting of several elevated homes that utilize drive-under garages. Allowing other homes in the subdivision to utilize a similar design will support a harmonious community. Neither 1012 Avenue of Oaks nor the other homes planned with drive-under garages will be disproportionately higher than the permitted homes because they are all subject to the same maximum height requirements set forth in the zoning code. Put simply, there is no logical reason why some drive-under garages are permitted in Avenue of Oaks and others are not.

The City's interpretation of "story" is also contrary to the zoning ordinances' purpose of securing safety from flooding. Avenue of Oaks borders a marsh and is in a flood zone. Although the new flood map indicates the flooding risk is less than previously determined under the prior flood map, that risk has not been eliminated. The elevated design that utilizes drive-under garages helps protect property and residents from flooding risk. This fact has recently been recognized by the

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City in the Dutch Dialogues efforts. As seen in the attached excerpts from the Dutch Dialogues report, using elevated designs is measure that is encouraged to protect our City's residents and their property not just from flooding today but also from the uncertain but growing threats from climate change and sea-level rise in the future. (Ex. 8 - Dutch Dialogues Report Excerpts.)

By interpreting "story" to include drive-under garages, the City is discouraging homeowners from using this design feature, thereby increasing the threat to safety and property from flooding. This interpretation is contrary to the purposes of the zoning ordinances and the City's other recent efforts to protect its residents and their property from flooding. Therefore, the City's interpretation of "story" should be rejected for this reason, as well as the others cited above.

III. Conclusion

In sum, the City's interpretation of "story" is not supported by the text of the relevant ordinances and is based on unclear standards that prevent property owners from understanding how they can utilize their property. Also, the City's interpretation is contrary to the purposes of zoning ordinances intended to create harmonious communities and protect residents and properties from the threat of flooding. As a result, the Board should reject the City's interpretation and grant Crescent Home's appeal.

On behalf of Crescent Homes, we appreciate your consideration of our position, and we look forward to presenting our position at your upcoming hearing.

Sincerely,

E. Brandon Gaskins

Enclosures: As stated.

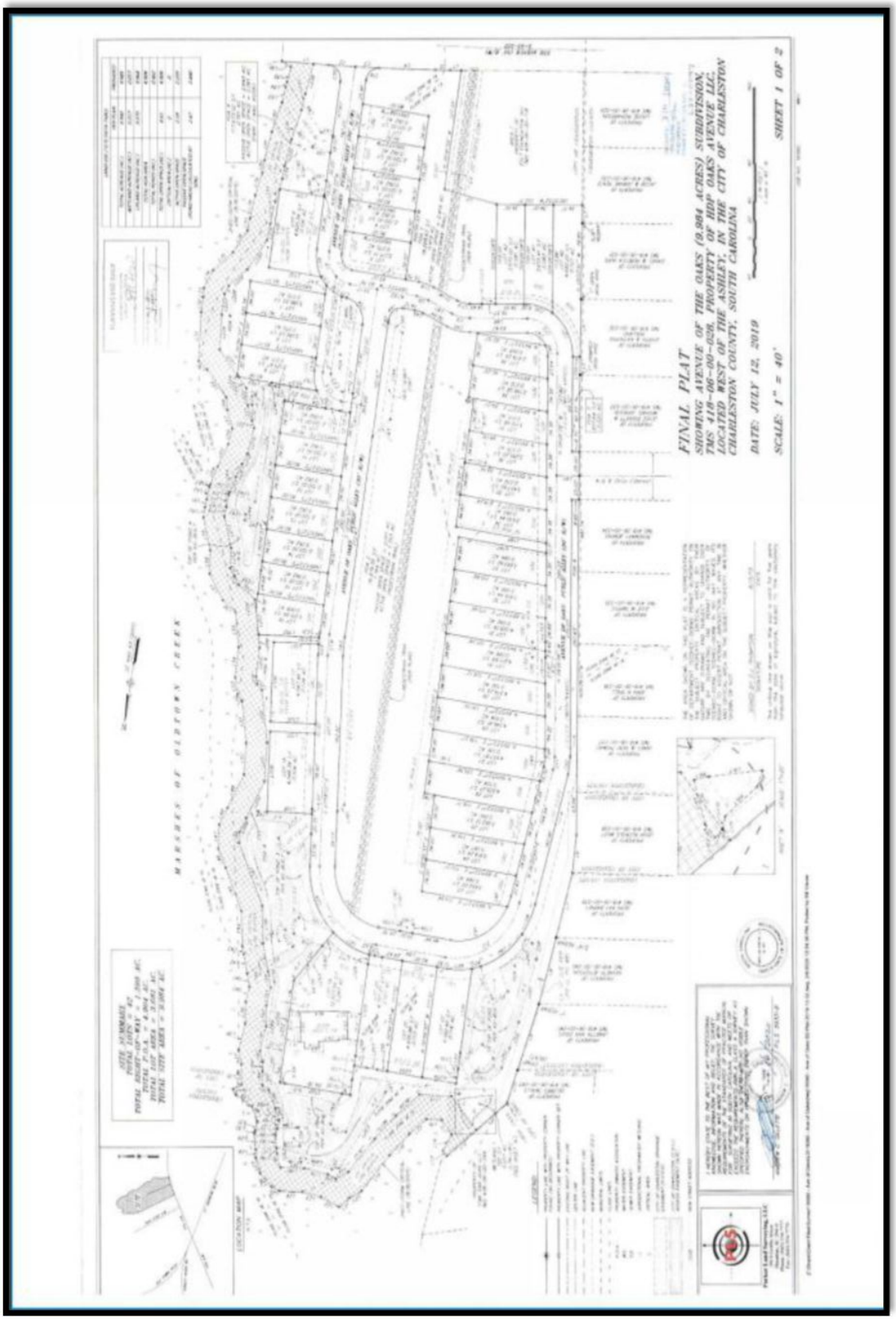
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FILED: CHARLESTON COUNTY - 2021 Oct 26 12:02 PM - CCH-MASTER-CCOMMON PLEAS-CASE#2021CP1004186

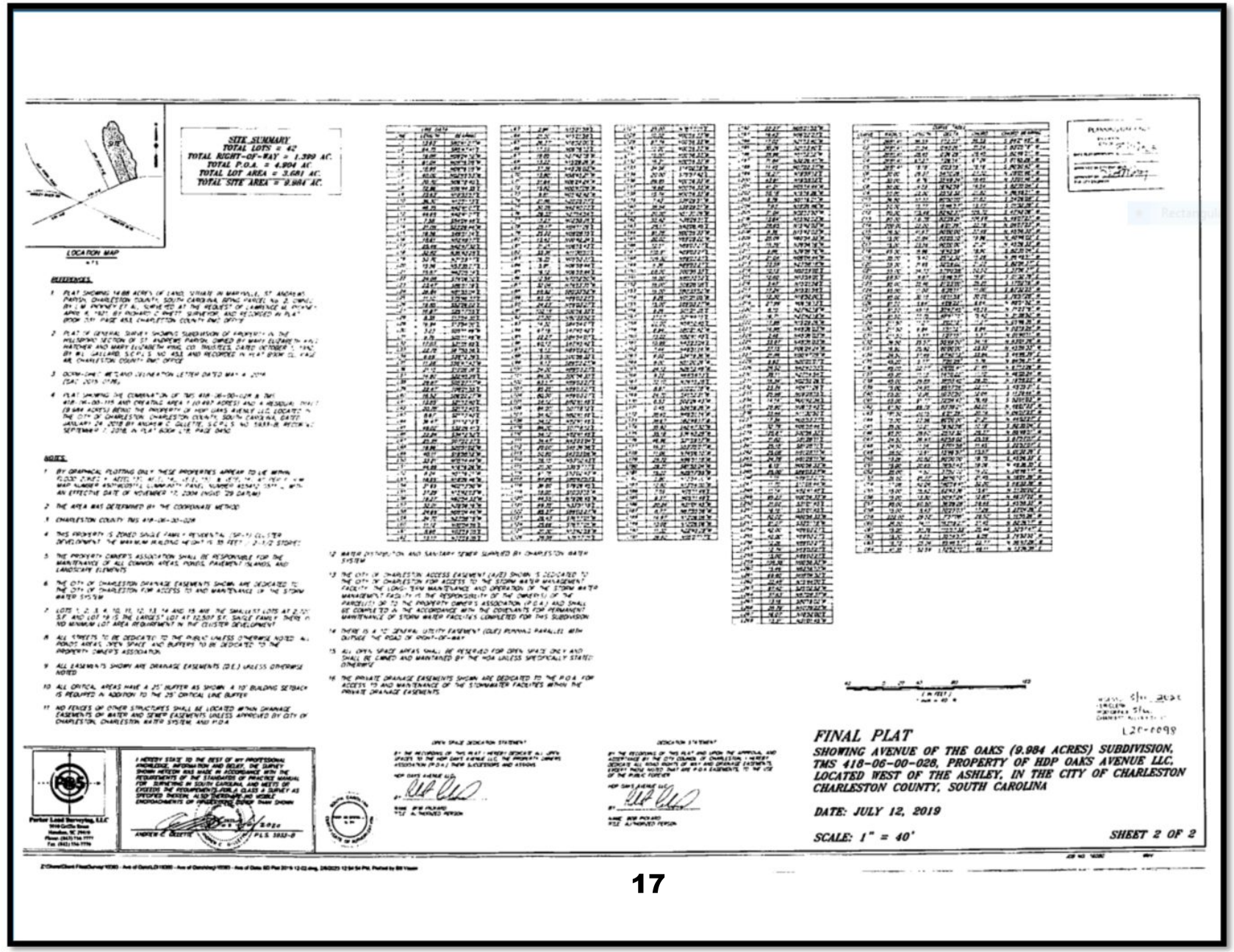
EXHIBIT 1

15

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16



SITE SUMMARY
TOTAL LOTS = 42
TOTAL RIGHT-OF-WAY = 1.399 AC.
TOTAL P.O.A. = 4.004 AC.
TOTAL LOT AREA = 3.581 AC.
TOTAL SITE AREA = 9.984 AC.

LOCATION MAP

REFERENCES

1. PLAT SHOWING 14.88 ACRES OF LAND, SITUATE IN MARYVILLE, ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA, BEING PARCEL No. 2, OWNED BY J. W. PINKNEY ET AL., SURVEYED AT THE REQUEST OF LAWRENCE M. PINKNEY, APRIL 4, 1921, BY RICHARD C. PRETT, SURVEYOR, AND RECORDED IN PLAT BOOK 33Y, PAGE 453, CHARLESTON COUNTY RMC OFFICE.
2. PLAT OF GENERAL SURVEY SHOWING SUBDIVISION OF PROPERTY IN THE MILLSPRING SECTION OF ST. ANDREWS PARISH, OWNED BY MARY ELIZABETH HALL HARTNER AND MARY ELIZABETH KING, CO. TRUSTEES, DATED OCTOBER 11, 1940, BY W.L. GAILLARD, S.C.P.L.S. NO. 453, AND RECORDED IN PLAT BOOK EL, PAGE 68, CHARLESTON COUNTY RMC OFFICE.
3. OCRM-LINE WETLAND DELINEATION LETTER DATED MAY 4, 2016 (SAC 2016-0196).
4. PLAT SHOWING THE COMBINATION OF TMS 418-06-00-029 & TMS 418-10-00-119 AND CREATING AREA 1 (10.497 ACRES) AND A RESIDUAL TRACT (9.984 ACRES) BEING THE PROPERTY OF HDP OAKS AVENUE LLC, LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA, DATED JANUARY 29, 2018 BY ANDREW C. GILLETTE, S.C.P.L.S. NO. 19313-B, RECORDED SEPTEMBER 7, 2018, IN PLAT BOOK L19, PAGE 0482.

NOTES

1. BY GRAPHICAL PLOTTING ONLY, THESE PROPERTIES APPEAR TO LIE WITHIN FLOOD ZONE(S) X, AE(EL 11), AE(EL 12), & AE(EL 14), AS SHOWN ON FEMA FIRM MAP NUMBER 45019C0511J, COMMUNITY PANEL NUMBER 450511 0511 J, WITH AN EFFECTIVE DATE OF NOVEMBER 12, 2004 (NGVD 29 DATUM).
2. THE AREA WAS DETERMINED BY THE COORDINATE METHOD.
3. CHARLESTON COUNTY TMS 418-06-00-028
4. THIS PROPERTY IS ZONED SINGLE FAMILY RESIDENTIAL (SR-1) CLUSTER DEVELOPMENT. THE MAXIMUM BUILDING HEIGHT IS 35 FEET / 2-1/2 STORIES.
5. THE PROPERTY OWNER'S ASSOCIATION SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL COMMON AREAS, PONDS, PAVEMENT ISLANDS, AND LANDSCAPE ELEMENTS.
6. THE CITY OF CHARLESTON DRAINAGE EASEMENTS SHOWN ARE DEDICATED TO THE CITY OF CHARLESTON FOR ACCESS TO AND MAINTENANCE OF THE STORM WATER SYSTEM.
7. LOTS 1, 2, 3, 4, 10, 11, 12, 13, 14 AND 15 ARE THE SMALLEST LOTS AT 2,751 S.F. AND LOT 16 IS THE LARGEST LOT AT 12,507 S.F. SINGLE FAMILY THERE IS NO MINIMUM LOT AREA REQUIREMENT IN THE CLUSTER DEVELOPMENT.
8. ALL STREETS TO BE DEDICATED TO THE PUBLIC UNLESS OTHERWISE NOTED. ALL PONDS AREAS, OPEN SPACE AND BUFFERS TO BE DEDICATED TO THE PROPERTY OWNER'S ASSOCIATION.
9. ALL EASEMENTS SHOWN ARE DRAINAGE EASEMENTS (D.E.) UNLESS OTHERWISE NOTED.
10. ALL CRITICAL AREAS HAVE A 25' BUFFER AS SHOWN. A 10' BUILDING SETBACK IS REQUIRED IN ADDITION TO THE 25' CRITICAL LINE BUFFER.
11. NO FENCES OR OTHER STRUCTURES SHALL BE LOCATED WITHIN DRAINAGE EASEMENTS OF WATER AND SEWER EASEMENTS, UNLESS APPROVED BY CITY OF CHARLESTON, CHARLESTON WATER SYSTEM AND P.O.A.
12. WATER DISTRIBUTION AND SANITARY SEWER SUPPLIED BY CHARLESTON WATER SYSTEM.
13. THE CITY OF CHARLESTON ACCESS EASEMENT (A.E.) SHOWN IS DEDICATED TO THE CITY OF CHARLESTON FOR ACCESS TO THE STORM WATER MANAGEMENT FACILITY. THE LONG-TERM MAINTENANCE AND OPERATION OF THE STORM WATER MANAGEMENT FACILITY IS THE RESPONSIBILITY OF THE OWNER(S) OF THE PARCEL(S) DUE TO THE PROPERTY OWNER'S ASSOCIATION (P.O.A.) AND SHALL BE COMPLETED IN THE ACCORDANCE WITH THE COVENANTS FOR PERMANENT MAINTENANCE OF STORM WATER FACILITIES COMPLETED FOR THIS SUBDIVISION.
14. THERE IS A 10' GENERAL UTILITY EASEMENT (G.U.E.) RUNNING PARALLEL WITH OUTSIDE THE ROAD OR RIGHT-OF-WAY.
15. ALL OPEN SPACE AREAS SHALL BE RESERVED FOR OPEN SPACE ONLY AND SHALL BE OWNED AND MAINTAINED BY THE HOA UNLESS SPECIFICALLY STATED OTHERWISE.
16. THE PRIVATE DRAINAGE EASEMENTS SHOWN ARE DEDICATED TO THE P.O.A. FOR ACCESS TO AND MAINTENANCE OF THE STORMWATER FACILITIES WITHIN THE PRIVATE DRAINAGE EASEMENTS.

OPEN SPACE DEDICATION STATEMENT

BY THE RECORDING OF THIS PLAT I HEREBY DEDICATE ALL OPEN SPACES TO THE HDP OAKS AVENUE LLC THE PROPERTY OWNERS ASSOCIATION (P.O.A.) THEIR SUCCESSORS AND ASSIGNS.

HDP OAKS AVENUE LLC

BY: _____

NAME: BOB POLLARD
ITS: AUTHORIZED PERSON

DEDICATION STATEMENT

BY THE RECORDING OF THIS PLAT AND UPON THE APPROVAL AND ACCEPTANCE BY THE CITY COUNCIL OF CHARLESTON, I HEREBY DEDICATE ALL ROAD RIGHTS OF WAY AND DRAINAGE EASEMENTS EXCEPT THOSE NOTED THAT ARE PUBLIC EASEMENTS, TO THE USE OF THE PUBLIC FOREVER.

HDP OAKS AVENUE LLC

BY: _____

NAME: BOB POLLARD
ITS: AUTHORIZED PERSON

Parker Land Surveying, LLC
1010 Griffin Street
Hamilton, SC 29616
Phone: (843) 784-7777
Fax: (843) 784-7779

I HEREBY STATE TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO DETERMINING ANY VISIBLE ENCROACHMENTS OR APPARENT EASEMENTS NOT SHOWN.

ANDREW C. GILLETTE, JR. REGISTERED LAND SURVEYOR P.L.S. 19313-B

SOUTH CAROLINA REGISTERED LAND SURVEYOR

L20-0098

FINAL PLAT

SHOWING AVENUE OF THE OAKS (9.984 ACRES) SUBDIVISION, TMS 418-06-00-028, PROPERTY OF HDP OAKS AVENUE LLC, LOCATED WEST OF THE ASHLEY, IN THE CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA

DATE: JULY 12, 2019

SCALE: 1" = 40'

SHEET 2 OF 2

RECORD 000087

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EXHIBIT 2

RECORD 000089

Brandon Gaskins

From: Kelly McGuinn <kelly.mcguinn@crescenthomes.net>
Sent: Monday, November 11, 2019 10:53 AM
To: Ted Terry; Bob Pickard; Craig Hobart
Subject: Fwd: 1111 & 1131 Oak Bluff
Attachments: image001.png; image001.png

below is the last correspondence from the city on the oak bluff permits.

-Kelly

Begin forwarded message:

From: Killion, Sean <killions@charleston-sc.gov>
Sent: Thursday, November 7, 2019 12:03 PM
To: Permitting <permitting@crescenthomes.net>
Subject: RE: 1111 & 1131 Oak Bluff

Jessica,

I agree this is complicated issue. The problem emerged when a former zoning planner who used to work for the City of Charleston approved a couple of 3 story structures in this subdivision that shouldn't have been approved. Since then myself and Lee Batchelder have spoken with Bob that we would approve the ones in the direct neighborhood of those that shouldn't have been approved in the first place (1111 Oak Bluff), but all future proposed houses must follow the SR-1 guidelines of 35'///2 ½ stories.

Sean Killion|Associate Planner

City of Charleston|Department of Planning, Preservation and Sustainability

Zoning Division

2 George Street|Charleston, SC 29401

T:(843) 724-3779|killions@charleston-sc.gov | www.charleston-sc.gov

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City of Charleston

From: Permitting [mailto:permitting@crescenthomes.net]
Sent: Thursday, November 7, 2019 11:48 AM
To: Killion, Sean <killions@charleston-sc.gov>
Subject: 1111 & 1131 Oak Bluff

Based off of the email you sent me, "for 1111 and 1131 Oak Bluff I came across a problem with the height of said buildings being over the SR-1 limits of 2 ½ stories. Both properties aren't located in a flood zone and therefore cannot be granted the FEMA exception," I was under the impression that both 1111 & 1131 had the same issues. Since 1111 was issued with the unfinished first floor and 1131 first floor is unfinished I thought that it would be issued as well. Am I reading that wrong? My apologies if I am, I myself am just getting confused.

If you should have any questions, please let me know.

Thank you,



JESSICA DICKSON

Permitting Coordinator

O: 843-573-9635 ext. 5101 | Permitting@crescenthomes.net |
1510 Hwy 17 N., Mt. Pleasant, SC 29465 | www.crescenthomes.net



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RECORD 000090

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Oct 26 2021 02:02 PM
CHARLESTON COUNTY REGISTER OF DEEDS
BOOK/PAGE 0041 986

From: Killion, Sean <killions@charleston-sc.gov>
Sent: Thursday, November 7, 2019 11:35 AM
To: Permitting <permitting@crescenthomes.net>
Subject: RE: CORRECTIONS NEEDED- FW: 1111 & 1131 Oak Bluff

Jessica,

I have no received revisions that are 2.5 stories for 1131 Oak Bluff, therefore it cannot receive zoning approval.

Sean Killion|Associate Planner

City of Charleston|Department of Planning, Preservation and Sustainability

Zoning Division

2 George Street|Charleston, SC 29401

T:(843) 724-3779|killions@charleston-sc.gov | www.charleston-sc.gov

City of Charleston

From: Permitting [mailto:permitting@crescenthomes.net]
Sent: Thursday, November 7, 2019 11:32 AM
To: Killion, Sean <killions@charleston-sc.gov>
Subject: RE: CORRECTIONS NEEDED- FW: 1111 & 1131 Oak Bluff

RECORD 000091

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Hey Sean,

I see that 1111 Oak Bluff is ready to be issued.

Do you happen to have any update on 1131 Oak Bluff?

If you should have any questions, please let me know.

Thank you,



JESSICA DICKSON

Permitting Coordinator

O: 843-573-9635 ext. 5101 | Permitting@crescenthomes.net |
1510 Hwy. 17 N., Mt. Pleasant, SC. 29465 | www.crescenthomes.net



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From: Killion, Sean <killions@charleston-sc.gov>
Sent: Wednesday, October 2, 2019 11:10 AM
To: Permitting <permitting@crescenthomes.net>
Cc: Alltop, Crystal <alltopc@charleston-sc.gov>
Subject: 1111 & 1131 Oak Bluff

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RECORD 000092

FILED CHARLESTON COUNTY - 2021 Oct 26 2:02 PM - CC-2021-CP-1000486

Hello,

While reviewing the plans for 1111 and 1131 Oak Bluff I came across a problem with the height of said buildings being over the SR-1 limits of 2 ½ stories. Both properties aren't located in a flood zone and therefore cannot be granted the FEMA exception. This needs to be addressed in order to receive zoning approval. If you have any questions or concerns feel free to email me or call me at 843-724-3779.

Sean Killion|Associate Planner

City of Charleston|Department of Planning, Preservation and Sustainability

Zoning Division

2 George Street|Charleston, SC 29401

T:(843) 724-3779|killions@charleston-sc.gov | www.charleston-sc.gov



RECORD 000093

FILED CLERK OF COURT 12-Oct-2021 2:16:02 PM - CCP - CHARLESTON - COMMON PLEAS - CASE # 2021CP1004186

EXHIBIT 3

RECORD 000095

Brandon Gaskins

From: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Sent: Monday, March 8, 2021 6:01 PM
To: Ross Appel; Morgan, Christopher
Subject: RE: Revision to Definition of "Story" under City Ordinance

Hi Ross,

Sorry for my tardy response. I am not in favor of this change because it would conflict with our current zoning restrictions for most neighborhoods outside the peninsula which limit houses to 2 ½ stories. We aleady allow ground floor stories in flood zones to not count toward the 2 ½ story limit, which has worked well. However, with the amendment Elis is proposing, we might as well change the 2 ½ story limit to 3 ½ stories which would be out of character for suburban neighborhoods. We (zoning) also don't review building permit applications to make interior alterations to SF homes so we would have no way to catch conversions of ground floor spaces from storage/garage spaces to living spaces, which is sure to happen.

I do think we should consider modified height restrictions as we implement the new comp plan, which hopefully will lead into a concerted effort on behalf of the City to revise our zoning regulations. I think the new comp plan will reflect the Dutch Dialogues recommendations and others dealing with sea level rise so it seems appropriate to consider height restrictions then.

Thanks for asking. Let me know if you have any further thoughts or questions.

Lee C. Batchelder AICP | Zoning Administrator
City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401
T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

From: Ross Appel <ross@mklawsc.com>
Sent: Monday, March 1, 2021 11:28 AM
To: Morgan, Christopher <MORGANC@charleston-sc.gov>; Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Subject: FW: Revision to Definition of "Story" under City Ordinance

CAUTION: This email originated outside of the City of Charleston. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Christopher and Lee,

I hope this finds both of you well. I am forwarding an e-mail from Ellis Leseman regarding a rather technical zoning change. The logic behind this sounds reasonable to me, but I want to get your perspective on this issue.

Once you've had a chance to review, please let me know and we can go from there.

Thanks, as always.

Ross

FILED IN COMMON PLEAS - CLASS # 2021CP1004186 Oct 26 2021 02:02PM - CHARLESTON - COMMON PLEAS

Ross Appel
Attorney, McCullough Khan, LLC

O: (843) 937-0400 | D: (843) 937-9798 | F: (843) 937-0706
E: ross@mklawsc.com | W: www.mklawsc.com
A: 359 King Street, Suite 200, Charleston, SC 29401

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From: Ellis Lesemann <erl@lalawsc.com>
Sent: Thursday, February 25, 2021 10:43 AM
To: Ross Appel <ross@mklawsc.com>
Cc: Bill Eubanks <beubanks@sganwdesign.com>
Subject: Revision to Definition of "Story" under City Ordinance

Hello Ross:

I am writing to follow up on the issue that we had discussed over the past several months relating to revising the City's Ordinances in order to encourage/allow newly constructed two-story homes to be elevated. This is a construction technique that is recommended repeatedly within the Dutch Dialogues.

Over the past two months, I've worked with Bill Eubanks in order to come up with the revision language that could facilitate this, which focuses on the definition of "story" under the City's Zoning Ordinance. We've developed wording that we believe is narrowly tailored and would not result in any unintended consequences. In light of your knowledge and background, and your support for the idea, we wanted to present the language to you and get your thoughts. Once the language is in good form, we are hopeful that you and perhaps other members of City Council could steer this through to enactment and implementation.

Attached are: (1) highlighted excerpts from the Dutch Dialogues Indicating the importance of elevating homes, both new and existing; and (2) the proposed draft language for a revision to the definition of "story" under the City's Zoning Ordinance that, if adopted, would make an immediate impact by allowing new two-story homes to be elevated.

Under the existing language and interpretation, if a home is elevated, it cannot be two stories, because the City's Planning, Preservation & Sustainability Department considers the unfinished area that would be underneath the house to be a "story." This results in an elevated two-story house being considered a "three-story" house, which isn't allowed in SR-1 and certain other zoning districts.

This wasn't always the interpretation, but it has become the current view within the Department. The result of this interpretation is that, in order to have a new two-story home, the home cannot be elevated. This undermines the goal of adapting construction practices in order to expect and accommodate rain events, climate change, and sea level rise. It also imposes an undue limitation on the options available for purchasers of new homes.

Adopting the proposed revision is an important action that we, together as a City, can take to implement this key lesson and recommendations from the Dutch Dialogues.

Talk soon,

RECORD 000096

FILED IN THE CLERK OF COURT'S OFFICE ON 10/04/2021 2:16:02 PM - CCP/MP - 2021CP1002486

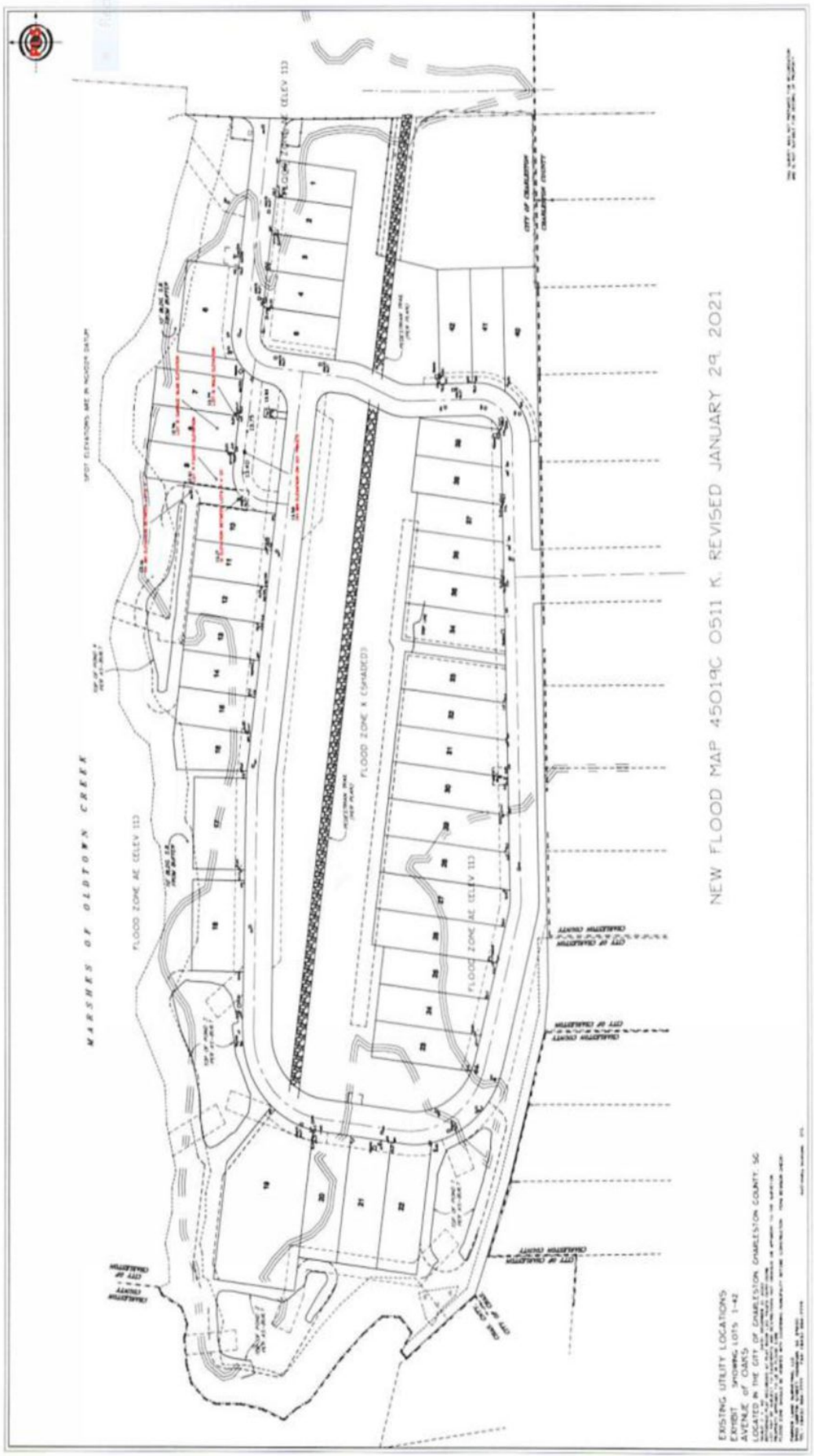
Ellis

Ellis R. Lesemann
Lesemann & Associates LLC
418 King Street, Suite 301
Charleston, SC 29403
Phone: (843) 724-5155
Mobile: (843) 367-8001
Email: erl@lalawsc.com
Website: www.lalawsc.com

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27

EXHIBIT 4


NEW FLOOD MAP 45019C 0511 K, REVISED JANUARY 29, 2021
MARSHES OF OLDTOWN CREEK
FLOOD ZONE AE (ELEV 11)
FLOOD ZONE X (SHADED)
EXISTING UTILITY LOCATIONS

29

EXHIBIT 5

City of Charleston New Single Family Permit Application

Name and Address of Property Owner Crescent Homes SC, LLC 572 Savannah Hwy, Charleston SC 29407

Contractor Crescent Homes SC, LLC **Cell No.**

Office No. 843-573-9635x5101 **E-mail** Permitting @crescenthomes.net

State License No. 18591 **City Business License No.** 39245

****

Lot 6 **Block** **Parcel** **Address (if known)** 1012 Avenue of Oaks

Subdivision Avenue of Oaks **Phase** **TMS** 418-06-00-124 **Zoning**

Heated Square Feet 1st floor: 1200 **2nd floor:** 1099 **3rd floor:**

Unheated Square Feet (Includes garages, porches, decks) 1636

Actual setbacks: Front 17' **Rear** 7' **North/East Side** 9.29' **South/West Side** 12.71'

Height of Dwelling: +/- 36' - 9" **(measured from the curb to the highest point of the finished roof)**

***Is this an Affordable Housing Project?** NO **(If yes, a letter must be included with this application stating that the construction meets the Affordable Housing Ordinance requirements.)**

REVIEW REQUIRES THE FOLLOWING PLANS WITH THIS APPLICATION:
Please see checklist for full requirements. Plans will not be accepted if all requirements have not been met.

1. **THREE (3) SCALED SITE PLANS** should be prepared, signed and sealed by a South Carolina licensed professional (i.e. surveyor or engineer; include state registration number on the site plan)
2. **MANUAL J** detailing HVAC calculation- 1 copy
3. **INTERNATIONAL ENERGY CONSERVATION CODE FORM** 1 copy
4. **TWO (2) SETS of BUILDING PLANS**
   - Indicating the height of all buildings measured from curb line elevation, or street elevation if there is no curb, to the highest point of the finished roof.
   - Plans by a registered design professional
   - Foundation plan
   - Framing Details or floor, wall, ceiling, roof, headers, beams, and girders
   - Floor Plans
   - Indicate how glazing will be protected from windborne debris
   - Structural details

NOTE: An Engineering permit and inspection by the Engineering Division is required prior to the issuance of a Certificate of Occupancy. Call 724-3782 for permit information and inspection requests.

For customer service, please contact the Customer Service Coordinator at 843-724-7450

For technical information, please contact the following:

GIS	**843-805-3230**	**Zoning**	**843-724-3755**
Engineering	**843-724-3782**	**Inspections**	**843-724-7448**

-I certify that the information on the application and its attachments is correct, that the proposed improvement(s) comply with private neighborhood covenants, if there are any, and that I am the owner of the subject property or the authorized representative of the owner. I authorize the subject property to be inspected for verification of same.

Applicant's Signature _____ **Date** 3/29/2021

You must fill out the second section of this application for your submittal to be considered complete. The International Residential Code Correction Sheet (IRC) is required by the Building Inspections Division for plan review.

RECORD 000101

EFFECTIVE UNTIL 12/31/2021 PER EMERGENCY ORDER #20 DATED 10/26/2021 - CHANGES TO CODE ARE NOT REQUIRED - CODE VERSION PRIOR TO #20 IS ACCEPTABLE

☐ This address and TMS number are correct per **Kittie Whiddon (GIS)**

_____ (Address Correction if Needed)

Permit Number

SF_____

International Residential Code Correction Sheet

**********THIS SECTION MUST BE COMPLETED BY THE APPLICANT**********

Contractor: Edward M. Terry, Crescent Homes SC, LLC

Address of Project (if known): 1012 Avenue Of Oaks

Number of: Stories 2 **Rooms** 6 **Bathrooms** 3.5 **Bedrooms** 3 **Kitchens** 1

Type of Construction: Wood Frame **Exterior of Building:** Cement-board Siding

Type of: Heat (electric or gas) Gas **Roof Covering** Shingles

Foundation (If slab, monolithic or raised: piers or continuous wall): Drive Under

Fireplace (prefab or site built, wood burning or gas): Prefab, Gas

Are roof trusses being used? Yes **Is sewer available?** Yes (If not, DHEC septic tank approval must be submitted)

Permit includes: Electrical (x), Plumbing (x), Mechanical (x), Gas (x), Separate permit to be obtained.

Window Agreement: (*Please sign and date)*

Crescent Homes, SC LLC *(Owner/Contractor/Agent)* will install windows that meet the American Architectural Manufacturer's Association specification per ***2015 SC IRC, R609.3*** for the following address _____.

Signature _____ Date 3/29/2021

**********For office use only**********

ITEMS NOTED BELOW SHALL BE CORRECTED IN THE FIELD

( ) Submit under construction flood zone elevation certificate prior to rough-in inspections. ( )
Submit finished construction flood zone elevation certificate prior to final inspections.
( ) Submit as-built v-zone and break away wall certifications prior to final inspections.

_____

_____

_____

_____

_____

Approved By _____ Date _____

Corrections indicated above will be complied with.

Owner/Contractor/Agent _____ Date _____

Revised 2/20/2019

RECORD 000102

EFFECTIVE ON AND AFTER JULY 1, 2021 ALL PLANS SUBMITTED FOR PLAN REVIEW SHALL BE SUBMITTED ELECTRONICALLY IN PDF FORMAT. PLANS SUBMITTED IN PAPER FORMAT WILL NOT BE ACCEPTED. PLEASE CONTACT YOUR LOCAL JURISDICTION FOR MORE INFORMATION.

Ashby, Pennye

From: Laura Phillips <lauraphillips@mvalaw.com>
Sent: Monday, May 17, 2021 11:47 AM
To: Ashby, Pennye
Cc: Brandon Gaskins
Subject: Crescent Homes SC, LLC - Appeal of Denial of Building Permit for 1012 Avenue of Oaks
Attachments: BZA-Z Application.pdf; BZA-Z Appeal Form.pdf; Crescent Homes Ave of Oaks BZA Appeal.pdf; Ex. 1 - Final Plat.pdf; Ex. 2 - Emails re Past Interpretation.pdf; Ex. 3 - Batchelder Email.pdf; Ex. 4 - Plat (New Flood Zones).pdf; Ex. 5 - Permit Application.pdf; Ex. 6 - Building Plans.pdf; Ex. 7 - Killion Email_Redacted.pdf; Ex. 8 - Dutch Dialogues Excerpts.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

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Good Morning Ms. Ashby,

Sent on behalf of Brandon Gaskins, please find attached the following:

1. Application;
2. Appeal Form;
3. Letter in support of Appeal dated May 17, 2021;
4. Exhibits 1-8.

Sincerely,

Laura L. Phillips
Paralegal
T 843.579.7043
F 843.579.7099
lauraphillips@mvalaw.com

Moore&VanAllen
78 Wentworth Street
Charleston, SC 29401-1428
843.579.7000
www.mvalaw.com

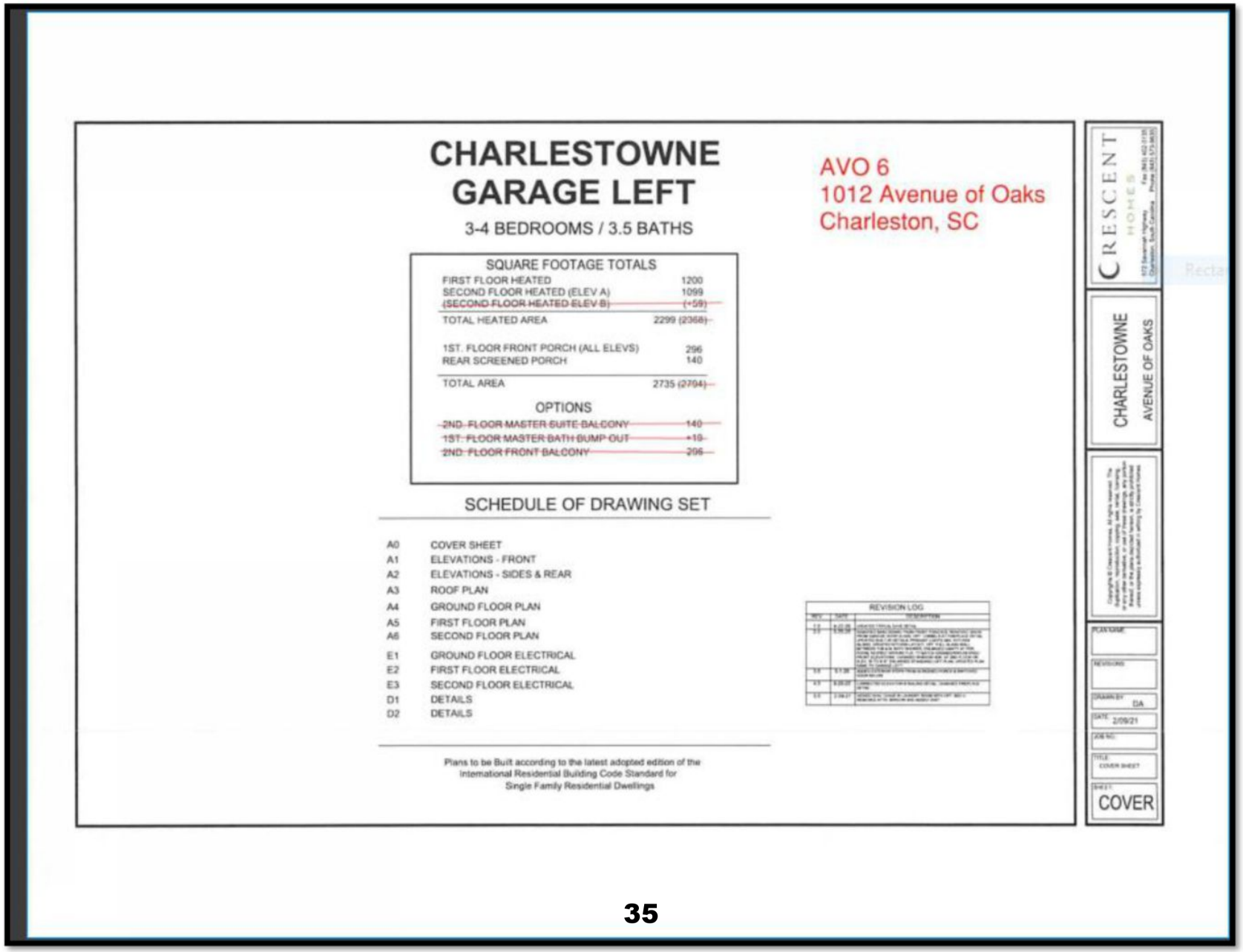
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Moore & Van Allen

RECORD 000103

FILED CHARLESTON COUNTY - 2021 Oct 26 12:02 PM - CCP - CASE# 2021CP1004186

EXHIBIT 6



CHARLESTOWNE GARAGE LEFT

3-4 BEDROOMS / 3.5 BATHS

AVO 6
1012 Avenue of Oaks
Charleston, SC

SQUARE FOOTAGE TOTALS	
FIRST FLOOR HEATED	1200
SECOND FLOOR HEATED (ELEV A)	1099
~~(SECOND FLOOR HEATED ELEV B)~~	~~(+59)~~
TOTAL HEATED AREA	2299 ~~(2368)~~
1ST. FLOOR FRONT PORCH (ALL ELEVS)	296
REAR SCREENED PORCH	140
TOTAL AREA	2735 ~~(2794)~~

OPTIONS	
~~2ND. FLOOR MASTER SUITE BALCONY~~	~~140~~
~~1ST. FLOOR MASTER BATH BUMP OUT~~	~~+19~~
~~2ND. FLOOR FRONT BALCONY~~	~~296~~

SCHEDULE OF DRAWING SET

A0	COVER SHEET
A1	ELEVATIONS - FRONT
A2	ELEVATIONS - SIDES & REAR
A3	ROOF PLAN
A4	GROUND FLOOR PLAN
A5	FIRST FLOOR PLAN
A6	SECOND FLOOR PLAN
E1	GROUND FLOOR ELECTRICAL
E2	FIRST FLOOR ELECTRICAL
E3	SECOND FLOOR ELECTRICAL
D1	DETAILS
D2	DETAILS

Plans to be Built according to the latest adopted edition of the International Residential Building Code Standard for Single Family Residential Dwellings

REVISION LOG

CRESCENT HOMES

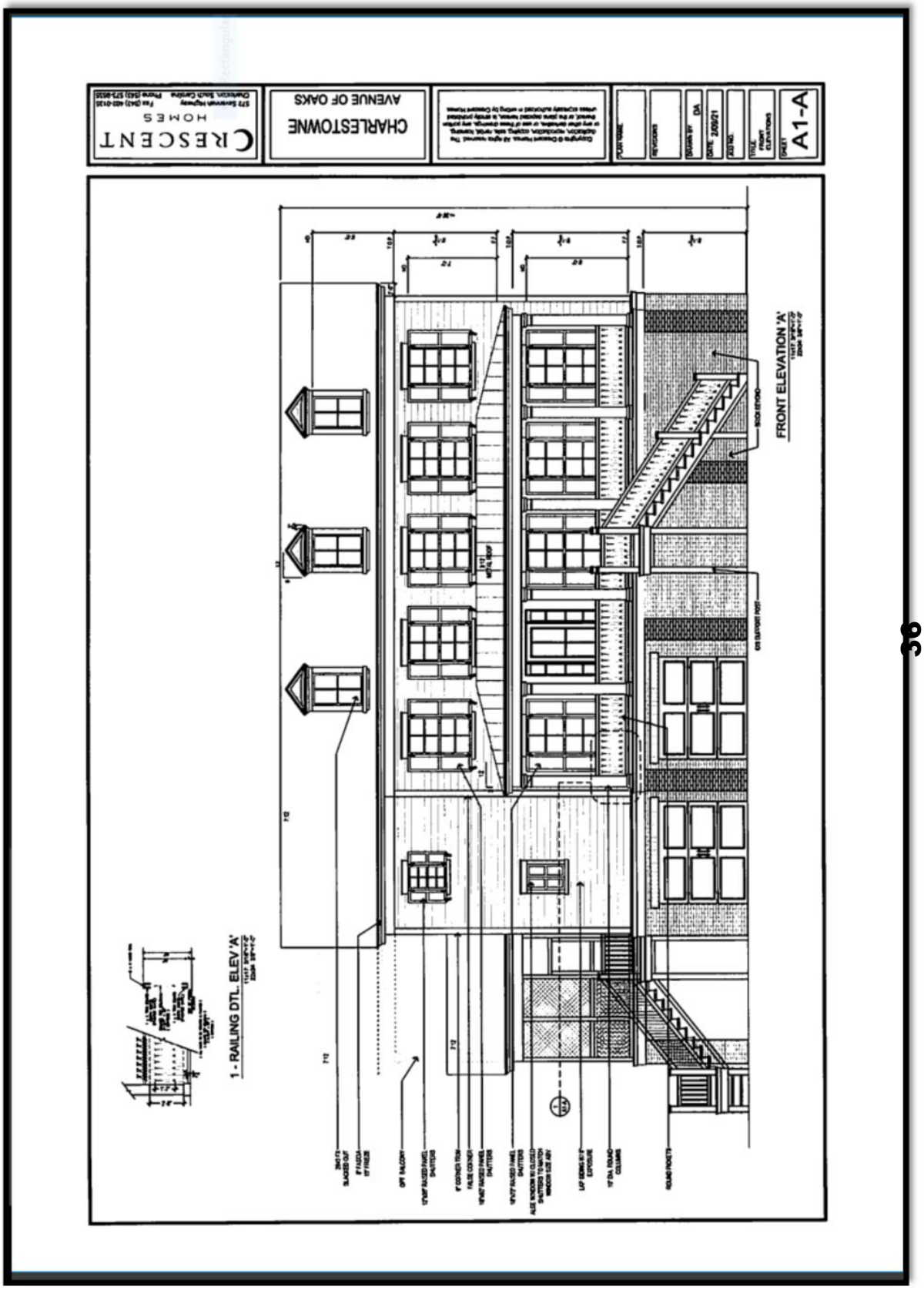
CHARLESTOWNE
AVENUE OF OAKS

DRAWN BY: DA
DATE: 2/09/21
JOB NO.:
TITLE: COVER SHEET
SHEET: COVER

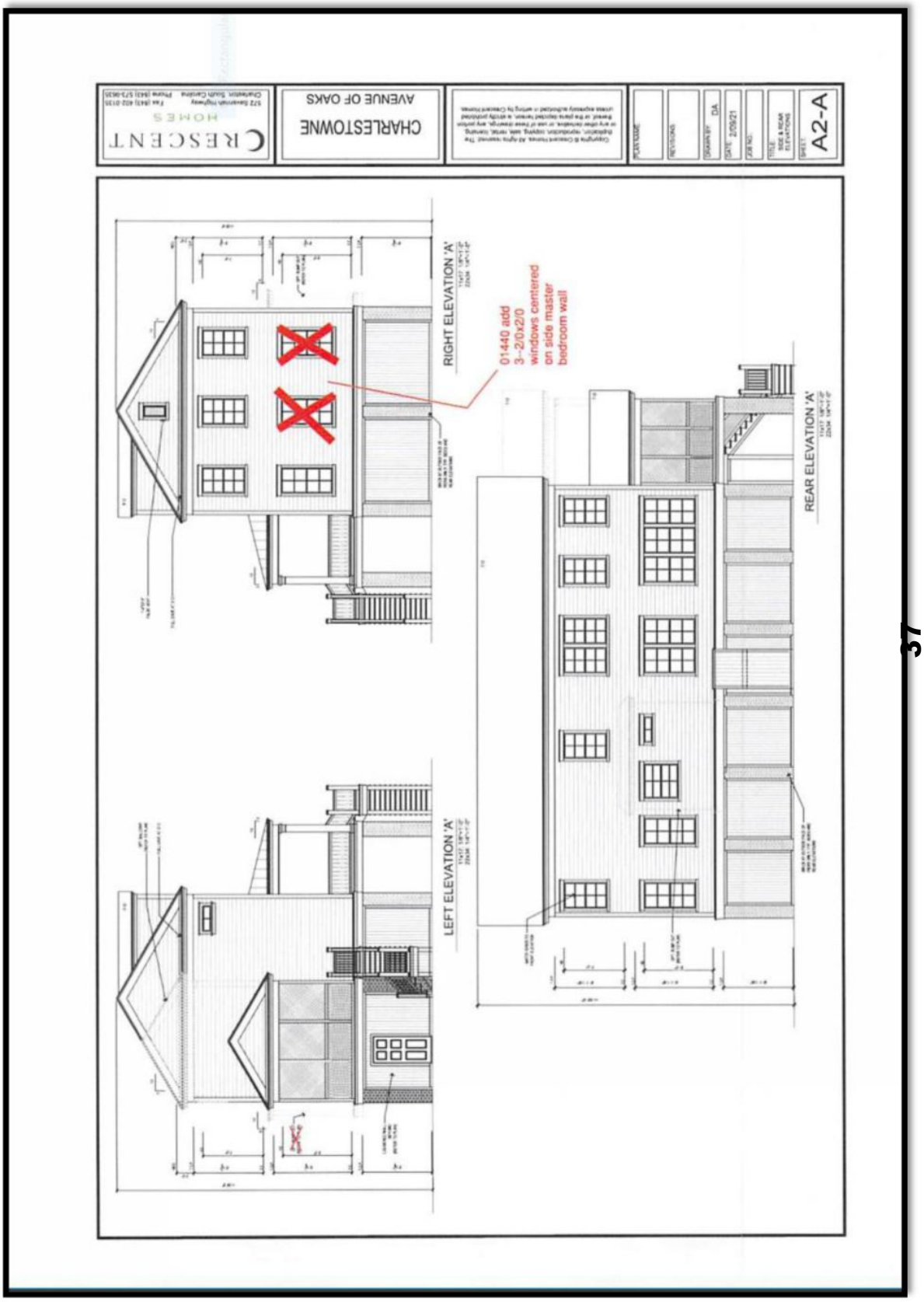
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2021-CP-08-00411
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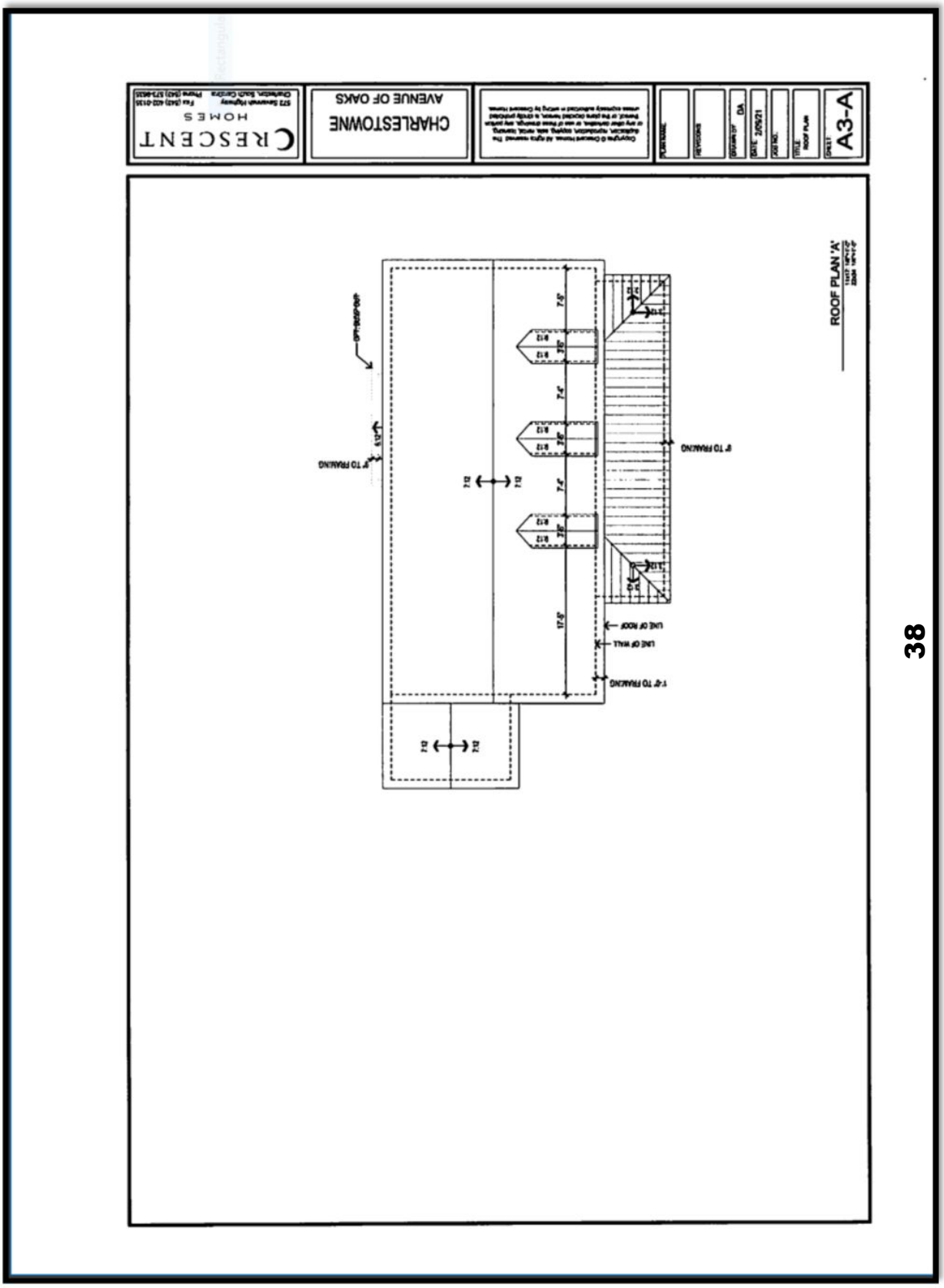
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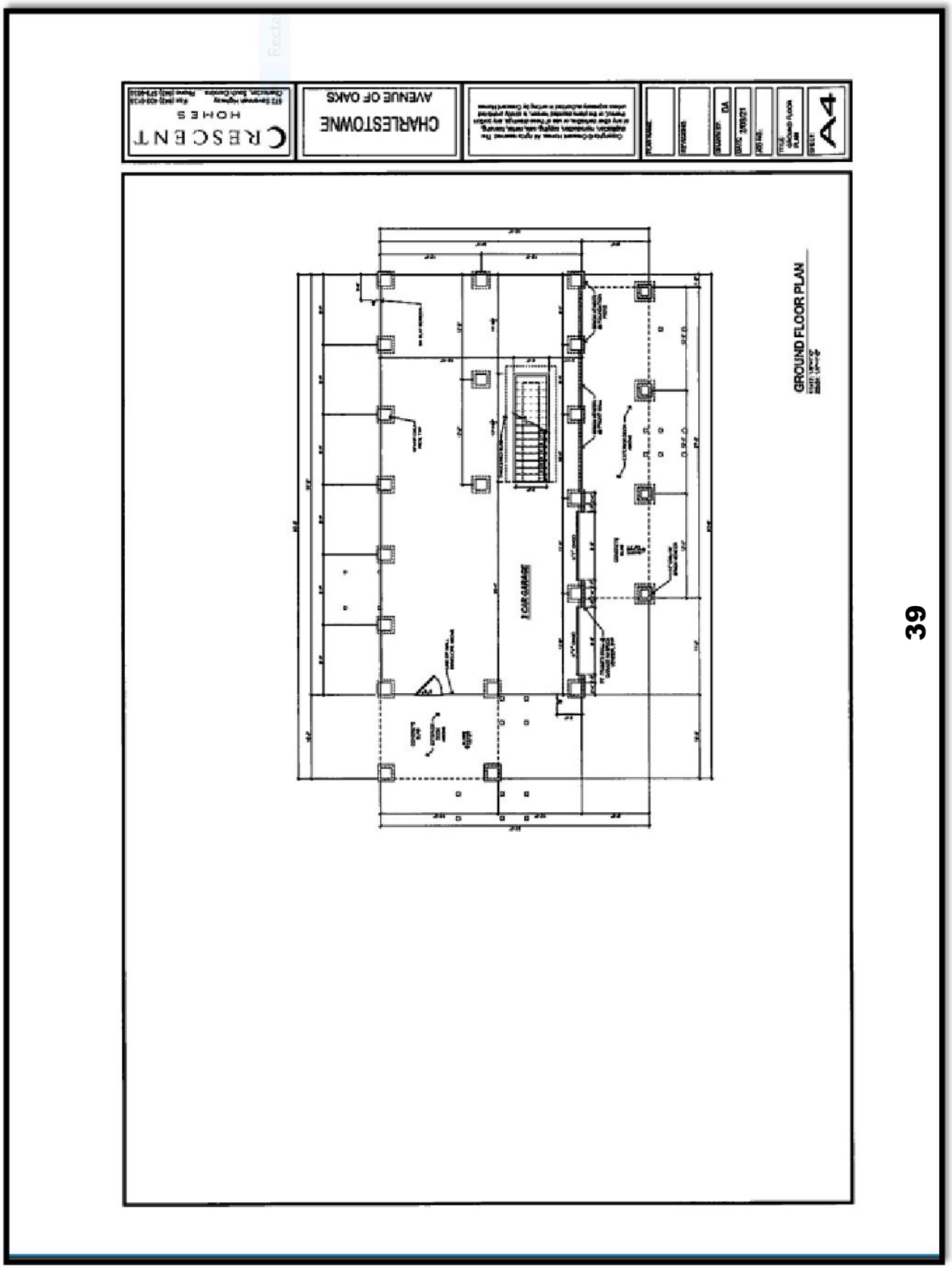
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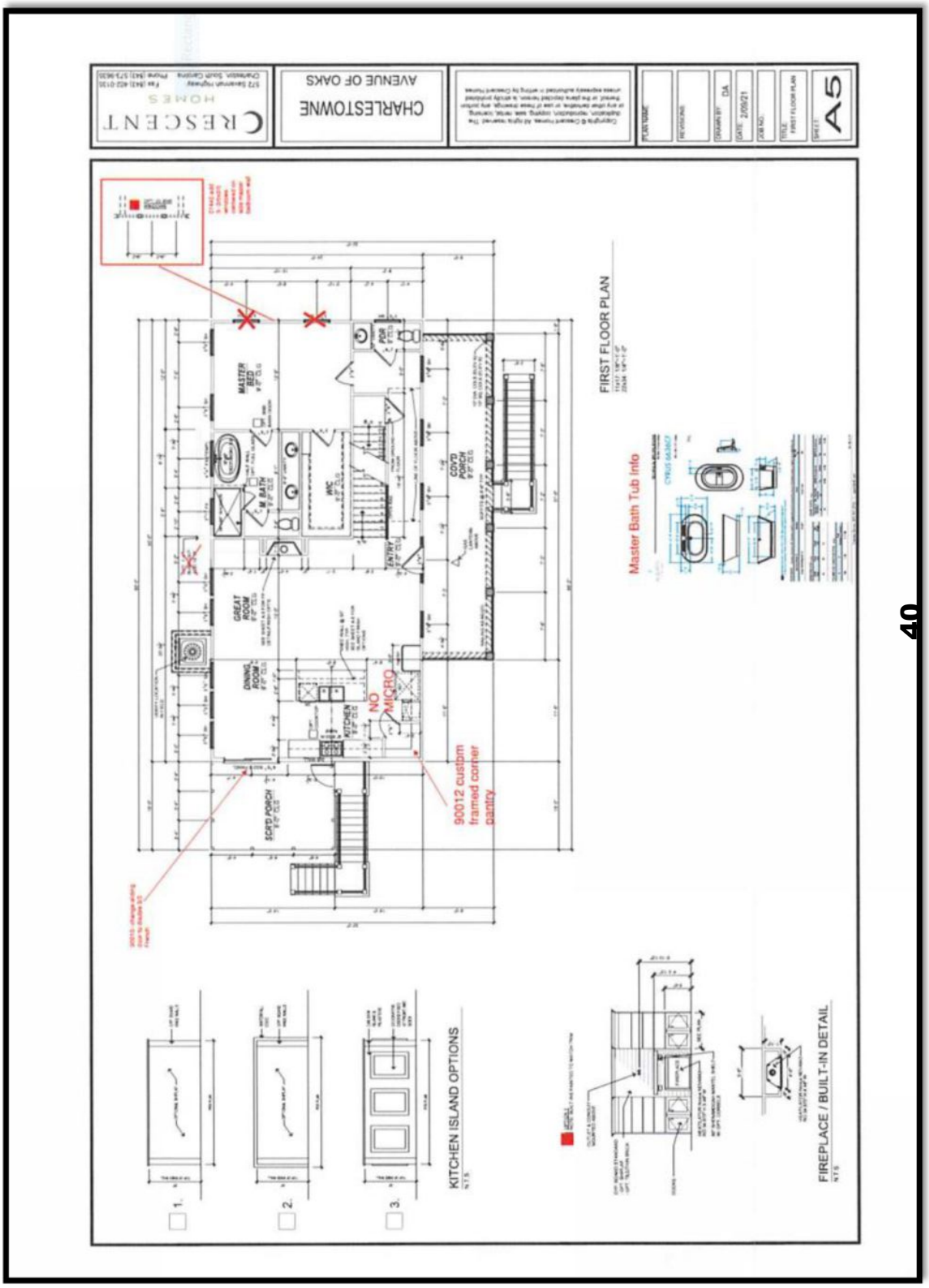


37


CRESCENT
HOMES
CHARLESTOWNE
AVENUE OF OAKS
A3-A
ROOF PLAN 'A'
38

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CRESCENT HOMES
CHARLESTOWNE
AVENUE OF OAKS
A5
FIRST FLOOR PLAN
Master Bath Tub info
90012 custom framed corner pantry
NO MICRO
KITCHEN ISLAND OPTIONS
FIREPLACE / BUILT-IN DETAIL

40

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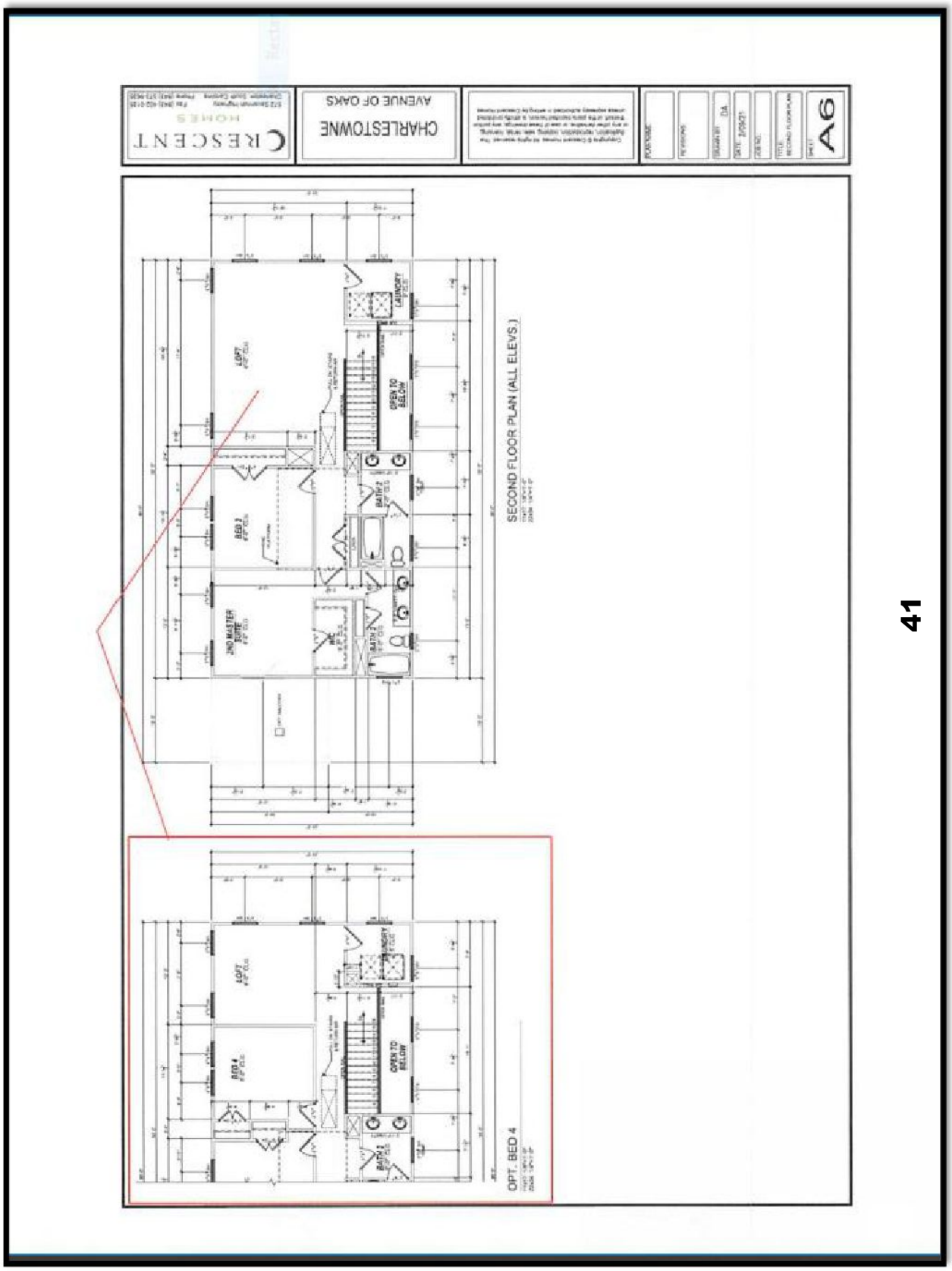
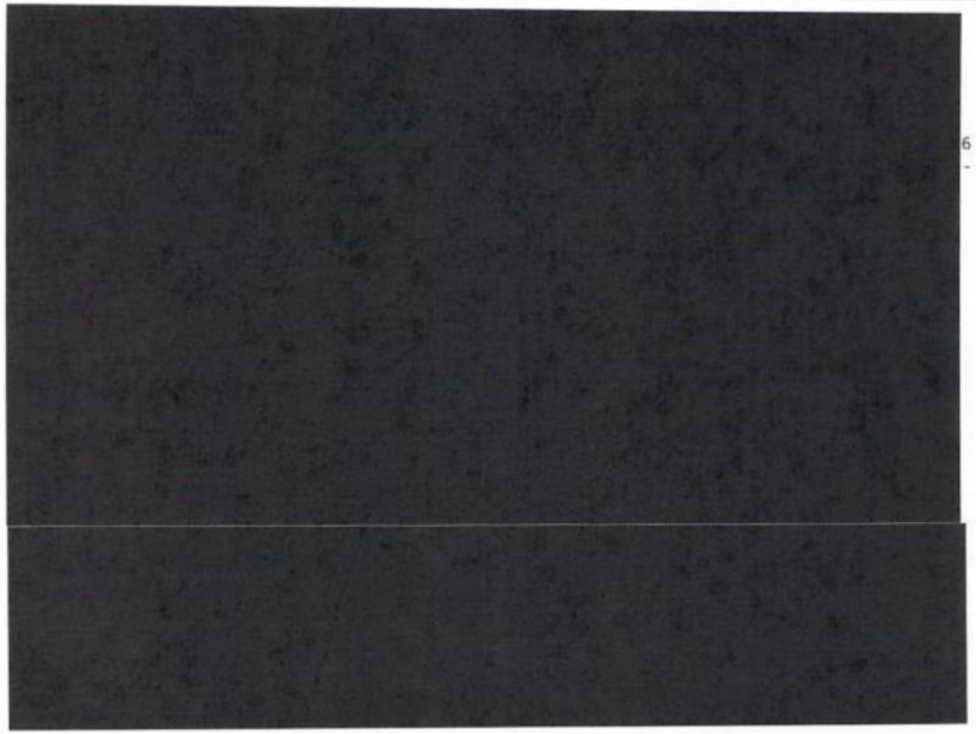


EXHIBIT 7

Brandon Gaskins



From: Killion, Sean <killions@charleston-sc.gov>
Sent: Thursday, April 15, 2021 9:07 AM
To: Permitting <permitting@crescenthomes.net>
Subject: 1012 Avenue of Oaks

Good Morning,

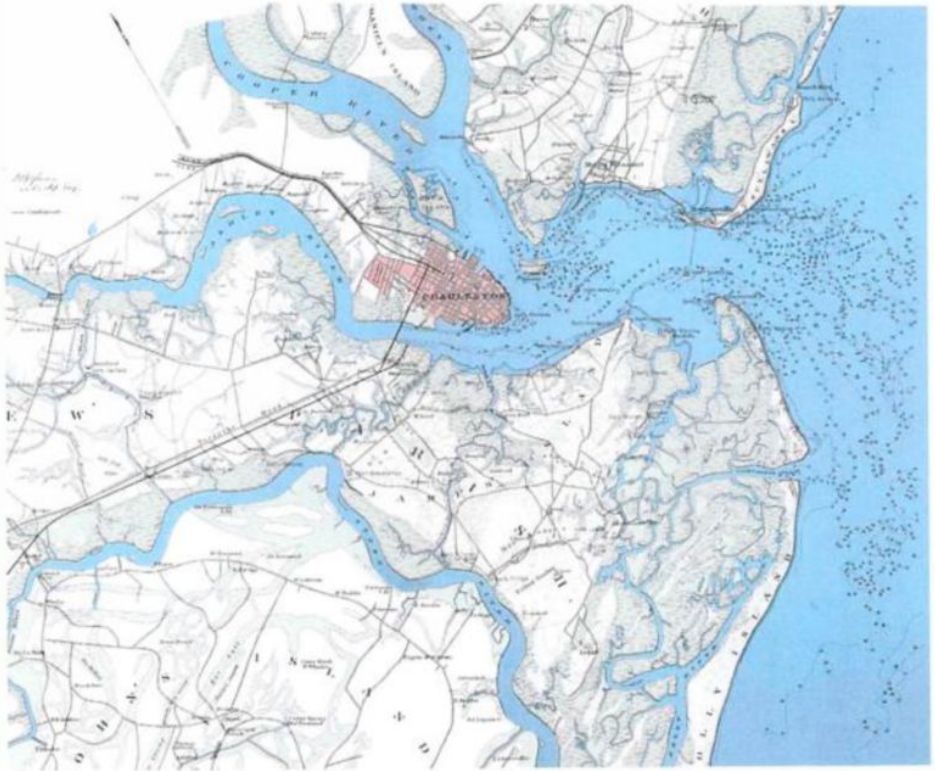
I was reviewing the plans for 1012 Avenue of Oaks and I saw the proposed design has a drive under in an X flood zone. This would make the house 3 stories and therefore non-conforming to the SR-1 regulations. Please revise for zoning approval.

Sean Killion|Associate Planner
City of Charleston|Department of Planning, Preservation and Sustainability
Zoning Division
2 George Street|Charleston, SC 29401
T:(843)724-3779|killions@charleston-sc.gov | www.charleston-sc.gov

RECORD 000113

EXHIBIT 8

Dutch Dialogues™
Charleston



September 2019

WAGGONNER & BALL

THE WATER INSTITUTE OF THE GULF

Kingdom of the Netherlands

RECORD 000115

EFILED IN THE CLERK'S OFFICE
CHARLESTON COUNTY, SOUTH CAROLINA
2021 Oct 26 2:16:02 PM
2021CP1002419

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Peninsula	128
Eastside	158
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Report produced by Waggonner & Ball with text contribution from The Water Institute of the Gulf.

September 24, 2019 10:05 AM

RECORD 000116

FILED ELECTRONICALLY IN THE CLERK OF COURT'S OFFICE 12/21/2022 2:16:02 PM - CCP/MP - CHARLESTON COUNTY - COMMON PLEAS - CASE # 2021CP1004186

A Layered Approach

A layered planning approach begins with Charleston's most basic layer: its physical ground, the land and water upon which infrastructure and inhabitation, history and culture, are based.

Safety first. Safety is increased through elevation and redundancy. Multiple lines of defense begin outside the city, in the landscape, and are also structured from within. Sustainable inhabitation is connected to deep geology.

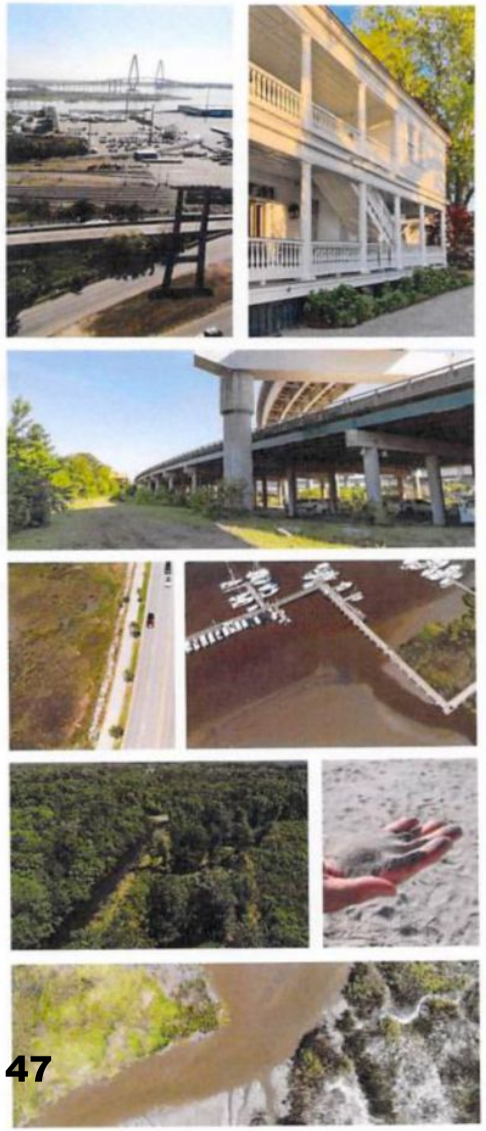
Elevation is salvation from inundation. Elevation is critical in low-lying place, and awareness of place translates to informed action. Charleston has areas of stable, relatively high ground, a critical asset in high water.

Know where you are. The Ashley and Cooper are tidal rivers. Shorelines shift across a low landscape, and plants and habitat move with them, if allowed. Healthy ecology supports a healthy economy and can provide protective benefits. Sustainable infrastructure aligns with ecological function. Water in the region must be understood as a holistic system, man-made and natural in tandem.

Work at multiple scales. Focus on the smallest scale, with an understanding of larger watershed and system functions. Conflicts between and within layers are acknowledged—culture and technology sometimes produce misalignments—and design solutions begin by asking what lies underneath.

Pursue multiple benefits. Single-purpose infrastructure is a poor investment.

No regrets. Make sure action taken now will not compromise future opportunities. Projects should fit within a comprehensive planning vision, but should be able to operate independently with success. Plans must be adaptable over time.



RECORD 000117



Louisiana's Multiple Lines of Defense
Credit: Louisiana CPRA

Disadvantages of a regional approach are that it requires:

- Robust implementation; the system is only as strong as its weakest link, requiring gates and barriers where open water crosses the (primary) lines of defense.
- Substantial inter- and intra-governmental cooperation and coordination.
- Additional measures, often related to stormwater drainage and local sea level rise adaptation.
- Reliable, steady investment, for long-term design, construction, operations and maintenance (O&M) funding. O&M costs are generally estimated at between 2%- 4% per year of the original cost of construction.
- Trade-offs between protection and environmental considerations. Some environmental impacts can often be mitigated post construction, for a price.

Elements of a Theoretical Regional System

A Hurricane Risk Reduction System for Charleston would consist of broad elements from offshore to inland areas.

- Reinforcing / strengthening / and possible reestablishment of barrier islands .





New Orleans Inner Harbor Navigation Channel Surge Barrier

RECORD 000118

EFFECTIVE DOCUMENT - 2021 Oct 26 21:02:22 PM - CHARLESTON COUNTY, SC - COMMON PLEAS - CASE# 2021CP1004186



Dutch Sand Engine
This Building with Nature project distributes sand along the Dutch coast with the forces of wind and water
Credit: Rijkswaterstaat





Top
Example of a flood resilient home
Credit: Aamodt/Plumb Architects

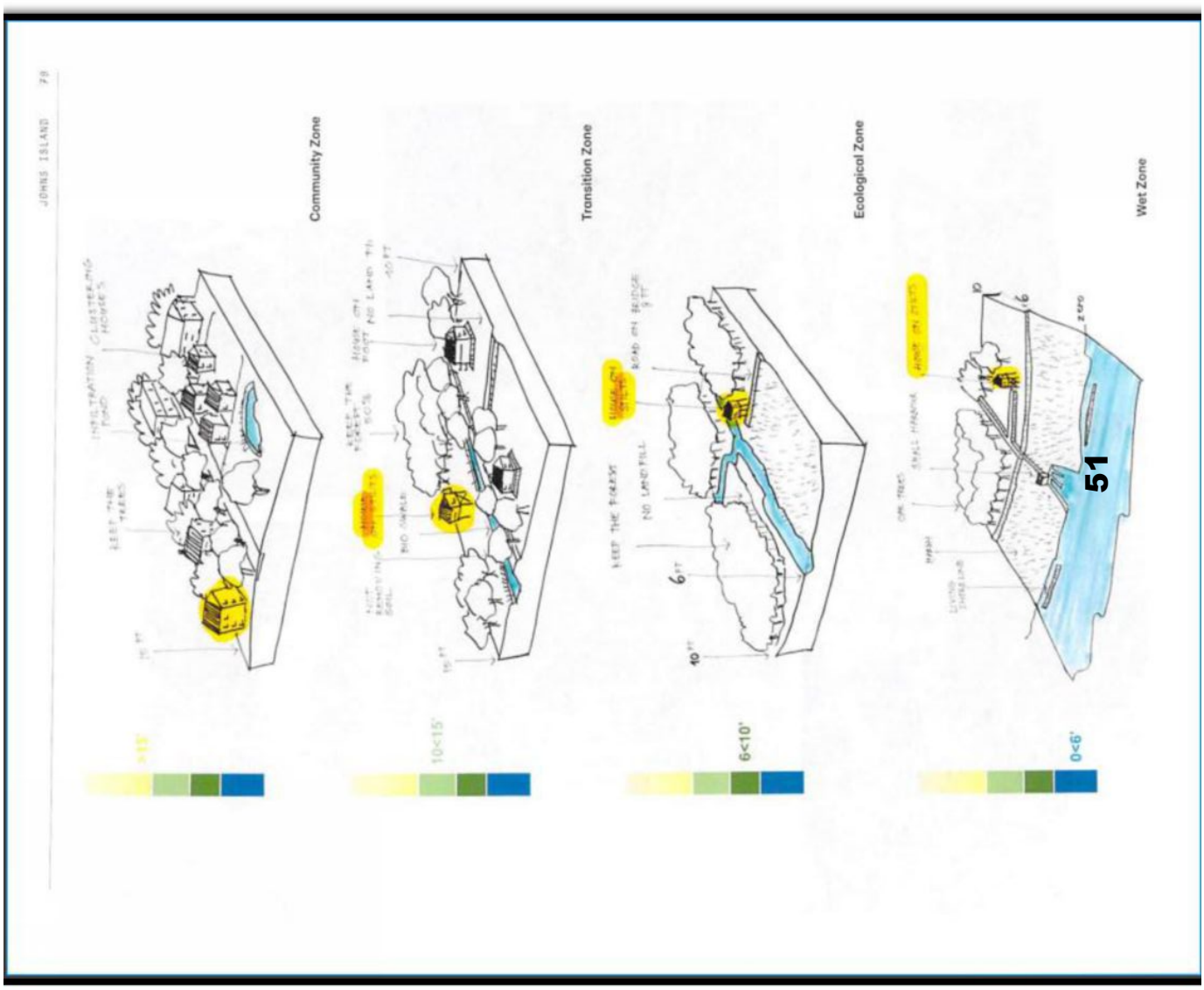
Above
Coastal flood defense in the beach resort of Katwijk, a combination of a sea dike, underground, beach-front parking garage, covered by a natural dune with a pedestrian zone and a nature reserve
Credit: Arcadis

- A robust intertidal and coastal marsh zone, buffering land and sea, with coastal marsh restoration, increased oyster banks and similar "building with nature" components.
- Pockets of resilient, elevated communities, able to adapt to storm, surge and sea level rise outside of the primary coastal defense system.
- A coastal defense alignment, behind which all infrastructure and buildings will be protected against the impacts of storm surge at the defined risk reduction level. This line would consist of coastal ridges, dunes, berms, sea dikes, levees and, where necessary (due to spatial constraints), floodwalls. Note: the Dutch have begun using more multifunctional flood protection structures in which primary flood protection and other economic, environmental, mobility or social benefits are combined.
- Gates / Barriers integrated into the coastal defense line to limit storm surge impacts that would occur via open water channels. To lessen ecosystem impacts and ensure normal riverine and tidal exchange and shipping access, movable gates would be required. These are complex structures and can be vertical lift gates or navigable barriers or a combination thereof.

RECORD 000119


JOHNS ISLAND 75
50
New Development

ELECTRONICALLY FILED - 2021 Oct 26 12:22 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196



more) and bridges-- with little-to-no landfill and no large-scale removal of existing soils and trees. Maintaining the existing coastal forest is essential: the average forest canopy should be maintained at 50% or more of land cover in this zone.

The ecological zone carries substantial flood risk and can expect to get wet in a 100-year storm which, oddly, means a 1% chance of flooding in any year but also a 26% chance that a home with a 30-yr mortgage will flood once over the mortgage term. Those living in this zone should be fully aware of the risk they assume by living there.

The transition zone is defined as areas between 10-15ft above MSL. **In the transition zone, development is possible**, including clustered, elevated homes. Development here must respect the dynamic nature of the landscape, with fluctuating water levels and sufficient, maintained overland drainage channels, and the need for tailored flood risk reduction strategies. Fill should be sparingly used, primarily for road construction or to elevate only certain homes. The coastal forests in this zone should not be further degraded as trees are essential for storing and managing stormwater.

The community zone, at 15 feet and more above MSL, is on historic and stable sand ridges, the most prominent of which are along Maybank Ridge and Upper Burden Creek. **This is stronger, higher, safer, and thus valuable ground**, although it is neither scarce nor abundant. Clustered development combined with stormwater infiltration could be encouraged in this zone, especially where the soils readily infiltrate and store water. The existing water systems-- channels, swales, creeks, ditches -- in these zones must also be protected, maintained and not further compromised, filled or eliminated. These systems store and infiltrate stormwater, providing stormwater management and hydrologic balance. Clear rules to protect these hydrologic features must be developed and enforced.

Zone	Approx. Land Elev. (NAVD)	Allowable Development Density	Allowable Foundation Types	Fill Allowed	Potential Stormwater BMPs
Wet Zone	0 – 6'	None	N/A	No	Living Shorelines/Buffers
Ecological Zone	6 – 10'	Limited (Single)	Elevated	Roadways Only	Promote Buffers/Open Systems/Space/ Storage Only
Transition Zone	10 – 15'	Moderate	Elevated/ Limited Slab on Grade	Limited	Closed Systems/ Open Space/Storage and Green Infrastructure/ Infiltration
Community Zone	> 15'	Moderate to Urban	Mix	Limited to Moderate	Green Infrastructure/ Infiltration and Limited Closed Systems

Elevation Zones
Four different zones are described relative to development strategies.

RECORD 000122

EFFECTIVE DOWNGRADE ALLOWED - 2022 Oct 26 21:02 PM - CCH MARRIED SEPARATE - CCDD MMDDYYYY FILED - CLASS # 2021CCP1004196

Church Creek

Landscape Context

The West Ashley / Church Creek area, unlike Johns Island or the Peninsula, is upland (but still low-lying), upstream, and influenced by fluvial conditions more than coastal ones. Ecologically, Church Creek and much of West Ashley is a water basin. The sponge-like functioning of the basin is compromised by constraints upon its water systems and by land-use and development patterns. **While Church Creek is lower in elevation than both Johns Island and the Peninsula, the issues of hurricane storm surge and sea level rise are less urgent here**.

Before human settlement, Church Creek was a sinuous waterway that had multiple branches and outlets. It was reminiscent to the nearby Angel Oak tree, with its vascular system that spreads out in a multitude of winding paths. Just as the Angel Oak gives life, form and energy to Johns Island, the long forgotten Church Creek landscape provides the same for West Ashley. The Creek's natural functions are needed to restore health, safety and balance to the Ashley and Stono River watersheds. Ignore these, and more flood disruption and devastation along these floodplains will occur.

The Church Creek basin has been irreparably shaped by human activity. The basin, once once a lowland swamp between the Stono and the Ashley River, was first drained for rice cultivation. The second wave of alteration came after the Civil War when the it was further drained and cleared for phosphate mining. After phosphate extraction had subsided, the basin became a suburb. The system of ditches which drained the swamp became the drainage system for neighborhoods. The remaining swamp was developed, constricting an already unnatural drainage system.

North of the railroad, Church Creek is now entirely artificial, a man-made ditch that runs behind backyards, under culverts and through the old phosphate mines. This section suffers the worst flooding. Culverts constrict flow and homes are built directly along channel and old creek bed. **Below the railroad the creek is tidal and still largely natural.** Flood risk in this lower zone stems primarily from tidal impacts.

Development in the Basin

The flood challenge in Church Creek is partly about the water system and partly about occupation and land-use planning. Development pressure is high and most of the remaining developable space in the basin will be built out soon. Most of the basin is incredibly low in elevation. Homes in the floodplain may be only slightly lower than homes outside of it. Homes along the tidal portion of the creek are at an additional risk from tides and sea level rise. Neighborhoods' ability to store water is challenged. Even as developmental regulations become more strict, existing homes retain substantial tidal flooding and stormwater risks.

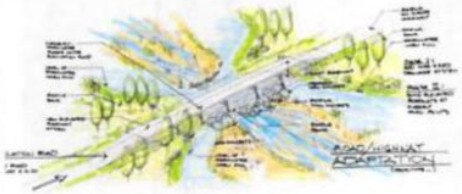
There are things to embrace and things to change in the Church Creek basin. The tidal landscape can be used to accrete land and resilient waterfront development. The retrofitted creek, and the historical phosphate mines, must become functioning pieces of a basin-wide stormwater system. New, elevated homes have limited some flood risk but are disconnected from each other and the landscape. Without water and development working together problems are often transferred downstream.

RECORD 000123

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Inland Development

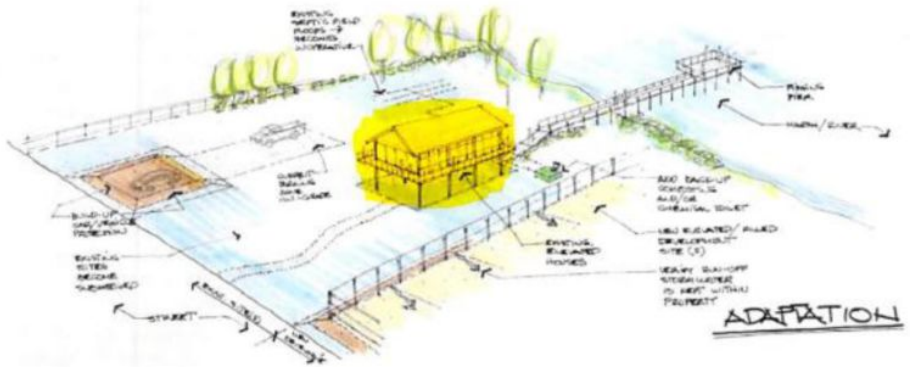


Retrofitted Road Overpasses

New Development

Our proposed blue-green network might be supplemented with new or repurposed developments (red areas in opposite drawing) within the floodplain. This development pattern establishes a vision and direction for the region and can be achieved over the next decade or two. We suggest starting on this vision as soon as possible, through a process that includes new developments in the pipeline and those already on the drawing board.

Sea level rise will extend the floodplain inland. Some development here – we all like to live near the water—is acceptable if properly elevated. An old Cajun-saying is relevant: Elevation is Salvation from Inundation. **But this development will have to adapt to the water system, not the other way around**. A new type of water-centric development could be a cultural and economic asset for Charleston. Connectivity for cars, bikes and pedestrians– via possible new linear parks—could reinforce this living with water vision.



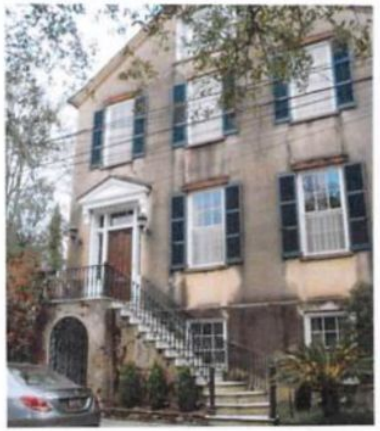
Coastal Development

RECORD 000124

EFFECTIVE DOMICILIARY HEARING - 2021 Oct 26 21:02 PM - CHARLESTON - COMMISSION PACKAGE - 2021CP1004186

Historic Charleston Foundation

Flood Adaptations for Historic Structures





Historic Examples of Building Elevations
Structures from the nineteenth century are elevated several feet, with facades and porches that create a consistent, traditional streetscape.
Credit: City of Charleston

Historic Charleston Foundation

Charleston is undeniably proud of its historic architecture. The city has one of the most, if not the most, important collections of residential and civic architecture in the United States for which Charleston was designated as a National Historic Landmark District in 1960. Both the local and the nationally recognized district have been greatly expanded over the years and for both designations, retaining the historic character of individual buildings is key to the preservation of the whole.

Until fairly recently, Charleston's preservation community was adamantly opposed to elevating historic buildings simply because of flood risk. The visual character of a historic building is closely linked to its overall design, its height, massing, proportion and the overall scale of its architectural features. When an historic building is raised, the process can affect its integrity by altering its proportions and compromising its relationship to adjacent buildings and to the historic district as a whole. Massive damage from Hurricane Hugo in 1989 demonstrated the dangers for historic buildings within the low-lying areas of the city, yet the event – at the time – seemed isolated.

However today, with escalating rain events, sea level rise and tidal flooding, we know that water constitutes an increasing threat to our historic district, and our position on elevating threatened buildings has evolved. A key component of historic preservation is adaptability, therefore, we must accommodate the elevation of historic buildings where warranted in order to improve resiliency for our historic district and ensure their very survival.

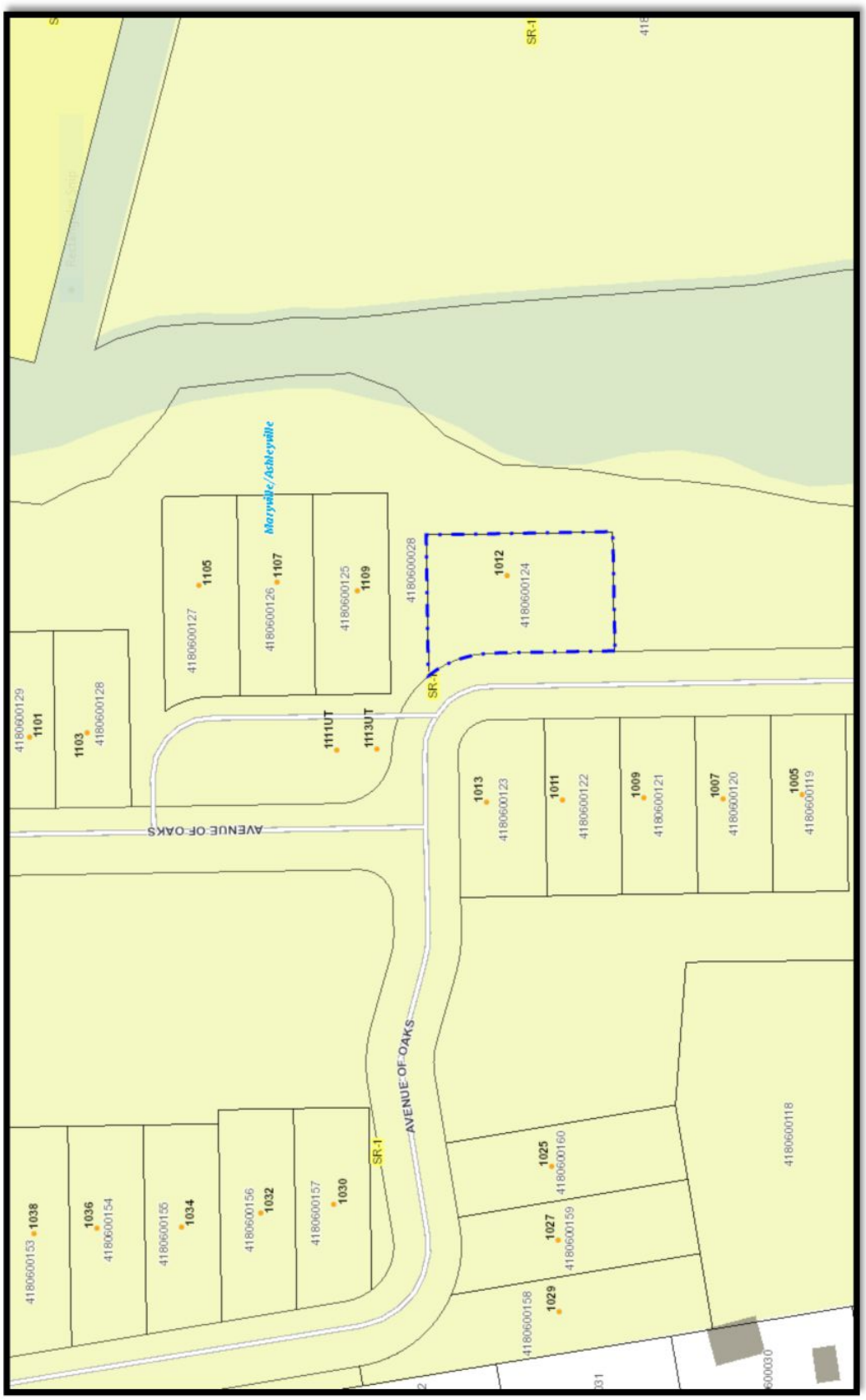
All images this spread credit: City of Charleston

RECORD 000125

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SR-1
Maryville/Ashleyville
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1113UT
SR-1
AVENUE OF OAKS
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4180600158
4180600118

57

Agenda Item #B-3

AVENUE OF OAKS (LOTS 1-7, 16 AND 42)

(MARYVILLE/ASHLEYVILLE)

TMS #418-06-00-119-125, 134 AND 160

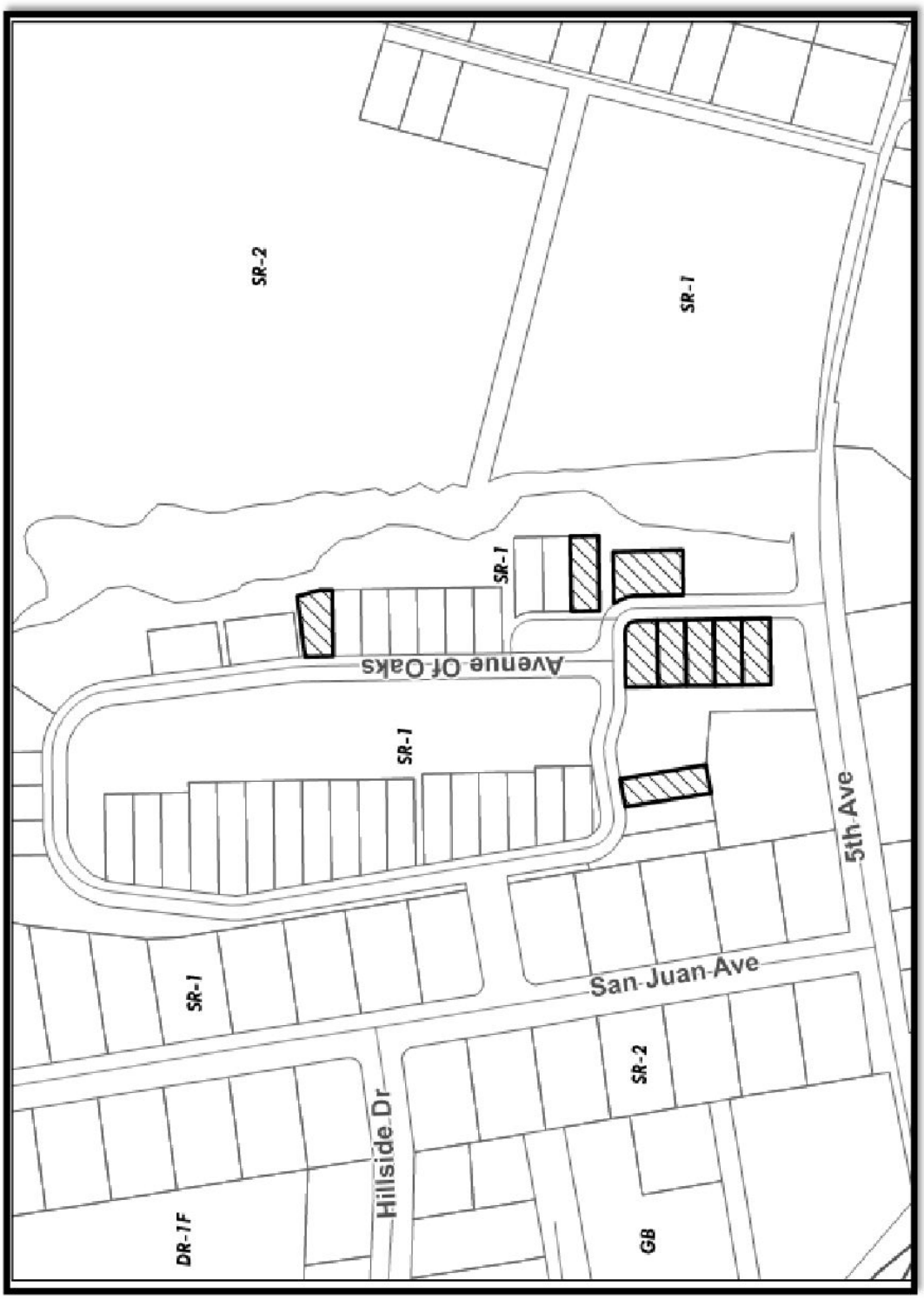
Request variance from Sec. 54-301 to allow construction of 3-story single-family residences (Lots 1-7, 16 and 42) that exceed 25-ft. in height (Limit is 2 ½ stories, 35-ft.).

Zoned SR-1

RECORD 000128

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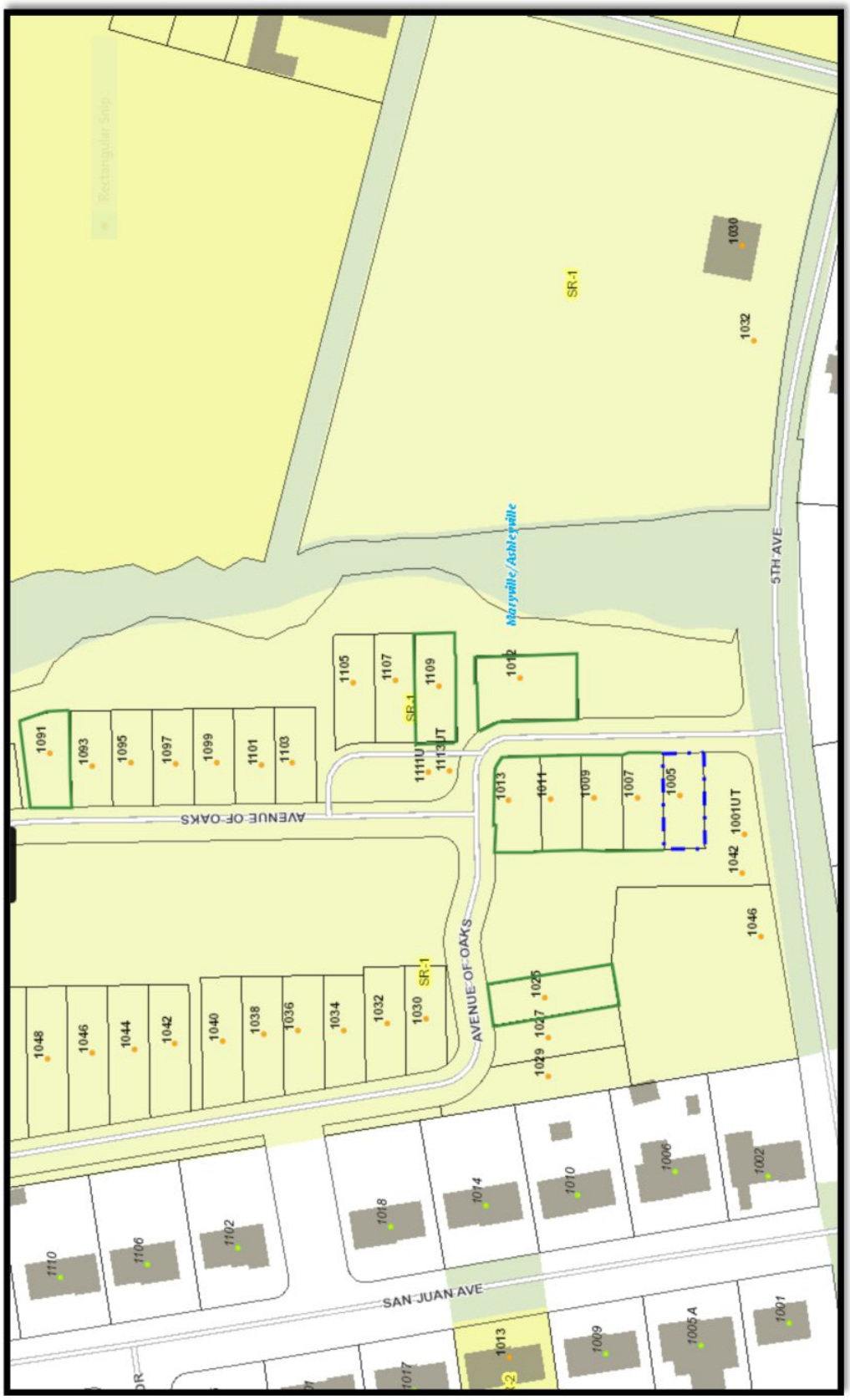
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61

Lot	Address	Street	TMS #
1	1005	Avenue of Oaks	418-06-00-119
2	1007	Avenue of Oaks	418-06-00-120
3	1009	Avenue of Oaks	418-06-00-121
4	1011	Avenue of Oaks	418-06-00-122
5	1013	Avenue of Oaks	418-06-00-123
6	1012	Avenue of Oaks	418-06-00-124
7	1109	Avenue of Oaks	418-06-00-125
16	1091	Avenue of Oaks	418-06-00-134
42	1025	Avenue of Oaks	418-06-00-160

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

City of Charleston

Instructions – This application, along with the required information and fee, must be submitted to the Permit Center at 2 George Street. **Applications are due by 12 Noon on the deadline date and must be complete to be accepted and placed on an agenda.** A sign will be posted on the property, and a public hearing will be conducted by the Board of Zoning Appeals – Zoning. **Permits authorized by the Board cannot be issued during a five (5) business day appeal period following the decision of the Board, except for use variances, the appeal period shall be fifteen (15) calendar days.** An appeal to the Board during this appeal period stays all further action on the application.

THE APPLICANT HEREBY REQUESTS:

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

MEETING DATE REQUESTED: June 15

Property Address See List of 9 Lots Attached TMS # See List Attached.

Property Owner Crescent Homes SC, LLC Daytime Phone 803-609-6929

Applicant Kelly McGuinn Daytime Phone _____

Applicant's Mailing Address 572 Savannah Highway, Charleston, SC 29407.

_____ E-mail Address Kelly.McGuinn@crescenthomes.net

Relationship of applicant to owner (same, representative, prospective buyer, other) Representative VP of Operations.

Zoning of property R-1 Cluster.

Information required with application: (check information submitted)

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

Optional but very helpful information:

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

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

Applicant _____ Date 5-17-21

For office use only
Date application received _____ Time application received _____
Staffperson _____ Fee $ _____ Receipt # _____

RECORD 000133

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

See Attached

Variance Test: The Board of Zoning Appeals-Zoning is authorized to approve a variance from the requirements of the Zoning Ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

In granting a variance, the Board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare. (SC Code of Laws § 6-29-800)

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

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

RECORD 000134

FILED IN THE OFFICE OF THE CLERK OF COURT CHARLESTON COUNTY SC - CCP - 2021CP1004186 - 10/26/2021 2:16:02 PM

RECORD 000135

AVENUE OF OAKS VARIANCE REQUEST

Pursuant to S.C. Code Ann. § 6-29-800 and Zoning Code § 54-924, Applicant Crescent Homes SC, LLC submits this information in response to the applicable criteria in support of a variance for nine lots (Lots 1-7, 18, and 42) within the Avenue of Oaks subdivision.

1. There are extraordinary and exceptional conditions pertaining to the particular properties.

Extraordinary and exception conditions pertain to these particular properties because they have been impacted by the new FEMA flood maps, which became effective in January 2021 pursuant to Ordinance No. 2020-44. Under the City planning department's interpretation of the zoning code, a drive-under garage area of a home is not considered a "story" for purposes of determining compliance with a zoning district's height restrictions if the home is located in a certain flood zone.

At the time Avenue of Oaks was being designed, all of the developable property was located in either Flood Zones AE-13 or AE-14. As a result, Crescent Homes designed the subdivision based on the City's interpretation that all homes could be designed with drive-under garages that would not be considered a "story" for purposes of the SR-1 zoning district's 2 ½ story height restriction. Relying on this interpretation, Crescent Homes designed 22 of the lots in Avenue of Oaks to have drive-under garages with two stories of living space above.

The City approved the final plat for Avenue of Oaks in March 2020, and Crescent Homes began developing the lots in accordance with its design. To date, Crescent Homes received building permits for 13 out of the 22 planned homes that utilize a drive-under garage. However, FEMA issued new flood maps for Charleston County in 2020, which became effective in January 2021. As a result of the flood map changes, the nine remaining the lots planned for drive-under garages have been rezoned from Flood Zone AE-13 to Flood Zone X.

Under the City's interpretation of the zoning ordinances, a drive-under garage area on a lot in Flood Zone X is considered a story. Therefore, the homes designed for these remaining nine lots with two stories of living space above a drive-under garage are considered three-story homes and, consequently, not in compliance with the applicable height restrictions for SR-1, according to the City's interpretation.

Based on these facts, the changes to the flooding zones during the development process after the final plat has been approved constitutes an extraordinary and exceptional condition.

2. The conditions do not generally apply to other property in the vicinity.

Crescent Homes is unaware of any other properties in the vicinity that were under development and impacted by the flood map changes. Therefore, these conditions do not generally apply to other property in the vicinity.

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3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

The application of the City's interpretation of "story" and SR-1 height restrictions will unreasonably restrict the utilization of the property by prohibiting two-story homes with drive-under garages and by nullifying Crescent Home's existing designs for the subdivision. Although Crescent Homes can utilize the nine lots in question with other designs, it is "not required to show that without the variance there exists no feasible conforming use for the property in question" to show an unreasonable restriction. *Restaurant Row Assocs. v. Horry Cty.*, 335 S.C. 209, 217, 516 S.E.2d 442, 446 (1999).

In this case, the inability to use the design of two stories over a drive-under garage is unreasonable because the lots in question remain in a flood zone and are subject to the risk of flooding. The City's interpretation is forcing a choice between a one-story living space with a drive-under garage to protect from flooding or two-stories of living space without additional flood protection from being elevated over a drive-under garage. Because the designs in question provide for reasonably sized homes, especially considering the narrow lot dimensions utilized under the cluster development zoning ordinance for this neighborhood, this is an unreasonable choice being imposed by the City's interpretation of the ordinance.

The unreasonableness of this choice is compounded by the fact that the designs in questions were permissible just a few months ago before the new flood maps became effective. The subdivision was designed based on the old flood maps and in reliance on the reasonable belief that drive-under garages could be utilized without them being considered a story. It would now be unreasonable to restrict the use of the drive-under designs when other homes have already been permitted with the same design feature.

4. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

The authorization of the variance will not be of substantial detriment to adjacent property as those properties have homes that utilize the same drive-under garage feature. Thus, the design of the new homes will be harmonious with those properties and consistent with the original plan for the subdivision.

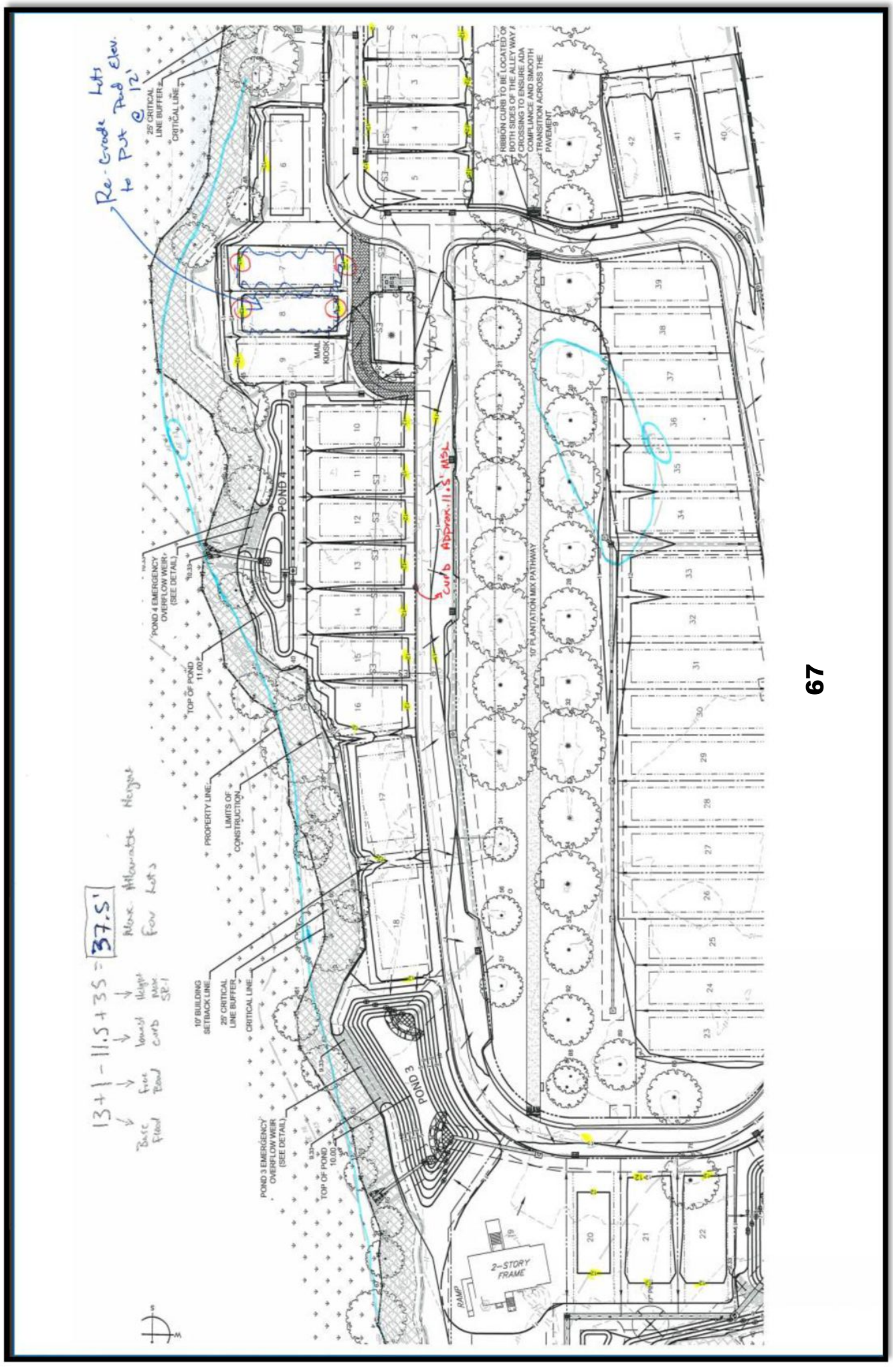
The variance will also not be of any detriment to the public good. If anything, the public good will be enhanced because the drive-under design will provide additional protection from possible flooding, thereby reducing the potential social and indirect impacts that flooding often creates.

Last, the variance will not harm the character of the zoning district as the homes will comply with all other zoning requirements for the SR-1 zoning district, and the variance will not permit prohibited uses. Significantly, even if the drive-under garages are permitted with a variance, the homes will still be subject to the maximum height restrictions imposed by the zoning code.

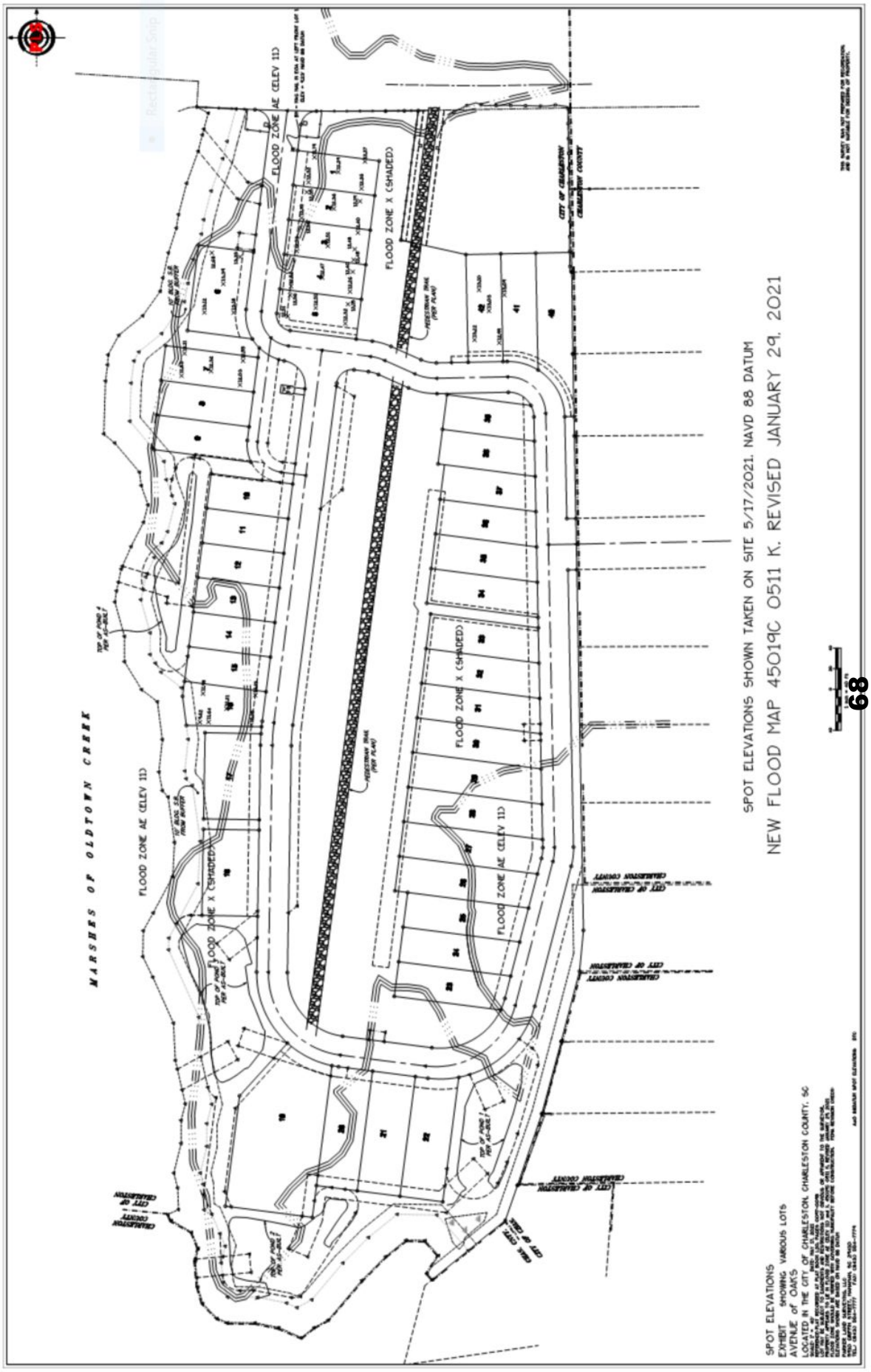
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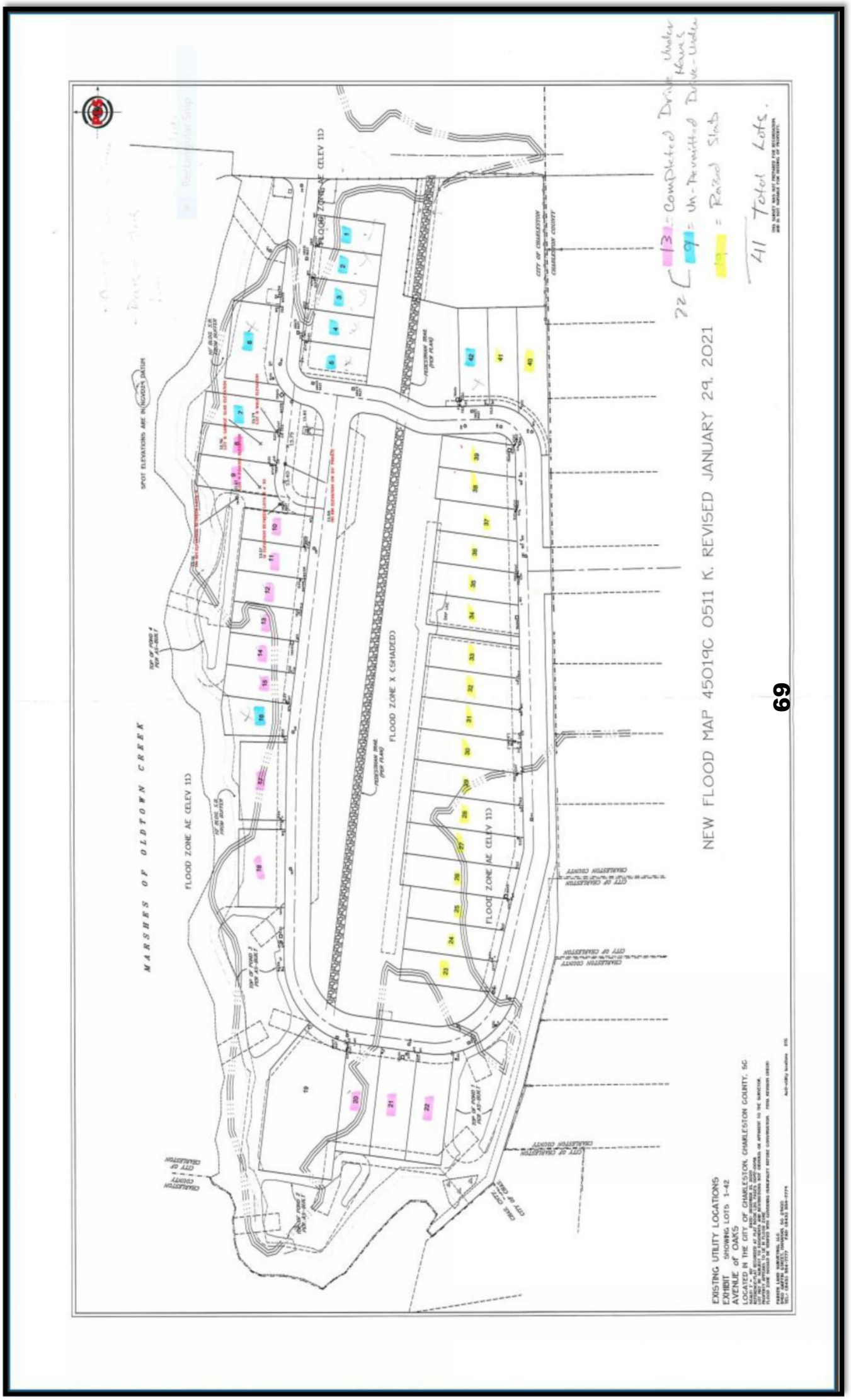
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67


SPOT ELEVATIONS
EXHIBIT SHOWING VARIOUS LOTS
AVENUE of OAKS
LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SC
NEW FLOOD MAP 45019C 0511 K. REVISED JANUARY 29, 2021
SPOT ELEVATIONS SHOWN TAKEN ON SITE 5/17/2021. NAVD 88 DATUM
MARSHES OF OLDTOWN CREEK
FLOOD ZONE AE (ELEV 11)
FLOOD ZONE X (SHADED)
68


EXISTING UTILITY LOCATIONS
EXHIBIT SHOWING LOTS 1-42
AVENUE of OAKS
LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SC
NEW FLOOD MAP 45019C 0511 K, REVISED JANUARY 29, 2021
MARSHES OF OLDTOWN CREEK
FLOOD ZONE AE CELEV 11)
FLOOD ZONE X (SHADED)
FLOOD ZONE AE CELEV 11)
FLOOD ZONE AE CELEV 11)
SPOT ELEVATIONS ARE IN (NAVD88 DATUM)
CITY OF CHARLESTON
CHARLESTON COUNTY
22 C - Completed Driveway
9 = Un-Permitted Drive-Ways
13 = Poured Slabs
41 Total Lots.

RECORD 000140

City of Charleston

BOARD OF ZONING APPEALS-ZONING

August 3, 2021
5:15 PM

DEPARTMENT OF PLANNING, PRESERVATION & SUSTAINABILITY
www.charleston-sc.gov/bza-z

****Video and microphone is currently disabled for all attendees.****
This meeting is being recorded.

Go to www.charleston-sc.gov/bza-z for instructions to join. Call (843) 724-3770 if you are experiencing technical difficulties

FILED ELECTRONICALLY IN CCP 2021 Oct 26 2:16:02 PM - CHARLESTON - COMMON PLEAS - CASE# 2021CP1004986

Zoom Meeting Protocol

Order on Each Application:

- Chair announces each application followed by staff presentation and recommendation
- Staff presents application and City's recommendation. Staff will control slide presentation
- Staff announces comments received and whether anyone has signed up to speak
- Applicant, after being sworn in, will be allowed to present their application if opposition or questions are raised, followed by public comments from pre-registered attendees in favor. Each speaker will be sworn in before speaking
- Staff then recognizes registered attendees for public comments in opposition. Each speaker will be sworn in
- Staff then recognizes the applicant for a short rebuttal before Chair closes public comments and begins Board discussion

Providing Comment:

- People who sign up to speak prior to the 12 noon deadline will be called on when it is your turn to speak and your microphone will be enabled. You may only speak once on each item.
- Your microphone will be disabled after you are finished speaking.

Go to www.charleston-sc.gov/bza-z for instructions to join. Call (843) 724-3770 if you are experiencing technical difficulties

RECORD 000141

Board of Zoning Appeals-Zoning

Your Board of Zoning Appeals-Zoning Members are:

Michael Robinson - Chair
John Bennett
Allison Cannon Grass
Walter Jaudon
Howell Morrison
Robben Richards
Geiza Vargas-Vargas

Your City of Charleston Staff are:

Lee Batchelder, *Zoning Administrator*
Scott Valentine, *TRC Coordinator*
Pennye Ashby, *Senior Planner*
Vanessa Ellington, *Clerk*

The Board of Zoning Appeals—Zoning has the authority to do three things:

1. Hear appeals to decisions of the Zoning Administrator;
2. Grant special exceptions, a fact finding function of the Board; and
3. Grant variances to the Zoning Ordinance if the application meets the hardship test outlined in Section 54-924 of the ordinance.

Go to www.charleston-sc.gov/bza-z for instructions to join. Call (843) 724-3770 if you are experiencing technical difficulties

RECORD 000142

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Board of Zoning Appeals-Zoning

Requirements for Granting a Variance

A variance may be granted by the Board of Zoning Appeals in an individual case of unnecessary hardship if the Board makes the following findings:

a. there are extraordinary and exceptional conditions pertaining to the particular piece of property;

b. these conditions do not generally apply to other property in the vicinity;

c. because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

d. the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

RECORD 000143

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Agenda Item #A-1

Approval of July 20, 2021 BZA-Z Minutes

(click on link below)

https://www.charleston-sc.gov/AgendaCenter/ViewFile/Agenda/_07202021-6700

RECORD 000144

FILED IN THE OFFICE OF THE CLERK OF COURT 10/26/2022 2:16:02 PM - CHARLESTON COUNTY - COMMON PLEAS - CASE # 2021CP1004186

Agenda Item #A-2

1012 AVENUE OF OAKS

(MARYVILLE/ASHLEYVILLE)

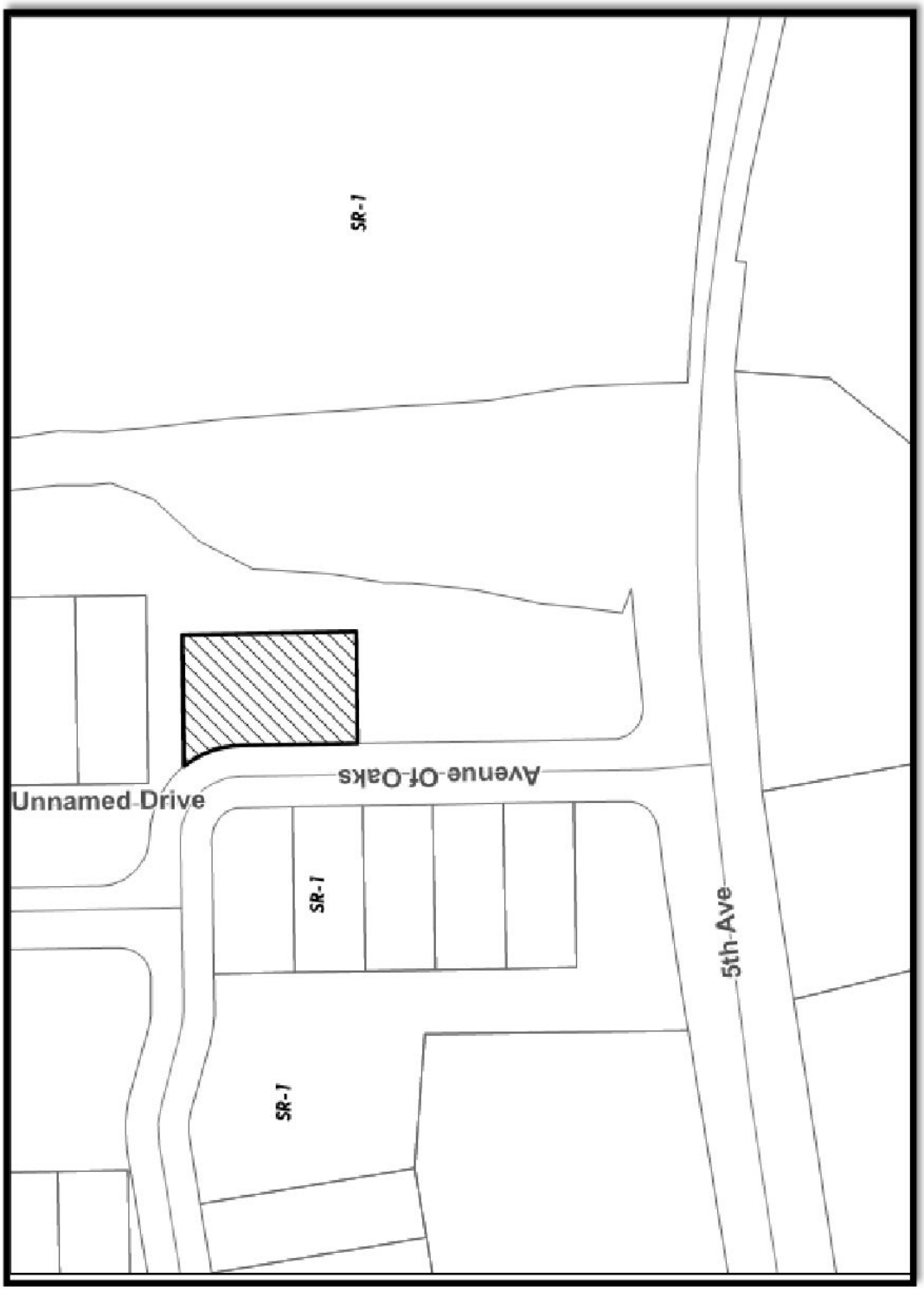
TMS # 418-06-00-124

Request an appeal of the Zoning Administrator's decision to deny building permit on the grounds that the proposed home exceeds the 2 ½ story height restriction for the SR-1 (Single-Family Residential) zone district under Sec. 54-301, because the home's designed drive under garage constitutes a 3rd story under Sec. 54-120

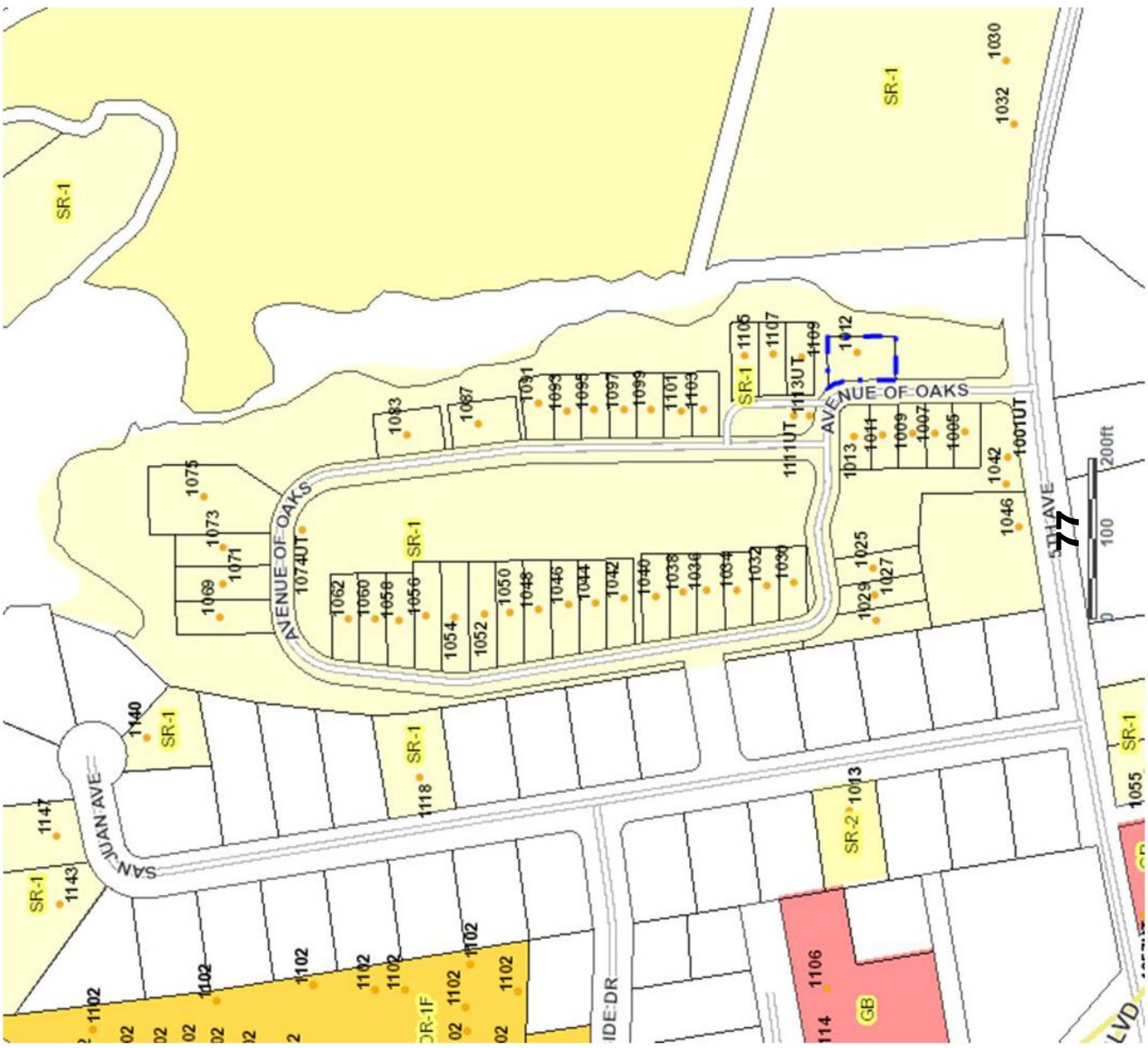
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ELECTRONICALLY FILED - 2021 Oct 26 12:22 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196



76


SR-1
AVENUE OF OAKS
SAN JUAN AVE
SR-2
GB
77
200ft
100

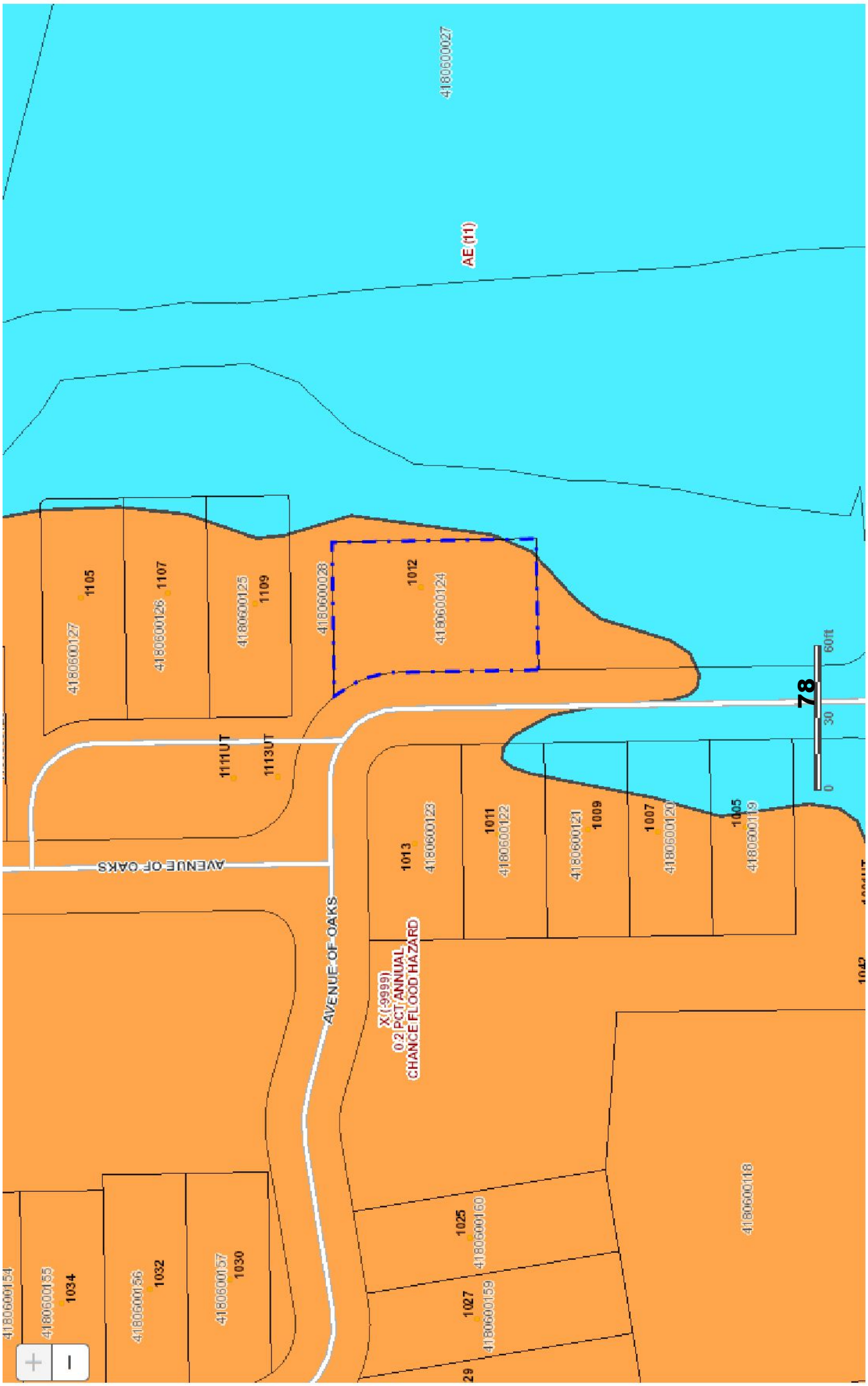

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AVENUE OF OAKS
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CHANCE FLOOD HAZARD
1042
4180600118
1025
4180600160
1027
4180600159
29
4180600154
4180600155
1034
4180600156
1032
4180600157
1030

TABLE 3.1: HEIGHT, AREA AND SETBACK REGULATIONS[5/9]

Abbreviations: N/A - Not Applicable, NR - Not required.
Numbers in ( ) indicate number of units per acre.
May 15, 1996

	Front and Rear [10/17] Setback Minimum Depths			Side Setbacks- Minimum Widths			Minimum Lot [13] Area per Family in square Feet-Type Dwelling Unit					
Zone District Designation	Total	Front	Rear	Total	South/ West	North/ East	1-Fam.	2-Fam.	Multi-Fam.	Maximum [2] Percent of Lot Occupied by Buildings	Max Height Limits [5] Structures	Max. Height Limits [16] Fences/ Walls
SR-1 [21]	50'	25'	25'	18'	9'	9'	9,000(4.8)	NA	NA	35%	35/2½ str.	6'

RECORD 000149

EFILED-2021Oct 26 2022PM1-CHARRIESTON-COMMON PLEAS-CASE#2021CP1004186

Sec. 54-120 Definitions.

Story. That portion of a building included between the surface of any floor and the surface of the next floor above, or if there be no floor above it, then the space between such and the ceiling next above it.

RECORD 000150

EFILED IN THE 11TH DISTRICT COURT OF HARRIS COUNTY, TEXAS - CCA#20211CCP10041986 - 2021-Oct-26 21:02 PM - CHRISTOPHER A. PRINE - COUNTY CLERK

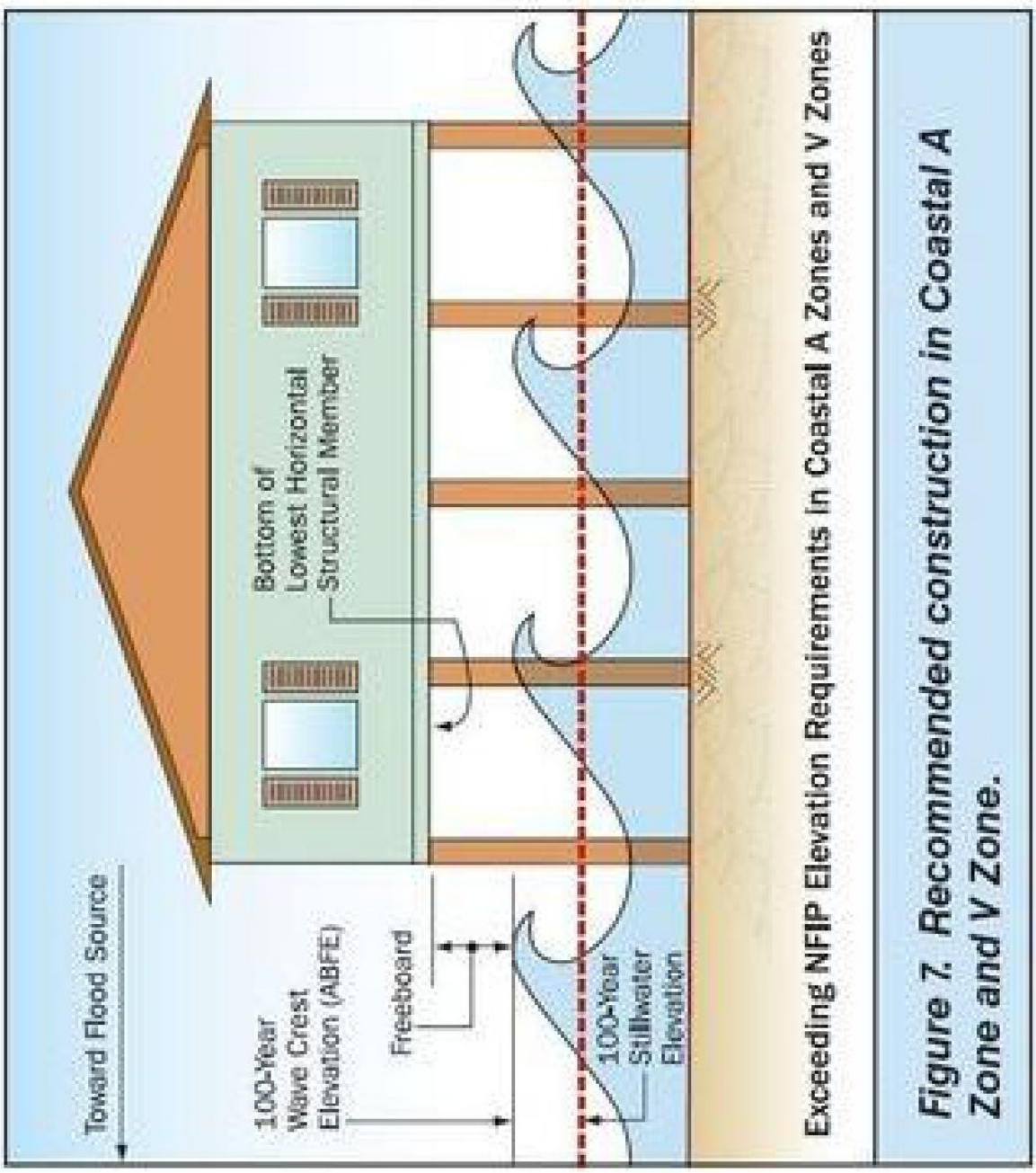
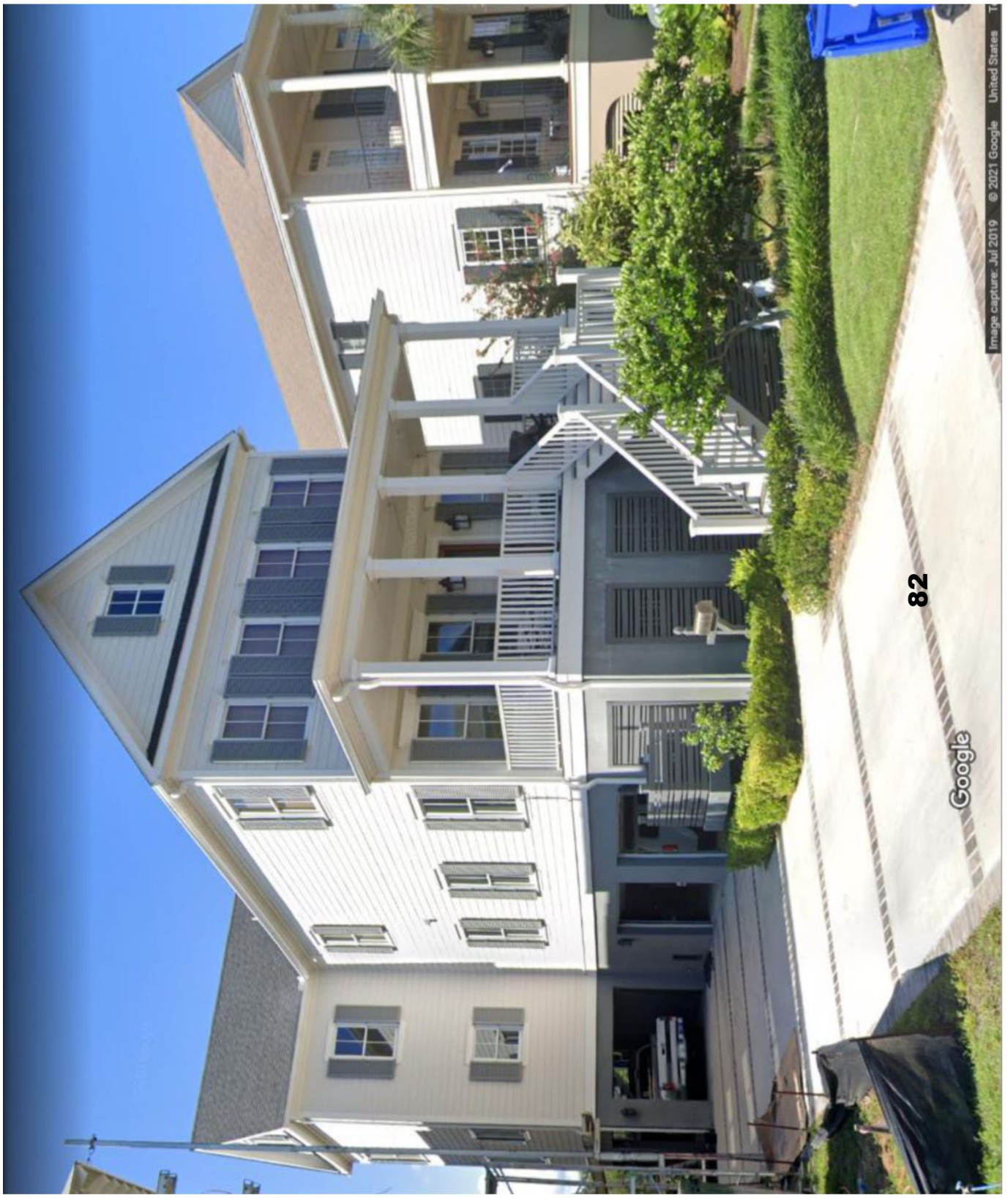
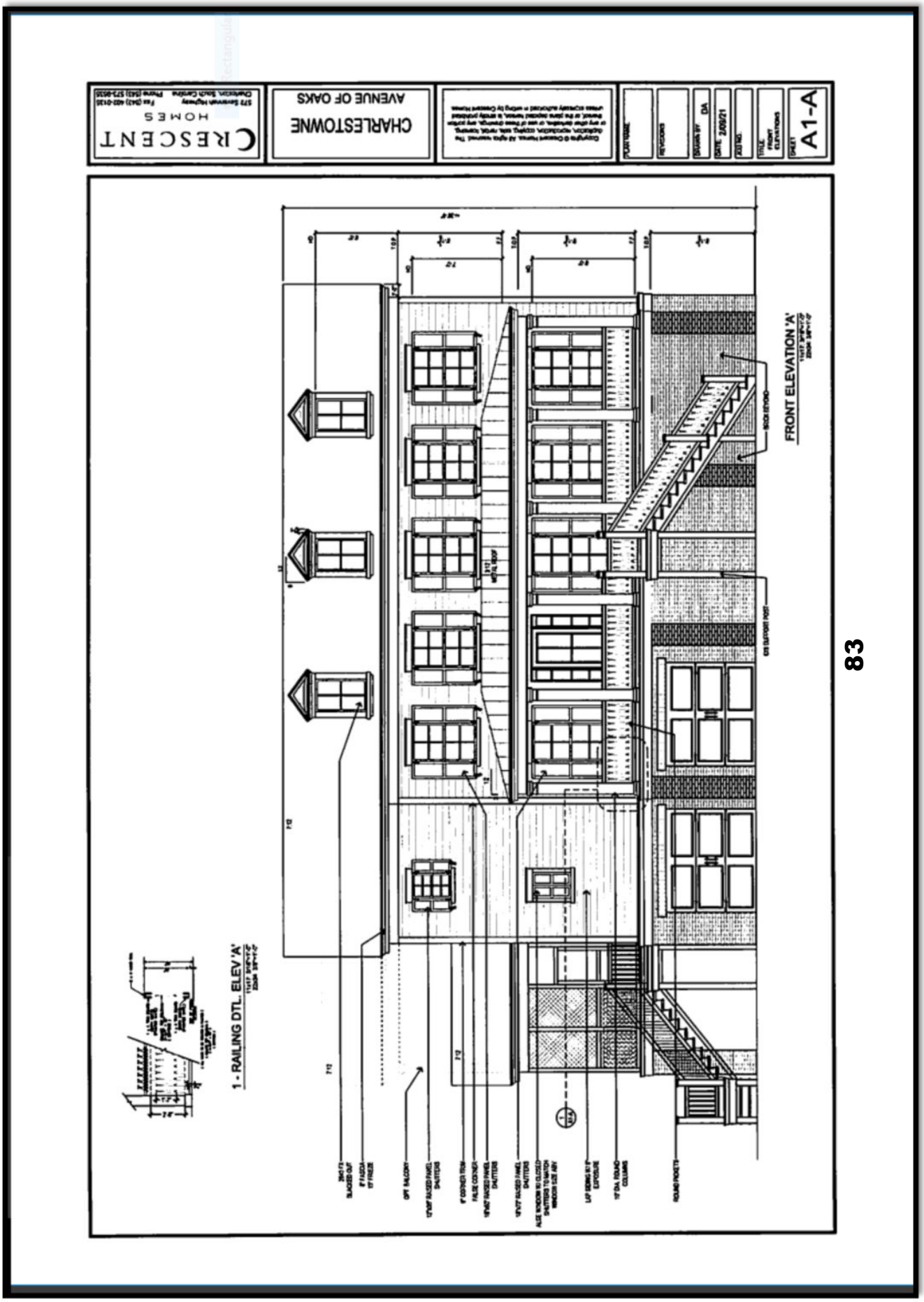
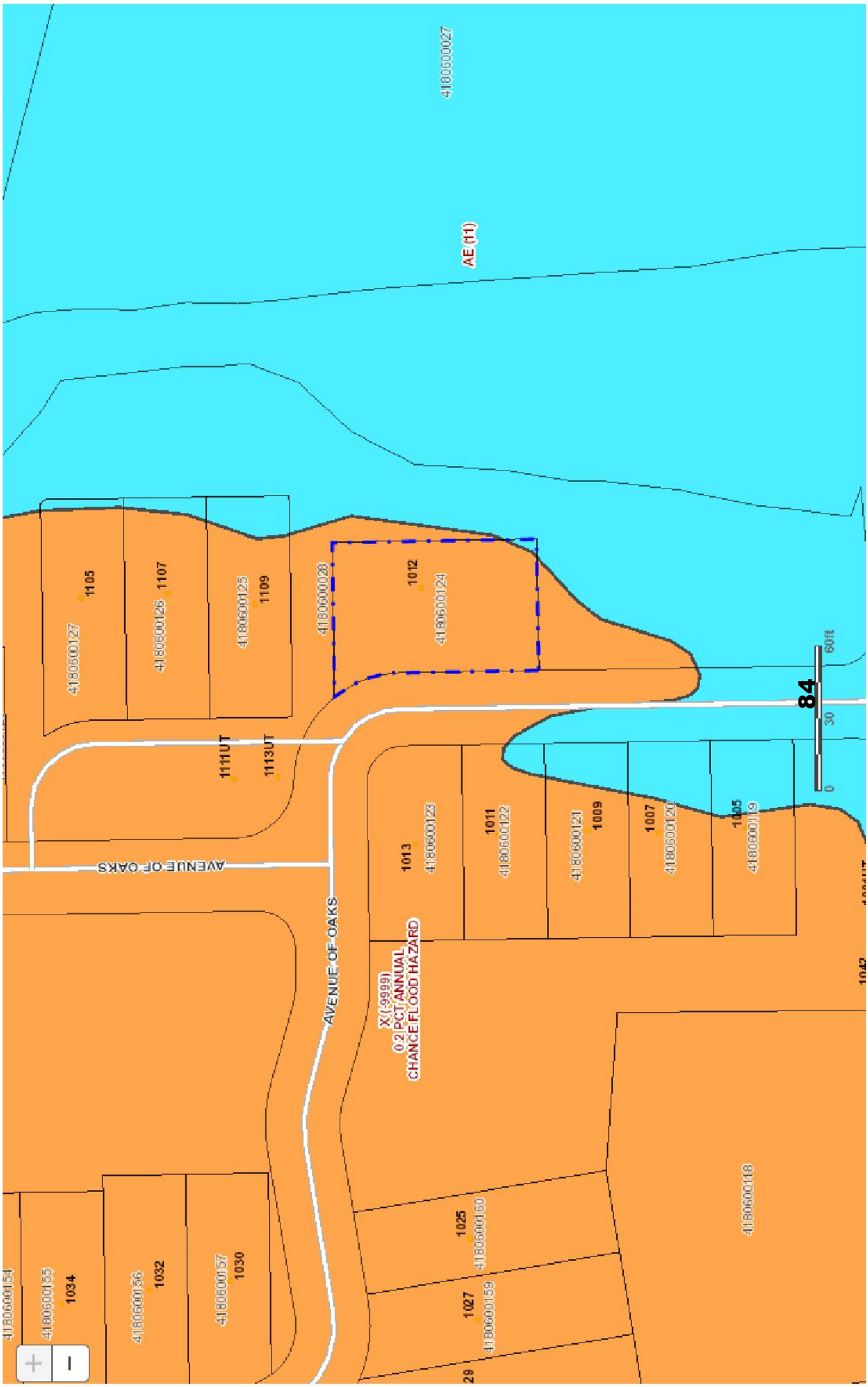
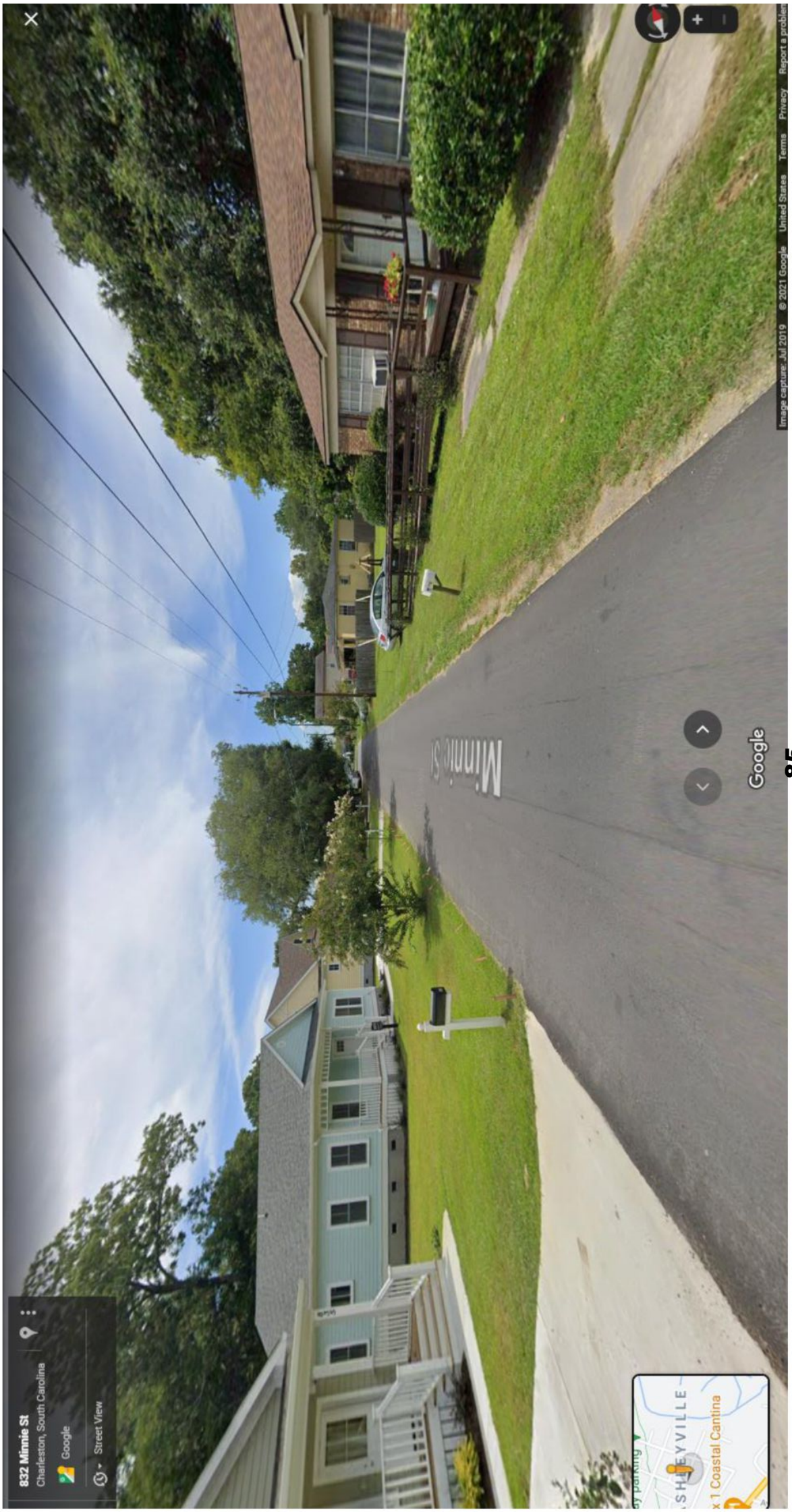


Figure 7. Recommended construction in Coastal A Zone and V Zone.


82
Google
Image capture: Jul 2019 © 2021 Google United States


CRESCENT HOMES
CHARLESTOWNE
AVENUE OF OAKS
A1-A
FRONT ELEVATION 'A'
1 - RAILING DTL. ELEV 'A'


4180600027
AE (11)
4180600127
1105
4180600126
1107
4180600125
1109
4180600028
1012
4180600124
1111UT
1113UT
AVENUE OF OAKS
1013
4180600123
1011
4180600122
4180600121
1009
1007
4180600120
1005
4180600119
X (9999)
0.2 PCT ANNUAL
CHANCE FLOOD HAZARD
4180600154
4180600155
1034
4180600156
1032
4180600157
1030
1025
4180600160
1027
4180600159
4180600118
84
60ft
30
0


832 Minnie St
Charleston, South Carolina
Google
Street View
Minnie St
Google
Image capture: Jul 2019 © 2021 Google United States Terms Privacy Report a problem
Coastal Cantina

85

RECORD 000156

Application for Variance, Special Exception, Reconsideration, or Extension to the **Board of Zoning Appeals – Zoning (BZA-Z)** **Page 1 of 2**

City of Charleston

Instructions – This application, along with the required information and fee, must be submitted to the Permit Center at 2 George Street. **Applications are due by 12 Noon on the deadline date and must be complete to be accepted and placed on an agenda.** A sign will be posted on the property, and a public hearing will be conducted by the Board of Zoning Appeals – Zoning. **Permits authorized by the Board cannot be issued during a five (5) business day appeal period following the decision of the Board, except for use variances, the appeal period shall be fifteen (15) calendar days.** An appeal to the Board during this appeal period stays all further action on the application.

THE APPLICANT HEREBY REQUESTS:

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

MEETING DATE REQUESTED: __June 15, 2021_____

Property Address _1012 Avenue of Oaks, Charleston, SC 29407_____ TMS # __418-06-00-124_____

Property Owner __Crescent Homes SC, LLC_____ Daytime Phone _843-573-9635_____

Applicant __E. Brandon Gaskins, Esq., Moore & Van Allen PLLC_____Daytime Phone _843-579-7038_____

Applicant's Mailing Address _PO Box 22828, Charleston, SC 29413_____

_____ E-mail Address _gaskinsb@mvalaw.com_____

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

Zoning of property __SR-1_____

Information required with application: (check information submitted)

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

Optional but very helpful information:

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

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

Applicant __/s/ E. Brandon Gaskins_____ Date__5/17/2021_____

For office use only
Date application received _____ Time application received _____
Staffperson _____ Fee $ _____ Receipt # _____

FILED ELECTRONICALLY IN THE CHARLESTON COUNTY COURT OF COMMON PLEAS - CASE # 2021CP1004186
Oct 26 2021 2:02 PM - CHARLESTON COUNTY - COMMON PLEAS

Appeal for Reconsideration to the
Board of Zoning Appeals – Zoning (BZA-Z)

City of Charleston

Applicants appealing for reconsideration of a Board decision or decision of the zoning administrator must submit the following information with the BZA-Z application and fee, to the Permit Center at 2 George Street:

In the case of an appeal for **reconsideration of a Board decision**, applicant shall state below the grounds upon which it is considered that the Board misapprehended or misconceived the question or questions involved, or the ground or grounds upon which it is considered that the Board has erred in its finding or disposition of the appeal, application or matter (add as an attachment if necessary). **THE DEADLINE FOR SUBMITTING THIS APPEAL FORM WITH THE BZA-Z APPLICATION AND FEE IS THE CLOSE OF BUSINESS ON THE 5TH BUSINESS DAY FOLLOWING THE DATE OF THE BOARD DECISION BEING APPEALED:**

In the case of an appeal for **reconsideration of a decision of the zoning administrator**, applicant shall state below the interpretation(s) of the Zoning Ordinance being appealed, how the applicant is aggrieved by the interpretation(s), and what the applicant contends is the correct interpretation of the Zoning Ordinance (add as an attachment if necessary):

The City has denied a building permit for 1012 Avenue of Oaks on the grounds that the designed home exceeds the 2 1/2 story height restriction for the SR-1 zoning district under Zoning Code Section 54-301 because the home's designed drive-under garage constitutes a "story" under Zoning Code Section 54-120. For the reasons set forth in the attached letter, a drive-under garage should not be considered a story, and the City's interpretation is in error and contrary to the purposes of the zoning ordinances.

Signature of Applicant __/s/ E. Brandon Gaskins_____ Date _5/17/2021____

For office use only
Date application received 5/17/21 Time application received 11:47 Staffperson DA

Department of Planning, Preservation & Sustainability 2 George Street Charleston, South Carolina 29401
(843) 724-3781 www.charleston-sc.gov/zoning

RECORD 000157

FILED IN THE CLERK'S OFFICE OF THE CHARLESTON COUNTY COURT OF COMMON PLEAS - CASE # 2021CP1004186 Oct 26 2021 02:02 PM

RECORD 000158

FILED ELECTRONICALLY IN THE CHARLESTON COUNTY COURT OF COMMON PLEAS - CASE # 2021CP1004186 - Oct 26 2021 02:02PM

Moore&VanAllen

E. Brandon Gaskins
Attorney at Law

T 843 579 7038
F 843 579 8738
brandongaskins@mvalaw.com

Moore & Van Allen PLLC

78 Wentworth Street
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

May 17, 2021

VIA EMAIL
Board of Zoning Appeals – Zoning
City of Charleston
2 George Street
Charleston, South Carolina 29401

Re: *Crescent Homes SC, LLC*
Appeal of Denial of Building Permit for 1012 Avenue of Oaks

Dear Members of the City of Charleston Board of Zoning Appeals:

Pursuant to S.C. Code Ann. § 6-29-800(A)(1) and City Zoning Code § 54-926, I am writing in support of Crescent Homes SC, LLC's appeal of the City Planning Department's denial of a building permit for 1012 Avenue of Oaks in the Avenue of Oaks subdivision in the City of Charleston. As explained in more detail below, the City denied Crescent Homes' building permit application because the designed plan purportedly exceeds the 2 ½ story limitation for the SR-1 zoning district. This conclusion is based on the interpretation that the home's designed drive-under garage area is a "story," as defined by the City's zoning code. This interpretation impacts not only 1012 Avenue of Oaks but eight other lots that are planned to have drive-under garages.

The City's interpretation is in error because it conflicts with the City's ordinances and is not supported by the text of the applicable zoning provisions. Moreover, the City's interpretation is contrary to the purposes of the City's zoning ordinances because it will encourage inconsistency in the subdivision's home designs as a result of the City's prior approval of other homes with drive-under garages. In addition, it will discourage elevated home designs intended to protect property and residents from the threat of flooding.

I. Factual Background

Crescent Homes is the owner and builder of residential lots in the Avenue of Oaks subdivision in the Maryville neighborhood of West Ashley. Avenue of Oaks is in zoning district SR-1, and it was developed subject to the cluster development requirements under Zoning Code §§ 54-299.11, *et seq*. The final plat of Avenue of Oaks with 42 developable lots was approved by the City in March 2020. (Ex. 1 – Final Plat.)

Avenue of Oaks is adjacent to the marshland of Oldtown Creek. As a result, it is in a relatively low area and has a higher risk of flooding. At the time the final plat was approved, all residential lots were in Flood Zones AE-14 or AE-13, which are special flood hazard areas under Code § 27-105. (*Id.*)
In the SR-1 zoning district, the maximum height for structures is 35' and 2 ½ stories. (Zoning Code § 54-301.) Under Zoning Code § 54-120, "story" is defined as "that portion of a building included between the surface of any floor and the surface of the next floor above, or if there be no floor above, then the space between such and the ceiling next above it." Although the City has not always interpreted this term consistently, the City's Planning Department recent interpretation of

"story" has not included unfinished drive-under areas if such areas are within a flood zone. (Ex. 2 – Email re: Past Interpretation of Story; Ex. 3 - Email from L. Batcheldor, 3/8/21.)

Based on that interpretation, Crescent Homes designed 22 of the lots with a drive-under design and two stories of livings space over the drive-under area. Of those, 13 lots have already received building permits from the City.

In January 2021, FEMA's revised flood maps for Charleston County became effective pursuant to City Ordinance No. 2020-140. Under the new flood maps, 25 of the lots are now within Flood Zone X, and the other 17 lots are now within Flood Zone AE-11. (Ex. 4 – Plat w/ New Flood Zones.) Of the 25 lots that are now within Flood Zone X, 9 lots utilize the drive-under design but do not have building permits.

On March 29, 2021, Crescent Homes applied for a building permit for 1012 Avenue of Oaks (Lot 6). (Ex. 5 – Permit Application.) The permit application included a schedule of building plans depicting the design for the home. (Ex. 6 – Building Plans.) The building plans show two-stories of living space supported by piers and over a drive-under that serves as the home's foundation. (*Id.*) The building plans also show that the drive-under garage is unfinished and unheated. The garage's side and rear have louvered wood exterior walls, and the front of the home has two garage doors surrounded by brick exterior walls covering the piers. (*Id.*)

On April 15, 2021, Sean Killion, Associate Planner for the City, emailed Crescent Homes to provide notice that the proposed design for 1012 Avenue of Oaks did not comply with applicable zoning requirements. According to Mr. Killion, "[T]he proposed design has a drive under in an X flood zone. This would make the house 3 stories and therefore non-conforming to the SR-1 regulations. Please revise for zoning approval." (Ex. 7 – Killion Email.)

This appeal challenges the City's determination that the drive-under garage for 1012 Avenue of Oaks, as well as any other unpermitted lots in the subdivision with a drive-under garage in Flood Zone X, is a story under the City's zoning ordinances.

II. Argument

This appeal raises the issue of whether the City's planning department erred in denying the building permit for 1012 Avenue of Oaks based on its interpretation of the term "story," as defined by Zoning Code § 54-120. As such, this case involves a matter of construction of the City's zoning ordinances.

In reviewing a zoning ordinance, the Board should give the ordinance a "practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers." *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018). The ordinance's language must be construed in context, and "the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute. The language must also be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Id.*

RECORD 000159

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In analyzing zoning ordinances, courts and zoning boards should be guided by the well-founded principle of law that:

> Statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. It follows that the terms limiting the use of the property must be liberally construed for the benefit of the property owner.

Helicopter Solutions, Inc. v. Hinde, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (2015). Furthermore, zoning ordinances must be construed "to allow people to use their property so as to realize its highest utility" when the ordinances are drafted so that people do not have a clear understanding as to what they are permitted to do with their property. *Kean/Sherratt P'ship by Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987).

In this case, the City's interpretation of "story" as including unfinished drive-under garages is in error because the City's ordinances demonstrate that City Council did not intend for such areas to be a "story." As stated above, the zoning code defines "story," in pertinent part, to mean "that portion of a building included between the surface of any floor and the surface of the next floor above." Zoning Code § 54-120. Therefore, whether a drive-under garage constitutes a "story" necessarily depends on whether it is a "floor."

Although the City's zoning code does not define "floor," City Council defined that term in its stormwater management ordinance. As a result, it is appropriate to look to that ordinance for guidance in determining the meaning of "floor." *See Mathis v. Hair*, 358 S.C. 48, 53, 594 S.E.2d 851, 854 (2003) (considering definitions of term in other statutes to determine statutory term's meaning); *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) ("Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme."); *Brown v. Gardner*, 513 U.S. 115, 118 (1994) (looking to how ambiguous term is used in analogous statutes). This principle is especially applicable here because the City's interpretation of "story" depends on whether the home is located in a flood zone. *See Boehm*, 423 S.C. at 184, 813 S.E.2d at 881 (stating that a zoning ordinance "must also be read in a sense that harmonizes with its subject matter and accords with its general purpose"). Thus, the City's stormwater management ordinance provides the best guidance as to whether a drive-under garage in a flood zone is a "floor," and, thus, a "story."

In the stormwater management ordinance, the surface of an unfinished drive-under garage is not a "floor." This ordinance defines "floor" to mean "the top surface of an enclosed area in a building (including basement) i.e., top slap in concrete slab construction or top of wood flooring in wood frame construction. *The term does not include the floor of a garage used solely for parking vehicles.*" (Code § 27-103) (emphasis added). Furthermore, the stormwater ordinance further defines "lowest floor" as not including unfinished garages or enclosures. "An unfinished or flood resistant enclosure, usable solely for parking vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is

RECORD 000160

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not built so as to render the structure in violation of the applicable non-elevated design requirements of this article." (*Id.*)

Here, the drive-under garage designed for 1012 Avenue of Oaks does not fall within the definitions of "floor" or "lowest floor" because it meets the express criteria for exclusion. It is an unfinished garage that is only partially enclosed and designed solely for parking vehicles and storage. Therefore, it is not a "floor," and consequently, it is not a "story."

Not only does a drive-under garage not meet the definition of "story," the City's interpretation of the term based on its relationship to a flood zone lacks textual support. According to the City, the determination of whether a drive-under garage is a story depends on whether it is in a flood zone and what flood zone it is in. The City approved building permits for other houses with drive-under garages in Avenue of Oaks on lots that were in Flood Zones AE-14 and AE-13 prior to the issuance of the new FEMA flood maps. In so doing, the City did not consider the drive-under garages on those lots to be a story, thereby concluding that the proposed design did not exceed the 2 ½ story maximum height in the SR-1 zoning district. Now, however, the City takes the position that a drive-under garage is a story if it is located on a lot in Flood Zone X.

Yet nothing in the definition of "story" or any other zoning provision suggests that the term's meaning changes based on the location of a flood zone. In fact, the definition does not use the term "flood zone" in any manner. And the City's planning department has never articulated which specific flood zones or conditions permit a drive-under garage to be excluded from the definition of "story." Instead, the definition appears to be determined on the whims of the City's planning department, which has failed to provide property owners with a clear understanding of what criteria applies for determining whether a drive-under garage constitutes a "story." This type of decision making is the epitome of arbitrariness that cannot be tolerated under the rule of law.

In addition, the City's interpretation of "story" in this case undermines the purposes of the zoning code. Zoning ordinances are intended, among other things, "to facilitate the creation of a convenient, attractive, and harmonious community" and "to secure safety from fire, flood, and other dangers." S.C. Code Ann. § 6-29-710. The City's interpretation of "story" advances neither of these purposes.

In this case, Avenue of Oaks is an attractive community consisting of several elevated homes that utilize drive-under garages. Allowing other homes in the subdivision to utilize a similar design will support a harmonious community. Neither 1012 Avenue of Oaks nor the other homes planned with drive-under garages will be disproportionately higher than the permitted homes because they are all subject to the same maximum height requirements set forth in the zoning code. Put simply, there is no logical reason why some drive-under garages are permitted in Avenue of Oaks and others are not.

The City's interpretation of "story" is also contrary to the zoning ordinances' purpose of securing safety from flooding. Avenue of Oaks borders a marsh and is in a flood zone. Although the new flood map indicates the flooding risk is less than previously determined under the prior flood map, that risk has not been eliminated. The elevated design that utilizes drive-under garages helps protect property and residents from flooding risk. This fact has recently been recognized by the

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City in the Dutch Dialogues efforts. As seen in the attached excerpts from the Dutch Dialogues report, using elevated designs is measure that is encouraged to protect our City's residents and their property not just from flooding today but also from the uncertain but growing threats from climate change and sea-level rise in the future. (Ex. 8 - Dutch Dialogues Report Excerpts.)

By interpreting "story" to include drive-under garages, the City is discouraging homeowners from using this design feature, thereby increasing the threat to safety and property from flooding. This interpretation is contrary to the purposes of the zoning ordinances and the City's other recent efforts to protect its residents and their property from flooding. Therefore, the City's interpretation of "story" should be rejected for this reason, as well as the others cited above.

III. Conclusion

In sum, the City's interpretation of "story" is not supported by the text of the relevant ordinances and is based on unclear standards that prevent property owners from understanding how they can utilize their property. Also, the City's interpretation is contrary to the purposes of zoning ordinances intended to create harmonious communities and protect residents and properties from the threat of flooding. As a result, the Board should reject the City's interpretation and grant Crescent Home's appeal.

On behalf of Crescent Homes, we appreciate your consideration of our position, and we look forward to presenting our position at your upcoming hearing.

Sincerely,

E. Brandon Gaskins

Enclosures: As stated.

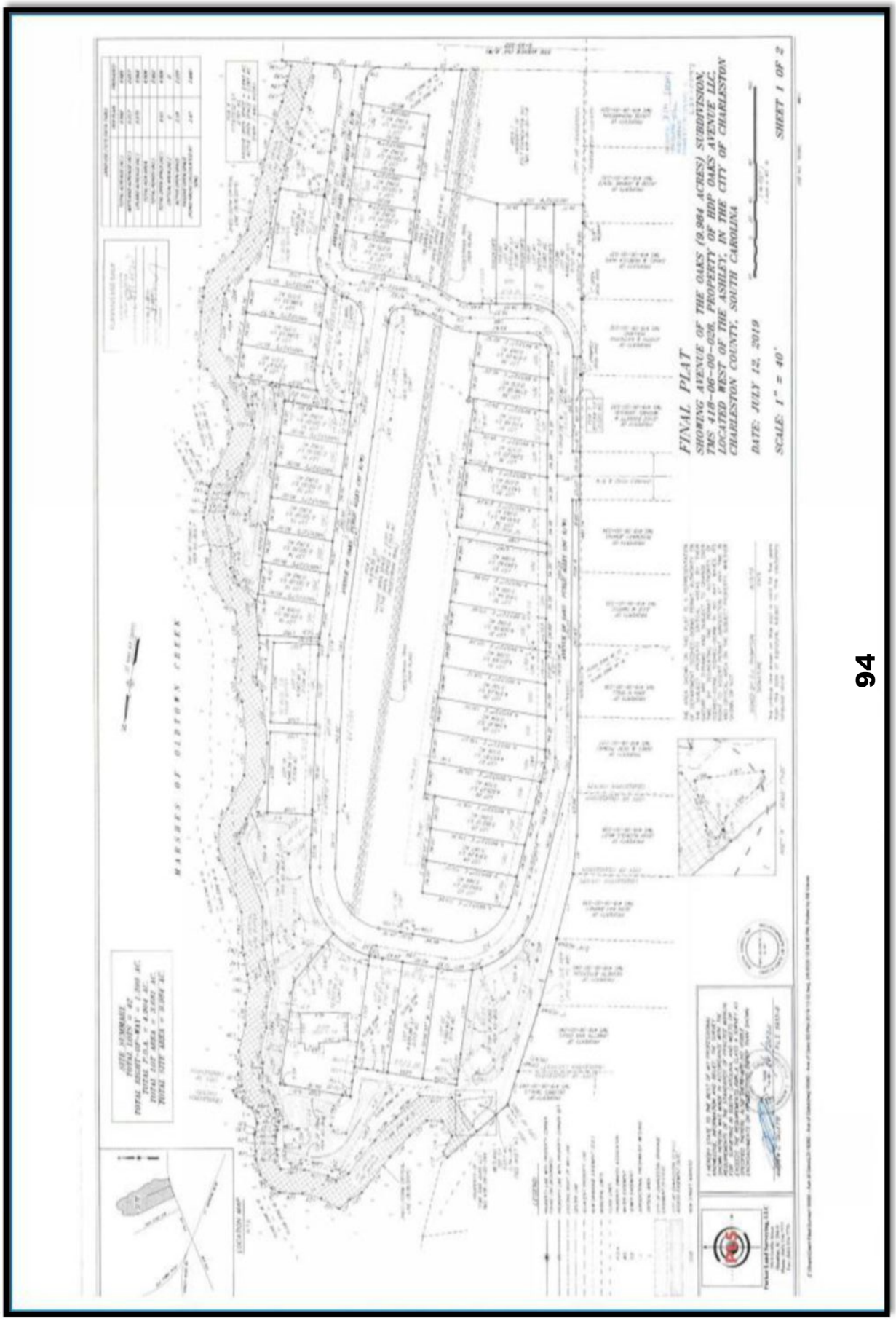
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FILED: CHARLESTON COUNTY - 2021 Oct 26 12:02 PM - CCH-MAR-HEARINGS-CCOMMON PLEAS-CASE#2021CP1004186

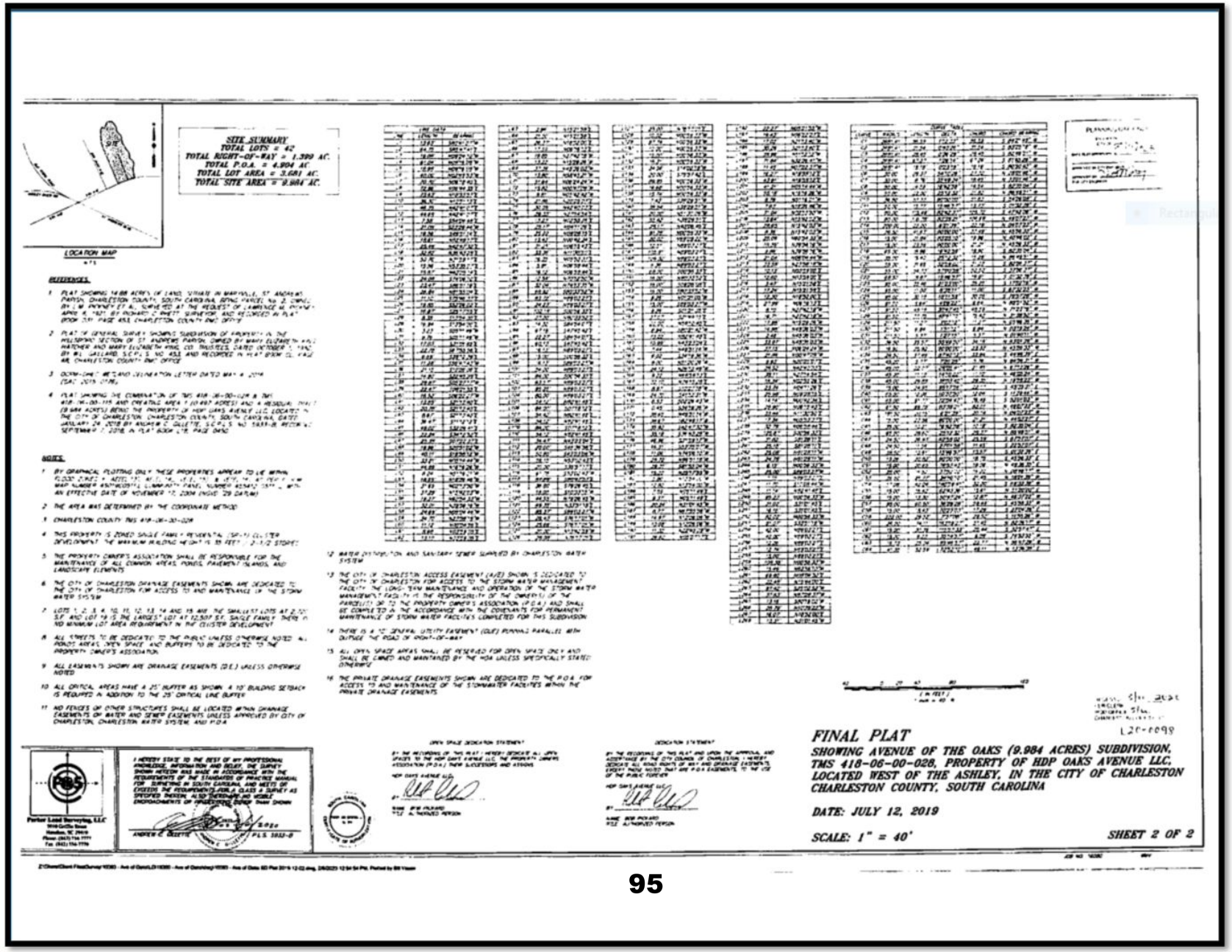
EXHIBIT 1

93

ELECTRONICALLY FILED - 2021 Dec 24 12:22 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196



94



SITE SUMMARY
TOTAL LOTS = 42
TOTAL RIGHT-OF-WAY = 1.399 AC.
TOTAL P.O.A. = 4.004 AC.
TOTAL LOT AREA = 3.581 AC.
TOTAL SITE AREA = 9.984 AC.

LOCATION MAP

FINAL PLAT
SHOWING AVENUE OF THE OAKS (9.984 ACRES) SUBDIVISION, TMS 418-06-00-028, PROPERTY OF HDP OAKS AVENUE LLC, LOCATED WEST OF THE ASHLEY, IN THE CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA

DATE: JULY 12, 2019

SCALE: 1" = 40'

SHEET 2 OF 2

L20-0098

RECORD 000165

EFILED ELECTRONICALLY FILED - 2022110ct 246 21602PAM - CCH-MAR-FILE STD-N - CCOMMMON PLEAS - CCASE#2022CCP1004196

EXHIBIT 2

96

Brandon Gaskins

From: Kelly McGuinn <kelly.mcguinn@crescenthomes.net>
Sent: Monday, November 11, 2019 10:53 AM
To: Ted Terry; Bob Pickard; Craig Hobart
Subject: Fwd: 1111 & 1131 Oak Bluff
Attachments: image001.png; image001.png

below is the last correspondence from the city on the oak bluff permits.

-Kelly

Begin forwarded message:

From: Killion, Sean <killions@charleston-sc.gov>
Sent: Thursday, November 7, 2019 12:03 PM
To: Permitting <permitting@crescenthomes.net>
Subject: RE: 1111 & 1131 Oak Bluff

Jessica,

I agree this is complicated issue. The problem emerged when a former zoning planner who used to work for the City of Charleston approved a couple of 3 story structures in this subdivision that shouldn't have been approved. Since then myself and Lee Batchelder have spoken with Bob that we would approve the ones in the direct neighborhood of those that shouldn't have been approved in the first place (1111 Oak Bluff), but all future proposed houses must follow the SR-1 guidelines of 35'///2 ½ stories.

Sean Killion|Associate Planner

City of Charleston|Department of Planning, Preservation and Sustainability

Zoning Division

2 George Street|Charleston, SC 29401

T:(843) 724-3779|killions@charleston-sc.gov | www.charleston-sc.gov

RECORD 000167

City of Charleston

From: Permitting [mailto:permitting@crescenthomes.net]
Sent: Thursday, November 7, 2019 11:48 AM
To: Killion, Sean <killions@charleston-sc.gov>
Subject: 1111 & 1131 Oak Bluff

Based off of the email you sent me, "for 1111 and 1131 Oak Bluff I came across a problem with the height of said buildings being over the SR-1 limits of 2 ½ stories. Both properties aren't located in a flood zone and therefore cannot be granted the FEMA exception," I was under the impression that both 1111 & 1131 had the same issues. Since 1111 was issued with the unfinished first floor and 1131 first floor is unfinished I thought that it would be issued as well. Am I reading that wrong? My apologies if I am, I myself am just getting confused.

If you should have any questions, please let me know.

Thank you,



JESSICA DICKSON

Permitting Coordinator

O: 843-573-9635 ext. 5101 | Permitting@crescenthomes.net |
1510 Hwy 17 N., Mt. Pleasant, SC 29465 | www.crescenthomes.net



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FILED IN THE OFFICE OF THE CLERK OF COURT 12/06/2021 12:02 PM - CHARLESTON COUNTY - COMMON PLEAS - CASE # 2021CP1004186

From: Killion, Sean <killions@charleston-sc.gov>
Sent: Thursday, November 7, 2019 11:35 AM
To: Permitting <permitting@crescenthomes.net>
Subject: RE: CORRECTIONS NEEDED- FW: 1111 & 1131 Oak Bluff

Jessica,

I have no received revisions that are 2.5 stories for 1131 Oak Bluff, therefore it cannot receive zoning approval.

Sean Killion | Associate Planner

City of Charleston | Department of Planning, Preservation and Sustainability

Zoning Division

2 George Street | Charleston, SC 29401

T:(843) 724-3779 | killions@charleston-sc.gov | www.charleston-sc.gov

City of Charleston

From: Permitting [mailto:permitting@crescenthomes.net]
Sent: Thursday, November 7, 2019 11:32 AM
To: Killion, Sean <killions@charleston-sc.gov>
Subject: RE: CORRECTIONS NEEDED- FW: 1111 & 1131 Oak Bluff

Hey Sean,

I see that 1111 Oak Bluff is ready to be issued.

Do you happen to have any update on 1131 Oak Bluff?

If you should have any questions, please let me know.

Thank you,



JESSICA DICKSON

Permitting Coordinator

O: 843-573-9635 ext. 5101 | Permitting@crescenthomes.net |
1510 Hwy. 17 N., Mt. Pleasant, SC. 29465 | www.crescenthomes.net



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From: Killion, Sean <killions@charleston-sc.gov>
Sent: Wednesday, October 2, 2019 11:10 AM
To: Permitting <permitting@crescenthomes.net>
Cc: Alltop, Crystal <alltopc@charleston-sc.gov>
Subject: 1111 & 1131 Oak Bluff

100

RECORD 000170

FILED CHARLESTON COUNTY - 2021 Oct 26 2:16:02 PM - CCP - CHARLESTON COUNTY - COMMON PLEAS - CASE# 2021CP1004186

Hello,

While reviewing the plans for 1111 and 1131 Oak Bluff I came across a problem with the height of said buildings being over the SR-1 limits of 2 ½ stories. Both properties aren't located in a flood zone and therefore cannot be granted the FEMA exception. This needs to be addressed in order to receive zoning approval. If you have any questions or concerns feel free to email me or call me at 843-724-3779.

Sean Killion|Associate Planner

City of Charleston|Department of Planning, Preservation and Sustainability

Zoning Division

2 George Street|Charleston, SC 29401

T:(843) 724-3779|killions@charleston-sc.gov | www.charleston-sc.gov



City of Charleston

RECORD 000171

EXHIBIT 3

102

RECORD 000173

Brandon Gaskins

From: Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Sent: Monday, March 8, 2021 6:01 PM
To: Ross Appel; Morgan, Christopher
Subject: RE: Revision to Definition of "Story" under City Ordinance

Hi Ross,

Sorry for my tardy response. I am not in favor of this change because it would conflict with our current zoning restrictions for most neighborhoods outside the peninsula which limit houses to 2 ½ stories. We aleady allow ground floor stories in flood zones to not count toward the 2 ½ story limit, which has worked well. However, with the amendment Elis is proposing, we might as well change the 2 ½ story limit to 3 ½ stories which would be out of character for suburban neighborhoods. We (zoning) also don't review building permit applications to make interior alterations to SF homes so we would have no way to catch conversions of ground floor spaces from storage/garage spaces to living spaces, which is sure to happen.

I do think we should consider modified height restrictions as we implement the new comp plan, which hopefully will lead into a concerted effort on behalf of the City to revise our zoning regulations. I think the new comp plan will reflect the Dutch Dialogues recommendations and others dealing with sea level rise so it seems appropriate to consider height restrictions then.

Thanks for asking. Let me know if you have any further thoughts or questions.

Lee C. Batchelder AICP | Zoning Administrator
City of Charleston | Department of Planning Preservation & Sustainability
2 George Street | Suite 3100 | Charleston, SC 29401
T:(843) 724-3771 | F:(843) 724-3772 | e: batchelderl@charleston-sc.gov | www.charleston-sc.gov

From: Ross Appel <ross@mklawsc.com>
Sent: Monday, March 1, 2021 11:28 AM
To: Morgan, Christopher <MORGANC@charleston-sc.gov>; Batchelder, Lee <BATCHELDERL@charleston-sc.gov>
Subject: FW: Revision to Definition of "Story" under City Ordinance

CAUTION: This email originated outside of the City of Charleston. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Christopher and Lee,

I hope this finds both of you well. I am forwarding an e-mail from Ellis Leseman regarding a rather technical zoning change. The logic behind this sounds reasonable to me, but I want to get your perspective on this issue.

Once you've had a chance to review, please let me know and we can go from there.

Thanks, as always.

Ross

FILED IN COMMON PLEAS - CCA#2021CP1004186 Oct 26 2021 02:02PM - CHARLESTON - COMMON PLEAS

Ross Appel
Attorney, McCullough Khan, LLC

O: (843) 937-0400 | D: (843) 937-9798 | F: (843) 937-0706
E: ross@mklawsc.com | W: www.mklawsc.com
A: 359 King Street, Suite 200, Charleston, SC 29401

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From: Ellis Lesemann <erl@lalawsc.com>
Sent: Thursday, February 25, 2021 10:43 AM
To: Ross Appel <ross@mklawsc.com>
Cc: Bill Eubanks <beubanks@sganwdesign.com>
Subject: Revision to Definition of "Story" under City Ordinance

Hello Ross:

I am writing to follow up on the issue that we had discussed over the past several months relating to revising the City's Ordinances in order to encourage/allow newly constructed two-story homes to be elevated. This is a construction technique that is recommended repeatedly within the Dutch Dialogues.

Over the past two months, I've worked with Bill Eubanks in order to come up with the revision language that could facilitate this, which focuses on the definition of "story" under the City's Zoning Ordinance. We've developed wording that we believe is narrowly tailored and would not result in any unintended consequences. In light of your knowledge and background, and your support for the idea, we wanted to present the language to you and get your thoughts. Once the language is in good form, we are hopeful that you and perhaps other members of City Council could steer this through to enactment and implementation.

Attached are: (1) highlighted excerpts from the Dutch Dialogues Indicating the importance of elevating homes, both new and existing; and (2) the proposed draft language for a revision to the definition of "story" under the City's Zoning Ordinance that, if adopted, would make an immediate impact by allowing new two-story homes to be elevated.

Under the existing language and interpretation, if a home is elevated, it cannot be two stories, because the City's Planning, Preservation & Sustainability Department considers the unfinished area that would be underneath the house to be a "story." This results in an elevated two-story house being considered a "three-story" house, which isn't allowed in SR-1 and certain other zoning districts.

This wasn't always the interpretation, but it has become the current view within the Department. The result of this interpretation is that, in order to have a new two-story home, the home cannot be elevated. This undermines the goal of adapting construction practices in order to expect and accommodate rain events, climate change, and sea level rise. It also imposes an undue limitation on the options available for purchasers of new homes.

Adopting the proposed revision is an important action that we, together as a City, can take to implement this key lesson and recommendations from the Dutch Dialogues.

Talk soon,

104

RECORD 000174

FILED IN THE CLERK OF COURT'S OFFICE ON 10/24/2022 2:16:02 PM - CCP/MAR/FILE STAMP - CCP/MAR/FILE #2021CP1004186

Ellis

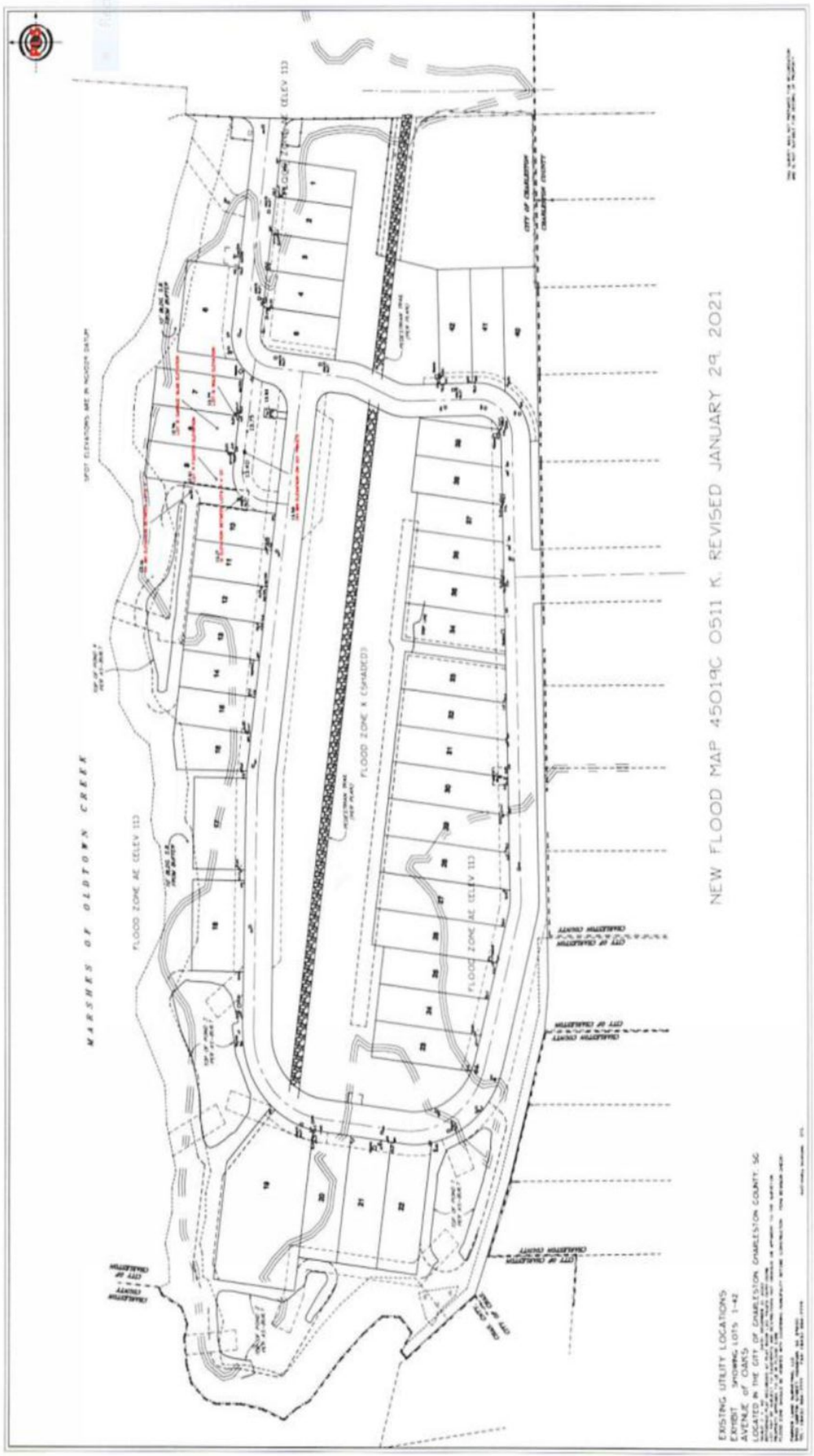
Ellis R. Lesemann
Lesemann & Associates LLC
418 King Street, Suite 301
Charleston, SC 29403
Phone: (843) 724-5155
Mobile: (843) 367-8001
Email: erl@lalawsc.com
Website: www.lalawsc.com

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105

EXHIBIT 4

106


NEW FLOOD MAP 45019C 0511 K, REVISED JANUARY 29, 2021
MARSHES OF OLDTOWN CREEK
FLOOD ZONE AE (ELEV 11)
FLOOD ZONE X (SHADED)
EXISTING UTILITY LOCATIONS
EXHIBIT
SHOWING LOTS 1-42
AVENUE of OAKS
LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SC

107

EXHIBIT 5

108

City of Charleston New Single Family Permit Application

Name and Address of Property Owner Crescent Homes SC, LLC 572 Savannah Hwy, Charleston SC 29407

Contractor Crescent Homes SC, LLC **Cell No.** _____

Office No. 843-573-9635x5101 **E-mail** Permitting @crescenthomes.net

State License No. 18591 **City Business License No.** 39245

****

Lot 6 **Block** _____ **Parcel** _____ **Address (if known)** 1012 Avenue of Oaks

Subdivision Avenue of Oaks **Phase** _____ **TMS** 418-06-00-124 **Zoning** _____

Heated Square Feet 1st floor: 1200 **2nd floor:** 1099 **3rd floor:** _____

Unheated Square Feet (Includes garages, porches, decks) 1636

Actual setbacks: Front 17' **Rear** 7' **North/East Side** 9.29' **South/West Side** 12.71'

Height of Dwelling: +/- 36' - 9" **(measured from the curb to the highest point of the finished roof)**

***Is this an Affordable Housing Project?** NO **(If yes, a letter must be included with this application stating that the construction meets the Affordable Housing Ordinance requirements.)**

REVIEW REQUIRES THE FOLLOWING PLANS WITH THIS APPLICATION:
Please see checklist for full requirements. Plans will not be accepted if all requirements have not been met.

1. **THREE (3) SCALED SITE PLANS** should be prepared, signed and sealed by a South Carolina licensed professional (i.e. surveyor or engineer; include state registration number on the site plan)
2. **MANUAL J** detailing HVAC calculation- 1 copy
3. **INTERNATIONAL ENERGY CONSERVATION CODE FORM** 1 copy
4. **TWO (2) SETS of BUILDING PLANS**
   - Indicating the height of all buildings measured from curb line elevation, or street elevation if there is no curb, to the highest point of the finished roof.
   - Plans by a registered design professional
   - Foundation plan
   - Framing Details or floor, wall, ceiling, roof, headers, beams, and girders
   - Floor Plans
   - Indicate how glazing will be protected from windborne debris
   - Structural details

NOTE: An Engineering permit and inspection by the Engineering Division is required prior to the issuance of a Certificate of Occupancy. Call 724-3782 for permit information and inspection requests.

For customer service, please contact the Customer Service Coordinator at 843-724-7450

For technical information, please contact the following:

GIS	**843-805-3230**	**Zoning**	**843-724-3755**
Engineering	**843-724-3782**	**Inspections**	**843-724-7448**

-I certify that the information on the application and its attachments is correct, that the proposed improvement(s) comply with private neighborhood covenants, if there are any, and that I am the owner of the subject property or the authorized representative of the owner. I authorize the subject property to be inspected for verification of same.

Applicant's Signature _____ **Date** 3/29/2021

*****You must fill out the second section of this application for your submittal to be considered complete. The International Residential Code Correction Sheet (IRC) is required by the Building Inspections Division for plan review.*****

RECORD 000179

EFFECTIVE ONLY IF FILED - 20211006 2:16:02 PM - CCH MARRIED STD - CCDMMOD NRPE PASS - CCASE# 2021CP1004186

☐ This address and TMS number are correct per **Kittie Whiddon (GIS)**

_____ (Address Correction if Needed)

Permit Number

SF_____

International Residential Code Correction Sheet

**********THIS SECTION MUST BE COMPLETED BY THE APPLICANT**********

Contractor: Edward M. Terry, Crescent Homes SC, LLC

Address of Project (if known): 1012 Avenue Of Oaks

Number of: Stories 2 **Rooms** 6 **Bathrooms** 3.5 **Bedrooms** 3 **Kitchens** 1

Type of Construction: Wood Frame **Exterior of Building:** Cement-board Siding

Type of: Heat (electric or gas) Gas **Roof Covering** Shingles

Foundation (If slab, monolithic or raised: piers or continuous wall): Drive Under

Fireplace (prefab or site built, wood burning or gas): Prefab, Gas

Are roof trusses being used? Yes **Is sewer available?** Yes (If not, DHEC septic tank approval must be submitted)

Permit includes: Electrical (x), Plumbing (x), Mechanical (x), Gas (x), Separate permit to be obtained.

Window Agreement: (*Please sign and date*)

Crescent Homes, SC LLC *(Owner/Contractor/Agent)* will install windows that meet the American Architectural Manufacturer's Association specification per ***2015 SC IRC, R609.3*** for the following address _____.

Signature _____ Date 3/29/2021

**********For office use only**********

ITEMS NOTED BELOW SHALL BE CORRECTED IN THE FIELD

( ) Submit under construction flood zone elevation certificate prior to rough-in inspections. ( )
Submit finished construction flood zone elevation certificate prior to final inspections.
( ) Submit as-built v-zone and break away wall certifications prior to final inspections.

_____

_____

_____

_____

_____

Approved By _____ Date _____

Corrections indicated above will be complied with.

Owner/Contractor/Agent _____ Date _____

Revised 2/20/2019

110

RECORD 000180

EFFECTIVE ON THE DATE OF RECORDING ALL PLATS PRESENTED FOR RECORDING MUST BE APPROVED BY THE CHARLESTON COUNTY DEPARTMENT OF PUBLIC WORKS. PLAT APPROVAL #2021CCPW004986 Oct 26 2021 02:02PM

Ashby, Pennye

From: Laura Phillips <lauraphillips@mvalaw.com>
Sent: Monday, May 17, 2021 11:47 AM
To: Ashby, Pennye
Cc: Brandon Gaskins
Subject: Crescent Homes SC, LLC - Appeal of Denial of Building Permit for 1012 Avenue of Oaks
Attachments: BZA-Z Application.pdf; BZA-Z Appeal Form.pdf; Crescent Homes Ave of Oaks BZA Appeal.pdf; Ex. 1 - Final Plat.pdf; Ex. 2 - Emails re Past Interpretation.pdf; Ex. 3 - Batchelder Email.pdf; Ex. 4 - Plat (New Flood Zones).pdf; Ex. 5 - Permit Application.pdf; Ex. 6 - Building Plans.pdf; Ex. 7 - Killion Email_Redacted.pdf; Ex. 8 - Dutch Dialogues Excerpts.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

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Good Morning Ms. Ashby,

Sent on behalf of Brandon Gaskins, please find attached the following:

1. Application;
2. Appeal Form;
3. Letter in support of Appeal dated May 17, 2021;
4. Exhibits 1-8.

Sincerely,

Laura L. Phillips
Paralegal
T 843.579.7043
F 843.579.7099
lauraphillips@mvalaw.com

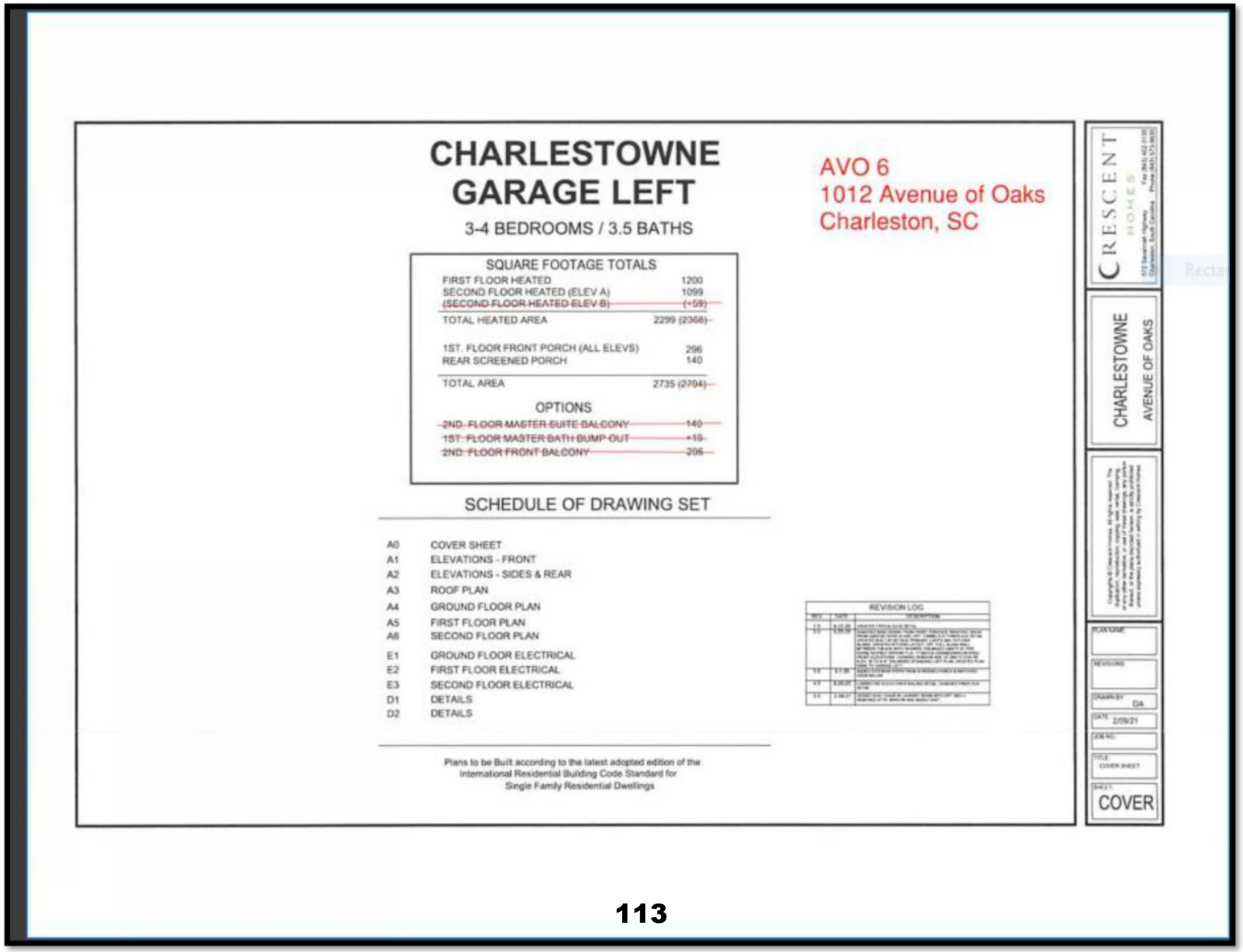
Moore&VanAllen
78 Wentworth Street
Charleston, SC 29401-1428
843.579.7000
www.mvalaw.com

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Moore & Van Allen

EXHIBIT 6

112



CHARLESTOWNE GARAGE LEFT

3-4 BEDROOMS / 3.5 BATHS

AVO 6
1012 Avenue of Oaks
Charleston, SC

SQUARE FOOTAGE TOTALS	
FIRST FLOOR HEATED	1200
SECOND FLOOR HEATED (ELEV A)	1099
~~(SECOND FLOOR HEATED ELEV B)~~	~~(+59)~~
TOTAL HEATED AREA	2299 ~~(2368)~~
1ST. FLOOR FRONT PORCH (ALL ELEVS)	296
REAR SCREENED PORCH	140
TOTAL AREA	2735 ~~(2794)~~

OPTIONS	
~~2ND. FLOOR MASTER SUITE BALCONY~~	~~140~~
~~1ST. FLOOR MASTER BATH BUMP OUT~~	~~+19~~
~~2ND. FLOOR FRONT BALCONY~~	~~296~~

SCHEDULE OF DRAWING SET

A0	COVER SHEET
A1	ELEVATIONS - FRONT
A2	ELEVATIONS - SIDES & REAR
A3	ROOF PLAN
A4	GROUND FLOOR PLAN
A5	FIRST FLOOR PLAN
A6	SECOND FLOOR PLAN
E1	GROUND FLOOR ELECTRICAL
E2	FIRST FLOOR ELECTRICAL
E3	SECOND FLOOR ELECTRICAL
D1	DETAILS
D2	DETAILS

Plans to be Built according to the latest adopted edition of the International Residential Building Code Standard for Single Family Residential Dwellings

REVISION LOG

CRESCENT HOMES

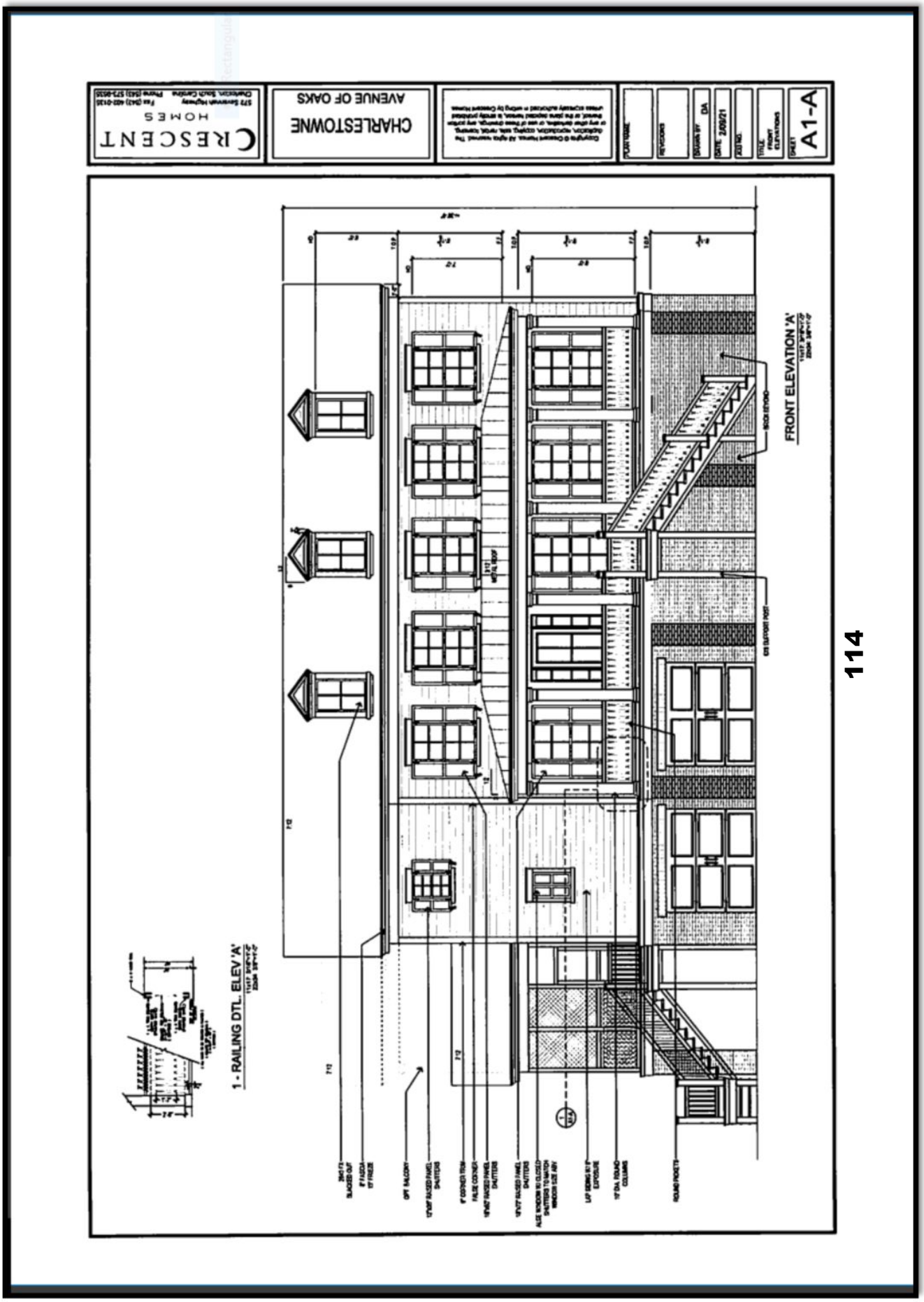
CHARLESTOWNE
AVENUE OF OAKS

DRAWN BY: DA
DATE: 2/09/21
JOB NO.:
TITLE: COVER SHEET
SHEET: COVER

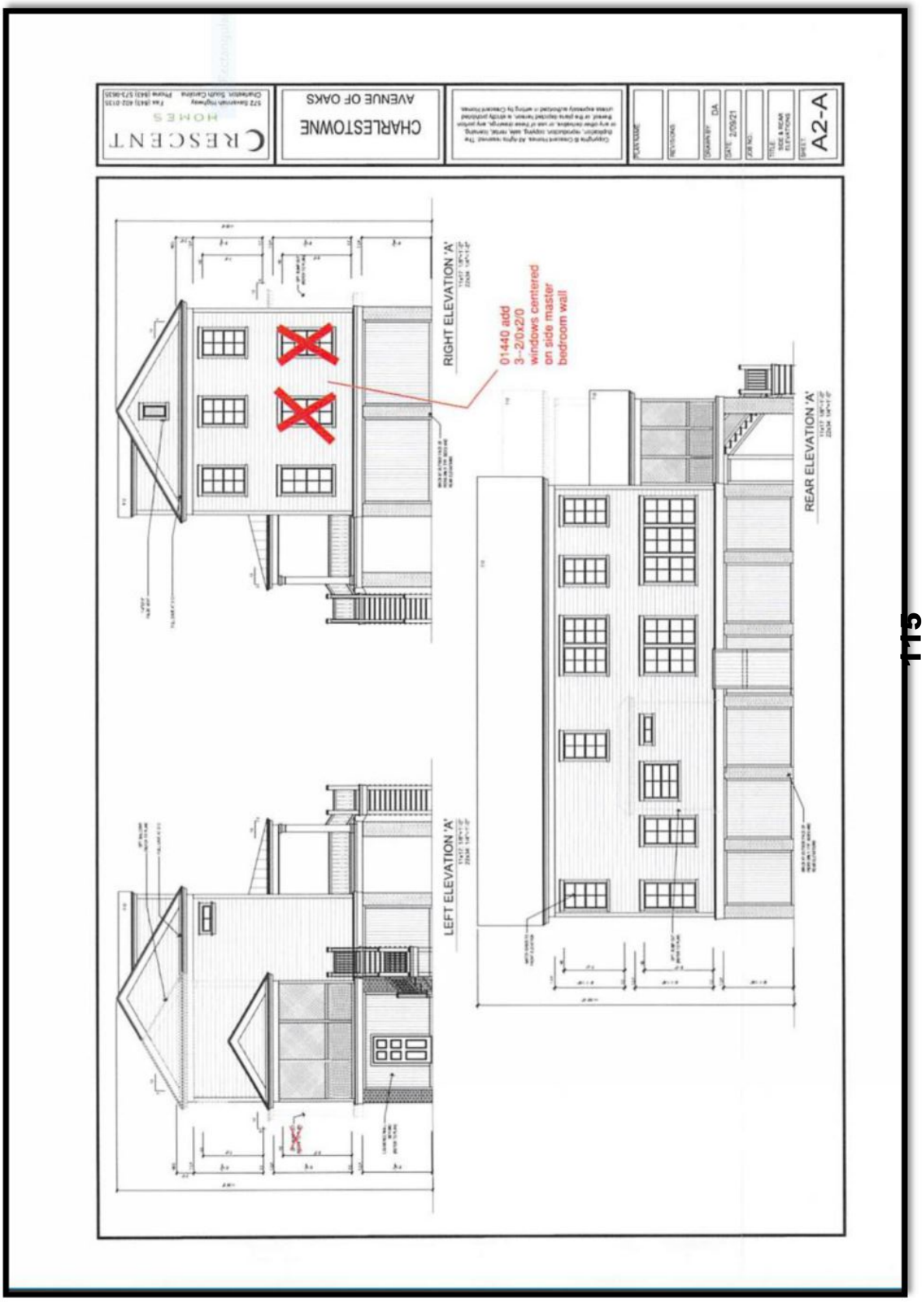
RECORD 000183

113

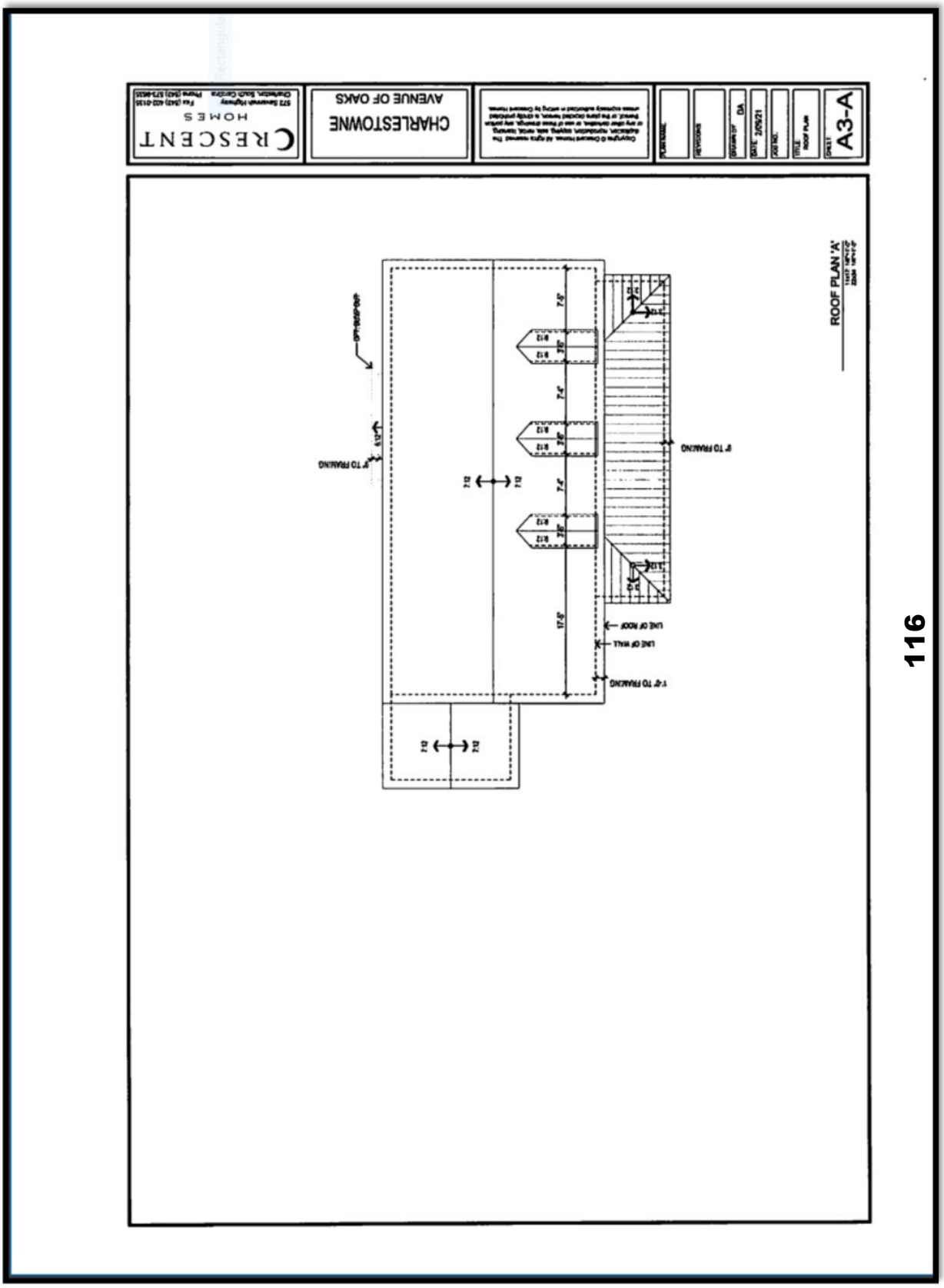
EFFECTIVE DOCUMENT - SUBJECT TO CHANGE - CCO#2021100241986


CRESCENT HOMES
CHARLESTOWNE
AVENUE OF OAKS
A1-A
FRONT ELEVATION 'A'
1 - RAILING DTL. ELEV 'A'

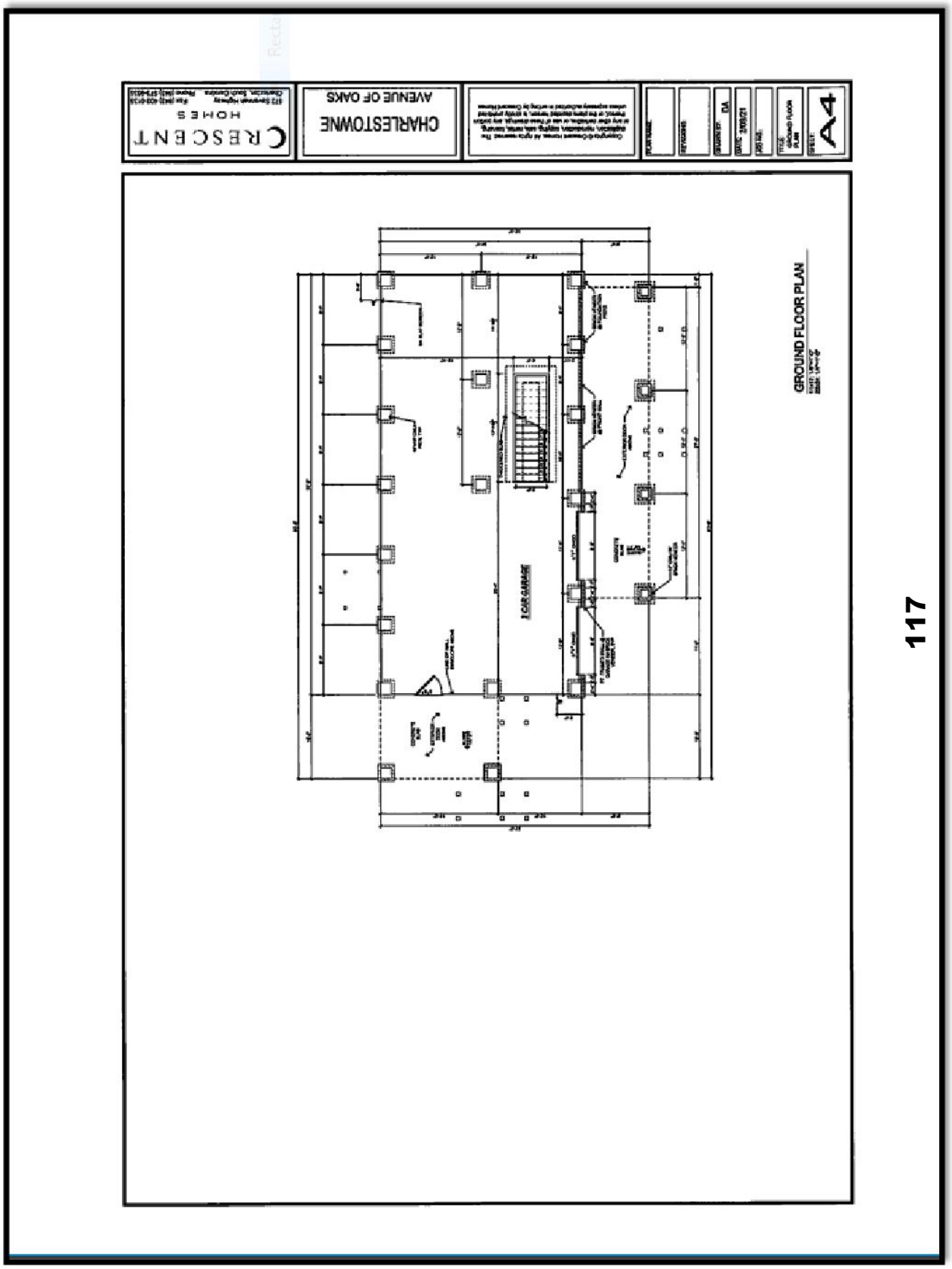
114


CRESCENT HOMES
CHARLESTOWNE
AVENUE OF OAKS
A2-A
RIGHT ELEVATION 'A'
01440 add
3-2/0x2/0
windows centered
on side master
bedroom wall
REAR ELEVATION 'A'
LEFT ELEVATION 'A'

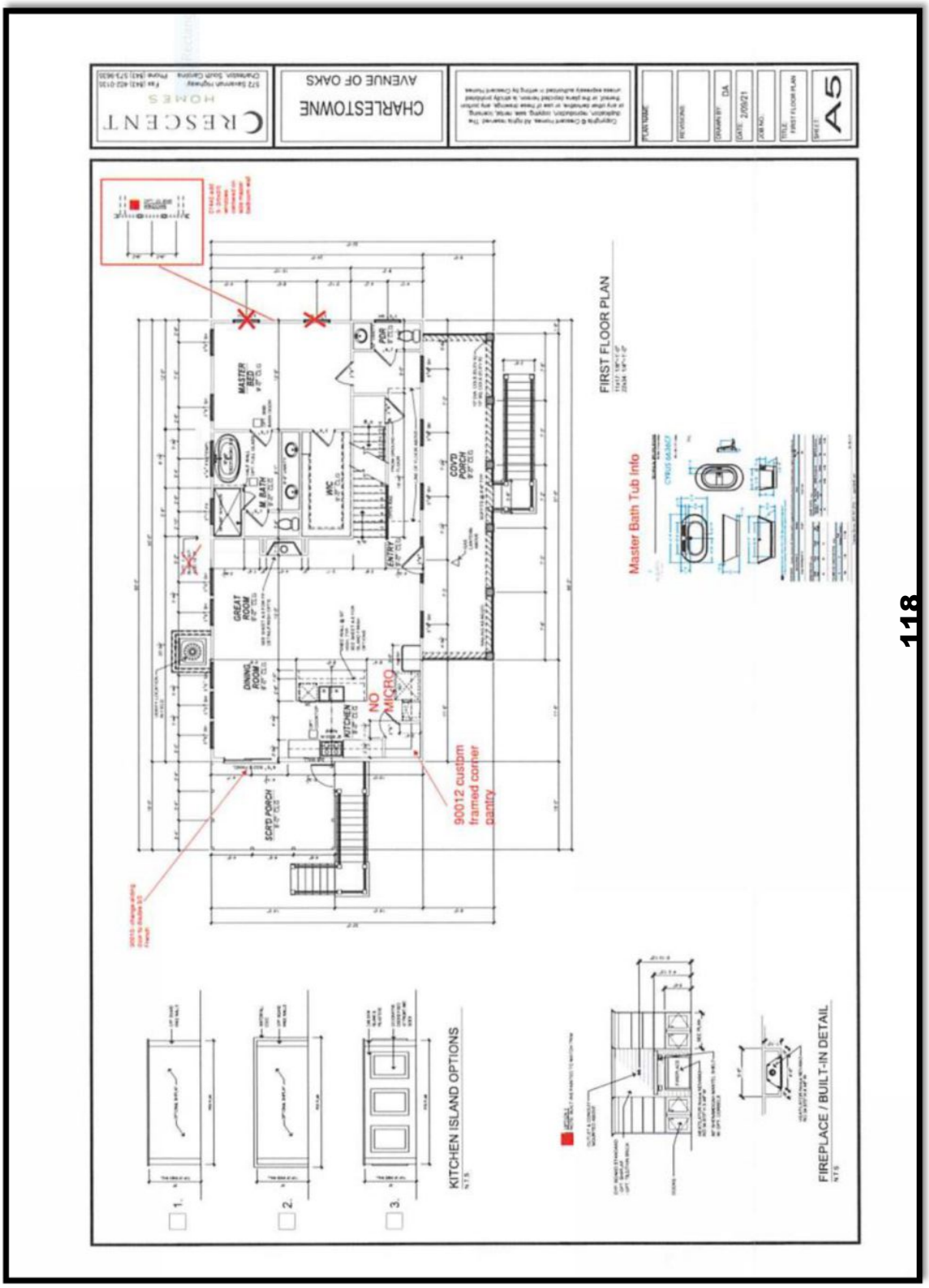
113


CRESCENT
HOMES
CHARLESTOWNE
AVENUE OF OAKS
A3-A
ROOF PLAN 'A'
116

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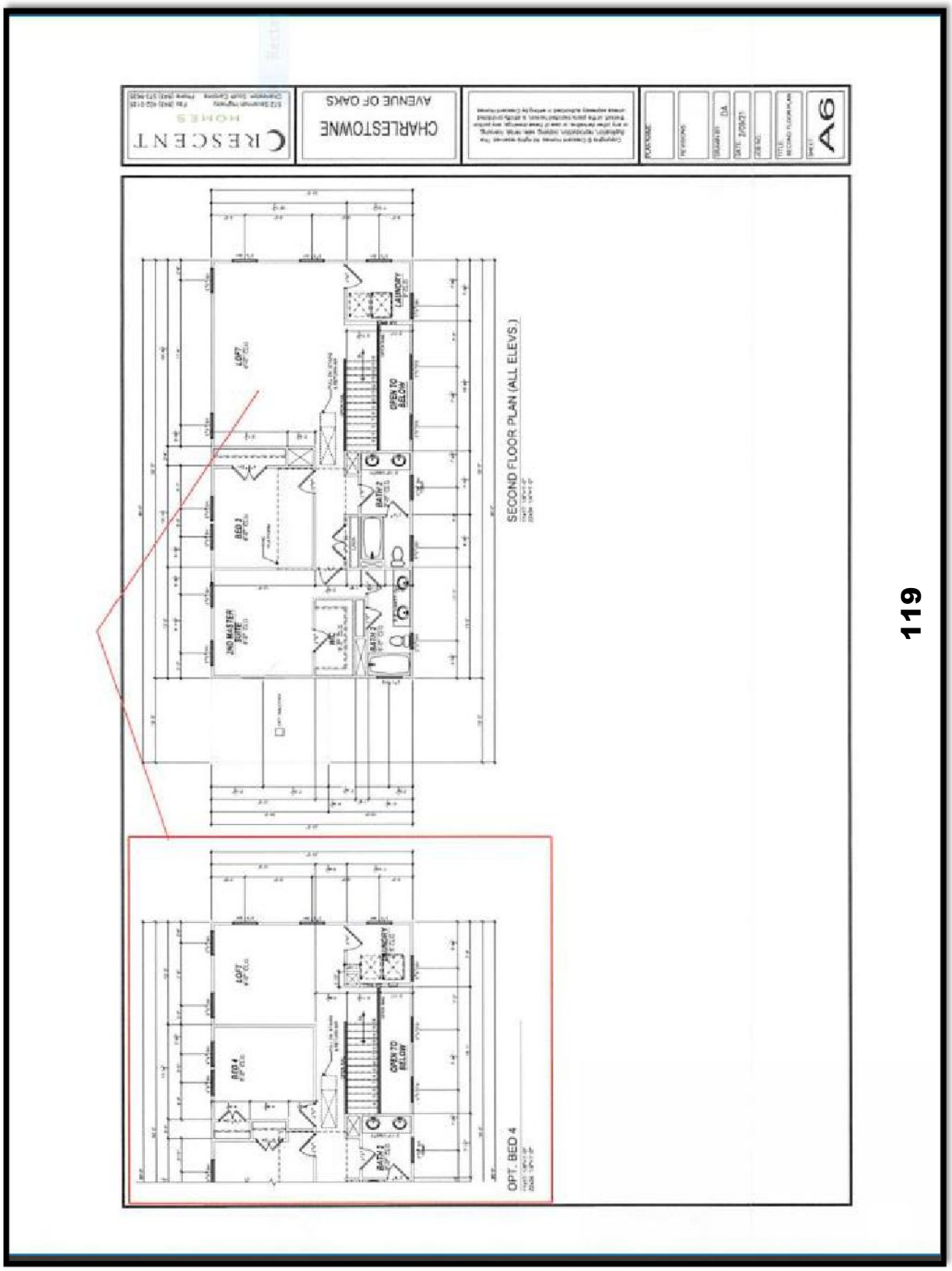


117


CRESCENT HOMES
CHARLESTOWNE
AVENUE OF OAKS
A5
FIRST FLOOR PLAN
Master Bath Tub info
90012 custom framed corner pantry
NO MICRO
KITCHEN ISLAND OPTIONS
FIREPLACE / BUILT-IN DETAIL

118

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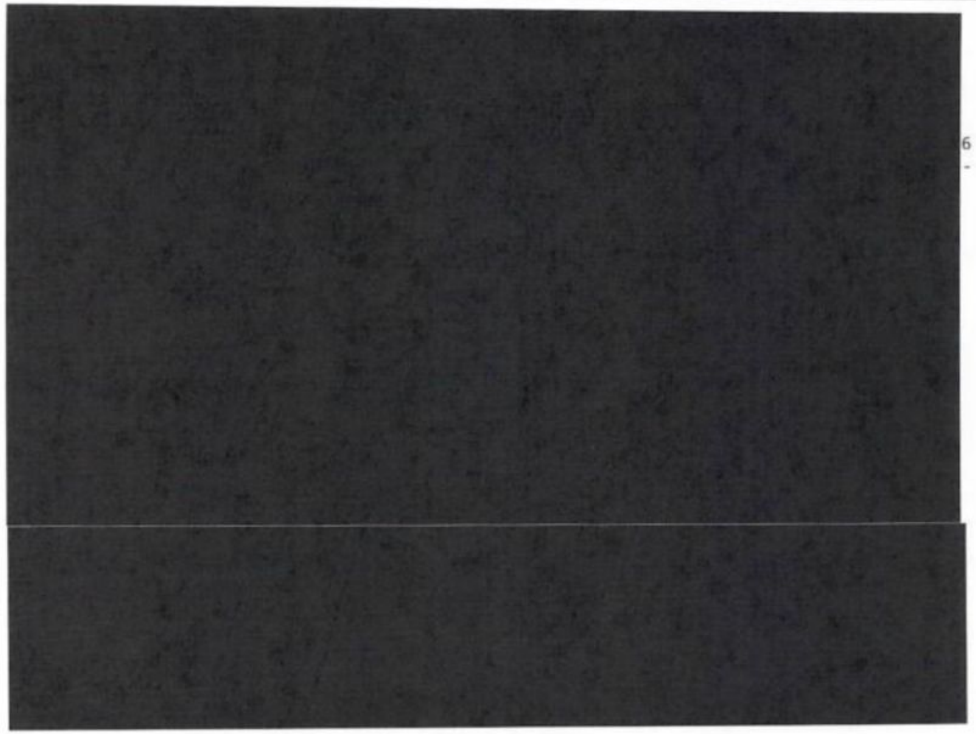
119

EXHIBIT 7

120

ELECTRONICALLY FILED - 2021 Oct 26 2:00 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196

Brandon Gaskins



From: Killion, Sean <killions@charleston-sc.gov>
Sent: Thursday, April 15, 2021 9:07 AM
To: Permitting <permitting@crescenthomes.net>
Subject: 1012 Avenue of Oaks

Good Morning,

I was reviewing the plans for 1012 Avenue of Oaks and I saw the proposed design has a drive under in an X flood zone. This would make the house 3 stories and therefore non-conforming to the SR-1 regulations. Please revise for zoning approval.

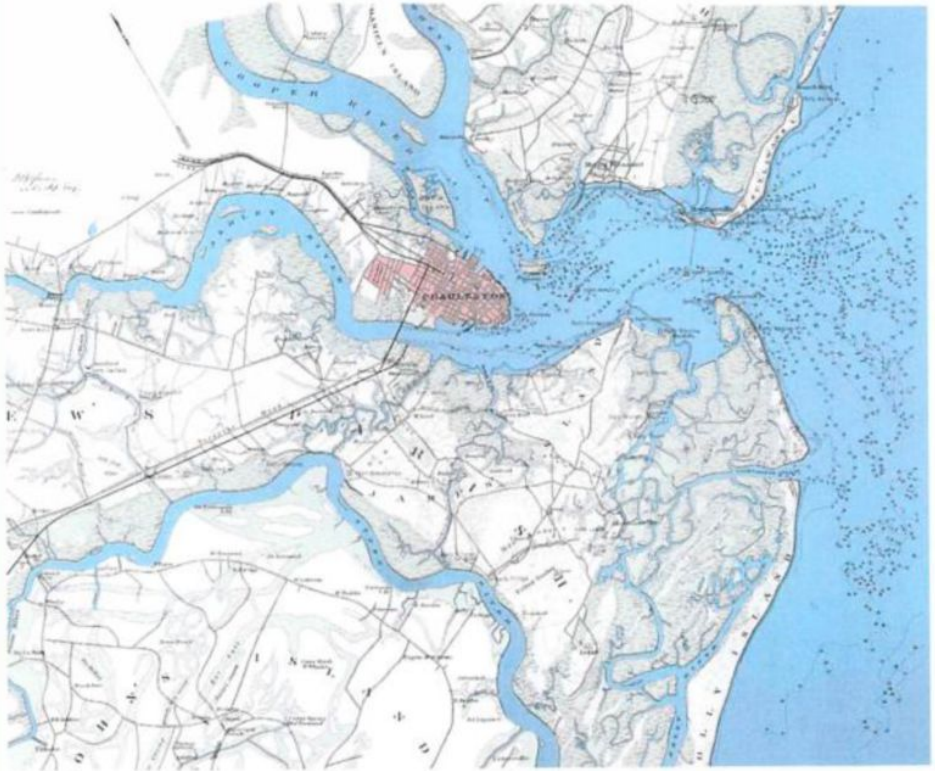
Sean Killion|Associate Planner
City of Charleston|Department of Planning, Preservation and Sustainability
Zoning Division
2 George Street|Charleston, SC 29401
T:(843)724-3779|killions@charleston-sc.gov | www.charleston-sc.gov

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EXHIBIT 8

122

Dutch Dialogues™
Charleston



September 2019

WAGGONNER & BALL

THE WATER INSTITUTE OF THE GULF

Kingdom of the Netherlands

RECORD 000193

ELECTRONICALLY FILED - 2021 Oct 26 2:00 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196

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Coastal Zone	50
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Peninsula	128
Eastside	158
Charleston Medical District	184
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Report produced by Waggonner & Ball with text contribution from The Water Institute of the Gulf.

September 24, 2019 10:05 AM

RECORD 000194

ELECTRONICALLY FILED - 2021 Oct 26 2:00 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196

A Layered Approach

A layered planning approach begins with Charleston's most basic layer: its physical ground, the land and water upon which infrastructure and inhabitation, history and culture, are based.

Safety first. Safety is increased through elevation and redundancy. Multiple lines of defense begin outside the city, in the landscape, and are also structured from within. Sustainable inhabitation is connected to deep geology.

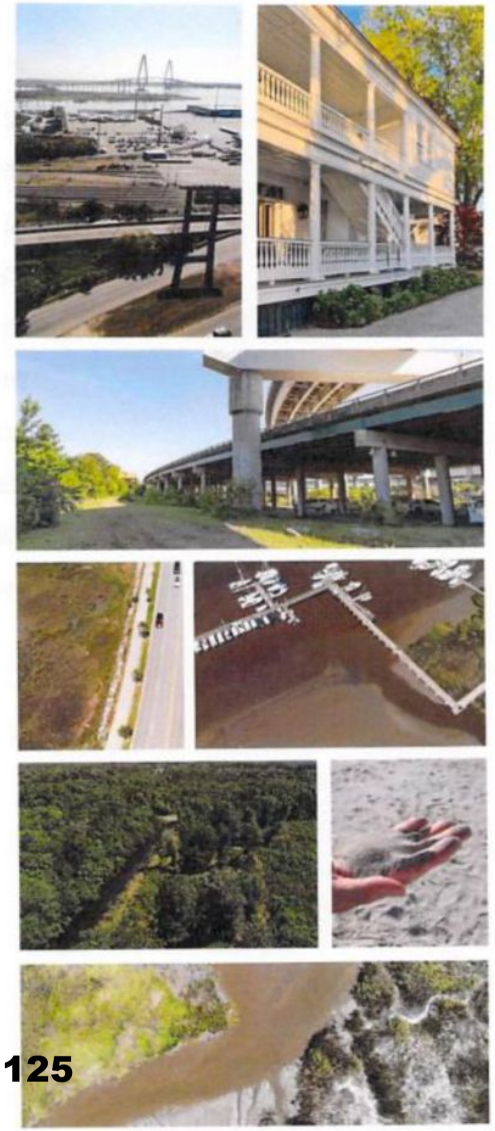
Elevation is salvation from inundation. Elevation is critical in low-lying place, and awareness of place translates to informed action. Charleston has areas of stable, relatively high ground, a critical asset in high water.

Know where you are. The Ashley and Cooper are tidal rivers. Shorelines shift across a low landscape, and plants and habitat move with them, if allowed. Healthy ecology supports a healthy economy and can provide protective benefits. Sustainable infrastructure aligns with ecological function. Water in the region must be understood as a holistic system, man-made and natural in tandem.

Work at multiple scales. Focus on the smallest scale, with an understanding of larger watershed and system functions. Conflicts between and within layers are acknowledged—culture and technology sometimes produce misalignments—and design solutions begin by asking what lies underneath.

Pursue multiple benefits. Single-purpose infrastructure is a poor investment.

No regrets. Make sure action taken now will not compromise future opportunities. Projects should fit within a comprehensive planning vision, but should be able to operate independently with success. Plans must be adaptable over time.



RECORD 000195

ELECTRONICALLY FILED - 2021 Oct 26 2:00 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196



Louisiana's Multiple Lines of Defense
Credit: Louisiana CPRA

Disadvantages of a regional approach are that it requires:

- Robust implementation; the system is only as strong as its weakest link, requiring gates and barriers where open water crosses the (primary) lines of defense.
- Substantial inter- and intra-governmental cooperation and coordination.
- Additional measures, often related to stormwater drainage and local sea level rise adaptation.
- Reliable, steady investment, for long-term design, construction, operations and maintenance (O&M) funding. O&M costs are generally estimated at between 2%- 4% per year of the original cost of construction.
- Trade-offs between protection and environmental considerations. Some environmental impacts can often be mitigated post construction, for a price.

Elements of a Theoretical Regional System

A Hurricane Risk Reduction System for Charleston would consist of broad elements from offshore to inland areas.

- Reinforcing / strengthening / and possible reestablishment of barrier islands .





New Orleans Inner Harbor Navigation Channel Surge Barrier

RECORD 000196

ELECTRONICALLY FILED - 2021 Oct 26 2:00 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196



Dutch Sand Engine
This Building with Nature project distributes sand along the Dutch coast with the forces of wind and water
Credit: Rijkswaterstaat





Top
Example of a flood resilient home
Credit: Aamodt/Plumb Architects

Above
Coastal flood defense in the beach resort of Katwijk, a combination of a sea dike, underground, beach-front parking garage, covered by a natural dune with a pedestrian zone and a nature reserve
Credit: Arcadis

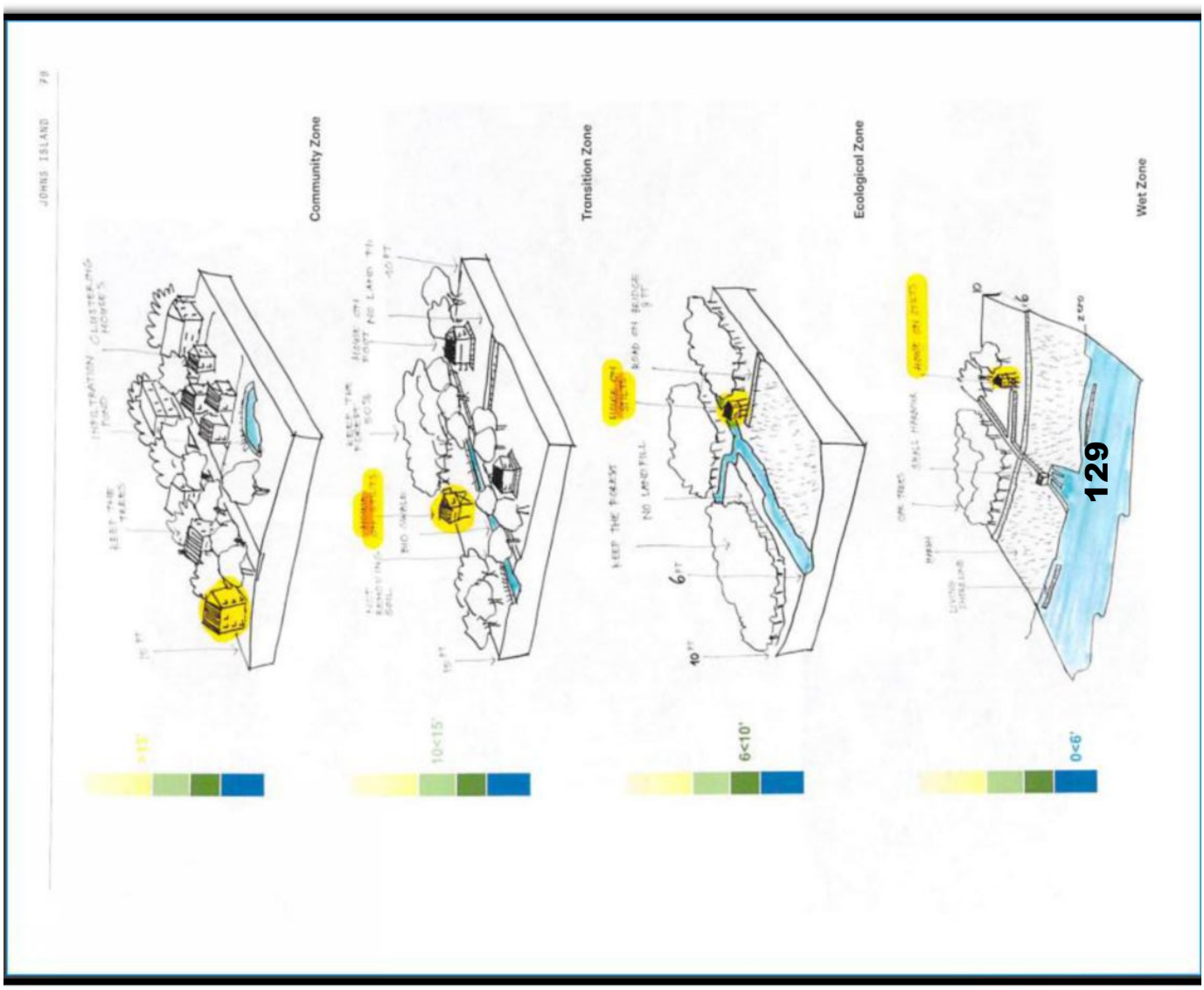
- A robust intertidal and coastal marsh zone, buffering land and sea, with coastal marsh restoration, increased oyster banks and similar "building with nature" components.
- Pockets of resilient, elevated communities, able to adapt to storm, surge and sea level rise outside of the primary coastal defense system.
- A coastal defense alignment, behind which all infrastructure and buildings will be protected against the impacts of storm surge at the defined risk reduction level. This line would consist of coastal ridges, dunes, berms, sea dikes, levees and, where necessary (due to spatial constraints), floodwalls. Note: the Dutch have begun using more multifunctional flood protection structures in which primary flood protection and other economic, environmental, mobility or social benefits are combined.
- Gates / Barriers integrated into the coastal defense line to limit storm surge impacts that would occur via open water channels. To lessen ecosystem impacts and ensure normal riverine and tidal exchange and shipping access, movable gates would be required. These are complex structures and can be vertical lift gates or navigable barriers or a combination thereof.

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RECORD 000197

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JOHNS ISLAND SC
128
New Development


JOHNS ISLAND
Community Zone
Transition Zone
Ecological Zone
Wet Zone
10<15'
6<10'
0<6'
129

more) and bridges-- with little-to-no landfill and no large-scale removal of existing soils and trees. Maintaining the existing coastal forest is essential: the average forest canopy should be maintained at 50% or more of land cover in this zone.

The ecological zone carries substantial flood risk and can expect to get wet in a 100-year storm which, oddly, means a 1% chance of flooding in any year but also a 26% chance that a home with a 30-yr mortgage will flood once over the mortgage term. Those living in this zone should be fully aware of the risk they assume by living there.

The transition zone is defined as areas between 10-15ft above MSL. **In the transition zone, development is possible**, including clustered, elevated homes. Development here must respect the dynamic nature of the landscape, with fluctuating water levels and sufficient, maintained overland drainage channels, and the need for tailored flood risk reduction strategies. Fill should be sparingly used, primarily for road construction or to elevate only certain homes. The coastal forests in this zone should not be further degraded as trees are essential for storing and managing stormwater.

The community zone, at 15 feet and more above MSL, is on historic and stable sand ridges, the most prominent of which are along Maybank Ridge and Upper Burden Creek. **This is stronger, higher, safer, and thus valuable ground**, although it is neither scarce nor abundant. Clustered development combined with stormwater infiltration could be encouraged in this zone, especially where the soils readily infiltrate and store water. The existing water systems-- channels, swales, creeks, ditches -- in these zones must also be protected, maintained and not further compromised, filled or eliminated. These systems store and infiltrate stormwater, providing stormwater management and hydrologic balance. Clear rules to protect these hydrologic features must be developed and enforced.

Zone	Approx. Land Elev. (NAVD)	Allowable Development Density	Allowable Foundation Types	Fill Allowed	Potential Stormwater BMPs
Wet Zone	0 – 6'	None	N/A	No	Living Shorelines/Buffers
Ecological Zone	6 – 10'	Limited (Single)	Elevated	Roadways Only	Promote Buffers/Open Systems/Space/ Storage Only
Transition Zone	10 – 15'	Moderate	Elevated/ Limited Slab on Grade	Limited	Closed Systems/ Open Space/Storage and Green Infrastructure/ Infiltration
Community Zone	> 15'	Moderate to Urban	Mix	Limited to Moderate	Green Infrastructure/ Infiltration and Limited Closed Systems

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Elevation Zones
Four different zones are described relative to development strategies.

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Church Creek

Landscape Context

The West Ashley / Church Creek area, unlike Johns Island or the Peninsula, is upland (but still low-lying), upstream, and influenced by fluvial conditions more than coastal ones. Ecologically, Church Creek and much of West Ashley is a water basin. The sponge-like functioning of the basin is compromised by constraints upon its water systems and by land-use and development patterns. **While Church Creek is lower in elevation than both Johns Island and the Peninsula, the issues of hurricane storm surge and sea level rise are less urgent here**.

Before human settlement, Church Creek was a sinuous waterway that had multiple branches and outlets. It was reminiscent to the nearby Angel Oak tree, with its vascular system that spreads out in a multitude of winding paths. Just as the Angel Oak gives life, form and energy to Johns Island, the long forgotten Church Creek landscape provides the same for West Ashley. The Creek's natural functions are needed to restore health, safety and balance to the Ashley and Stono River watersheds. Ignore these, and more flood disruption and devastation along these floodplains will occur.

The Church Creek basin has been irreparably shaped by human activity. The basin, once once a lowland swamp between the Stono and the Ashley River, was first drained for rice cultivation. The second wave of alteration came after the Civil War when the it was further drained and cleared for phosphate mining. After phosphate extraction had subsided, the basin became a suburb. The system of ditches which drained the swamp became the drainage system for neighborhoods. The remaining swamp was developed, constricting an already unnatural drainage system.

North of the railroad, Church Creek is now entirely artificial, a man-made ditch that runs behind backyards, under culverts and through the old phosphate mines. This section suffers the worst flooding. Culverts constrict flow and homes are built directly along channel and old creek bed. **Below the railroad the creek is tidal and still largely natural.** Flood risk in this lower zone stems primarily from tidal impacts.

Development in the Basin

The flood challenge in Church Creek is partly about the water system and partly about occupation and land-use planning. Development pressure is high and most of the remaining developable space in the basin will be built out soon. Most of the basin is incredibly low in elevation. Homes in the floodplain may be only slightly lower than homes outside of it. Homes along the tidal portion of the creek are at an additional risk from tides and sea level rise. Neighborhoods' ability to store water is challenged. Even as developmental regulations become more strict, existing homes retain substantial tidal flooding and stormwater risks.

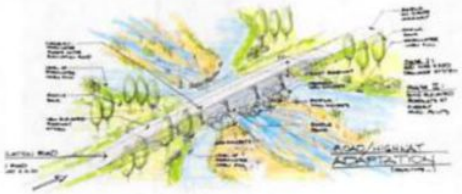
There are things to embrace and things to change in the Church Creek basin. The tidal landscape can be used to accrete land and resilient waterfront development. The retrofitted creek, and the historical phosphate mines, must become functioning pieces of a basin-wide stormwater system. New, elevated homes have limited some flood risk but are disconnected from each other and the landscape. Without water and development working together problems are often transferred downstream.

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Inland Development

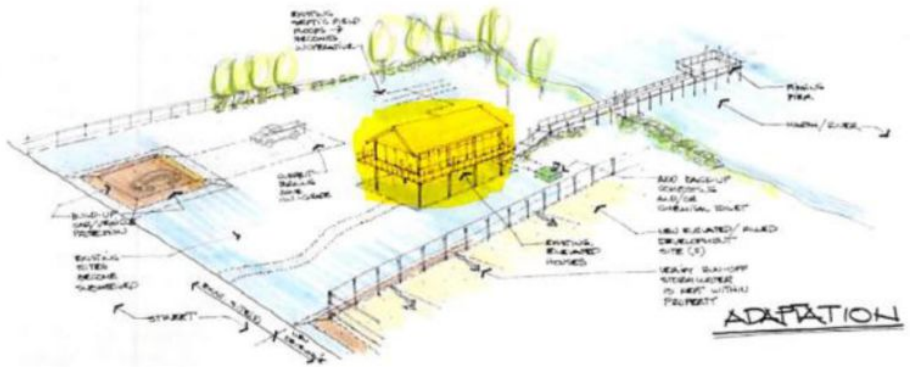


Retrofitted Road Overpasses

New Development

Our proposed blue-green network might be supplemented with new or repurposed developments (red areas in opposite drawing) within the floodplain. This development pattern establishes a vision and direction for the region and can be achieved over the next decade or two. We suggest starting on this vision as soon as possible, through a process that includes new developments in the pipeline and those already on the drawing board.

Sea level rise will extend the floodplain inland. Some development here – we all like to live near the water—is acceptable if properly elevated. An old Cajun-saying is relevant: Elevation is Salvation from Inundation. **But this development will have to adapt to the water system, not the other way around**. A new type of water-centric development could be a cultural and economic asset for Charleston. Connectivity for cars, bikes and pedestrians– via possible new linear parks—could reinforce this living with water vision.



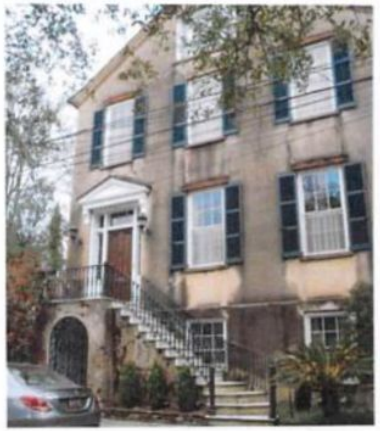
Coastal Development

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Historic Charleston Foundation

Flood Adaptations for Historic Structures





Historic Examples of Building Elevations
Structures from the nineteenth century are elevated several feet, with facades and porches that create a consistent, traditional streetscape.
Credit: City of Charleston

Historic Charleston Foundation

Charleston is undeniably proud of its historic architecture. The city has one of the most, if not the most, important collections of residential and civic architecture in the United States for which Charleston was designated as a National Historic Landmark District in 1960. Both the local and the nationally recognized district have been greatly expanded over the years and for both designations, retaining the historic character of individual buildings is key to the preservation of the whole.

Until fairly recently, Charleston's preservation community was adamantly opposed to elevating historic buildings simply because of flood risk. The visual character of a historic building is closely linked to its overall design, its height, massing, proportion and the overall scale of its architectural features. When an historic building is raised, the process can affect its integrity by altering its proportions and compromising its relationship to adjacent buildings and to the historic district as a whole. Massive damage from Hurricane Hugo in 1989 demonstrated the dangers for historic buildings within the low-lying areas of the city, yet the event – at the time – seemed isolated.

However today, with escalating rain events, sea level rise and tidal flooding, we know that water constitutes an increasing threat to our historic district, and our position on elevating threatened buildings has evolved. A key component of historic preservation is adaptability, therefore, we must accommodate the elevation of historic buildings where warranted in order to improve resiliency for our historic district and ensure their very survival.

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All images this spread credit: City of Charleston

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Unusual Words or Terms: **Must be completed** (e.g. abbreviations, Company Names, Names of people or places, technical jargon	NONE	
Transcriber N & I:	VVTRAS DK30 US0053	
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[00:00:00]
Lee Bachelder: If the Chair would like to take it away?

[00:00:11]
Michael Robinson: Thank you very much. This is the June 15, 2021 meeting of the City of Charleston Board of Zoning Appeals-Zoning. Present are Mr. Morrison, Mr. Joudon, Mrs. Grass, Mrs. Richards, Mrs. Vargas-Vargas, Mr. Bennett, and Mr. Robinson. Present from the Zoning staff are Mr. Bachelder, Miss. Ashby, and Mr. Valentine.

These proceedings are being recorded and we ask that those who speak identify themselves for the record. We will conduct this meeting in the usual fashion. First, receive information from City Staff about the application and their recommendation. If the recommendation is favorable and no one objects to the application, usually the Board of Zoning Appeals treats the matter as being uncontested and passes it as a matter of course. If however, the City recommends against the application or there is opposition to the application we treat the application as contested and hear from the applicant and anyone else who's in favor of the application.

Next we hear from anyone opposed followed by a short rebuttal from the applicant. We then close the public hearing portion of the meeting for that particular application and open discussion for the Board of Zoning Appeals members only. Who will then make the decision to approve, approve with conditions, or deny the application?

The Board of Zoning Appeals-Zoning has the authority to do three things; first to hear appeals to decisions of the zoning administrator. Second, grant exceptions in fact-finding functional abilities, and third grant variances of the lending ordinance if the application meets the hardship test outlined in section 54-924 of the ordinance. The board may deliberate and make the final decision on a matter by a majority vote of members present at the hearing and qualifying to vote. Provided that not less than a quarter miss present in qualifying to vote. However, in a permanent vote of 2/3rds of the Board members present and voting shall be required before a youth variance may be granted.

For a variance to be granted the Board of Zoning Appeals must make the following findings. A) That they are extraordinary in exceptional conditions pertaining to the piece of property. B) These conditions do not generally apply to other property in the vicinity. C) Because of these conditions the application of the ordinance to the particular would effectively prohibit or unreasonably restrict the utilization of the property; and D) the authorization of a variance would not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

We have no withdrawals and no deferrals on the agenda tonight. So all the items advertised will be heard at this meeting.
[00:03:36]

[00:44:20]
Michael Robinson: Thank you Mr. Morrison.

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[00:44:26]
Howell Morrison: Yes, Sir Mr. Robinson.

[00:44:29]
Michael Robinson: Item #2 on the agenda is 1012 Avenue of Oaks (Maryvale/Ashleyville). Request an appeal of the Zoning Administrator's decision to deny building permit on the grounds that the proposed home exceeds the 2 1/2 story height restriction for the SR-1 (Single Family Residential) zone district under Sec. 54-301, because the home's designed drive-under garage constitutes a 3rd story under Sec. 54-120. Zoned SR-1.

I forgot at the beginning of the meeting to announce the City Attorney's presence. Did that come up in the last item?

[00:45:19]
Howell Morrison: No sir, it did not.

[00:45:21]
Tim Domin: It did not. Tim Domin, I am here on behalf of the Board to act as your attorney should you choose to vote to go into executive searching on this item as well as the next item, which is a related item.

[00:45:34]
Michael Robinson: Thank you Mr. Domin. Mr. Bachelder.

[00:45:40]
Lee Batchelder: Thank you so this is a lot on a street called Avenue of Oaks within a development that's called Avenue of Oaks in West Ashley. It's actually a new residential development within the Ashleyville/Maryvale neighborhood. Just to give you a little bit more information. This is an appeal of my decision not to approve plans to build a new home on this lot, because they exceeded the 2 1/2 story height limit.

This is a view of the zoning map of that neighborhood and you see the lot in question that is outlined in blue, but there are 30 some lots in the neighborhood overall, I think, give or take a few. It's a beautiful piece of property. It actually had a single family home at the very back of the property. It has a very beautiful avenue of oaks that lead from 5th Avenue to back to where that house stood or it may still stand. I'm not even sure if it's there anymore. Anyway the house wasn't historic, but the trees were certainly an important feature. The developer went in there and came up with a plan to work around those trees and it's turned out to be a very nice project.

Anyway, the lot in question is not in a flood zone. This is the new map that took effect in January of 2021. The new FEMA map that shows this property is in that brown area. This is a flood map and it shows the zoning or the flood zones and that brown area is an X zone, which means it's not a zone in which you have to elevate the first floor and I don't believe you have to pay flood insurance for your home. The blue area just outside that lot is a flood zone and does require a minimum elevation of 11 as you can see on the map.

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That was a change from the previous map that had this lot. In fact all of the other lots within this neighborhood were in a flood zone that required the first floor to be elevated. The SR-1 Zoning District that applies to this property has a maximum height limit of 35 feet and 2 1/2 stories. You can see that highlighted here from the Zoning Ordinance. That means you have to be no more than 2 1/2 stories and no more than a total height from the curb elevation up to the peak of the roof of 35 feet.

The Zoning Ordinance defines a story as that portion of a building included between the surface of any floor and the surface of the next floor above, or if there's no floor then the ceiling above that floor. Pretty simple definition and of course in a flood zone. Where the first floor has to be elevated to meet minimum flood elevation requirements. You end up with homes essentially on stilts. They can be beautiful walls, they can be piers that have infill between those piers but a variety of ways of constructing those ground level spaces that are compliant with flood zone requirements.

The house essentially moves from where it would be close to the ground, up to a certain elevation above the ground. This is an example of a house that we would call a two story or 2 1/2 story house. With that first floor being a garage/storage space. Basically a space below the house, below those 2 1/2 stories. In order to meet flood zone requirements. That's the way we've interpreted the rules and we've applied that interpretation since, in the City of Charleston, since the early 1980's, I believe, when the City through annexation and instruction began to have homes constructed within flood zones back when they were brand new.

I think they were first adopted by the Federal Government in maybe the mid to late-70's so since that time the City has applied this interpretation where we don't count that ground level as a story because that would be penalizing the owner of the property by removing essentially a story from the house. We've given that interpretation over the years to allow that ground level to not count as a story.

This is the plan that was submitted by the developer. Essentially the same as what was on the previous slide. A 2 1/2 story house elevated above the garage. The only difference in this case is this house is no longer in a flood zone. It is, as I said, it is no longer in this flood zone. It was until January of this year, but it's not in a flood zone now. The reason that I think this is problematic; that granting this appeal would be problematic is that this would be residential. In other words, if we were not to count that ground level story that is not required to meet flood zone requirements.

If we would not count that as a story in those situations then you would end up with essentially 3 1/2 story houses and the Zoning Division would not have any control over what happened on those ground levels as we know, garages sometimes in depth becoming additional living space and if that space is outside of the . . . so even though somebody might say that's gonna be garage storage space initially. We know that over time people like to add condition space to their home and that becomes a convenient place to do it and you just end up parking outside or something like that.

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Or you have the garage space and convert part of that garage or that storage level into conditioned space and the City Zoning Division will not have any control over whether that happened or not. We don't review building permit applications to make those kind of interior conversions of buildings. We simply don't have the ability to do that and there would not be anybody else in the City, the Building Inspections folks would not have any issues with issuing those kinds of permits to allow those interior conversions for these spaces. These ground levels that are outside of a flood zone are in effect, in our opinion, a story. If they are in a flood zone they are not a story because you're only trying to comply with flood zone requirements set by the Federal Government. You do not have a choice in those.

If it's outside of a flood zone then we consider that to be a story and typically the residential zoning districts that have this 35 foot, 2 1/2 story height limit are the suburban residential developments. Neighborhoods that we have all over the city and you can just imagine all of the homes in those neighborhoods are typically ranch homes, single story homes, two story homes, sometimes 2 1/2 story homes. Not the 2 1/2 stories over a garage. Though we would tell anybody else in those neighborhoods, sorry you can't build your garage below your house. You don't have to elevate for flood zone reasons and doing what you want to do essentially becomes a 3rd story.

We would not allow that and we have not allowed that in the past. In this neighborhood, in particular, Ashleyville/Maryvale, it's typical of many of these older neighborhoods in West Ashley. It's 1 story homes, some 2 story homes; you can see one in the distance here. But to introduce homes on lots where somebody might come in and say, "Well, I want to take a vacant lot in this neighborhood or I want to demolish this 1 story house and build a new house and essentially make it 3 1/2 stories." Would be out of character and create a great impact for this neighborhood.

This would be presidential and would allow homes out of character with these existing neighborhoods in the city that are not in flood zones. For that reason alone I just feel like we should not approve this appeal. I think we have been very reasonable in how we interpreted the rules in the past and applied them. Nobody's ever asked for variances or sought to appeal that interpretation. The other thing is when this first came up, and again, this lot was in a flood zone. Where the house had to be elevated prior to January of this year. It wasn't an issue and the developer constructed a number of homes in other lots in this neighborhood that have the garage level with the 2 1/2 stories above it. We had approved those because of that flood elevation requirement. But now that that's gone we could not approve the plans for this lot when they were submitted in March and I subsequently, in a conversation with the developer, advised them that I would be supportive of a variance, a zoning variance, to allow them to build 3 story homes in this neighborhood. To continue what they had already started essentially on these remaining lots where they had planned to do that.

With the new flood zone maps they were not able to. I told them I would support that request and this was right after we had . . . I think it was right after we had granted; the Board had granted the variance for that other neighborhood called Laurel Oaks, which is down Bees Ferry Road. If you will remember in West Ashley. That was a similar situation. The developer went through a whole planning process; constructed the infrastructure was all set to start building

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homes then the flood maps took effect and that changed the whole set of rules for them and they had to come in and get a variance. I supported that and the Board approved it. So, I feel like this is the solution for this neighborhood. The appeal is a bad solution and I'll just leave it at that.

I know the attorney who filed this, Mr. Gaskins is the one who is in attendance so if we can promote him.

[00:59:54]
Tim Domin: Lee?

[00:59:55]
Lee Batchelder: Yes, I'm sorry.

[00:59:56]
Tim Domin: While you are promoting Mr. Gaskins. Can you clarify for the board and for me that the next item on the agenda is, in fact, the variance request and it is inclusive of this one lot 124 that's mentioned in this request to appeal your decision?

[01:00:18]
Lee Batchelder: Yeah, so the next item on the Board's agenda is a variance request to allow a three story on this particular lot where the lot is located that is the subject of this appeal.

[01:00:37]
Tim Domin: And you are going to . . . the city is going to support that request?

[01:00:40]
Lee Batchelder: That's correct. And I see that Mr. Gaskins has been promoted to an attendee and I guess as an attorney, we don't need to swear you in. So . . .

[01:01:04]
Michael Robinson: Is that your presentation, Mr. Batchelder?

[01:01:06]
Lee Batchelder: Yeah, that's my presentation.

[01:01:08]
Michael Robinson: Does anybody on the board have any questions for Mr. Batchelder?

[01:01:13]
Allison Grass: Can I ask a question just about a comment that Mr. Batchelder made about the character? Can I ask that now or should I wait?

[01:01:25]
Michael Robinson: What was your question?

[01:01:26]

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Allison Grass: Okay, I wanted to ask just in regards to one of the points that Mr. Batchelder made about not supporting this request is because the 3 story homes will be out of character with the existing homes in the neighborhood. Is that [inaudible 01:01:45].

[01:01:46]
Lee Batchelder: That and so, then not in this particular development, but what I'm saying is if you were to agree with the appeal and grant that appeal, you would essentially be establishing a rule that would allow these kind of houses to be located throughout Ashleyville, Maryville and other neighborhoods.

[01:02:08]
Allison Grass: Okay, thank you. I was thinking you were talking about that particular development. Okay, perfect thanks.

[01:02:14]
Lee Batchelder: Thanks.

[01:02:15]
Michael Robinson: Any other questions?

[01:02:17]
Walter Jaudon: Yes, Mr. Batchelder, you said that the rule for the flooding zone changes prior to the contractor submitting the application. Is that correct?

[01:02:28]
Lee Batchelder: That's correct.

[01:02:29]
Walter Jaudon: Okay, thank you.

[01:02:32]
Michael Robinson: Anything else? Mr. Gaskins?

[01:02:39]
Brandon Gaskins: Thank you members of the board. My name is Brandon Gaskins with the Moore and Van Allen Law Firm here in Charleston and I represent the owner Crescent Homes SC LLC. I'm not gonna rehash much of what Mr. Batchelder said. I think his recitation of the [inaudible 01:02:54] background was generally correct, but I think he did omit some key details which I would like to highlight. So, this development, the final plat for it was approved in March of 202. At that time, all of the developable lots were in either flood zone AE13 or AE14. So, based on that final plat approval and being in those flood zones, that's how the developer determined the layout or not necessarily the layout but the design of the homes.

And at that time, there were 42 lots in this subdivision, 22 of them were designed to have this elevated drive under garage design and I believe 13 of those had been permitted and some of them built and spoke maybe under construction, but that leaves nine of the original that were not,

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that were not permitted prior to the change in the flood map in January 2021; however, the final plat had already been approved and that's how the development was designed. So, of those 13, those 13 . . . 13 homes with the same design, same drive under garage style and under the city's interpretation that is not considered a story based on where it is in the flood map and we believe that's an error under the definition of story in the zoning code as it's construed as a whole with other provisions of the zoning ordinance.

Mr. Batchelder highlighted the definition for it earlier and that provides important part. "That portion of a building including between the surface of any floor in the surface of the next floor above." There is nothing in that definition that allows the city to determine whether a garage is a story or not based on where it is on the flood map and one other clarifying point. After he flood map change in January of 2021, this lot as well as the others are still in a flood zone. It is in flood zone X. That is a lower risk area but it is still a flood zone and there is nothing in writing from the city staff or zoning administrator where it articulates the standard for determining what, what flood area you have to be in.

So, we believe that interpretation is arbitrary and capricious and the subject to the whims of the zoning administrator and can change at any time because it is not in writing, but going back to the language of the code and the documentation of story. Again, it is based on the area between the surface of any floor and the surface of the next floor above. So, you have to look to the definition of floor to determine what is a story. And floor is not defined in the zoning code; however, it is defined in the city's Stormwater Management Ordinance and this is what it says: Floor means "The top surface of an enclosed are in a building including basement, IE, top slab and concrete slab construction or top of wood flooring and wood frame construction." And this is the important part, "The term does not include the floor of a garage used solely for parking vehicles." So, under the city's code, that garage floor under this design is not a floor and therefore it cannot be a story.

The Stormwater Management Ordinance goes on to define the term lowest floor as an unfinished or flood resistant enclosure usable solely for parking vehicles building access or storage in an area other than a basement area is not considered a building's lowest floor. So, under the Stormwater management Ordinance that a garage is not a floor and therefore it can't be a story, and the zoning code needs to be construed part harmoniously and as a whole and when you construe those sections together it's pretty clear that the garages are not a floor and therefore not a story.

So again, we believe that the . . . Mr. Batchelder and his department' interpretation of story is incorrect under the plain language of the zoning code and for the reasons that we discussed earlier, it is also arbitrary and capricious because there's nothing in the zoning code that, that determines a story based on where it is in the flood map, but I would also add that interrupting story as we have proposed where a drive under garage is not considered a story, is consistent with the purposes of the zoning code and the comprehensive governmental planning enabling act. It says that one of the purposes of the zoning code is to protect property from flooding and other dangers.

Fear interpreting story to not include a drive under garage will be consistent with these purposes

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because it's gonna raise, it's gonna raise the house and protect the habitable area from flooding and the damage that naturally occurs, and I think the timing of our appeal is very on point because of what we experienced this past weekend, very severe flooding and what the city has done, and what we saw in the newspaper this week is just looking to changing zoning code to accommodate these recurring floods and another thing that it has done in the Dutch dialogue's process is looked at ways that we can mitigate the risk of flooding and climate change in rising sea walls and here we have a development that boarders the marshland of Old Town Creek.

So, there is a flooding risk and it just doesn't make sense for us as a city to spend all this money to look for ways to mitigate the risk of flooding and then have an interpretation that actually increases the risk of flooding. For those reasons we believe that our interpretation of story is right and the zoning administrators is incorrect and we would ask that you grant our appeal and I'll be happy to answer any questions that you have.

[01:09:54]
Michael Robinson: Any questions for Mr. Gaskins?

[01:09:57]
Allison Grass: And what is the overall height of these proposed structures?

[01:10:02]
Brandon Gaskins: That's a good question Mr. Grass. So, regardless of whether the stor-, whether it's considered a story or not, the height restriction is 35 feet subject to some exception when you are in a flood zone where it can be raised. I believe these are approximately 37 feet so just above that height but within the exception that is granted under the zoning code. So regardless of whether it's a story, it can exceed the height of the zoning code.

[01:10:32]
Allison Grass: Okay, thank you.

[01:10:34]
Michael Robinson: Any other questions?

[Crosstalk]

[01:10:38]
Geiza Vargas-Vargas: [Inaudible 01:10:38], Mr. Batchelder?

[01:10:41]
Lee Batchelder: I . . . pardon?

[01:10:43]
Geiza Vargas-Vargas: I have a question for you, if I may. Is your recommendation to deny the application a procedural, based on a procedural issue or is it based on the result of permitting them to build? So, is it that the request should have been or a variance?

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[01:11:11]
Lee Batcheldert: Well I disagree with the position that the applicant is taking on this appeal and there are several things that Mr. Gaskins said that I disagree with. Number one, the definition for a floor is not in the zoning ordinance. So, there's no definition and we've again, always interpreted that story definition in a term floor in that to be the floor of a conditioned space. So, you get one and a half or actually no, I take that back cause that would nullify my position, but I feel like they're arguing with an interpretation that's very reasonable. It's been reasonable and been applied consistently for 40 years and I've already said that I do support the variance for this particular development because of the situation that they have. So, I feel like the appeal is unnecessary, yes.

[01:12:30]
Brandon Gaskins: Can I . . .

[01:12:30]
Geiza Vargas-Vargas: Okay.

[01:12:31]
Brandon Gaskins: Can I respond briefly to that if y'all don't mind? So, two things. I don't believe that the city has consistently interpreted the term story in this manner and if you look at our letter in support with the exhibits, it shows that the interpretation has not been consistent, and I think that further demonstrates why the city's interpretation is so concerning because it is not based in the text and therefore they can adopt it inconsistent interpretations.

I would also argue against the presidential value and the harm that can come from this because the city in fact does have, at least to my knowledge, two specific ordinances, the Cainhoy Planned Development Ordinance and the Dan Hoy Island Planned Development Ordinance that especially excludes drive under garages front he definition of story. So, if it's not a story in Cainhoy and if it's not a story in Dan Hoy Island and if it's not a story in the back side of this development, how is it a story in the font of the development? So, for those reasons we believe that the city's interpretation is in error.

[01:13:52]
Tim Domin: Mr. Gaskins, Tim Domin on behalf of the Board as the Board's attorney. I'm struggling with the legal advice that I might have to give to the Board. I wanted to address Mr. Batchelder's concern that if his interpretation is overruled then you would have this area that your client might not build out as finished space but that the homeowners could later come back in and make into conditioned space. And in an X zone that is not going to be in violation of the Stormwater and flood restrictions as far as I know and I wanted you to try and help me understand why that's not a major problem.

[01:14:43]
Brandon Gaskins: I don't believe it is a major problem, If it is, I think the city council can address it through ordinance to prohibit those types of conversions and again, looking at Dan Hoy Island, looking at Cainhoy if it's not a problem in Cainhoy and Dan Hoy Island, it shouldn't be a problem in West Ashley. So, I think that's a red herring argument. There's no epidemic of

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people converting garages to homes and that causing detriment to the community. There's just nothing in the record that suggests that that's a realistic and realistic concern.

[01:15:21]
Howell Morrison: So, I have one question. I'm still unclear although Ms. Grass asked about this. This particular application, how tall is this proposed home?

[01:15:37]
Brandon Gaskins: I could be, I wanna say it's 37 and ½ feet which is within the height restrictions under the zoning code. There . . .

[Crosstalk]

[01:15:46]
Howell Morrison: The height restrictions not . . .

[01:15:47]
Brandon Gaskins: . . . under restrictions it was 35 but there is an exception to go a little bit higher if you're in a flood zone and we complied with that requirement.

[01:15:57]
Howell Morrison: And so the proposed home is 2 and 1/2 stories . . . well two floors and ½ above the garage?

[01:16:08]
Brandon Gaskins: That is correct.

[01:16:11]
Howell Morrison: And what would prevent, under your interpretation Mr. Gaskin, this home from reaching 38 or 40 feet?

[01:16:22]
Brandon Gaskins: The limitations of the zoning code and the SR1 zoning code.

[01:16:29]
Howell Morrison: And so this limitation is not 35 strictly 35 as I thought we talked, Mr. Batchelder's started with?

[01:16:40]
Brandon Gaskins: It is, I think, the default or the general limitation is 35 but there re . . . there is an exception that allows you to go slightly above that depending on where you are in the flood zone and Mr. Batchelder can provide more clarity on that, but it still would be subject to the restrictions in the zoning code if you adopt . . . if you say . . . if you adopt our interpretation and say that the first floor is not a story. That does not mean that the developer can come in and build a 2 and ½ story building on top of that garage that's 45 of 50 feet.

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[01:17:21]
Howell Morrison: So, Mr. Batchelder going to back to one of your concerns, the 35 foot height limit. If a person were to knock down one of these existing single story units in the middle of one of those streets such as the photograph you showed us and not in a flood zone, wanted to build a 35 foot home 2 and ½ stories that doesn't include a downstairs garage, say he just wanted tall ceilings, would that be a home that needs any special exception of variance?

[01:18:11]
Lee Batchelder: No, it would not.

[01:18:14]
Howell Morrison: Okay.

[01:18:21]
Michael Robinson: This is a very complicated matter and we certainly don't wanna be setting a president in. It might be in our best interest to maybe go into executive session just to ask all the questions that we might have before we make a decision on this case.

[01:18:44]
Howell Morrison: I second that.

[01:18:46]
Michael Robinson: Well, I can't make a motion.

[01:18:49]
Howell Morrisont: I move for executive session.

[01:18:50]
Geiza Vargas-Vargas: I second. I'll second.

[01:18:54]
Michael Robinsont: Second move and second. All in favor, say goodbye by saying aye. Mr. Morrison?

[01:18:58]
Howell Morrison: Aye.

[01:18:59]
Michael Robinson: Mr. Jaudon?

[01:19:01]
Waletr Jaudon: Aye.

[01:19:04]
Michael Robinson: Ms. Richards.

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[01:19:05]
Robben Richards: Aye.

[01:19:06]
Michael Robinson: Ms. Vargas-Vargas.

[01:19:07]
Geiza Vargas-Vargas: Aye.

[01:19:09]
Michael Robinson: Mr. Bennett.

[01:19:11]
John Bennett: Aye.

[01:19:12]
Michael Robinson: Mr. Robinson's votes aye. The motion is unanimously approved. We're going to executive session for discussion and no decision will be made.

[01:19:21]
Lee Batchelder: So I . . . and I think procedurally, I think we have a new Zoom link that aloof you were sent, all of the board members were sent. So, it should be in your inbox, email account in your [inaudible 01:19:40] and I think three . . . I'm not sure how we deal with the . . .

[01:19:47]
Tim Domin: It prompts you to leave and join once you click on the link. So, you gotta punch leave and join which I'm getting ready to do.

[01:20:01]
Geiza Vargas-Vargas: So, we leave this webinar?

[01:20:04]
Lee Batchelder: Where is the leave and join? I'm sorry.

[01:20:06]
Geiza Vargas-Vargas: I don't see a leave and . . .

[01:20:08]
Lee Batcheldert: I'm not very well versed on this part of things. [Inaudible 01:20:16]. Okay. [Inaudible 01:20:25]. Let me see.

[01:20:36]
Geiza Vargas-Varga: Oh, I figured it out. So if you click on the link in Mr. Valentine's email, you'\ll see the leave and join.

[01:20:45]

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Robben Richards: Yeah, oh yeah.

[01:20:46]
Howell Morrison: Okay, I got it.

[01:20:47]
Robben Richards: Okay, thank you.

[01:20:50]
Allison Grass: Are we out of the other meeting now?

[01:20:53]
Lee Batchelder: No, I'm . . . you're not. As far as I know we're not. So, I think . . . let me see here. So, I should just click on the link to open up the new . . . okay, [inaudible 01:21:35] on the post from the other file of the other link. So, do I switch? I'll start new meeting, leave and start.

[01:24:19]
Tim Domin: I'm having an issue getting into the executive session.

[01:24:22]
Walter Jaudon: I'm trying too.

[01:24:28]
Tim Domin: Is everybody else getting an error message that the host has another meeting?

[01:24:34]
Scott Valentine: Yeah, I think it's the format that we host these Vijay meetings in. It's not . . . it allows you to host two meetings at the same time, but we're hosting a webinar for the Vijay meeting. So, it won't let us host a meeting outside of the webinar. That's the iss- . . .

[01:24:56]
Howell Morrison: So, can we hold an executive session by using the same connection here but by turning it off . . . the other participants?

[01:25:15]
Waletr Jaudon: That makes sense.

[01:25:19]
Tim Domin: We can set up an entirely separate Zoom conference call or audio call.

[01:25:29]
Howell Morrison: Yeah I mean I guess we could, we could also just do a conference call. We need to get, we need to get Lee back from where we were. So, John I see you up here. Did you, did you have the same screens?

[01:25:51]

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John Bennett: I did. Yep, same issue.

[01:25:54]
Geiza Vargas-Vargas: And he had the same also.

[01:26:01]
Howell Morrison: Who is this? Oh heck. Well, I . . . you know, we can't get an executive session. We're having trouble. Okay, thank you. We'll figure this thing out.

[01:26:15]
Robben Richards: What happened?

[01:26:16]
Howell Morrison: Okay, bye. So that was Edward Prichard telling me on the telephone that he was somehow in our executive session, which we can't get into.

[01:26:30]
Robben Richards: Oh, okay. So nobody's in there?

[01:26:34]
Howell Morrison: Well there are others he said in there who are not . . .

[01:26:36]
Robben Richards: That are not us.

[01:26:38]
Howell Morrison: Not us, right.

[01:26:39]
Tim Domin: Unless, does he think this is the executive session?

[01:26:45]
Howell Morrison: I don't know. He could. He's calling me again. Hey, Edward. Okay, so he's . . . yeah, can you . . . you can hear me on your speaker now talking to you on this phone. Okay, okay thank you. All right, bye. Yes, so we're not in executive session just for the others who can hear us. We are back to the main meeting now. We don't have Mr. Robinson back yet. Who else are we missing? Have we got Ally Grass?

[01:27:28]
Robben Richards: I can text her.

[01:27:29]
Howell Morrison: Okay and we don't have Lee. There's Michael. Okay, but he's abandoned his post. I don't see him. Okay, that was a nice experiment.

[01:28:18]

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Geiza Vargas-Vargas: I tried calling Penny to tell her we were back over here but she didn't answer.

[01:28:25]
Howell Morrison: Okay. Tim may be able . . . Domin may be able to send us all of the conference [inaudible 01:28:35].

[01:28:37]
Tim Domin: Yeah, that's what I'm trying to find though. I usually make somebody in my office set that up. So, let me see what I can do to find that, how I can get that conference call number.

[01:29:03]
Howell Morrison: Tim?

[01:29:04]
Tim Domin: Yeah?

[01:29:05]
Howell Morrison: I can actually do this. Once we get everybody on here to listen. I can give everyone a dial in number without having to email 'em and a pass code.

[01:29:18]
Tim Domin: Well, you don't wanna do that in this . . . this is a public meeting now.

[01:29:22]
Howell Morrison: Yeah, that's true.

[01:29:23]
Tim Domin: You could email it to everybody and then we'll be able to go into that.

[01:29:29]
Howell Morrison: All right, I'm gonna try to do that right now. Bennett, [inaudible 01:29:34] Ash, Lee, Mike, Walter. Walter this is your email abstract 193?

[01:29:51]
Walter Jaudon: Yes, it is.

[01:29:53]
Howell Morrison: Okay. I am gonna, I'm gonna send everybody an email with a dial in.

[01:30:00]
Tim Domin: So, it's important that everybody go to mute on this and not be on your phone while you are . . . have an open line to the meeting otherwise.

[01:30:10]
Howell Morrison: Yes. Yes, exactly. All right, I'm sending this now and I'm gonna mute

myself and I'm gonna host . . . I'm now identified as Pennye Ashby.

[01:31:13]
Robben Richards: Howell, did you get my email in there too?

[01:31:29]
Tim Domin: Okay, I received Mr. Morrison's email. I'm going to get on that line.

[01:31:34]
F Speaker: I'm not sure that he, he didn't say my name.

[01:31:37]
M Speaker: Yours is not on here, I'll get it. Standby a second please, Robben.

[01:31:41]
Robben: Okay.

[01:31:45]
M Speaker: Because I'm in the middle of . . .

[01:31:52]
Robot F Voice: Now, enter the matter number, follow . . . please wait for the tone. Then state your name and press the pound or hash key.

[01:32:02]
Howell: Howell.

[01:32:04]
Robot F Voice: When you hear this tone, you will be the first person to join the meeting.

[01:32:08]
Howell: Robben?

[01:32:12]
F Speaker: I thought I was joined?

[01:32:13]
Howell: What is your email Robben?

[01:32:16]
Robben: It's R-O-B-B-E-N Richards at Comcast dot net.

[1:32:38]
Howell: One second please. All right, it's gone to you.

[01:32:44]

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Robben: Okay.

[01:32:45]
Howell: And I am remute. Michael, you need to be muted maybe with Pennye's help. Okay.

[01:33:13]
Michael: I have the meeting . . .

[01:33:13]
Howell: Yes, thank you and everybody's muted. Walter, are you muted?

[01:33:19]
Walter: No, I just unmuted myself. I had the meeting ID number, but what telephone number do I use?

[01:33:26]
Howell: It's on the email, it's 888, it's at the front of the email. Oh. The email I sent you, Walter, can you hear me? It doesn't work. Press alt eight to unmute. Hold on Walter. Alt plus eight.

[01:34:08]
Walter: I see it.

[01:34:11]
Robben: So, do we do this on Zoom?

[01:34:26]
Howell: Oh, Robben, you should have received in your inbox the . . .

[01:34:30]
Robben: I have it, but what do I do with all those numbers, I just click on my phone? Or on the . . .

[01:34:35]
Howell: Yeah, you call the number and then you put in the passcode. Okay. Yes. Oh no, not on the Zoom.

[01:35:27]
Robben: Robben Richards. Yeah. [Silence/background noise 01:35:41 - 02:02:24]

[02:02:25]
M Speaker: Are we back in the meeting yet Lee?

[02:02:29]
Howell: Yeah, Lee's muted. Mr. Jaudon's not back yet. There he is.

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[02:02:54]
M Speaker: Is that everyone?

[02:02:56]
Howell: Pennye, we need Pennye.

[02:03:05]
M Speaker 1: There's Pennye.

[02:03:06]
Howell: There she is.

[02:03:10]
Michael Robinson: All right, we're out of Executive Session. And we received legal advice, no decisions were made, we just received legal advice on this issue. We're on item number two, 1012 Avenue Oakes. Is any member of the board have any other questions for the appellant or for Mr. Batchelder? Were there any motions?

[02:03:52]
Howell: So, Mr. Chairman, can I . . . can we move to defer and go to number three, until we've heard number three on our agenda?

[02:04:04]
Michael Robinson: Is that your motion?

[02:04:07]
Howell: It, I'd like to make a motion if it's proper, yes.

[002:04:11]
Michael Robinson: Is there a second to that motion?

[02:04:13]
Robben Richards: I second.

[02:04:17]
Michael Robinson: All in favor please provide by saying aye. Mr. Morrison?

[02:04:20]
Howell Morrison: Aye.

[02:04:22]
Michael Robinson: Mr. Jaudon?

[02:04:23]
Walter Jaudon: Aye.

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[02:04:24]
Michael Robinson: Ms. Grass?

[02:04:25]
Allison Grass: Aye.

[02:04:26]
Michael Robinson: Ms. Richards?

[02:04:28]
Robben Richards: Aye.

[02:04:29]
Michael Robinson: Ms. Vargas-Vargas?

[02:04:31]
Geiza Vargas-Vargas: Aye.

[02:04:33]
Michael Robinson: Mr. Bennet?

[02:04:34]
John Bennett: Aye.

[02:04:35]
Michael Robinson: Mr. Robinson votes aye. The motion is unanimously approved. Item number three is Avenue of Oaks, Mayville, Asheville, lots one through seven, 16, and 42. Request variance from section 50-301 to allow construction of should be story, single family residences on lots one through seven, 16, and 42, that exceed 35 feet in height, limit is two and half stories, 35 feet, zoned SR1, Mr. Backelder?

[02:05:12]
Lee Batchelder: Thank you, and I'll just point out that the where it says 25 feet on the screen right now, that's a typo, it should say to exceed 35 feet in height. So, this is a variance request to allow Crescent Home to develop this neighborhood that the Avenue of Oaks who construct these taller homes on the lots shown on this map. I think that's nine lots total. And, again, just going back over this, so, this neighborhood was started and when it was started the flood maps had all of this neighborhood in a flood zone. And other homes in this neighborhood were constructed, not all of the homes, but other homes were constructed that exceed the two and half story limit. And actually have the drive-in garage, and exceed the 35 foot limit by two and half feet.

This is a list of the specific lots that are listed in your agenda. And these are the lots where they are requisition variance. And this is the zoning map, just showing that all of these lots are within the SR1 zoning district. This is the old flood map, I've highlighted the lots in question. And the AE13 zone would have applied to this area prior to the change in flood maps. The new flood maps have this brown area, which is an X zone, does not require any flood elevation for lots

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within that X zone. The blue zone is a flood zone, those require some elevation, but not as much as the old flood zone. So, they submitted their application. and the paperwork.

This drawing right here does a good job of illustrating that they've, what they've constructed so far. So, the pick lots, the lot numbers that are highlighted in that pink color, those have been completed, those homes have been completed or under construction, I guess, potentially, and those are drive-under homes. So those are the taller homes. The yellow homes are not drive-under homes, those are, I guess, two story homes on a raised foundation. And then the blue highlighting indicates the lots where they're requesting a variance.

So I, as I sat in the previous matter, I support the variance to allow this neighborhood to go ahead and have those drive under homes constructed, potentially a three story, three and half story home constructed on these lots and with that total height to exceed the 35 foot limit by two and a half feet. That will allow them to complete the build out of this particular neighborhood, which was started under the old flood maps and under the new flood maps is impacted with the restriction that we've been talking about. And this would be consistent with what the position that I took on Laurel Oaks, back in early May, when that matter came before the board. And the board approved that variance request. So I recommend approval of this request.

[02:09:16]
Michael Robinson: Mr. Batchelder, I noticed on the application it talks about the building exceeding 35 feet in height, but it has no parameters. And in this incidence it might be exceeded, is there anything, more information on the application that gives us a little more guidance on that?

[02:09:38]
Lee Batchelder: Well, the elevation that they did provide shows a 37 and half foot height limit and I think they also indicated that somewhere else. On this drawing right here, which shows the 37, 37 and half food max height for these homes. So that's the extent of the request to increase the overall height about 35 feet.

[02:10:13]
Michael Robinson: Any questions for Mr. Batchelder?

[02:10:15]
Robben Richards: So, it would include not to exceed 37.5 feet?

[02:10:22]
Lee Batchelder: Correct.

[02:10:22]
Robben Richards: Would be part of this approval.

[02:10:26]
Lee Batchelder: Correct.

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[02:10:28]
Michael Robinson: Ms. Ashby is there opposition to this request?

[02:10:33]
Pennye Ashby: No, Mr. Robinson, I'm not aware of any opposition, no one has signed up to speak against it.

[02:10:41]
Michael Robinson: Are there any motions from the board?

[02:10:47]
John Bennett: I move for approval with the conditions that the limit be set at 35 and half feet, and that the ground floor cannot be converted into condition, finished space.

[02:10:58]
Michael Robinson: You mean 37 and half feet, John?

[02:11:02]
John Bennett: I'm sorry?

[02:11:03]
Michael Robinson: 37 and half feet, not 35 and half.

[02:11:06]
John Bennett: Correct, 37 and half feet, thank you.

[02:11:09]
Michael Robinson: Is there a second?

[02:11:14]
M Speaker 1: I'll second.

[02:11:16]
Michael Robinson: All those in favor, signal by saying aye. Mr. Morrison?

[02:11:19]
Howell Morrison: Aye.

[02:11:20]
Michael Robinson: Mr. Jaudon?

[02:11:22]
Walter Jaudon: Aye.

[02:11:23]
Michael Robinson: Ms. Grass?

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[02:11:25]
Allison Grass: Aye.

[02:11:26]
Michael Robinson: Ms. Richards?

[02:11:27]
Robben Richards: Aye.

[02:11:28]
Michael Robinson: Ms. Vargas-Vargas?

[02:11:29]
Geiza Vargas-Vargas: Aye.

[02:11:31]
Michael Robinson: Mr. Bennett?

[02:11:32]
John Bennett: Aye.

[02:11:33]
Michael Robinson: Robinson votes aye. The motion is unanimously approved. And I believe Mr. Morrison, your motion, prior motion was to defer the hearing of item number two until we heard item number three, is that correct?

[02:11:51]
Howell Morrison: Yes or so, item number two has been granted, that variance has been granted by number three, as I understand it. And I'm not sure we need to consider two in as much as the homes been, the plan has been permitted by variance, I mean by, yes by variance in number three.

[02:12:25]
Michael Robinson: Is there any discussion on that?

[02:12:29]
M Speaker 1: Mr. Chairman, may I be heard on that point?

[02:12:32]
Michael Robinson: No sir, we closed the public hearing portion on that item already. Is there any discussion from the board, please?

[02:12:44]
Walter Jaudon: Yes, I have something, a question, so in other words, what you're saying is that because we voted yes for number three, then number two will be permitted? Is that what I'm

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hearing?

[02:13:00]
Howell Morrison: It was one of the lots encompassed in number three.

[02:13:07]
Walter Jaudon: Okay.

[02:13:08]
Michael Robinson: What was it, what was the intent of the scope of your comment Mr. Morrison?

[02:13:16]
Howell Morrison: Well, it seems to me we don't, the board does not need to decide number two if the plan for 37 and half feet is approved for number three. For that lot 1012 Avenue of Oaks, item number two. That issue becomes muted, does it not? For the purposes of our decision?

[02:13:57]
Walter Jaudon: Yes, but number two, isn't that, violates the federal flood zone, is that correct? Because the application was not submitted prior to the government rezoning of that area. I think the application was submitted in March.

[02:14:25]
Howell Morrison: Well, I'm a little bit lost. I thought it was not in a flood zone. But . . .

[02:14:34]
Lee Batchelder: Correct, the lot was in a flood zone until January, and then it was removed from the. It's still in an X zone flood zone, but it's not in a zone that requires the first floor be elevated. Let's put it that way. It no longer qualifies under the previous decisions that the staff made regarding the other lots where they didn't receive city approval for drive under homes. And those are the lots shown in pink, here. So, yeah, so there just, that number two is specific to one lot in this neighborhood, the variance that you just approved will allow them to construct the home that they applied for back in March.

[02:15:31]
Michael Robinson: Was that clarified for your Mr. Jaudon?

[02:15:35]
Walter Jaudon: Yes, somewhat.

[02:15:40]
Michael Robinson: Are there any other questions? Any motions?

[02:15:55]
Howell Morrison: Well, I guess procedurally, I'd move to defer number two, Mr. Chairman, on

the grounds that I think it's muted. If we can, if we get legal advice that we've got to decide that, we can revisit it at another meeting. But I don't see the necessity of deciding an issue that complicated if we don't have to.

[02:16:21]
Michael Robinson: Is there a second to that motion?

[02:16:23]
Walter Jaudon: Second.

[02:16:25]
Michael Robinson: All in favor, say goodbye by saying aye, Mr. Morrison?

[02:16:30]
Howell Morrison: Aye.

[END TRANSCRIPTION 02:16:28]

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[00:00:00]
Mr. Batchelder: Okay. I . . .

[00:00:02]
Ms. Ashby: Okay.

[00:00:02]
Mr. Batchelder: . . . I just started the recording.

[00:00:04]
Ms. Ashby: Good.

[00:00:07]
Mr. Batchelder: Okay.

[00:00:09]
Ms. Ashby: All right.

[00:00:29]
Mr. Batchelder: Okay, I think we're all set to begin. Penny, can you? I think our Chair needs to unmute.

[00:01:04]
Ms. Ashby: Okay.

[00:01:05]
Mr. Batchelder: Could you help on that? Oh.

[00:01:07]
Mr. Robinson: Looks like I did it.

[00:01:09]
Mr. Batchelder: Okay. You got it.

[00:01:10]
Ms. Ashby: Oh. Okay.

[00:01:11]
Mr. Batchelder: Very good.

[00:01:12]
Mr. Robinson: I'm getting better. I'm getting better. This is the August 3rd 2021 meeting of the City of Charleston Board of Zoning Appeals - Zoning. Present are Mr. Jaudon, Ms. Grass, Ms. Richards, Ms. Vargas-Vargas, Mr. Bennett and Mr. Robinson. Present from the Planning Staff are Miss Ashby and Mr. Batchelder. These proceedings are being recorded and we ask that those who speak identify themselves for the record.

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We'll conduct this meeting in the usual fashion. We'll first receive information from City staff to vent the application and the recommendation. If the recommendation is favorable and no one objects to the application, usually the Board of Zoning Appeals treats the matter as being uncontested and passes it as a matter of course. If, however, the City recommends against the application or there is opposition to the application, we treat the application as contested and hear from the applicant and anyone else who's in favor of the application. Next, we hear from anyone opposed followed by a short rebuttal from the applicant.

We've enclosed the public hearing portion for that particular application and open discussion to the Board of Zoning Appeals members only. We will then make a decision to approve, approve with conditions, or deny the application. The Board of Zoning Appeals - Zoning has the authority to do three things: First, to hear appeals to decisions of the Zoning Administrator. Second, grant special exceptions, the fact-finding function of the board, and third, grant variances to the zoning ordinance if the application meets the hardship test outlined in Section 54-924 of the ordinance.

The board may deliberate and make a final decision on a matter, find majority voter members present at the hearing and qualified to vote. Provided that not less than a quorum is present and qualified to vote. However, an affirmative vote of two thirds of the board members present and voting shall be required before a use variance may be granted. For a variance to be granted, the Board of Zoning Appeals must make the following findings: that there are extraordinary and exception conditions pertaining to the particular piece of property; b, these conditions do not generally apply to other property in the vicinity; c, because of these conditions, the application and the ordinance to the particular piece of proprietary would effectively prohibit or unreasonably restrict utilization of the property; and, d, the authorization for a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

I'd like to mention that our operating procedure is that we allow 10 minutes for the applicant to make their case, followed by 10 minutes from opposition. Then the applicant has 5 minutes to rebut the opposition. We'll follow this format in this meeting. We've had some run-on meetings over the past number of meetings and we found it would be better to follow the procedure as defined in the Ordinance.

There are three deferrals tonight. Item B1 on the agenda, 62 Church Street, is deferred, Item B5 657 to 663 King Street has been deferred, and Item B7, 42 Halsey Boulevard has been deferred. None of these will be heard at the meeting tonight.

First item on the agenda is to review the minutes and deferred applications from the July 20th, 2021 Board Meeting. Does anyone on the board have any corrections on the minutes as provided to them ahead of time? If not, Mr. Jaudon moves for approval. Seconded by Ms. Grass and all those in favor signify by saying, "Aye." Mr. Jaudon?

[00:06:07]
Mr. Jaudon: Aye.

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[00:06:09]
Mr. Robinson: Ms. Grass?

[00:06:10]
Ms. Grass: Aye.

[00:06:11]
Mr. Robinson: Ms. Richards?

[00:06:12]
Ms. Richards: Aye.

[00:06:13]
Mr. Robinson: Ms. Vargas-Vargas?

[00:06:15]
Ms. Vargas-Varas: Aye.

[00:06:16]
Mr. Robinson: Mr. Bennett?

[00:06:18]
Mr. Robinson: Mr. Robinson votes aye. The motion is unanimously approved. Second item on the agenda, 1012 Avenue of Oaks (Maryville/Ashleyville), request an appeal of the Zoning Administrator's decision to deny building permit on grounds that proposed home exceeds the 2 ½ story height restriction for the SR1 (Single-Family Residential) zone district under Section 54-301, because the home's designed drive under garage constitutes a 3rd story under Section 54-120 Zone SR-1. Mr. Batchelder?

[00:07:02]
Mr. Batchelder: So this is an appeal that was on the agenda back in June and at that meeting, we had this appeal on the agenda and then we had a variance request to allow the 3-story homes that this builder would like to build in this neighborhood on nine of those lots. The board initially deferred the appeal, pending the outcome of that variance request. Once that variance request was heard and approved for those nine lots, the matter was brought back up and the board member, Mr. Morrison, who made the motion to defer, he spoke about denying it, but then he came back around, and just said, "Let's defer it." If an attorney tells us we need to rehear it or hear it, then we will and that's the motion that was approved by the board.

In this case, the attorney who had filed this appeal would like the board to hear this matter and make a decision and so I will make my presentation. Kim Donan, the attorney who represents the Board is present and can speak to the Board if members have any interest in going into an executive session, we'll be happy to address you in that session. Otherwise, I'll go ahead and make my presentation and let the applicant go ahead and make his.

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Then we also have some interest I think from residents in that area who might wanna speak as well. Just to refresh your memory, this was an appeal that was filed for a particular lot, within this development, which was known as the Avenue of the Oaks in the Maryville/Ashleyville neighborhood in West Ashley. This map shows the lot that this appeal was filed for and here's a zoning map just showing that neighborhood and the particular lot where the appeal was filed right here.

Just to refresh your memory, there had been a number of lots, I think 13 lots within this neighborhood, where these 3-story drive-under homes or 2 ½ story or 2-story homes with drive-under spaces had been permitted by the City because those lots were in a flood zone under the maps that were in effect until January of this year and so we had approved those homes because the properties within a flood zone require the first floor to be elevated and in that situation we have allowed the elevated space to be approved and not count that as a story for that 2 ½ story limitation.

In January, the flood maps changed and this particular map or particular lot, along with other lots, was no longer in a flood zone. It was an X zone, not an AE, Elevation 11 Zone that required an elevated first floor, and so the opportunity to do the drive-under homes that they had been planning for this lot and a few other lots went away. That's why they filed the appeal, I guess, and why they filed the variance request.

On the City's interpretation and Application of Ordinance, the City Zoning Ordinance defines a story and here is that definition that's included in the Zoning Ordinance. The SR1 Zoning category that applies to this neighborhood and many, many neighborhoods throughout the City has a 35-food, 2 ½ story height limitation which I've highlighted there in that chart. The same height limitation applies to other residential zoning districts that apply to large areas of the City of Charleston as well.

Of course, we know that we have flood zones in this area. These are zones that are identified by the federal government, through FEMA, and for a City to participate in the flood insurance program, we've got to adopt these federal rules that dictate what can happen within these flood zones and those rules that you've got to elevate the first floor of a residential structure above the base flood elevation. In the City's case, we've actually added to feet freeboard to that base flood elevation, so that pushes the floor, first floor of the house even higher above the grade in many cases and leaves a space under that first floor, which can be used as a garage/storage area, that sort of thing.

This is one example of a home on James Island in a flood zone. Here's another example of a home on the peninsula in a flood zone and you see that the ground floor has louvers and garage door openings and really is nothing but storage, unconditioned storage space, in this case a garage. Probably other things are kept under there as well.

We haven't counted that space that is created with the elevation of that first floor in a flood zone as a story towards that 2 ½ story height limitation and we think that that's been a correct application of that restriction and a very reasonable one, given the effect that flood zones have had on construction in the City of Charleston, since they were first adopted, I think, in the '70s.

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So in this case the applicant is building these kinds of homes in the neighborhood and, again, when they were in a flood zone, we would permit this 2, 2 ½ story home in that flood zone and not count that space under the first floor as a story.

They would like the board to decide that that's the incorrect interpretation and allow these types of homes everywhere, regardless of whether the property is in the flood zone, where the first floor is required to be elevated, and that would be essentially changing the legislation or changing the ordinance City-wide, so this would have a precedent across the City affect many, many neighborhoods throughout the City, existing neighborhoods as well as new neighborhoods. We've got for certain many existing neighborhoods that have a 2 ½ story limitation and that is the character of homes in that neighborhood, not to have dry, limber spaces.

Agreeing and approving this appeal would change that interpretation and suddenly allow these kinds of homes everywhere in these neighborhoods regardless of whether there was any flood zone elevation impact or not. We think that that is incorrect. The appellant wants the board to do City Council's job and that is not the job of this board. City Council, if they see fit, should amend the Zoning Ordinance with their legislative authority. Furthermore, we think our interpretation of the 2 ½ story height limit within these areas is the correct one and our application is correct, so for those reasons, we think this appeal should be denied.

[00:17:30]

Mr. Robinson: The City recommends denial. Is the applicant present?

[00:17:37]
Ms. Ashby: May I say something, please, real quick? I apologize. The attorney, City attorney, has asked to join the panel a couple of times.

[00:17:26]
Mr. Batchelder: And I'm going to . . .

[00:17:47]
Ms. Ashby: All right, thank you.

[00:17:47]
Mr. Batchelder: . . . promote [inaudible 00:17:47] if I do see him. Yes.

[00:18:08]
Mr. Domin: Thank you very much. This is Tim Domin and I've been asked to represent the board. If you choose to go into executive session as it relates to this item, you can receive legal advice in executive session. Ultimately, your decision is to whether you go into executive session or not.

[00:18:29]
Mr. Robinson: Thank you, Mr. Domin. Is the applicant present?

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[00:18:35]
Mr. Batchelder: Yes, Mr. Gaskins is present and I'm going to promote him to become a panelist. Okay, Mr. Gaskins, are you there? Okay.

[00:19:00]
Mr. Gaskins: I am here. Can y'all hear me?

[00:19:03]
Mr. Robinson: Yes, Mr. Batchelder, would you please swear Mr. Gaskins in?

[00:19:10]
Mr. Batchelder: Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

[00:19:14]
Mr. Gaskins: I do.

[00:19:17]
Mr. Robinson: Yes, sir, Mr. Gaskins.

[00:19:17]
Mr. Batchelder: And just so you know, Brandon, I included your two-page letter, following this application, so it's in the documents, if you'd like to [inaudible 00:19:30].

[00:19:30]
Mr. Gaskins: Thank you, Mr. Batchelder. Members of the Board, my name is Brandon Gaskins of the Moore & Van Allen law firm, here in Charleston. I represent the appellant, Crescent Homes, SC, LLC, and before I get to the merits of our appeal, I do want to address the issue of whether the appeal was mooted by the board's adoption or granting of the variances for the other nine lots. As Mr. Batchelder just referred to, I sent him some correspondence today addressing that issue and I'll briefly go over it in case y'all haven't had a chance to review it.

Basically, there are three exceptions to the Mootness Doctrine. The first is if the issue raised is capable of repetition, but generally will evade review. Secondly, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct and, finally, if a decision may affect future events or have collateral consequences for the party that the decision does not moot it even if the court or the tribunal cannot give effective relief.

In this case, we believe all three exceptions apply. First, the issue is capable of repetition and is likely to evade review and I think your agenda here today is a prime example of that. Later in the agenda, you'll be hearing two more variance requests to allow these additional stories for two other lots in the same neighborhood. As long as we are pushed into having to go the variance route, the issue of whether the staff's interpretation of "story" is correct is going to evade review.

Not only is capable of repetition within this neighborhood, it's capable of repetition in other developments. The applicant or the appellant has plans to use this drive under garage design and

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in multiple other developments, so the issue is going to reappear and we need to get a final answer on this issue.

Secondly, we do believe this is a matter of imperative and manifest urgency. Many of y'all likely saw the article last week that appeared in the New York Times specifically dealing with the City's efforts to protect homes in the Peninsula and the downtown area for flooding by raising them. The City has embraced elevation and the overall message that the City and the Mayor. I think what we're attempting to send is that we need to be proactive in addressing these matters. We cannot predict climate change. We cannot protect sea rise and a flood zone today may not be a flood zone tomorrow or an area that is not a flood zone today may be a flood zone tomorrow.

So we have to be proactive in dealing with these issues. We think it's time that this issue be dealt, head-on, and we get a resolution one way or the other. Third, this decision will have collateral consequences for the parties as well as other builders. As I stated earlier, the developer intended to use this design in other neighborhoods. This is popular product or design that consumers want because they can't predict the future. They want some assurances that they are not going to be affected by flooding and so even if the appeal as it relates to 1012 Avenue of Oaks may have been mooted by the granting of the variance, this is an issue that is not going away and, for those reasons, it falls outside of the Mootness Doctrine.

Now turning to the merits of the appeal and just to be clear, we are not asking you to do City Council's job as Mr. Batchelder stated. What we are asking you to do is to correct the mistaken interpretation of the City's planning staff and this all comes down to the definition of story and how that is interpreted. Mr. Batchelder put up the definition of story earlier and basically what it comes down to is whether the garage in this drive under garage design is considered a floor.

The City's Zoning Code does not define floor but its Stormwater Management Ordinance does and it is clear, under that definition that the floor of a garage is not a floor and therefore it can't be a story. Specifically, City Ordinance Section 27-103 defines floor to mean, quote, "the term does not include the floor of a garage used solely for parking vehicles." It goes on to define the term 'lowest floor" and it says, "An unfinished or flood resistant enclosure useable solely for parking vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable, non-elevated design requirements of this article."

That's exactly what we have here. We have an unfinished, unconditioned area that is used exclusively for parking vehicles and for storage with wood louvers that allows water to flow through it. Not only is that definition of story, which excludes a drive under garage, consistent with the Stormwater Management Ordinance, the City's interpretation is not supported with any text. As you heard Mr. Batchelder explain, the definition of story changes in their view based on whether the property in question is in a flood zone or not. If you go back to that definition of story, there is nothing in there that mentions a flood zone. By virtue of that, their interpretation is completely arbitrary and subject to change at the whims of the planning staff and that is clearly arbitrary and not supported by the text of the ordinance.

Last, we would say that the City's interpretation is not consistent with the purposes of the Zoning

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Code, in general. One of the purposes of a Zoning Code is to protect property and people from flooding and this interpretation certainly does not do that. In the Avenue of Oaks subdivision it borders a marshland. Some of the property or all of the property is in a flood zone. This is in a flood zone. It is in Flood Zone X. Now, for whatever reason, the City's Planning Staff does not count that as being in a flood zone for its interpretation.

Clearly, we are in a flood zone. We are in an unstable, unpredictable environment, where we have climate change, rising seas, and we just can't predict the future, so we need to be proactive and start taking measures that protect property and people from flooding. For those reasons, we'd ask that you would grant the appeal and I'm happy to answer any questions that you may have.

[00:27:07]
Mr. Robinson: Any questions for Mr. Gaskins?

[00:27:10]
Mr. Bennett: Mr. Gaskins, my name is John Bennett, and I have a few questions for you. I wonder if you could clarify for me are you familiar with the South Carolina Residential Building Code?

[00:27:24]
Mr. Gaskins: Very generally, not in any detail, Mr. Bennett.

[00:27:28]
Mr. Bennett: Okay. It is the statewide legislatively-adopted building code governing one and two-family dwellings in the State of South Carolina. It's based on . . . and I apologize. My screen has just completely cut out on me. Oops. Thank you. I'm sorry. It is based on the model building code, which is published by the International Code Council, which is broadly adopted throughout the US. South Carolina adopts it and then they make a few state modifications at the state level. The reason I bring this up is because I think it's important to consider what the Building Code requires in states and says in its own definitions, which is also I think relevant to this project.

Mr. Batchelder, would you mind flipping back to the definition of story?

[00:28:19]
Mr. Batchelder: Sure.

[00:28:20]
Mr. Bennett: One of the earlier slides in your presentation. Thank you, so I'm gonna read, if you may, Chapter 3 from the State Residential Building Code. South Carolina Residential Building Code says that the definition of a story is "that portion of a building including between upper surface of a floor and the upper surface of a floor or roof next above" and that language is very, very similar, almost identical to what the Zoning Ordinance has.

I think that's relevant because the surface of the floor is really where this is going. I think the question that you have posed is about interpreting that ground floor and at what point that ground floor is considered a floor or not a floor. You referenced the Stormwater Management

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Ordinance, which has language specifically excluding that ground-level floor. I suspect that where that language arises is actually from the South Carolina Residential Building Code, which has a section, Chapter 3, on Flood-Resistant Construction, which for projects that are in these zones, it excludes that lowest level as a slab on ground specifically exempting this floor for the purposes of redefining the lowest floor.

I guess my point I'm getting at is that portion of the Stormwater Management Code and the lowest floor is reestablished for flood-resistant construction intentionally and I think that is the same approach the City has taken or appears to be when it comes to defining that lowest level for flood-resistant construction. I don't think that that issue, through the Building Code, has been brought forward, and I just wanted to point that out, that, from the Building Code standpoint, a story is a story. There's not a lot of ambiguity as to what constitutes a story, that lowest floor being exempted only in the case of flood-resistant construction, and if I can . . .

[00:31:00]
Mr. Robinson: [Inaudible 00:31:00] represent Mr. Gaskins?

[00:31:02]
Mr. Gaskins: Well, I'm not sure that I completely understand Mr. Bennett's point. I think the definitions in the Stormwater Ordinance, even if it's consistent with the Building Code, supports our position that the floor of the garage or the surface of the garage is not a floor and to the extent that the City is interpreting it consistently, I think it needs to be consistent. If a drive under garage is not considered a story in a flood zone, there's nothing in the Zoning Ordinance that allows it to be considered a story when it's not in a flood zone.

[00:31:53]
Mr. Bennett: Mr. Gaskins, if you'll bear with me, my follow-up question to this is it sounds like your intention is to comply with the flood-resistant construction so that you can use this exception. My question is will your client follow through the remainder of that chapter and use flood-resistant construction throughout that entire ground level?

[00:32:13]
Mr. Gaskins: Well, I don't know the answer to that but I do know that whenever they go through the building permit process, they have to submit plans that comply with the applicable building code and so to the extent that they don't comply with the applicable building code, they wouldn't be permitted. If it applies, yes. If not, I'm not sure I know the answer to that.

[00:32:37]
Mr. Bennett: I guess what I'm getting at is if their intention is to comply and take advantage of this exception then that would be one thing, but it seems to me, I guess, that their intention is to comply with the flood-resistant construction and I guess that would need to come through, from a permitting standpoint, would be addressed by the Permitting Office. Is that what you're stating?

[00:33:13]
Mr. Gaskins: Yes and just to be clear I don't think this is an exception to the definition of story.

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I think the way that we are interpreting is the correct way to interpret it and not being an exception. With that being said, whatever Building Code provisions apply will apply and they will have to comply with it.

[00:33:40]
Mr. Robinson: Any other questions? Mr. Bennett, did you have one?

[00:33:49]
Mr. Bennett: Only to the point that I'm not sure, I'm not convinced that the definition of floor is as ambiguous as you've stated in your argument. That is all.

[00:34:06]
Mr. Gaskins: Yeah, I agree. I don't think the definition of floor is ambiguous. I think the definition of story is ambiguous, which is why we look to the definition of floor, which seems pretty clear that the drive under garage is not considered a floor.

[00:34:20]
Mr. Bennett: In the case of flood-resistant construction, correct?

[00:34:27]
Mr. Gaskins: Well, under the definition in the Stormwater Management Ordinance.

[00:34:33]
Mr. Bennett: Is the project being permitted under the Stormwater Management Guidelines?

[00:34:39]
Mr. Gaskins: I don't know the answer to that.

[00:34:41]
Mr. Bennett: Okay.

[00:34:43]
Mr. Gaskins: Under the canons of statutory construction, when a term is ambiguous, you can look to other similar statutes to determine the meaning of that ambiguous term, which is why we're looking to the Stormwater Management Ordinance.

[00:35:03]
Mr. Robinson: Any other questions for Mr. Gaskins? Is there anyone else present who wishes to be heard on behalf of this application? If not, is there anyone who wishes to speak in opposition?

[00:35:21]
Mr. Ashby: Yes, Mr. Robinson, there are people that have signed up to speak in opposition. The first person would be Miss Marcia Higgins who is the president of Ashleyville/Maryville Neighborhood Association.

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[00:35:39]
Mr. Robinson: Let me say once again to the opposition, there is a 10-minute total time period on anything, any conversation from the opposition. Will the first person please present themselves?

[00:35:57]
Mr. Batchelder: I'm allowing Ms. Higgins to speak and when she comes on I could swear her in.

[00:36:06]
Ms. Higgins: I unmuted myself.

[00:36:09]
Mr. Batchelder: Okay. Let me swear you in.

[00:36:13]
Ms. Higgins: All right.

[00:36:14]
Mr. Batchelder: Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

[00:36:18]
Ms. Higgins: Yes, I do.

[00:36:20]
Mr. Batchelder: Okay. Please proceed.

[00:36:20]
Mr. Robinson: Thank you. Proceed. Please state your comments.

[00:36:24]
Ms. Higgins: Pardon me?

[00:36:26]
Mr. Robinson: Go ahead.

[00:36:29]
Ms. Higgins: My name is Marcia Higgins. I am the president of the Maryville/Ashleyville Neighborhood Association and I reside in the Ashleyville community near the Avenue of Oaks subdivision. It is requested that the appeal to the Zoning Administrators decision to deny a building permit to allow the construction of a three story single-family home at 1012 Avenue of Oaks is not approved and the decision is denied to this building permit. It is asked that a decision is upheld.

This request exceeds the 2 ½ stories or 35 feet zoning limitation that was approved when the

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plans and design of Avenue of Oaks was first approved by the appropriate boards and the City of Charleston. The construction of this subdivision by Crescent Homes is already too close to smaller homes on San Juan Avenue and some residents are already putting up their privacy fencing.

We ask that you please not further destroy the home setting for the persons who live on San Juana Avenue and please do not further destroy the historic character of the Maryville/Ashleyville community. Please stay with the initial plans that show some consideration for the smaller nearby homes and the historic Maryville/Ashleyville community. Thank you.

[00:38:35]
Mr. Robinson: Thank you very much. Is there anyone else present who wishes to speak in opposition?

[00:38:40]
Mr. Ashby: Yes, Mr. Robinson. Councilmember Carol Jackson.

[00:38:47]
Mr. Robinson: Ms. Jackson?

[00:38:52]
Ms. Jackson: Yes, thank you. I appreciate the opportunity to address the Board of Zoning Appeals.

[00:38:59]
Mr. Robinson: Ms. Jackson, excuse me one moment, please. Would you mind being sworn in?

[00:39:04]
Ms. Jackson: Oh, no, thank you.

[00:39:07]
Mr. Batchelder: All right, Councilmember Jackson, do you swear to tell the truth, the truth and nothing but the truth so help you God?

[00:39:14]
Ms. Jackson: Yes, I do.

[00:39:15]
Mr. Robinson: Yes, ma'am.

[00:39:15]
Mr. Batchelder: Thank you.

[00:39:16]
Mr. Robinson: Proceed.

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[00:39:18]
Ms. Jackson: Thank you. I appreciate this opportunity. I'm following along as an elected official as you might imagine, but also as a resident who has experience in building housing that's priced to an attainable income level and I think that the emphasis on this property and some of the other ones that are gonna be coming before you tonight are majoring on the definition of stories and the floor of an open garage, which we do all favor, in terms of planning for stormwater activities and crises that we know are coming our way.

What I don't understand is why we're not discussing the 35-foot height limit and agreeing that building under 35 feet or under is not a hardship to a builder. The first house that Mr. Batchelder showed you tonight as an example of a house that's elevated on James Island, happens to belong to me and my husband and it was never in danger of exceeding the 35-foot height limit. I think that if the builders would be considering the location of where they're building as a modestly-priced neighborhood, obviously we are revering Maryville/Ashleyville as an historic African-American settlement community. There's a lot of history being written and, as I said, celebrated.

If we stay with the 35-foot height limit, I think that these owners of those new properties can be building property that works out for everyone. I know that might be too much of an original argument for an appeal, but I do think that some of the topics that you are discussing during the appeal are applicable to the denial of the appeal, or that the staying with the original ruling of the zoning administrator to deny the building permit and I would also say that they will qualify for the rationale for the reasons that you should deny the two variance requests later in your agenda. Thank you very much.

[00:41:44]
Mr. Robinson: Thank you. Any questions for Ms. Jackson? Is anyone else present who wishes to speak in opposition?

[00:41:53]
Ms. Ashley: Yes, Mr. Robinson, Diane Hamilton who is a resident and on the board of the Ashleyville/Maryville Neighborhood Association.

[00:42:07]
Mr. Batchelder: And . . .

[00:42:10]
Ms. Hamilton: Hello?

[00:42:11]
Mr. Batchelder: Hello, Ms. Hamilton, let me swear you . . .

[00:42:13]
Ms. Hamilton: Yes, good evening.

[00:42:14]

Mr. Batchelder: Let me swear you in. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

[00:42:20]
Ms. Hamilton: I do.

[00:42:22]
Mr. Batchelder: Thank you.

[00:42:23]
Mr. Robinson: Please proceed.

[00:42:25]
Ms. Hamilton: Good evening. My name is Diane Hamilton, a lifelong resident of the Maryville/Ashleyville community and the immediate past president of the Maryville/Ashleyville Neighborhood Association. I am asking the BCA to support the City Zoning Administrator's decision to deny a building permit on the grounds that proposed home exceeds the 2 ½ story height restriction for the SR1 Zone District and the underground garage constitutes a 3rd story.

The argument that because the area is unfit disqualifies it from being classified as a story causes me to think how it is common practice that many property owners convert garages into living spaces. A property owner using this, quote, "loophole" could then get around the Zoning Ordinance.
In addition, I do not think that the error made by a former employee should be allowed to serve as a precedent. The surrounding neighborhood, a historic neighborhood, consists of mostly one-story homes and several two-story homes. Thank you this afternoon for listening to me.

[00:43:36]
Mr. Robinson: Thank you. Any questions for Ms. Hamilton? Anyone else wish to speak in opposition?

[00:43:44]
Ms. Ashley: No one else, Mr. Robinson.

[00:43:47]
Mr. Batchelder: Could I maybe just add a couple more things? I think where Mr. Bennett was going is that the definition and correct me if I'm wrong bu the definition that he was referring to speaks to the flood zone, which, again, sets forth a whole series of regulations for these ground floor spaces that prevents them from ever being converted into something that's not just simply storied and if they're not in a flood zone, these ground floor spaces, although they might be constructed as storage, could easily become condition space, expanded space for the house.

We know that that's what happens over time. People decide they wanna add more space to their homes and garages get converted into living space and, in this case, a full story would become conditioned space if they're not in a flood zone where we have rules that would prevent that. We would not have the ability to stop that from happening. We know that changes happen on homes

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without permits being issued and even if people come in for permits, the City Zoning Staff is not reviewing those kinds of permit requests. We review permit requests for additions, for new construction, that sort of thing. We don't necessarily review permit requests to alter interior spaces within homes, so those are just some additional points I would like to make.

[00:45:50]
Mr. Robinson: Thank you. Mr. Gaskins, you have five minutes for a rebuttal.

[00:45:57]
Mr. Gaskins: Thank you and I will try to address the different points that were made regarding Mr. Batchelder's last statement. I think this is definitely something that can be prevented, the conversion of garage space to condition space. If a drive under garage is converted, it has to have a building permit and when and through that process whoever's reviewing it can review it and say, "Okay, will this comply with the zoning?" If you are converting that unconditioned open space to a conditioned space, it then becomes a story, and, at that point, it would no longer comply with the zoning requirements and the height limitation. To the extent that it's not done doesn't mean it can't be done and if that is a legitimate concern, there are processes that can be put in place to prevent that.

Secondly, with respect to Ms. Jackson's comments on height, just to be clear, we are not requesting a variance from the height restrictions. Those restrictions are 35 feet; however, when you're in a flood zone, you can increase that by a little bit and that's all we're asking for a here, so and not that it would apply in all other developments, but with respect to Avenue of Oaks, we're asking for 37.5 feet, which is under the height limitations for the SR1 district because these properties are in a flood zone.

With respect to the members of the Maryville/Ashleyville community, I certainly respect their point of view and understand their concerns, but there's a fundamental flaw with their position. Those properties on San Juan Avenue, except for I believe four that are in the city, but probably 20 that are in the county, are in the R4 Zoning District in Charleston County. The height limitation is 35 feet. There is no limitation on stories. The design that they are opposed to is permissible by right for every single parcel on San Juan Avenue except for four.

If this product can be built on San Juan Avenue, it doesn't make much sense to me that it can't be built in an adjacent neighborhood, so we do not believe it is going to transform the district or be harmful to the neighboring properties. This is doing what is allowed in the R4 District. Thank you.

[00:48:48]
Mr. Robinson: Thank you very much. That closes the public hearing portion of the meeting. Are there any comments or discussion, motions for the Board?

[00:49:03]
Mr. Gaskins: I would like to add a follow-on comment to some stuff that I was alluding to and perhaps didn't state it succinctly and that is essentially that while the current applicant may intend to comply with the flood-proofing requirements of both the Stormwater Management

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Ordinance as well as the residential code for flood-resistant construction, it's not mandatory and that exception would apply only in the case of those types of construction where that type of construction is required. I think it is important to be proactive about flood water and those issues, however, I don't know that it is our place to supersede the State Building Code and provide it that I think relief could be sought through other avenues. That's my thought on that issue.

[00:50:00]
Mr. Robinson: Any other comments from the Board?

[00:50:02]
Mr. Jaudon: I agree. I think that our position is to follow the rules that are already present and it's not our responsibility to overrule any ordinance and that City Council perhaps need to go and take another look at this, but I agree with Mr. Batchelder to deny.

[00:50:25]
Mr. Robinson: Any other comments? Are there any motions?

[00:50:35]
Mr. Jaudon: I move to deny the motion for the Ordinance.

[00:00:00]
Mr. Batchelder: I'll second that motion.

[00:50:45]
Mr. Robinson: It's moved and seconded. All those in favor signify by saying, "Aye." Mr. Jaudon?

[00:50:48]
Mr. Jaudon: Aye.

[00:50:54]
Mr. Robinson: Ms. Grass?

[00:50:55]
Ms. Grass: Aye.

[00:50:56]
Mr. Robinson: Ms. Richards?

[00:50:57]
Ms. Richards: Aye.

[00:50:58]
Mr. Robinson: Ms. Vargas-Vargas?

[00:51:00]

Ms. Vargas-Vargas: Aye.

[00:51:01]
Mr. Robinson: Mr. Bennett?

[00:51:02]
Mr. Bennett: Aye.

[00:51:03]
Mr. Robinson: Mr. Robinson votes aye. The motion was unanimously approved. Thank you very much.

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Agenda Item #B-2

1029 AVENUE OF OAKS (LOT 40)

(MARYVILLE/ASHLEYVILLE)

TMS # 418-06-00-158

Request variance from sec. 54-301 to allow construction of a 3-story single-family residence that exceeds 35-ft. in height (Limit is 2 ½ stories, 35-ft.)

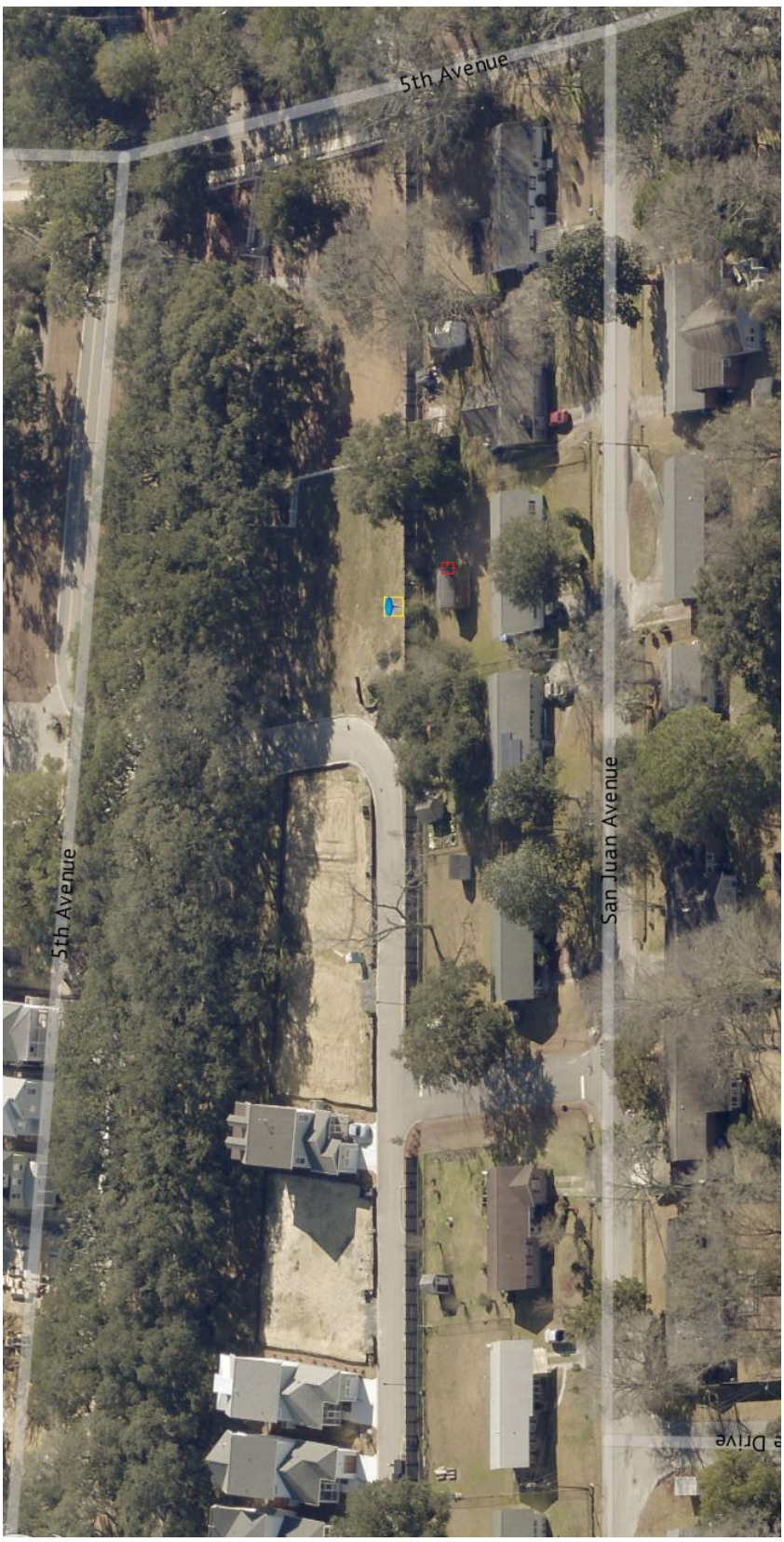
Zoned SR-1

RECORD 000247

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SR-2
SR-1
SR-2
SR-2
SR-1
Avenue Of Oaks
SR-1
SR-1
SR-1
San Juan Ave
5th Ave
SR-1
SR-2
GB
Hillside Dr
DR-1F
GB
GB
61
GB

178



179


AVENUE OF OAKS
Avenue of The Oaks
AVENUE OF OAKS
5TH AVE
SAN JUAN AVE
HILLSIDE DR
GUNN AVE
MAZYCK ST
SAINT ANDREWS BLVD
SAINT ANDREWS BLVD
Marysville/Ashleyville
SR-1
SR-2
GB
1105
1107
1109
1012
1095
1097
1099
1101
1103
1111UT
1113UT
1013
1011
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1007
1005
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180

RECORD 000251

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

City of Charleston

Instructions – This application, along with the required information and fee, must be submitted to the Permit Center at 2 George Street. **Applications are due by 12 Noon on the deadline date and must be complete to be accepted and placed on an agenda.** A sign will be posted on the property, and a public hearing will be conducted by the Board of Zoning Appeals – Zoning. **Permits authorized by the Board cannot be issued during a five (5) business day appeal period following the decision of the Board, except for use variances, the appeal period shall be fifteen (15) calendar days.** An appeal to the Board during this appeal period stays all further action on the application.

THE APPLICANT HEREBY REQUESTS:

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

MEETING DATE REQUESTED: August 3, 2021

Property Address 1029 Avenue of Palms TMS # 418-06-00-158

Property Owner Crescent Homes SC, LLC Daytime Phone 803-609-6929

Applicant Kelly McGuinn Daytime Phone

Applicant's Mailing Address 572 Savannah Highway, Charleston, SC 29407

E-mail Address Kelly.mcguinn@crescenthomes.net

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

Zoning of property R-1 Cluster

Information required with application: (check information submitted)

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

Optional but very helpful information:

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

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

Applicant [signature] Date 6-30-21

For office use only
Date application received _____ 181 Time application received _____
Staffperson _____ Fee $ _____ Receipt # _____

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

See Attached.

Variance Test: The Board of Zoning Appeals-Zoning is authorized to approve a variance from the requirements of the Zoning Ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

In granting a variance, the Board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare. (SC Code of Laws § 6-29-800)

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

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

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RECORD 000253

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AVENUE OF OAKS VARIANCE REQUEST

Pursuant to S.C. Code Ann. § 6-29-800 and Zoning Code § 54-924, Applicant Crescent Homes SC, LLC submits this information in response to the applicable criteria in support of a variance for nine lots (Lots 1-7, 18, and 42) within the Avenue of Oaks subdivision.

1. There are extraordinary and exceptional conditions pertaining to the particular properties.

Extraordinary and exception conditions pertain to these particular properties because they have been impacted by the new FEMA flood maps, which became effective in January 2021 pursuant to Ordinance No. 2020-44. Under the City planning department's interpretation of the zoning code, a drive-under garage area of a home is not considered a "story" for purposes of determining compliance with a zoning district's height restrictions if the home is located in a certain flood zone.

At the time Avenue of Oaks was being designed, all of the developable property was located in either Flood Zones AE-13 or AE-14. As a result, Crescent Homes designed the subdivision based on the City's interpretation that all homes could be designed with drive-under garages that would not be considered a "story" for purposes of the SR-1 zoning district's 2 ½ story height restriction. Relying on this interpretation, Crescent Homes designed 22 of the lots in Avenue of Oaks to have drive-under garages with two stories of living space above.

The City approved the final plat for Avenue of Oaks in March 2020, and Crescent Homes began developing the lots in accordance with its design. To date, Crescent Homes received building permits for 13 out of the 22 planned homes that utilize a drive-under garage. However, FEMA issued new flood maps for Charleston County in 2020, which became effective in January 2021. As a result of the flood map changes, the nine remaining the lots planned for drive-under garages have been rezoned from Flood Zone AE-13 to Flood Zone X.

Under the City's interpretation of the zoning ordinances, a drive-under garage area on a lot in Flood Zone X is considered a story. Therefore, the homes designed for these remaining nine lots with two stories of living space above a drive-under garage are considered three-story homes and, consequently, not in compliance with the applicable height restrictions for SR-1, according to the City's interpretation.

Based on these facts, the changes to the flooding zones during the development process after the final plat has been approved constitutes an extraordinary and exceptional condition.

2. The conditions do not generally apply to other property in the vicinity.

Crescent Homes is unaware of any other properties in the vicinity that were under development and impacted by the flood map changes. Therefore, these conditions do not generally apply to other property in the vicinity.

3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

The application of the City's interpretation of "story" and SR-1 height restrictions will unreasonably restrict the utilization of the property by prohibiting two-story homes with drive-under garages and by nullifying Crescent Home's existing designs for the subdivision. Although Crescent Homes can utilize the nine lots in question with other designs, it is "not required to show that without the variance there exists no feasible conforming use for the property in question" to show an unreasonable restriction. *Restaurant Row Assocs. v. Horry Cty.*, 335 S.C. 209, 217, 516 S.E.2d 442, 446 (1999).

In this case, the inability to use the design of two stories over a drive-under garage is unreasonable because the lots in question remain in a flood zone and are subject to the risk of flooding. The City's interpretation is forcing a choice between a one-story living space with a drive-under garage to protect from flooding or two-stories of living space without additional flood protection from being elevated over a drive-under garage. Because the designs in question provide for reasonably sized homes, especially considering the narrow lot dimensions utilized under the cluster development zoning ordinance for this neighborhood, this is an unreasonable choice being imposed by the City's interpretation of the ordinance.

The unreasonableness of this choice is compounded by the fact that the designs in questions were permissible just a few months ago before the new flood maps became effective. The subdivision was designed based on the old flood maps and in reliance on the reasonable belief that drive-under garages could be utilized without them being considered a story. It would now be unreasonable to restrict the use of the drive-under designs when other homes have already been permitted with the same design feature.

4. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

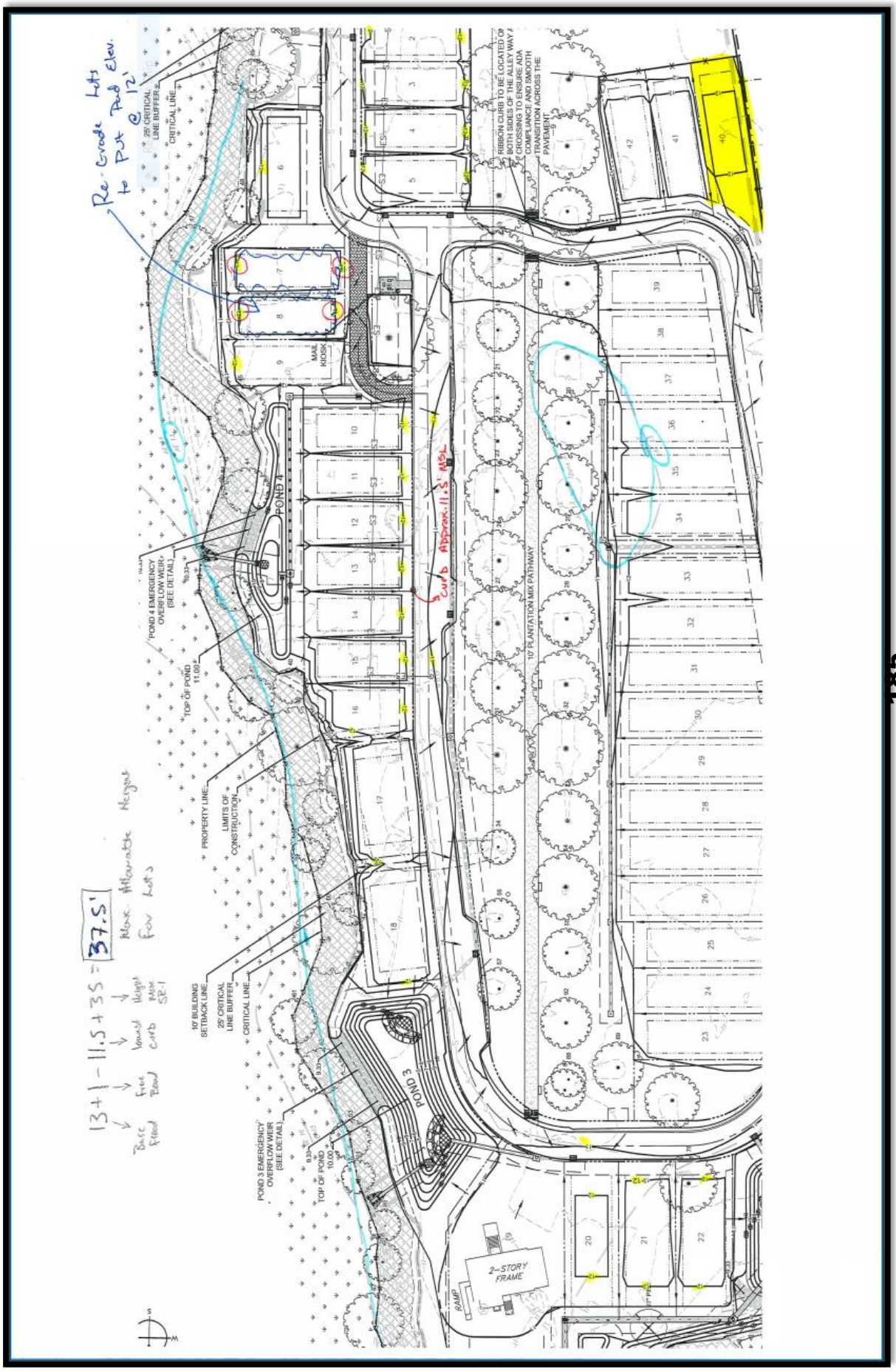
The authorization of the variance will not be of substantial detriment to adjacent property as those properties have homes that utilize the same drive-under garage feature. Thus, the design of the new homes will be harmonious with those properties and consistent with the original plan for the subdivision.

The variance will also not be of any detriment to the public good. If anything, the public good will be enhanced because the drive-under design will provide additional protection from possible flooding, thereby reducing the potential social and indirect impacts that flooding often creates.

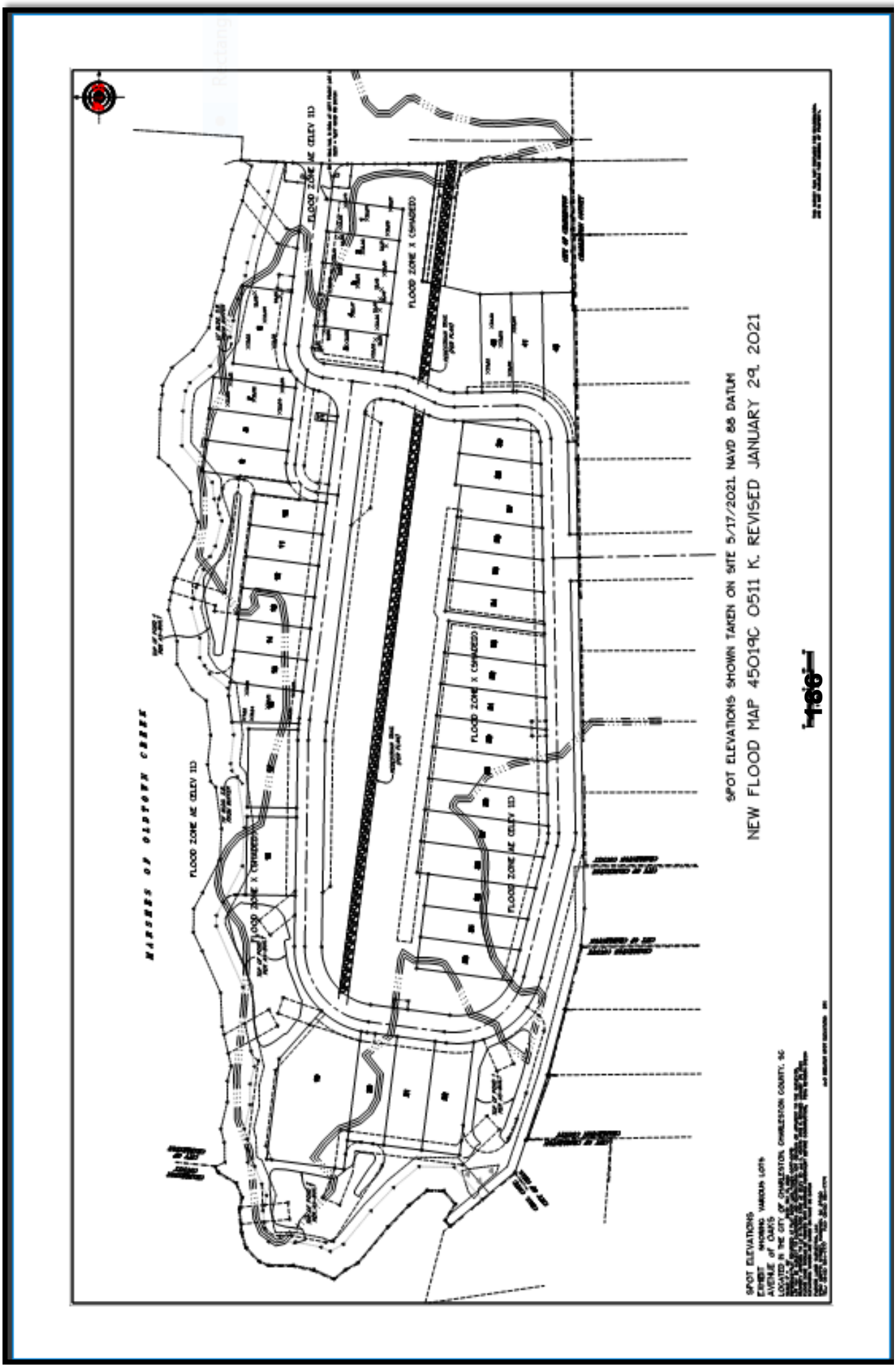
Last, the variance will not harm the character of the zoning district as the homes will comply with all other zoning requirements for the SR-1 zoning district, and the variance will not permit prohibited uses. Significantly, even if the drive-under garages are permitted with a variance, the homes will still be subject to the maximum height restrictions imposed by the zoning code.

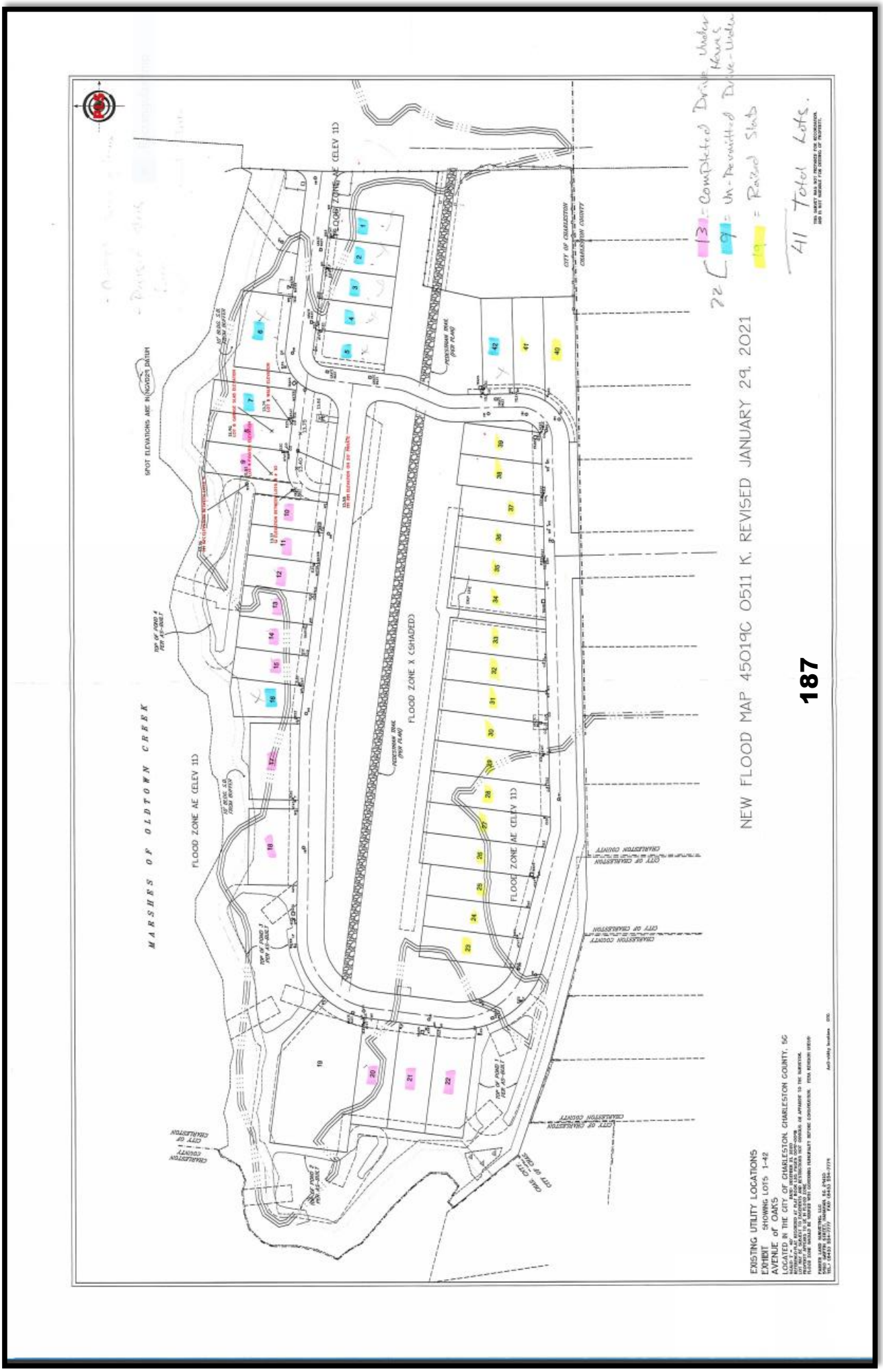
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Re-Grade lots to put Pad Elev. @ 12'
25' CRITICAL LINE BUFFER
CRITICAL LINE
RIBBON CURB TO BE LOCATED ON BOTH SIDES OF THE ALLEY WAY AT CROSSING TO ENSURE ADA COMPLIANCE AND SMOOTH TRANSITION ACROSS THE PAVEMENT
MAIL KIOSK
POND 4
POND 4 EMERGENCY OVERFLOW WEIR (SEE DETAIL)
TOP OF POND 11.00
PROPERTY LINE
LIMITS OF CONSTRUCTION
Curb Approx. 11.5' MSL
10' PLANTATION MIX PATHWAY
10' BUILDING SETBACK LINE
25' CRITICAL LINE BUFFER
CRITICAL LINE
POND 3
POND 3 EMERGENCY OVERFLOW WEIR (SEE DETAIL)
TOP OF POND 10.00
2-STORY FRAME
RAMP
13+1-11.5+35=37.5'
Base Flood
Free board
lowest habitable structure
Min SE-1
New Attached Garage
Raise Floor Elevations for lots

185


SPOT ELEVATIONS SHOWN TAKEN ON SITE 5/17/2021 NAVD 88 DATUM
NEW FLOOD MAP 45019C 0511 K, REVISED JANUARY 29, 2021
FLOOD ZONE AE (ELEV 11)
FLOOD ZONE X (SHADED)
MARSHES OF OLDTOWN CREEK


EXISTING UTILITY LOCATIONS
EXHIBIT
AVENUE of OAKS
SHOWING LOTS 1-42
LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SC
NEW FLOOD MAP 45019C 0511 K, REVISED JANUARY 29, 2021
MARSHES OF OLDTOWN CREEK
FLOOD ZONE AE (ELEV 11)
FLOOD ZONE X (SHADED)
SPOT ELEVATIONS ARE IN NAVD88 DATUM
CITY OF CHARLESTON
CHARLESTON COUNTY
187

RECORD 000258

MONROE DU
FRONT DOOR RIGHT

AVO 40

3-4 BEDROOMS / 2.5-4.5 BATHS

SQUARE FOOTAGE TOTALS	
FIRST FLOOR HEATED	1411
SECOND FLOOR HEATED	916
TOTAL HEATED AREA	2327
FRONT PORCH (ALL ELEVS)	168
REAR COVERED STOOP (ALL ELEVS)	65
TOTAL AREA	2,560

OPTIONS	
BALCONY (ELEV. B&C)	168
OPT. DINING BUMP OUT	+29
OPT. 2ND MASTER SUITE	+443
OPT. 2ND MASTER SUITE BALCONY	+65
OPT. 2ND MASTER SUITE EXT. BALCONY	+95
OPT. EXT. SCREENED PORCH	+95

REVISION LOG

REV	DATE	DESCRIPTION
1.0	11.02.20	OPT. DINING BUMP OUT, OPT. EXTENSION TO ENCPL FLOOR OPT., OPT. 2ND MASTER SUITE, OPT. 2ND MASTER SUITE BALCONY, OPT. EXT. SCREENED PORCH, OPT. LAUNDRY LOCATION AT 2ND FLOOR, OPT. STM BEDROOM FRENCH DOOR, BATHROOM, WARDROBE OPTIONS, OPT. 2ND MASTER SUITE EXT. BALCONY, OPT. 2ND MASTER SUITE BALCONY, EXTENDED EMOTION CLOSET, (2) BRAVO TILE DETAILING CHANGE, OPT. DWELLING ELEVATION, OPT. SIDING, FINISH, & COLOR OPTIONS, OPT. FRONT PORCH, OPT. REAR COVERED STOOP, OPT. BALCONY, REVISED DETAILS ON SHEET 3 ADDED, OPT. SHEET 4 ADDED, OPT. SHEET
2.0	1.29.21	OPT. 2ND MASTER SUITE, OPT. 2ND MASTER SUITE BALCONY, OPT. 2ND MASTER SUITE EXT. BALCONY, OPT. EXT. SCREENED PORCH, OPT. DINING BUMP OUT, OPT. EXTENSION TO ENCPL FLOOR, OPT. LAUNDRY LOCATION AT 2ND FLOOR, OPT. STM BEDROOM FRENCH DOOR, BATHROOM, WARDROBE OPTIONS, OPT. EXTENDED EMOTION CLOSET, (2) BRAVO TILE DETAILING CHANGE, OPT. DWELLING ELEVATION, OPT. SIDING, FINISH, & COLOR OPTIONS, OPT. FRONT PORCH, OPT. REAR COVERED STOOP, OPT. BALCONY, REVISED DETAILS ON SHEET 3 ADDED, OPT. SHEET 4 ADDED, OPT. SHEET, ADDITIONAL NOTE ADDED TO FOOTER PLAN SHEET, ART PLAN NOTE ADDED
3.0	2.24.21	OPT. 2ND MASTER SUITE, OPT. 2ND MASTER SUITE BALCONY, OPT. 2ND MASTER SUITE EXT. BALCONY, OPT. EXT. SCREENED PORCH, OPT. DINING BUMP OUT, OPT. EXTENSION TO ENCPL FLOOR, OPT. LAUNDRY LOCATION AT 2ND FLOOR, OPT. STM BEDROOM FRENCH DOOR, BATHROOM, WARDROBE OPTIONS, OPT. EXTENDED EMOTION CLOSET, (2) BRAVO TILE DETAILING CHANGE, OPT. DWELLING ELEVATION, OPT. SIDING, FINISH, & COLOR OPTIONS, OPT. FRONT PORCH, OPT. REAR COVERED STOOP, OPT. BALCONY, REVISED DETAILS ON SHEET 3 ADDED, OPT. SHEET 4 ADDED, OPT. SHEET, ADDITIONAL NOTE ADDED TO FOOTER PLAN SHEET, ART PLAN NOTE ADDED, OPT. 2ND MASTER SUITE BALCONY, OPT. 2ND MASTER SUITE EXT. BALCONY, OPT. EXT. SCREENED PORCH, OPT. DINING BUMP OUT, OPT. EXTENSION TO ENCPL FLOOR, OPT. LAUNDRY LOCATION AT 2ND FLOOR, OPT. STM BEDROOM FRENCH DOOR, BATHROOM, WARDROBE OPTIONS, OPT. EXTENDED EMOTION CLOSET, (2) BRAVO TILE DETAILING CHANGE, OPT. DWELLING ELEVATION, OPT. SIDING, FINISH, & COLOR OPTIONS, OPT. FRONT PORCH, OPT. REAR COVERED STOOP, OPT. BALCONY, REVISED DETAILS ON SHEET 3 ADDED, OPT. SHEET 4 ADDED, OPT. SHEET, ADDITIONAL NOTE ADDED TO FOOTER PLAN SHEET, ART PLAN NOTE ADDED, REVISED ELEVATIONS, REVISED FRONT PORCH ADDED, REVISED REAR COVERED STOOP ADDED, REVISED ROOF PLAN, REVISED FOOTER PLAN, REVISED FIRST FLOOR PLAN, REVISED SECOND FLOOR PLAN, REVISED GROUND FLOOR ELECTRICAL, REVISED FIRST FLOOR ELECTRICAL, REVISED SECOND FLOOR ELECTRICAL, REVISED OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELECTRICAL, REVISED DETAILS, REVISED SCHEDULE OF DRAWING SET
4.0	3.29.21	REVISED ELEVATIONS, REVISED FRONT PORCH ADDED, REVISED REAR COVERED STOOP ADDED, REVISED ROOF PLAN, REVISED FOOTER PLAN, REVISED FIRST FLOOR PLAN, REVISED SECOND FLOOR PLAN, REVISED GROUND FLOOR ELECTRICAL, REVISED FIRST FLOOR ELECTRICAL, REVISED SECOND FLOOR ELECTRICAL, REVISED OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELECTRICAL, REVISED DETAILS, REVISED SCHEDULE OF DRAWING SET, OPT. 2ND MASTER SUITE BALCONY, OPT. 2ND MASTER SUITE EXT. BALCONY, OPT. EXT. SCREENED PORCH, OPT. DINING BUMP OUT, OPT. EXTENSION TO ENCPL FLOOR, OPT. LAUNDRY LOCATION AT 2ND FLOOR, OPT. STM BEDROOM FRENCH DOOR, BATHROOM, WARDROBE OPTIONS, OPT. EXTENDED EMOTION CLOSET, (2) BRAVO TILE DETAILING CHANGE, OPT. DWELLING ELEVATION, OPT. SIDING, FINISH, & COLOR OPTIONS, OPT. FRONT PORCH, OPT. REAR COVERED STOOP, OPT. BALCONY, REVISED DETAILS ON SHEET 3 ADDED, OPT. SHEET 4 ADDED, OPT. SHEET, ADDITIONAL NOTE ADDED TO FOOTER PLAN SHEET, ART PLAN NOTE ADDED, REVISED ELEVATIONS, REVISED FRONT PORCH ADDED, REVISED REAR COVERED STOOP ADDED, REVISED ROOF PLAN, REVISED FOOTER PLAN, REVISED FIRST FLOOR PLAN, REVISED SECOND FLOOR PLAN, REVISED GROUND FLOOR ELECTRICAL, REVISED FIRST FLOOR ELECTRICAL, REVISED SECOND FLOOR ELECTRICAL, REVISED OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELECTRICAL, REVISED DETAILS, REVISED SCHEDULE OF DRAWING SET, REVISED OPT. 2ND MASTER SUITE BALCONY, REVISED OPT. 2ND MASTER SUITE EXT. BALCONY, REVISED OPT. EXT. SCREENED PORCH, REVISED OPT. DINING BUMP OUT, REVISED OPT. EXTENSION TO ENCPL FLOOR, REVISED OPT. LAUNDRY LOCATION AT 2ND FLOOR, REVISED OPT. STM BEDROOM FRENCH DOOR, BATHROOM, WARDROBE OPTIONS, REVISED OPT. EXTENDED EMOTION CLOSET, REVISED (2) BRAVO TILE DETAILING CHANGE, REVISED OPT. DWELLING ELEVATION, REVISED OPT. SIDING, FINISH, & COLOR OPTIONS, REVISED OPT. FRONT PORCH, REVISED OPT. REAR COVERED STOOP, REVISED OPT. BALCONY, REVISED DETAILS ON SHEET 3 ADDED, REVISED OPT. SHEET 4 ADDED, REVISED OPT. SHEET, REVISED ADDITIONAL NOTE ADDED TO FOOTER PLAN SHEET, REVISED ART PLAN NOTE ADDED, REVISED ELEVATIONS, REVISED FRONT PORCH ADDED, REVISED REAR COVERED STOOP ADDED, REVISED ROOF PLAN, REVISED FOOTER PLAN, REVISED FIRST FLOOR PLAN, REVISED SECOND FLOOR PLAN, REVISED GROUND FLOOR ELECTRICAL, REVISED FIRST FLOOR ELECTRICAL, REVISED SECOND FLOOR ELECTRICAL, REVISED OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELECTRICAL, REVISED DETAILS, REVISED SCHEDULE OF DRAWING SET
5.0	5.28.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR, REVISED GARAGE DOOR GLASS, OPT. CORNER LOT FIREPLACE DETAIL, ENGINEERING NOTE ADDED, REVISED FOOTER PLAN, REVISED FIRST FLOOR PLAN, REVISED SECOND FLOOR PLAN, REVISED GROUND FLOOR ELECTRICAL, REVISED FIRST FLOOR ELECTRICAL, REVISED SECOND FLOOR ELECTRICAL, REVISED OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELECTRICAL, REVISED DETAILS, REVISED SCHEDULE OF DRAWING SET, REVISED OPT. 2ND MASTER SUITE BALCONY, REVISED OPT. 2ND MASTER SUITE EXT. BALCONY, REVISED OPT. EXT. SCREENED PORCH, REVISED OPT. DINING BUMP OUT, REVISED OPT. EXTENSION TO ENCPL FLOOR, REVISED OPT. LAUNDRY LOCATION AT 2ND FLOOR, REVISED OPT. STM BEDROOM FRENCH DOOR, BATHROOM, WARDROBE OPTIONS, REVISED OPT. EXTENDED EMOTION CLOSET, REVISED (2) BRAVO TILE DETAILING CHANGE, REVISED OPT. DWELLING ELEVATION, REVISED OPT. SIDING, FINISH, & COLOR OPTIONS, REVISED OPT. FRONT PORCH, REVISED OPT. REAR COVERED STOOP, REVISED OPT. BALCONY, REVISED DETAILS ON SHEET 3 ADDED, REVISED OPT. SHEET 4 ADDED, REVISED OPT. SHEET, REVISED ADDITIONAL NOTE ADDED TO FOOTER PLAN SHEET, REVISED ART PLAN NOTE ADDED, REVISED ELEVATIONS, REVISED FRONT PORCH ADDED, REVISED REAR COVERED STOOP ADDED, REVISED ROOF PLAN, REVISED FOOTER PLAN, REVISED FIRST FLOOR PLAN, REVISED SECOND FLOOR PLAN, REVISED GROUND FLOOR ELECTRICAL, REVISED FIRST FLOOR ELECTRICAL, REVISED SECOND FLOOR ELECTRICAL, REVISED OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELECTRICAL, REVISED DETAILS, REVISED SCHEDULE OF DRAWING SET
6.0	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR, REVISED GARAGE DOOR GLASS, OPT. CORNER LOT FIREPLACE DETAIL, ENGINEERING NOTE ADDED, REVISED FOOTER PLAN, REVISED FIRST FLOOR PLAN, REVISED SECOND FLOOR PLAN, REVISED GROUND FLOOR ELECTRICAL, REVISED FIRST FLOOR ELECTRICAL, REVISED SECOND FLOOR ELECTRICAL, REVISED OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELECTRICAL, REVISED DETAILS, REVISED SCHEDULE OF DRAWING SET, REVISED OPT. 2ND MASTER SUITE BALCONY, REVISED OPT. 2ND MASTER SUITE EXT. BALCONY, REVISED OPT. EXT. SCREENED PORCH, REVISED OPT. DINING BUMP OUT, REVISED OPT. EXTENSION TO ENCPL FLOOR, REVISED OPT. LAUNDRY LOCATION AT 2ND FLOOR, REVISED OPT. STM BEDROOM FRENCH DOOR, BATHROOM, WARDROBE OPTIONS, REVISED OPT. EXTENDED EMOTION CLOSET, REVISED (2) BRAVO TILE DETAILING CHANGE, REVISED OPT. DWELLING ELEVATION, REVISED OPT. SIDING, FINISH, & COLOR OPTIONS, REVISED OPT. FRONT PORCH, REVISED OPT. REAR COVERED STOOP, REVISED OPT. BALCONY, REVISED DETAILS ON SHEET 3 ADDED, REVISED OPT. SHEET 4 ADDED, REVISED OPT. SHEET, REVISED ADDITIONAL NOTE ADDED TO FOOTER PLAN SHEET, REVISED ART PLAN NOTE ADDED, REVISED ELEVATIONS, REVISED FRONT PORCH ADDED, REVISED REAR COVERED STOOP ADDED, REVISED ROOF PLAN, REVISED FOOTER PLAN, REVISED FIRST FLOOR PLAN, REVISED SECOND FLOOR PLAN, REVISED GROUND FLOOR ELECTRICAL, REVISED FIRST FLOOR ELECTRICAL, REVISED SECOND FLOOR ELECTRICAL, REVISED OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELECTRICAL, REVISED DETAILS, REVISED SCHEDULE OF DRAWING SET
6.1	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.2	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
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6.181	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.182	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.183	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.184	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.185	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.186	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.187	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.188	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.189	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.190	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.191	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.192	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.193	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.194	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.195	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR
6.196	6.14.21	ADDED NEW FOOTER DETAIL FROM PATIO TO FRONT DOOR

RECORD 000259

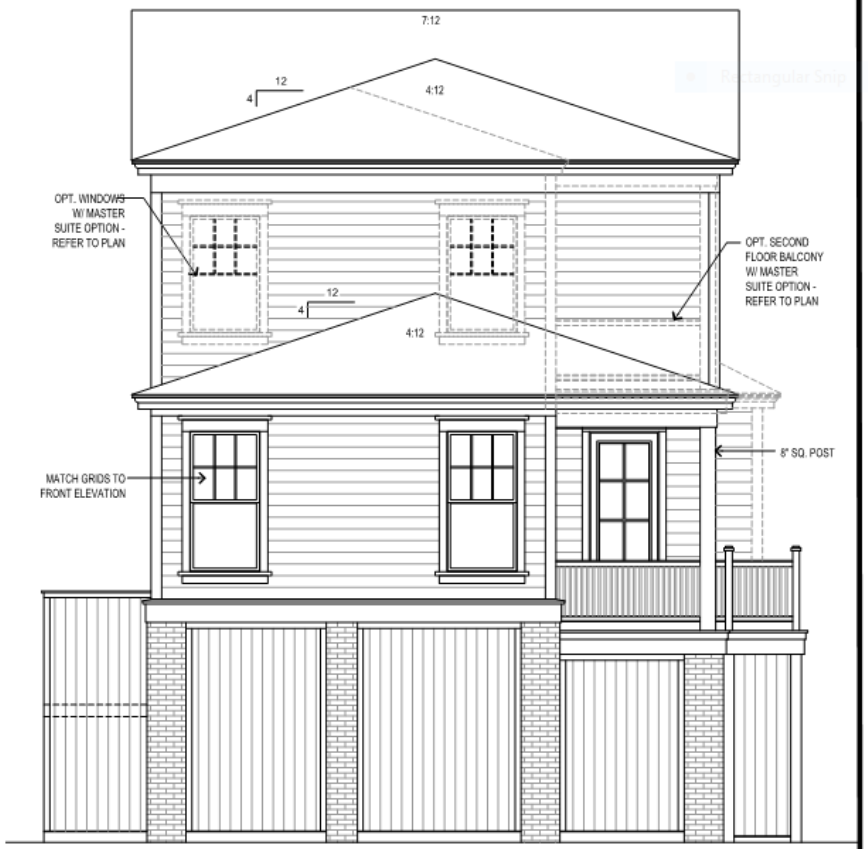
1 - RAILING DTL. ELEV 'A'

11x17: 3/16"=1'-0"
22x34: 3/8"=1'-0"



FRONT ELEVATION 'A'

11x17: 3/16"=1'-0"
22x34: 3/8"=1'-0"



REAR ELEVATION 'A'

11x17: 3/16"=1'-0"
22x34: 3/8"=1'-0"

572 Savannah
Charleston, So

MONROE DU
AVENUE OF OAKS

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PLAN NAME:
REVISIONS:
DRAWN BY: DA
DATE: 02/05/21
JOB NO.:
TITLE: FRONT AND REAR ELEVATIONS
SHEET: A1-A

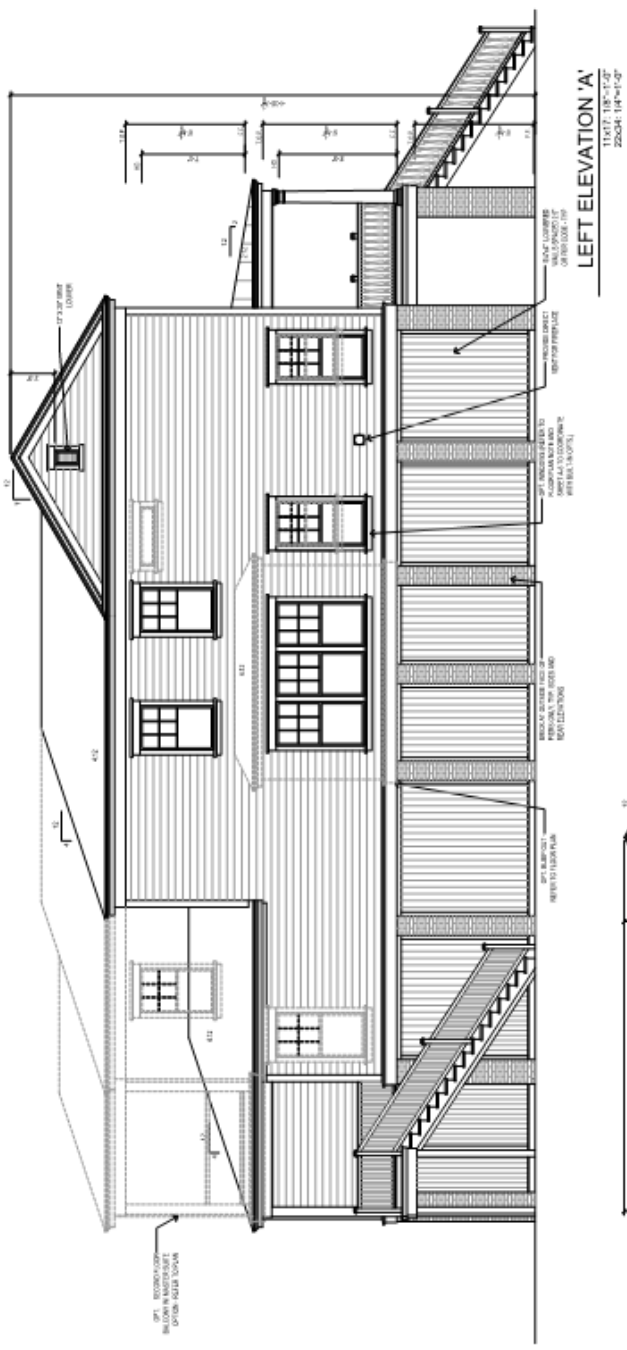
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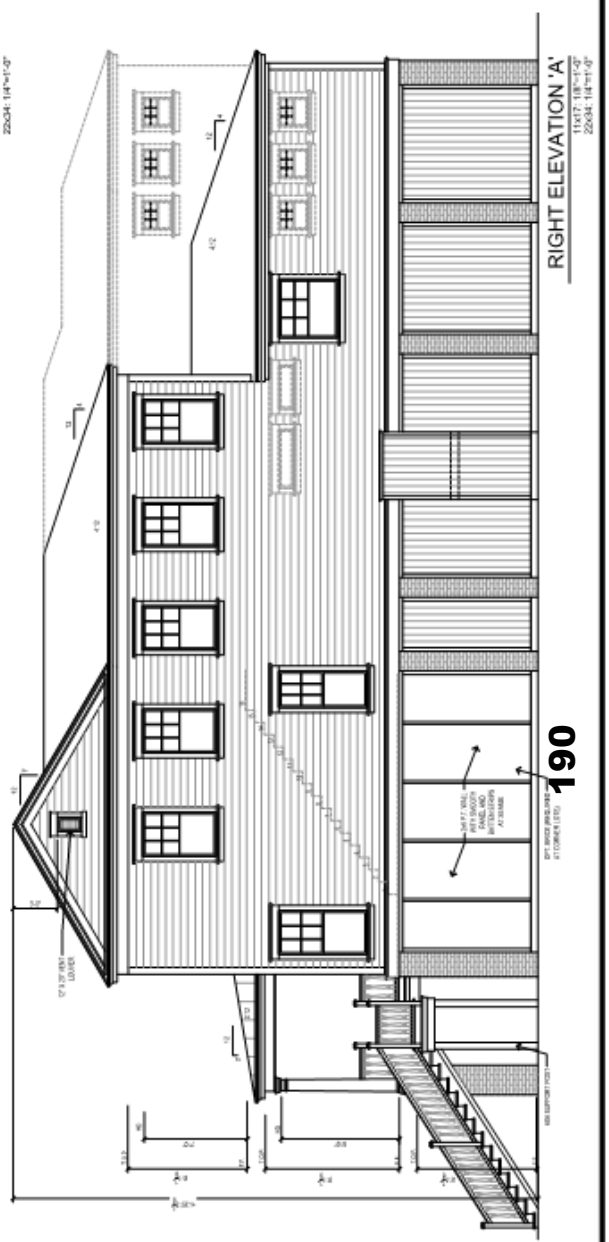
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AVENUE OF OAKS

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PLOT NAME:	
REVISIONS:	
DRAWN BY:	DA
DATE:	02/05/21
JOB NO.:	
TITLE:	SIDE ELEVATIONS
SHEET:	A2-A





190

Agenda Item #B-3

1027 AVENUE OF OAKS (LOT 41)

(MARYVILLE/ASHLEYVILLE)

TMS # 418-06-00-159

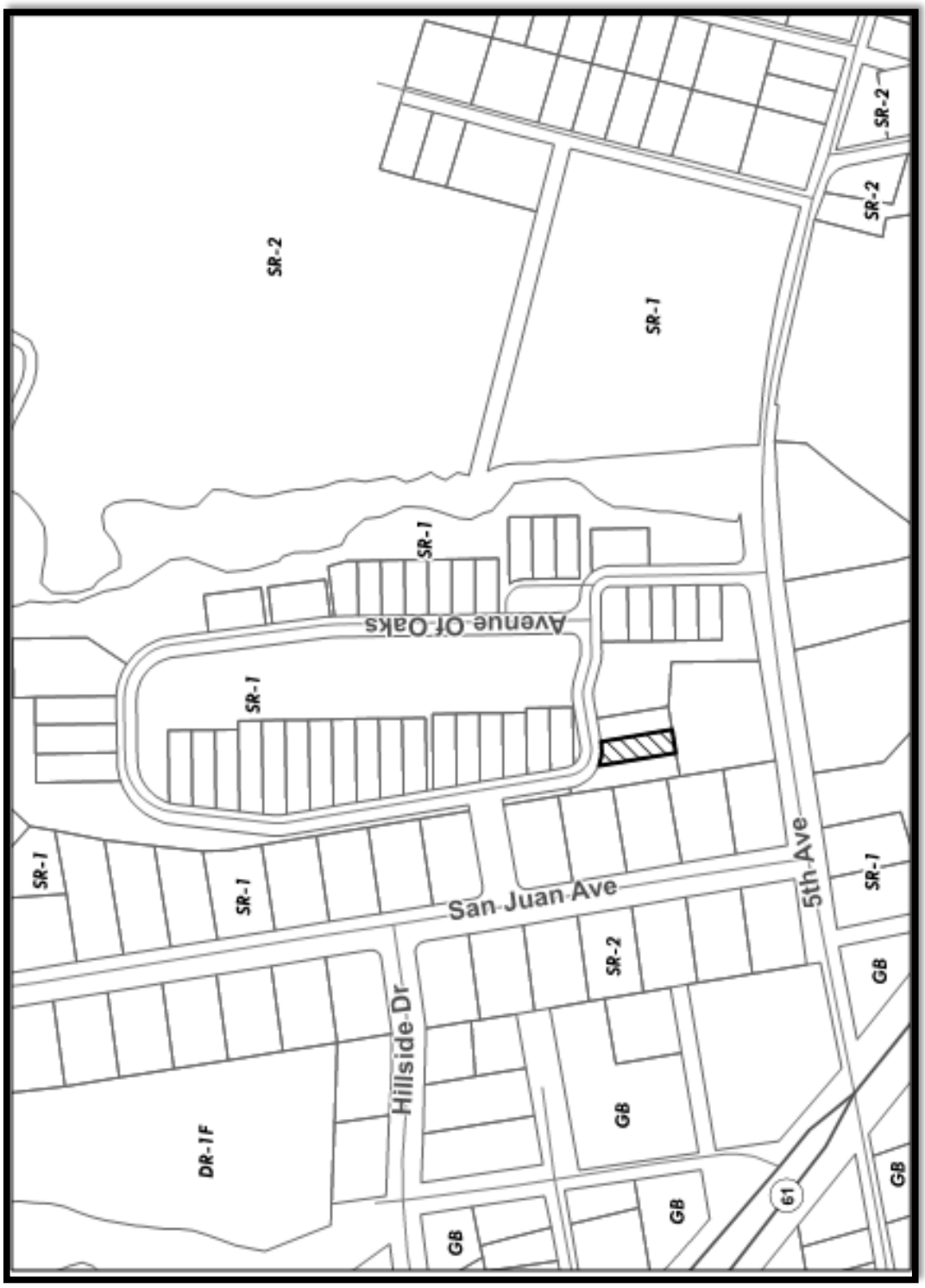
Request variance from Sec. 54-301 to allow construction of a 3-story single-family residence that exceeds 35-ft. in height (Limit is 2 ½ stories, 35-ft.).

Zoned SR-1

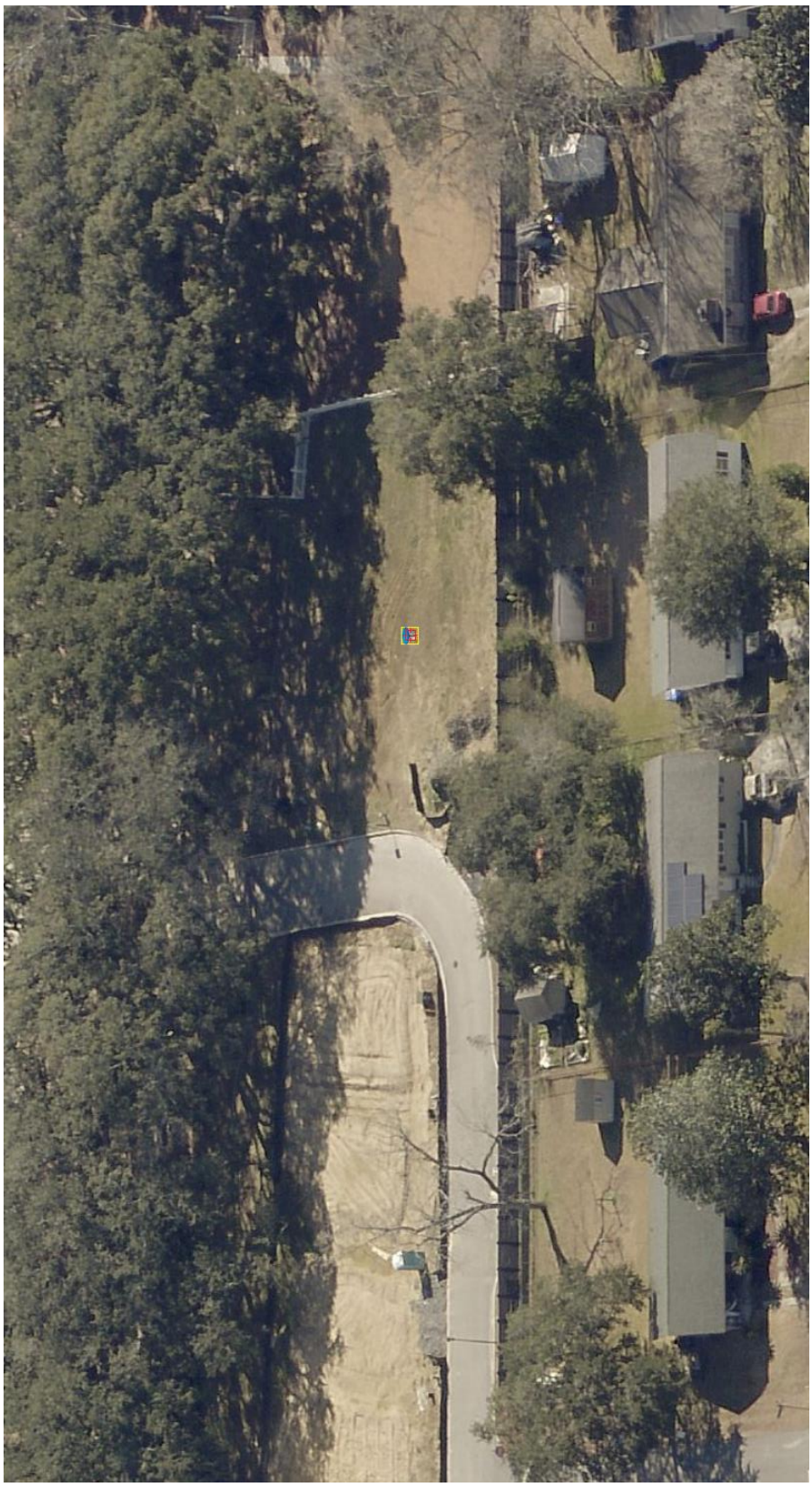
RECORD 000261

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ELECTRONICALLY FILED - 2021 Dec 24 11:22 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196



192



193


SR-1
1030
1032
5TH AVE
1105
1107
1109
1012
1095
1097
1099
1101
1103
1111UT
1113UT
1013
1011
1009
1007
1005
1001UT
1042
1046
AVENUE OF OAKS
Avenue of The Oaks
Marysville/Ashleyville
1044
1042
1040
1038
1036
1034
1032
1030
1025
1027
1029
1018
1014
1010
1006
1002
1106
1102
SAN JUAN AVE
1005 A
1007
1017
1105
1101
SR-2
1103
1100
1107
1104
1109
HILLSIDE DR
GUNN AVE
GB
1114
1050
1054
MAZYCK ST

194

RECORD 000265

ELECTRONICALLY FILED - 2021 Dec 24 11:22 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196

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

City of Charleston

Instructions – This application, along with the required information and fee, must be submitted to the Permit Center at 2 George Street. **Applications are due by 12 Noon on the deadline date and must be complete to be accepted and placed on an agenda.** A sign will be posted on the property, and a public hearing will be conducted by the Board of Zoning Appeals – Zoning. **Permits authorized by the Board cannot be issued during a five (5) business day appeal period following the decision of the Board, except for use variances, the appeal period shall be fifteen (15) calendar days.** An appeal to the Board during this appeal period stays all further action on the application.

THE APPLICANT HEREBY REQUESTS:

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

MEETING DATE REQUESTED: August 3, 2021

Property Address 1027 Avenue of Palms TMS # 418-06-00-159

Property Owner Crescent Homes SC, LLC Daytime Phone 803-609-6929

Applicant Kelly McGuinn Daytime Phone

Applicant's Mailing Address 572 Savannah Highway, Charleston, SC 29407

E-mail Address Kelly.mcguinn@crescenthomes.Net

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

Zoning of property R-1 cluster

Information required with application: (check information submitted)

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

Optional but very helpful information:

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

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

Applicant _____ Date 6-30-21

For office use only
Date application received _____ 195 Time application received _____
Staffperson _____ Fee $ _____ Receipt # _____

RECORD 000266

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

See Attached.

Variance Test: The Board of Zoning Appeals-Zoning is authorized to approve a variance from the requirements of the Zoning Ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

In granting a variance, the Board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare. (SC Code of Laws § 6-29-800)

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

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

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RECORD 000267

AVENUE OF OAKS VARIANCE REQUEST

Pursuant to S.C. Code Ann. § 6-29-800 and Zoning Code § 54-924, Applicant Crescent Homes SC, LLC submits this information in response to the applicable criteria in support of a variance for nine lots (Lots 1-7, 18, and 42) within the Avenue of Oaks subdivision.

1. There are extraordinary and exceptional conditions pertaining to the particular properties.

Extraordinary and exception conditions pertain to these particular properties because they have been impacted by the new FEMA flood maps, which became effective in January 2021 pursuant to Ordinance No. 2020-44. Under the City planning department's interpretation of the zoning code, a drive-under garage area of a home is not considered a "story" for purposes of determining compliance with a zoning district's height restrictions if the home is located in a certain flood zone.

At the time Avenue of Oaks was being designed, all of the developable property was located in either Flood Zones AE-13 or AE-14. As a result, Crescent Homes designed the subdivision based on the City's interpretation that all homes could be designed with drive-under garages that would not be considered a "story" for purposes of the SR-1 zoning district's 2 ½ story height restriction. Relying on this interpretation, Crescent Homes designed 22 of the lots in Avenue of Oaks to have drive-under garages with two stories of living space above.

The City approved the final plat for Avenue of Oaks in March 2020, and Crescent Homes began developing the lots in accordance with its design. To date, Crescent Homes received building permits for 13 out of the 22 planned homes that utilize a drive-under garage. However, FEMA issued new flood maps for Charleston County in 2020, which became effective in January 2021. As a result of the flood map changes, the nine remaining the lots planned for drive-under garages have been rezoned from Flood Zone AE-13 to Flood Zone X.

Under the City's interpretation of the zoning ordinances, a drive-under garage area on a lot in Flood Zone X is considered a story. Therefore, the homes designed for these remaining nine lots with two stories of living space above a drive-under garage are considered three-story homes and, consequently, not in compliance with the applicable height restrictions for SR-1, according to the City's interpretation.

Based on these facts, the changes to the flooding zones during the development process after the final plat has been approved constitutes an extraordinary and exceptional condition.

2. The conditions do not generally apply to other property in the vicinity.

Crescent Homes is unaware of any other properties in the vicinity that were under development and impacted by the flood map changes. Therefore, these conditions do not generally apply to other property in the vicinity.

3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

The application of the City's interpretation of "story" and SR-1 height restrictions will unreasonably restrict the utilization of the property by prohibiting two-story homes with drive-under garages and by nullifying Crescent Home's existing designs for the subdivision. Although Crescent Homes can utilize the nine lots in question with other designs, it is "not required to show that without the variance there exists no feasible conforming use for the property in question" to show an unreasonable restriction. *Restaurant Row Assocs. v. Horry Cty.*, 335 S.C. 209, 217, 516 S.E.2d 442, 446 (1999).

In this case, the inability to use the design of two stories over a drive-under garage is unreasonable because the lots in question remain in a flood zone and are subject to the risk of flooding. The City's interpretation is forcing a choice between a one-story living space with a drive-under garage to protect from flooding or two-stories of living space without additional flood protection from being elevated over a drive-under garage. Because the designs in question provide for reasonably sized homes, especially considering the narrow lot dimensions utilized under the cluster development zoning ordinance for this neighborhood, this is an unreasonable choice being imposed by the City's interpretation of the ordinance.

The unreasonableness of this choice is compounded by the fact that the designs in questions were permissible just a few months ago before the new flood maps became effective. The subdivision was designed based on the old flood maps and in reliance on the reasonable belief that drive-under garages could be utilized without them being considered a story. It would now be unreasonable to restrict the use of the drive-under designs when other homes have already been permitted with the same design feature.

4. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

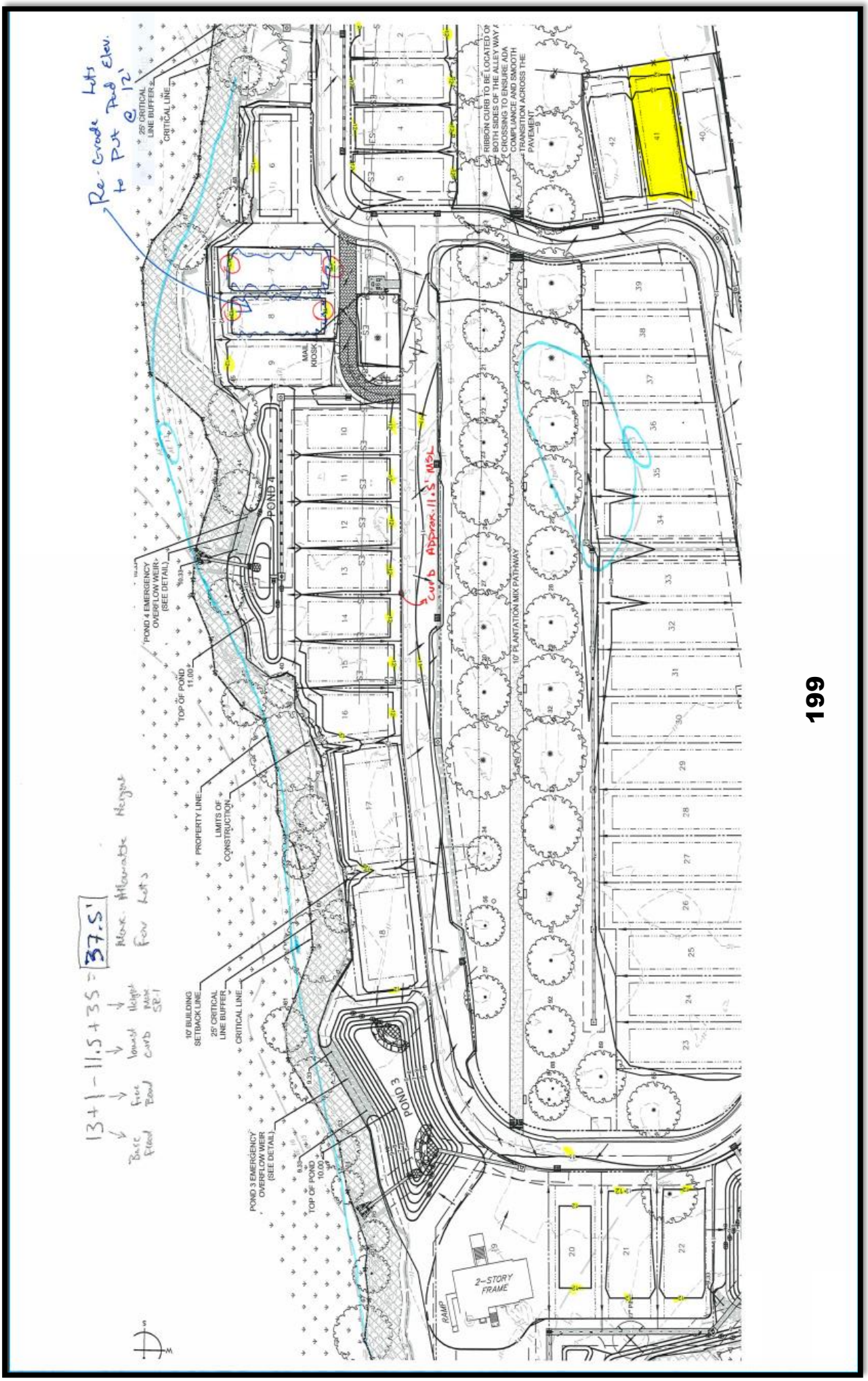
The authorization of the variance will not be of substantial detriment to adjacent property as those properties have homes that utilize the same drive-under garage feature. Thus, the design of the new homes will be harmonious with those properties and consistent with the original plan for the subdivision.

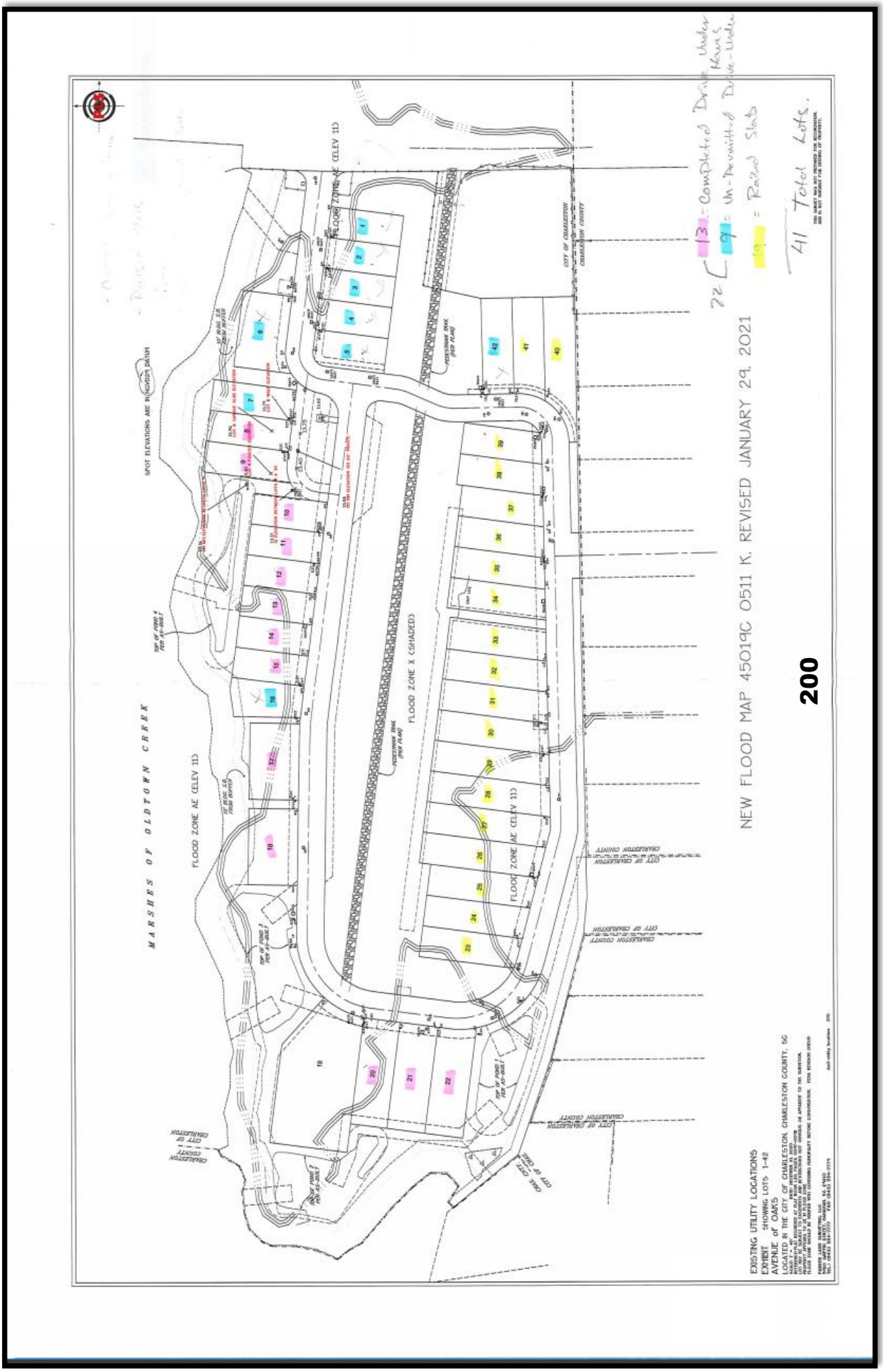
The variance will also not be of any detriment to the public good. If anything, the public good will be enhanced because the drive-under design will provide additional protection from possible flooding, thereby reducing the potential social and indirect impacts that flooding often creates.

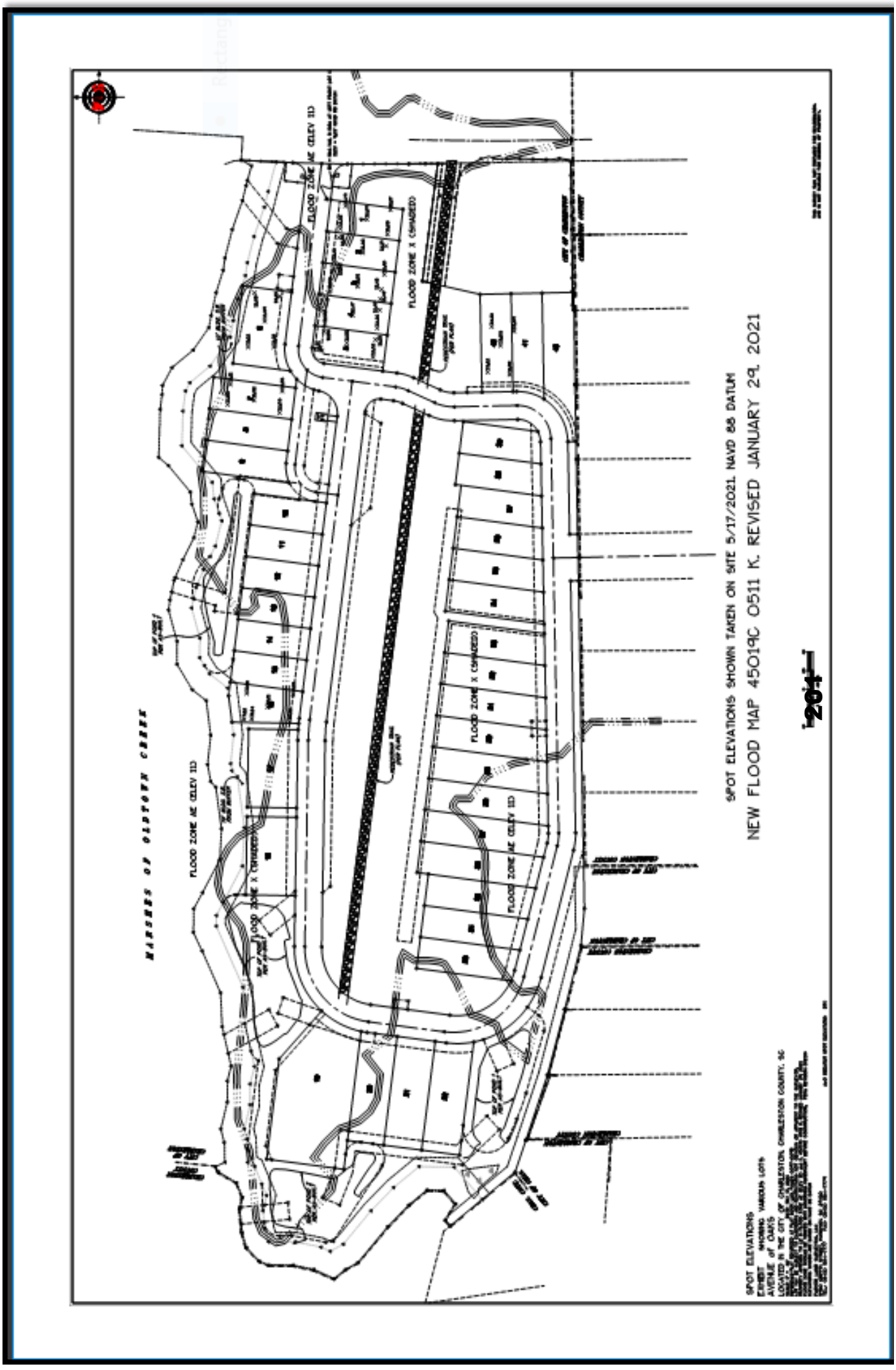
Last, the variance will not harm the character of the zoning district as the homes will comply with all other zoning requirements for the SR-1 zoning district, and the variance will not permit prohibited uses. Significantly, even if the drive-under garages are permitted with a variance, the homes will still be subject to the maximum height restrictions imposed by the zoning code.

RECORD 000268

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Re-Grade Lots to Put Pad Elev. @ 12'
POND 4
POND 3
POND 4 EMERGENCY OVERFLOW WEIR (SEE DETAIL)
TOP OF POND 11.00'
PROPERTY LINE
LIMITS OF CONSTRUCTION
10' BUILDING SETBACK LINE
25' CRITICAL LINE BUFFER
CRITICAL LINE
POND 3 EMERGENCY OVERFLOW WEIR (SEE DETAIL)
TOP OF POND 10.00'
MAIL KIOSK
RIBBON CURB TO BE LOCATED ON BOTH SIDES OF THE ALLEY WAY AT CROSSING TO ENSURE ADA COMPLIANCE AND SMOOTH TRANSITION ACROSS THE PAVEMENT
10' PLANTATION MIX PATHWAY
Curb Approx. 11.5' MSL
2-STORY FRAME
RAMP
13+1-11.5+35=37.5'
Base Flood
Free Board
Lowest Usable Space
Min. Allowable Height for Lots
199


200
NEW FLOOD MAP 45019C 0511 K, REVISED JANUARY 29, 2021
EXISTING UTILITY LOCATIONS
EXHIBIT
SHOWING LOTS 1-42
AVENUE of OAKS
LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SC
MARSHES OF OLDTOWN CREEK
FLOOD ZONE AE (ELEV 11)
FLOOD ZONE X (SHADED)
SPOT ELEVATIONS ARE IN NAVD88 DATUM
CITY OF CHARLESTON
CHARLESTON COUNTY
PEDESTRIAN RAMP (PER PLAN)
TOP OF POND 1 PER AS-BUILT
OAKS COTE
CITY OF CHAS
22 C 13 = Completed Drive, Under Heavy
9 = Un-Permitted Drive-Under
= Raised Slab
41 Total Lots.


SPOT ELEVATIONS SHOWN TAKEN ON SITE 5/17/2021 NAVD 88 DATUM
NEW FLOOD MAP 45019C 0511 K, REVISED JANUARY 29, 2021
2021
FLOOD ZONE AE (ELEV 11)
FLOOD ZONE X (SHADED)
MARSHES OF OLDTOWN CREEK

RECORD 000272

MONROE DU
FRONT DOOR RIGHT

3-4 BEDROOMS / 2.5-4.5 BATHS

AVO 41

SQUARE FOOTAGE TOTALS	
FIRST FLOOR HEATED	1411
SECOND FLOOR HEATED	916
TOTAL HEATED AREA	2327
FRONT PORCH (ALL ELEVS)	168
REAR COVERED STOOP (ALL ELEVS)	65
TOTAL AREA	2,560

OPTIONS	
BALCONY (ELEV. B&C)	168
OPT. DINING BUMP OUT	+29
OPT. 2ND MASTER SUITE	+443
OPT. 2ND MASTER SUITE BALCONY	+65
OPT. 2ND MASTER SUITE EXT. BALCONY	+95
OPT. EXT. SCREENED PORCH	+95

REVISION LOG

REV	DATE	DESCRIPTION
1.0	11-07-19	OPT. DINING BUMP OUT, OPT. EXPANSION TO DOOR LOCATION, RIGHT 4'-0" BALCONY, ADDITIONAL RAILING TO MATCH TO ADJACENT BRICK PIERS, OPT. LAUNDRY LOCATION AT 2ND FLOOR, OPT. 2ND MASTER SUITE WITH EXT. BALCONY ELEVATION AND PLAN, OPT. 2ND MASTER SUITE BALCONY, OPT. EXT. SCREENED PORCH ELEVATION AND PLAN, OPT. SCREENED PORCH ADDED, OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELEVATION AND PLAN ADDED, OPT. GROUND FLOOR ELECTRICAL ADDED, OPT. FIRST FLOOR ELECTRICAL ADDED, OPT. SECOND FLOOR ELECTRICAL ADDED, OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELECTRICAL ADDED, DETAILS ADDED, SHEET 2 RENUMBERED TO SHEET A3, SHEET 3 RENUMBERED TO SHEET A4, SHEET 4 RENUMBERED TO SHEET A5, SHEET 5 RENUMBERED TO SHEET A6, SHEET 6 RENUMBERED TO SHEET A7, SHEET 7 RENUMBERED TO SHEET A8, SHEET 8 RENUMBERED TO SHEET E1, SHEET 9 RENUMBERED TO SHEET E2, SHEET 10 RENUMBERED TO SHEET E3, SHEET 11 RENUMBERED TO SHEET E4, SHEET 12 RENUMBERED TO SHEET D1, SHEET 13 RENUMBERED TO SHEET D2
2.0	1-29-20	
3.0	3-09-20	
4.0	9-09-20	
5.0	4-14-21	
6.0	4-29-21	
7.0	5-28-21	
8.0	11-04-21	
9.0	11-22-21	

SCHEDULE OF DRAWING SET

A0	COVER SHEET
A1	ELEVATIONS - FRONT AND REAR
A2	ELEVATIONS - SIDES
A3	ROOF PLAN
A4	GROUND FLOOR PLAN
A5	FIRST FLOOR PLAN
A6	SECOND FLOOR PLAN
A7	OPT. EXT. SCREENED PORCH ELEVATION AND PLAN
A8	OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELEVATION AND PLAN
E1	GROUND FLOOR ELECTRICAL
E2	FIRST FLOOR ELECTRICAL
E3	SECOND FLOOR ELECTRICAL
E4	OPT. SECOND MASTER SUITE WITH EXT. BALCONY ELECTRICAL
D1	DETAILS
D2	DETAILS

Plans to be Built according to the latest adopted edition of the International Residential Building Code Standard for Single Family Residential Dwellings

3089

1027 AVE OF OAKS

CRESCENT HOMES
572 Savannah Highway
Charleston, South Carolina
Phone (843) 573-9535
Fax (843) 402-0135

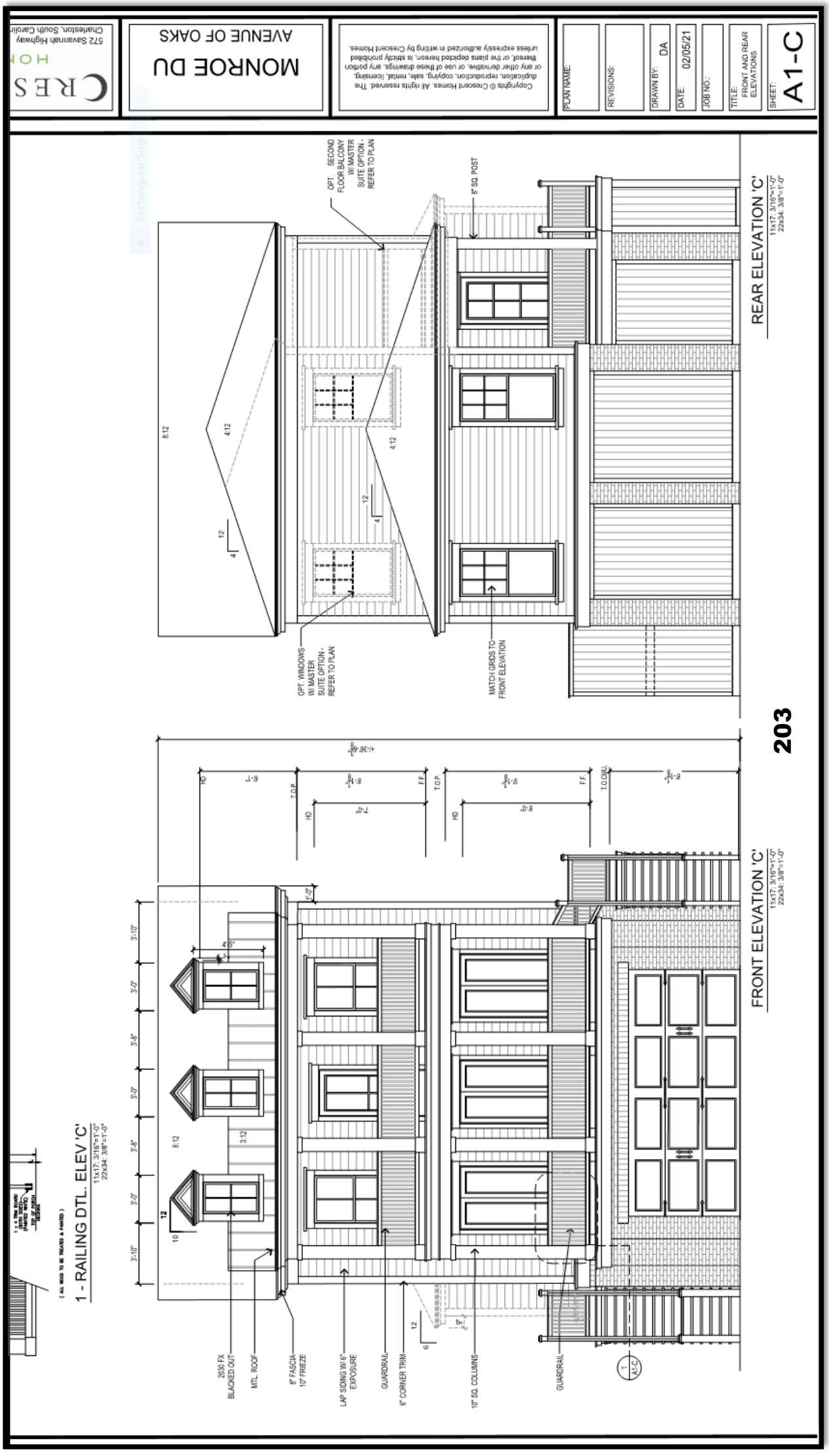
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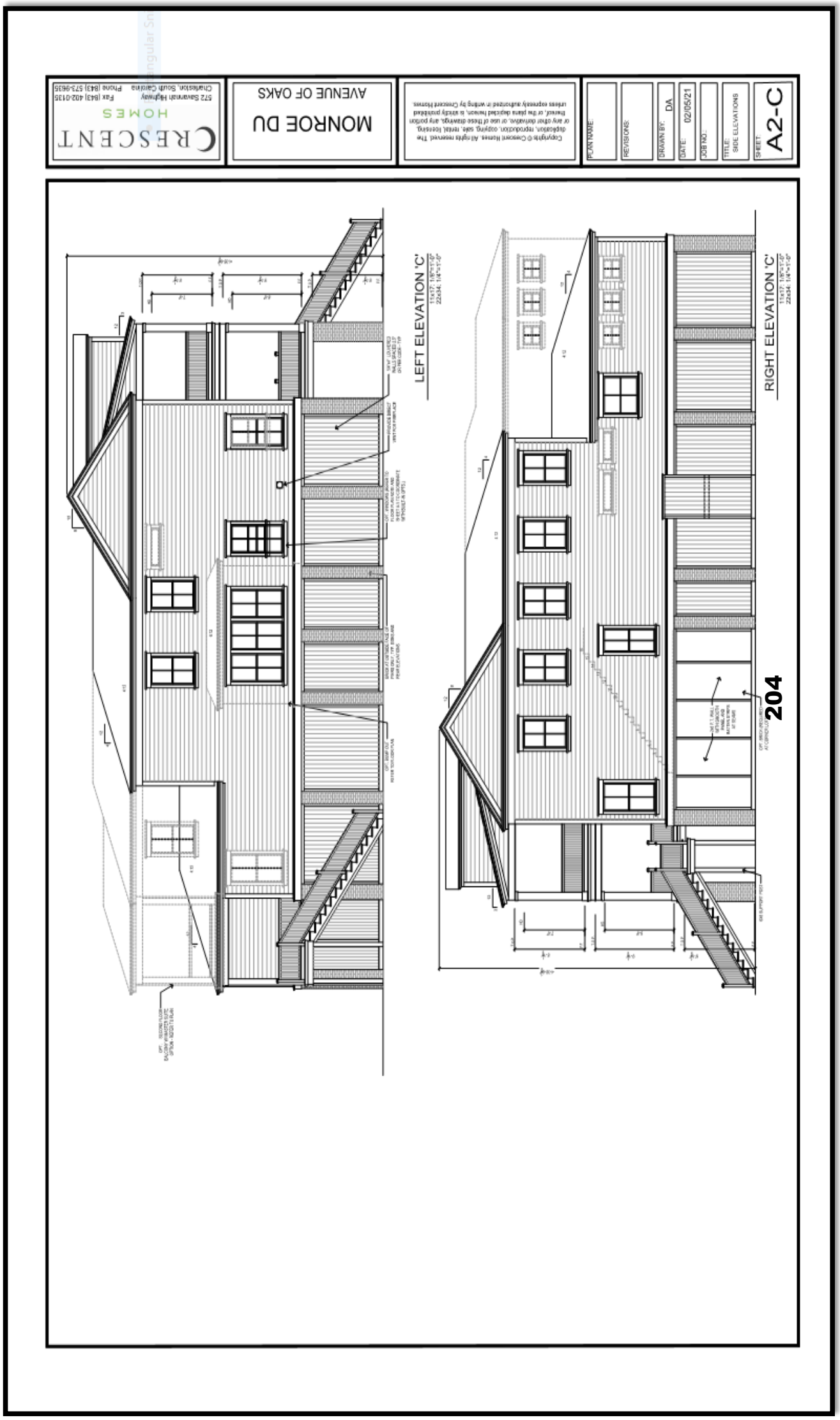
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PLAN NAME:
REVISIONS:
DRAWN BY: DA
DATE: 02/05/21
JOB NO.:
TITLE: COVER SHEET
SHEET: COVER

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AVENUE OF OAKS
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PLAN NAME:
REVISIONS:
DRAWN BY: DA
DATE: 02/05/21
JOB NO.:
TITLE: SIDE ELEVATIONS
SHEET: A2-C
LEFT ELEVATION 'C'
11x17: 1/8"=1'-0"
22x34: 1/4"=1'-0"
RIGHT ELEVATION 'C'
11x17: 1/8"=1'-0"
22x34: 1/4"=1'-0"
204

Agenda Item #B-4

131 COLUMBUS STREET

(CANNONBOROUGH/ELLIOTBOROUGH)

TMS # 460-08-02-001

Request special exception under Sec. 54-220 to allow a 175-unit accommodations use in a LI-A (Light Industrial-Accommodations) zone district.

RECORD 000275

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[1:05:52]

CHAIR ROBINSON: Next one is 1029 Avenue of Oaks, lot 40. Request variance from Section 54-301 to allow construction of a three-story single family residence that exceeds 35 feet in height. Limit is two and a half stories, 35 feet. Zoned SR-1. Mr. Bachelder.

BACHELDER: So here we have a new application for this variance request with an Avenue of Oaks development. This map shows the location of 1029 Avenue of Oaks. You'll see that it is adjacent to homes that front on San Juan Avenue, which is the neighboring neighborhood really to this new development of Avenue of Oaks. The zoning map shows the zoning of the Avenue of Oaks property SR-1, and the neighboring properties.

The Ashleyville Maryville neighborhood where this development is located is typically one story homes, some two story homes, and then you've got the homes on San Juan Avenue which are also typically one story homes. And it's these homes that this lot is located immediately behind. So you see the shed back here, that's probably in the back corner of this person's property, and just beyond that shed is the back property line and beyond that back property line is the Avenue of Oaks development.

So the home that's being proposed here that would be three stories is immediately behind these homes. And an aerial view shown here, the San Juan Avenue homes and this particular lot that we're dealing with right here, 1029 Avenue of Oaks. And another view, another way to look at that is from this angle.

So my position is in opposition to this request. So we go back to, we heard back in June when we heard the variance request for nine lots within the neighborhood. The letter from Mr. Gaskins indicated, and I've highlighted the language here, that Crescent Homes designed 22 of the lots within this neighborhood with a drive-under design with two stories of living space over

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the garage area. And of those 22 lots, 13 had already received building permits when this letter was written back in May, and those permits had been issued prior to the change in the flood map. So then we dealt with the remaining 9 lots of those 22 total lots within the neighborhood where they had intended to build these drive-under designs only to be thwarted by the change in the flood map. So we heard that request and we granted that approval. Those lots were not located within the area we're talking about with this application, right adjacent to or in close proximity to those homes on San Juan Avenue.

Now as you can see here, this map shows those nine lots, and when you've got marsh on the other side of the neighborhood. So there's no, there were no homes outside of the Avenue of Oaks development that were in close proximity to those nine lots that we dealt with before. Now we're talking about a lot, 1029 Avenue of Oaks, that is immediately adjacent to the San Juan Avenue lots. So that's one issue that I have.

The second issue is that this lot already received a building permit from the City back in May to allow the construction of this two-story home. And if I go back to this map, all of these lots over here have these two-story homes. They face the Avenue of Oaks, which is located right here, and then these lots over here face a nice park space that was donated by the developer to the East [unclear 1:11:27.1] Land Trust. And so this lot is not part of those 22 lots that were intended to be drive-under lots in the original plans for the development, according to letter Mr. Gaskins submitted to us.

But anyway, we approved these plans. This is the two-story home that would go on that lot and this is a site plan showing that approval. And so for that reason, I don't believe that we should approve this request. It's immediately abutting these neighboring properties on San Juan, would adversely affect them. The lot was not intended to be a drive-under home lot, and we've

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already issued the permit for a two-story home, which I think kind of makes it difficult to argue that he would suffer some sort of hardship by not receiving the three-story, I guess 37 foot tall plan approval.

So for that reason, my recommendation is for denial of this request.

CHAIR ROBINSON: City recommends denial. Is the applicant present? Yes. Mr. Gaskins?

GASKINS: Good evening, Board members again. Also available is Kelly McGuinn with Crescent Homes who may be able to provide some additional information if you all have questions. But Mr. Bachelder's summary is generally correct. There were approved building plans for these two lots based on the, I believe it was a contract that the builder had to sell those homes. Those contracts have now fallen through, and so what we are asking is a variance to build what we are building on the other lots in this neighborhood. As you saw from the map, one of the approved drive-under designs is directly adjacent to the middle lot.

And so we believe that, as we expressed in the June meeting, that all the conditions for a variance or all the criteria for a variance have been met. With respect to any inconsistency or detriment to the public good, there is none. This home will be, these two home will be consistent with 22 other homes in the neighborhood and as I explained earlier, with the one lot that borders the three house on San Juan Avenue. Those three homes can utilize the same design that, those parcels can utilize the same design that we are attempting to utilize here. So because the other variances have been granted, if we would have applied for building permits earlier in the process or included them in the last application, we would have been approved, or we feel we would have been approved, so we believe all the criteria have been met and the same conditions apply. So we would request the variance be granted.

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CHAIR ROBINSON: Any questions for Mr. Gaskins? Anyone else wish to be heard on behalf of the application?

KELLY: Yeah, I would just add that these lots were always intended…

BACHELDER: Let me swear you in, Kelly.

KELLY: Alright.

BACHELDER: Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

KELLY: I do.

CHAIR ROBINSON: Proceed, please.

KELLY: So the intent of these lots was always as drive-unders, and when the zoning map changed and we realized that the city had changed its position, is when based off the timelines to get the variance approved and needing to keep the community moving, we converted those to raised slab foundations that were built right on the ground just out of necessity to keep the community moving. So they were sold as raised slabs and permitted as such, but once we staked the raised slab foundation and the plans that have the garage as part of an additional footprint of the house, it really ate up every square foot of that lot and both contracts cancelled just because the functionally the houses don't work on the size lots. So I think Mr. Bachelder had brought up that there was the intent for these to always be raised slabs and not be drive-unders. That wasn't the case. Our intent was always to have these as raised foundations and only subsequently pivoted based off of the new interpretation as we worked out the details of specifically how that would be applied.

CHAIR ROBINSON: Any questions from the Board? Anyone else wish to speak on behalf of the application? In opposition?

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ASHBY: Yes, Mr. Robinson. Again, we have the neighborhood president from the Ashleyville Maryville Neighborhood Association. Ms. Higgins?

CHAIR ROBINSON: Ms. Higgins, you're still under oath, so please give us your comments.

HIGGINS: Oh, I just unmuted myself. Again, I'm Marsha Higgins, President of the Maryville Ashleyville Neighborhood Association. And it is requested that this agenda item B2, 1029 Avenue of Oaks, is not approved to allow construction of this three-story single family home that it seems it [unclear 1:18:02.6] limitations for homes in the Avenue of Oaks subdivision. I request again that you please stay with the initial plans that show some consideration of the smaller nearby homes on San Juan Avenue and also the historical Maryville Ashleyville community. Thank you.

CHAIR ROBINSON: Thank you. Anyone else in opposition?

ASHBY: Yes, Mr. Robinsons. Again, Councilmember Carol Jackson.

CHAIR ROBINSON: Ms. Jackson?

JACKSON: Yes, there are, thank you, Chairman. I too am continuing to be in opposition to this variance and the one behind it. I think it's very difficult for the builder to demonstrate a hardship when we know that there can be very lovely, affordable and marketable homes that are smaller density, smaller square footage of density. That would go along with the character and the history of Maryville Ashleyville, as well as the City's stated goals to be facilitating housing price points that are [inaudible 1:19:24.0] by our workforce and the desired residents who are moving to the area. Not every house that's built new needs to be maximum density for a particular lot. I heard Mr. McGuinn, I think his name is, say that this, once they showed the prospective buyer what the house would look like that was under contract for a different style the

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contract fell apart, because nobody wants to live on a property that just is way too big for the space that is granted it on the land.

So I would appeal to the Crescent Builders to design a smaller scale home. Thank you.

CHAIR ROBINSON: Any questions for Ms. Jackson?

GASKINS: If it would be possible just to create some clarity…

CHAIR ROBINSON: Mr. Gaskins, you're not allowed to speak at this point. Any questions for Ms. Jackson from the Board? Anyone else in opposition?

ASHBY: Yes, Mr. Robinson. Ms. Diane Hamilton.

CHAIR ROBINSON: Ms. Hamilton?

HAMILTON: Thank you again for allowing me to add my voice to this discussion. And I concur with all that Ms. Higgins and Ms. Jackson have said, so I won't repeat everything, but I concur 100 percent and I think the original plan that was approved by the City for the two-story home should be approved and deny the request for three stories because of its impact or potential impact on this historic neighborhood. Thank you.

CHAIR ROBINSON: Thank you. Any questions from the Board for Ms. Hamilton? Ms. Ashby, is there any other opposition?

ASHBY: Mr. Robinson, I believe Mr. Bachelder may have emails that we received in opposition. These people did not sign up to speak but they sent emails in opposition to this request.

CHAIR ROBINSON: Thank you. Does Mr. Bachelder want to go over those with us or he just wants them introduced into the record?

BACHELDER: Oh, yes, thank you. I do have a number that were sent last week. Councilmember Shaheed that represents this area of West Ashley and he says that he supports

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upholding the administrators' denial as to A2 and the denial of the application of item B2, which is the application we're looking at here. So that is from Councilmember Shaheed. And then I have an email from Charlie Smith, 333 Brockley Road, who indicates that he is opposed to this request as well.

CHAIR ROBINSON: Is that it?

BACHELDER: That's it.

CHAIR ROBINSON: Thank you very much. Any rebuttal?

GASKINS: I will be brief, and then I'll turn it over to Mr. McGuinn. As I understand the comments in opposition, they appear to be related to the height of the homes. But to be clear, we are not requesting a variance to exceed the maximum height. Even if a drive-under garage is not allowed, these homes can be built to 35 feet, possibly higher, depending on where they are in the flood zone and where the curb cuts are. So even if the variance is denied, there's probably going to be a home that is 35 feet or close to it and larger in the neighboring properties. But again, going back to what is permissible in the R4 zoning district, this exact same product that we are requesting is permissible.

This is a cluster subdivision, so the setbacks and the site requirements are what they are, and that's going to determine the design of the home. And Mr. McGuinn, I think, can address those issues and Ms. Jackson's concerns probably better than I can. So I'll turn it over to him.

MCGUINN: Just to address the issue of density, what we're proposing a variance on would actually be an incredibly less dense use of the property. Taking the garage and putting it as a separate structure increases the overall density that each of these sites would be developed to, which is why the contract fell through, because just the sheer density. So if density is the concern by the adjoining property owners, what we're proposing actually decreases the density.

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And then along the same lines of the height, if height is the concern, the height would not be any different. So from both a height and density perspective, what we're proposing better addresses those specific concerns.

And then just to discuss flooding briefly, because as a resident of Charleston, flooding is a huge concern. The City spent a lot of time, money and effort to try to address in a real way how we as citizens address the flooding issue. And so one way to do that is give somewhere for the water to go. If we're forced to build this house on the ground, all of that water that has to be displaced by the house that is now in place of an area that would otherwise be open and allow the water to flow under the house. So all of the water that would potentially be under the house, as with what we're proposing, is now being displaced on adjoining property owners, which is to the detriment.

So if the concerns of height and density both have been addressed in our proposal in a way that we feel like better serves the adjoining property owners, and also addresses the bigger issue of flooding not only for these specific sites but for the surrounding homeowners that will now, if not given the variance, have to take the water that's not being displaced by house. So those three things, we feel like what we're proposing better addresses the specific concerns that the adjoining property owners and other stakeholders brought up.

CHAIR ROBINSON: Thank you very much. Any comments, questions, discussion or motion from the Board?

GRASS: I just wanted to say a couple of things. I appreciate the comments made by the opposition and agree with them, and the justification or the arguments made by the applicant about the structures being built, it sounds like that it has a lot to do with the location near the marsh or stormwater concerns, not building on the land. It just sounds like maybe it's not the

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right location to be built period. So I don't feel like that they've created, or that they've proven that there's a hardship. It sounds like that the hardship is something that they might be creating, and it sounds like more of a design issue. I do hope that they will consider the neighboring historic neighborhood and building more in character with that. That's all I want to say.

CHAIR ROBINSON: Any other comments, questions or motions?

JUDEAN: I move for denial.

CHAIR ROBINSON: Motion for denial by Mr. Judean. Is there a second?

GRASS: I'll second it.

CHAIR ROBINSON: Seconded by Ms. Grass. All in favor signify by saying aye. Mr. Judean?

JUDEAN: Aye.

CHAIR ROBINSON: Ms. Grass?

GRASS: Aye.

CHAIR ROBINSON: Ms. Richards?

RICHARDS: Aye.

CHAIR ROBINSON: Ms. Vargas-Vargas?

VARGAS: Aye.

CHAIR ROBINSON: Mr. Bennett?

BENNETT: Aye.

CHAIR ROBINSON: Mr. Robinson votes aye. The motion is unanimously approved. Thank you very much. Next item on the agenda is item number 3, 1027 Avenue of Oaks, lot 41. Request a variance from Section 54-301 to allow construction of a three-story single family

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residence that exceeds 35 feet in height. Limit is two and a half stories, 35 feet. Zoned SR-1. Mr. Bachelder?

BACHELDER: This is the lot next door to the one we just heard. This map shows the location. Then the zoning map, SR-1. This lot is in close proximity to the homes on San Juan Avenue. Here we have another view of that relationship between those homes and this lot. So again, the arguments are the same basically. This was not one of those lots that was identified in the letter from Mr. Gaskins that indicated that they originally, that Crescent Homes originally planned to build on only 22 of the lots in this neighborhood with these drive-under homes.

And this is the home that was approved by the City back in May of this year, two-story home. And the site plan showing the location of that home. There are no setback requirements within this development, given that it is a neighborhood that was approved under we call the cluster development guidelines. And that's where you can group lots, smaller lots together to save open space and that's what they did here with that Avenue of Oaks. But there are no setback requirements, so the lots can be, have large homes on them if this is approved and those homes can be in very close proximity to neighboring homes.

So our recommendation is the same. We don't think that this qualifies for variance to allow this type of construction. We've already permitted a two-story home on this lot. This is not one of those original 22 lots that were intended for drive-under homes, and the proximity of this lot to those neighboring properties on San Juan Avenue is a concern. So we feel that this variance request should be denied.

CHAIR ROBINSON: The City recommends denial. Is the applicant present? Mr. Gaskins? Mr. McGuinn? Is the applicant present?

BACHELDER: I don't see Mr. Gaskins. I see Mr. McGuinn.

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CHAIR ROBINSON: Mr. McGuinn?

BACHELDER: Sounds like they're not going to speak on this application.

CHAIR ROBINSON: I'll call one more time for the applicant, Mr. Gaskins, Mr. McGuinn? Is anyone present in opposition?

ASHBY: Yes, Mr. Robinson. Marsha Higgins with the Ashleyville Maryville Neighborhood Association.

HIGGINS: Thank you so much. Again, I continue to request that the Board please stay with your initial plan that shows some consideration for the smaller nearby homes on San Juan Avenue and the historic Maryville Ashleyville community. [unclear 1:33:20.0] that you deny this request for item B3, 1027 Avenue of Oaks. Please do not approve this request. Thank you.

CHAIR ROBINSON: Thank you. Anyone else in opposition?

ASHBY: Yes, Mr. Robinson. Councilmember Ms. Jackson.

JACKSON: Thank you, Chairman. I continue my opposition to this request for variance. I did want to clarify my position that I stated on the last item. I'm not, I'm in favor of builders being respectful of the climate studies that have been done on our stormwater, understanding of better water management, stormwater runoff design. So I fully support builders that are trying to elevate their properties, and I think that having a breakaway walls garage is a good use of that elevation space. What I'm suggesting is that it's not a hardship for this builder to determine that he can stay within the two and a half story constraint by building an elevated first floor and putting one and a half stories on top of it. That can be a lovely home and it can be very attractive to the buyers that are moving to our region to take the jobs that are being created by our IT industry and a lot of the economic development business that's going on in the City. So I just don't think there's a hardship, but I am in favor of elevated building types. Thank you.

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CHAIR ROBINSON: Thank you. Anyone else in opposition?

ASHBY: Yes, Mr. Robinson. Ms. Diane Hamilton.

HAMILTON: Good afternoon again. I would like to just reiterate what has been said before in opposition to the projects relating to the Avenue of Oaks. I'm asking you to deny approval of this latest request and keep in mind the entire neighborhood as we try to move forward. Thank you very much.

CHAIR ROBINSON: Thank you. Anyone else in opposition?

BACHELDER: I had the same two letters. I think that we're referring to this lot as well. Is that true?

ASHBY: Yes sir.

BACHELDER: Yeah, from Councilmember Shaheed and Charlie Smith.

CHAIR ROBINSON: Thank you. Any rebuttal? Does the applicant wish to submit a rebuttal?

BACHELDER: And I think Mr. McGuinn, who was on the call earlier but did not speak, he is no longer listed as an attendee or panelist.

CHAIR ROBINSON: So the applicant is no longer present.

BACHELDER: Correct.

CHAIR ROBINSON: Ms. Richards moves for, excuse me, Ms. Richards moves for a denial, seconded by Ms. Vargas-Vargas. All in favor signify by saying aye. Mr. Judean?

JUDEAN: Aye.

CHAIR ROBINSON: Ms. Grass?

GRASS: Aye, and I want to clarify something too real quick. Is that okay?

CHAIR ROBINSON: Sure.

GRASS: Just that I didn't intend to say that they were, that the applicant should not be allowed to build on the lot. I was just stating that the points that they raised in regards to hardship did not meet the hardship test in my opinion. So I just wanted to clarify that.

CHAIR ROBINSON: Thank you. And you vote in favor of the motion?

GRASS: Yes.

CHAIR ROBINSON: Ms. Richards?

RICHARDS: Aye.

CHAIR ROBINSON: Ms. Vargas-Vargas?

VARGAS: Aye.

CHAIR ROBINSON: Mr. Bennett?

BENNETT: Aye.

CHAIR ROBINSON: Mr. Robinson votes aye. The motion is unanimously approved.

[1:37:42.9]

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ELECTRONICALLY FILED - 2021 Dec 27 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2021-CP-10-04196
COUNT OF CHARLESTON	)	
	)	
Crescent Homes SC, LLC,	)	
	)	**CONSENT MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE**
Appellant,	)	
	)	
vs.	)	
	)	
The City of Charleston Board of Zoning Appeals – Zoning,	)	
	)	
Respondent.	)	
	)	

Pursuant to Rule 74, SCRCP, Appellant Crescent Homes SC, LLC, with the consent of Respondent The City of Charleston Board of Zoning Appeals – Zoning, moves for leave of the Court to allow the Charleston Homebuilders Association to participate in this action as an amicus curiae and file an amicus curiae brief. Although there is no formal rule or statute governing participation by amicus curiae at the circuit court level, lower courts in other jurisdictions have been held to have the inherent authority to invite and allow participation by amicus curiae to assist the court in proceedings. *See, e.g., United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990). Moreover, South Carolina circuit court judges have the inherent authority to manage and conduct proceedings before them. *Branham v. Ford Motor Co.*, 390 S.C. 203, 242, 701 S.E.2d 5, 26 (2010).

In this case, Charleston Homebuilders Association and its members have an interest in the interpretation of the zoning code provision at issue in this appeal and desire to supplement the efforts of counsel and draw the court's attention to matters that pertain to the general public interest at large which may otherwise escape consideration without its participation. Therefore, Appellant

requests that the Court exercise its inherent authority and allow Charleston Homebuilders Association participation by amicus curiae in accordance with the proposed order, attached hereto.

WE SO MOVE:

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December 27, 2021
Charleston, South Carolina

ELECTRONICALLY FILED - 2021 Dec 27 3:04 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196

ELECTRONICALLY FILED - 2022 Jan 04 11:49 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Crescent Homes SC, LLC, Appellant, v. The City of Charleston Board of Zoning Appeals – Zoning, Respondent.	)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2021-CP-10-04196 **CHARLESTON HOME BUILDERS ASSOCIATION'S AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT**

Pursuant to this Court's Order Granting Leave to Participate as Amicus Curiae, issued December 29, 2021, the Charleston Home Builders Association (the "CHBA") submits this brief in support of the appeal of Appellant Crescent Homes SC, LLC ("Crescent Homes") from the decision of the City of Charleston Board of Zoning Appeals-Zoning (the "BZA") concerning construction of single-family residences in the Avenue of Oaks subdivision.

INTEREST OF AMICUS CURIAE

Charleston Home Builders Association is a non-profit organization committed to fostering growth and development in the Lowcountry of South Carolina. CHBA members consist of residential contractors, remodelers, developers, and representatives from all professions supporting the home-building industry. Since 1959, the CHBA has provided its members the resources necessary to develop safe, quality, and affordable housing in local communities.

The matter before the Court is of significant interest to the CHBA because of the broad implications the outcome will have on the home-building industry in Charleston and the surrounding areas. In denying the building permit requested by Crescent Homes, the BZA interpreted the Charleston Zoning Code, without legislative support, in a manner that severely

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restricts the design options for new home construction. Specifically, the BZA's interpretation of the term "story" and the undefined term "floor" to include unfinished drive-under areas eliminates options for home buyers who wish to protect themselves and their property from flood damage. Such a restriction on elevated-home plans is contrary to the City's policy and instruction to builders to secure the Charleston area against the ever-rising sea level and more frequent extreme weather. *See, e.g.*, Charleston City Council, *Flooding and Sea Level Rise Strategy* (2d ed. 2019) (discussing issues posed by rising waters and prioritizing the preservation and safety of the Charleston community). Construction in the Lowcountry already presents unique and challenging obstacles for home builders while the demand for housing continues to increase with the rapidly-growing population. The BZA's counterintuitive interpretation of the Zoning Code's height restrictions further exacerbates the burdens faced by local home builders.

The CHBA, therefore, submits this brief as *amicus curiae* in an effort to protect the interests of its members as well as the home-buying community they serve.

STATEMENT OF THE CASE

The CHBA incorporates herein the statement of facts contained in Crescent Home's Notice of Appeal and Petition for Appeal, filed on September 9, 2021. Facts of particular relevance are restated as follows:

In March of 2020, the City of Charleston (the "City") approved the final plat of the Avenue of Oaks subdivision. The subdivision sits within a single-family residential (SR-1) zoning district, in which the height of houses is limited to 35 feet and 2 ½ stories. Crescent Homes obtained building permits for thirteen lots using a drive-under design with two-stories of living space above.

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At that time, all of the residential lots in Avenue of Oaks were in AE flood zones, which designates high-risk areas.[1]

In January 2021, FEMA's revised flood maps became effective and placed twenty-five of the Avenue of Oaks lots in Shaded Zone X, a moderate risk zone.[2] Following this flood-zone change, the City refused to issue a building permit to Crescent Homes for a lot located at 1012 Avenue of Oaks which incorporated the same drive-under design that the City had approved in 2020. This denial was based on the City's interpretation of the Charleston Zoning Code that the inclusion of a drive-under is a "story" in certain flood zones but not in others. Applying this definition, the City determined that the drive-under space constituted a third story, thereby exceeding the 2 ½ story limitation. This reasoning is in no way related to the height, design, or purpose of the structure; it is simply based on the lot's flood-zone designation. Crescent Homes appealed this decision to the BZA, which ultimately denied the building permit for the lot but granted a variance request. By its denial, the BZA erroneously affirmed the City's flawed interpretation of the Charleston Zoning Code's height requirements.

ARGUMENT

The City and BZA's interpretation of the Charleston Zoning Code places arbitrary burdens on home builders and buyers in the City of Charleston. The interpretation conflicts with the stated policy priorities of the City and the interests of home builders and buyers alike. In applying the City's interpretation, the BZA failed to effectuate the plain language of the ordinance and

[1] Flood Zones beginning with A and V are within the regulated Special Flood Hazard Area (SFHA) and are considered high hazard flood zones. X Zones fall outside the SFHA although they are still exposed to potential flooding. Zone D represents areas in which flood hazards are undetermined but possible.

[2] Shaded Zone X designates areas of moderate risk while Zone X designates areas of lower risk.

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disregarded legislative intent underlying the Zoning Code. Such failure to implement long-accepted tools of statutory construction amount to an error of law.

"Issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." *Mikell v. County of Charleston*, 386 SC 153, 158, 687 SE2d 326, 329 (2009). As aptly explained in Crescent Home's Petition for Appeal, ordinances should be given a practical, reasonable, and fair interpretation consistent with the intent of the lawmakers. *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018). Further, "[a]lthough great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, 'a broader and more independent review is permitted when the issue concerns the construction of an ordinance.'" *Eagle Container Co. v. County of Newberry*, 379 S.C. 564, 568, 666 S.E.2d 892, 894 (2008) (quoting *Charleston Cnty. Parks & Rec. Comm'n v. Somers*, 319 S.C. 65, 68, 459 S.E.2d 841, 843 (1995)). "'The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose.'" *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 12, 776 S.E.2d 753, 759 (Ct. App. 2015) (quoting *City of Columbia v. Niagara Fire Ins. Co.*, 249 S.C. 388, 391, 154 S.E.2d 674, 676 (1967)).

A. The plain meaning of the Zoning Code must be effectuated, and the BZA cannot interpret its language to limit property rights without clear justification.

The interpretation of "story" offered by the City and supported by the BZA conflicts with long-established principles of statutory construction. The Zoning Code defines "story" as "[t]hat portion of a building included between the surface of any floor and the surface of the next floor above, or if there be no floor above it, then the space between such and the ceiling next above it."

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Charleston Zoning Code § 54-120. Thus, the term "story" relies on the meaning of floor; however, "floor" is not defined in the Zoning Code.

Undefined terms in zoning ordinances should be interpreted by comparison to related codes and as plainly understood in the relevant industry. Crescent Homes has offered a reasonable interpretation of "floor" based on the definition provided in the City of Charleston ordinances related to Stormwater Management and Flood Control: "[T]he top surface of an enclosed area in a building (including basement) i.e., top slab in concrete slab construction or top of wood flooring in wood frame construction. ***The term does not include the floor of a garage used solely for parking vehicles***." Charleston City Code § 27-103 (emphasis added). Additionally, Section 7-26 of the City Code expressly adopts the International Building Code (IBC). *See also* S.C. Code. Ann. § 6-9-50 (adopting the latest editions of the nationally recognized building codes). Although the IBC does not define "floor," it defines "lowest floor" as "[t]he lowest floor of the lowest enclosed area, including basement, but ***excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access or limited storage*** provided that such enclosure is not built so as to render the structure in violation of Section 1612 [which governs flood hazard areas]." IBC § 202 (emphasis added). These governing sources reflect the common understanding of "floor" as used in building construction.

Nonetheless, the City and the BZA have taken the position that "floor" has multiple meanings, which are dependent on whether the relevant structure is located in a particular flood zone. No notice is provided to builders that the City has adopted this split meaning of an otherwise simple term. The City's strained definition is not included in the Zoning Code nor is it found in any other City ordinance. It has no practical relation to the type of structure or its design. Further, this interpretation conflicts with the "well-founded principle of law" that "ordinances in derogation

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of natural rights of persons over their property are to be strictly construed . . . . [and] terms limiting the use of the property must be liberally construed for the benefit of the property owner." *Helicopter Solutions*, 414 S.C. at 13, 776 S.E.2d at 759 (quoting *Purdy v. Moise*, 223 S.C. 298, 302, 75 S.E.2d 605, 607 (1953)).

> Local governments have wide latitude to enact ordinances regulating what people can do with their property, but they must draft their ordinances so that people can have a clear understanding as to what is permitted and what is not. Otherwise, we must construe such ordinances to allow people to use their property so as to realize its highest utility.

Keane/Sherratt Partnership by Keane v. Hodge, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987).

The term "floor" has a common definition in the industry – one that the Charleston City Code adopted by reference – and this plain meaning ought to be used where the governing body has not provided a clear definition. If the City wished to create a dual meaning for the term, dependent on the flood zone in which a property sits, then it must draft the zoning ordinance accordingly so that home builders have "a clear understanding as to what is permitted." Thus, this Court should apply the written and practical definition of "floor" to hold that the BZA erred as a matter of law in finding that the terms "story" and "floor" include unfinished, flood resistant enclosures.

B. The BZA's construction of the Zoning Code is incompatible with legislative intent and the priorities of the home-building industry.

Even if this Court were to find the term "story" to be ambiguous, thereby evading a plain-meaning analysis, the Court should still reverse the BZA's decision as incorrect as a matter of law due to its inconsistency with legislative intent and industry practice. In many respects, the overarching objectives of builders and regulatory agencies are aligned. Both seek to ensure home buyers and owners feel secure knowing the structures in which they reside are safe. Home builders

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have the additional concern of providing attractive and affordable homes that meet these expectations even in the most challenging of locations. Eliminating the option of elevating a multi-story home to avoid storm and flood waters contradicts all of these priorities.

Reviewing courts are prohibited "from writing into an ordinance language restricting property rights to a greater degree than intended by the legislative body." *Helicopter Solutions*, 414 S.C. at 13, 776 S.E.2d at 759. In South Carolina, "[z]oning ordinances ***must be*** for the general purpose of guiding development in accordance with ***existing and future needs*** and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare." S.C. Code Ann. § 6-29-710 (emphasis added). It is under this umbrella of authority and for these limited purposes that the City and BZA derive their powers to enact, enforce, and interpret zoning ordinances. Furthermore, it is the stated intent of the cluster development ordinance, under which the Avenue of Oaks development was authorized, to permit "unique residential developments" that accomplish the following:

> a. Utilize ***creative and flexible site design*** that is sensitive to natural, historical, cultural and/or other significant land features.
> b. Provide quality common open space, both recreational and passive, for community members and citizens.
> c. Decrease stormwater runoff and nonpoint source pollution by reducing the amount of impervious surface in a development.
> d. ***Reduce the costs associated with infrastructure improvements***.
> e. ***Provide a mixture of lot sizes and housing options within a development***.

Charleston Zoning Code § 54-299.11 (emphasis added). The City, the BZA, and this Court must consider these legislative purposes when interpreting the Zoning Code.

Home builders seek not only to comply with these regulations but to do so in a way that allows home buyers to fully enjoy their property. This includes taking measures to design beautiful homes capable of withstanding natural disasters for years to come. As noted above, flooding is a chief concern for Charleston residents. Failure to properly design a home at the construction phase

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can force home owners to incur substantial renovation costs in later years. Thus, elevating a new home is not only practical but commendable. Furthermore, using the space under an elevated home to store vehicles and other items decreases the construction density on a lot. Innovative design such as this allows home owners to make full use of their property while also protecting neighbors from unsightly outbuildings. Saving home owners future costs and offering increased protection from the ever-rising waters, the drive-under design is favored by the industry and should be encouraged by the City.

The BZA's construction of the Zoning Code to prohibit this flood-resistant design conflicts with legislative intent, public policy, and industry practice. Requiring home owners in moderate-risk flood zones to increase their exposure to potential floods, a potential that will continue to increase over time, does not further any lawful purpose. Moreover, under this interpretation, home builders are forced into the position of using City-approved designs with the knowledge that a safer alternative exists. Consequently, the BZA's decision may have a stifling effect on innovation and discourage development in areas where flood zones may shift or change, as in this case.

Thus, this Court should find the City and the BZA's interpretation does not align with legislative intent nor is it supported by the practices and policies involved in the home-building industry and, accordingly, reverse the BZA's decision as having no reasonable relation to the manifest purpose of the Zoning Code.

CONCLUSION

Therefore, the City and BZA's interpretation of the Charleston Zoning Code as allowing a drive-under design in certain flood zones while prohibiting the same in others is an error of law. The interpretation disregards the plain meaning of the terms "story" and "floor" as used in the related codes and industry. It conflicts with the legislative intent underlying the Zoning Code and

practical policy considerations. For the foregoing reasons, this Court should find the City and BZA's interpretation of the Charleston Zoning Code to be an error of law and, accordingly, reverse the decision of the BZA.

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CHARLESTON, SC
January 4, 2022

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Crescent Homes SC, LLC, Appellant, vs. City of Charleston Board of Zoning Appeals - Zoning, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-04196 **MEMORANDUM IN SUPPORT OF CITY OF CHARLESTON BOARD OF ZONING APPEALS-ZONING**

This memorandum is submitted by counsel for the City of Charleston Board of Zoning Appeals – Zoning in support of its decisions.

The Appellant seeks to overturn two related decisions that were made---one decision of the Board of Zoning Appeals upholding the Zoning Administrator's interpretation of "story" as prohibiting the appellant from building more than two and a half "story" house and considering a drive-under garage a "story" for the purposes of this calculation. The second decision appealed relates to the denial of variances for two adjacent lots to exceed the two and a half story limit. The Appellant would like this Court to borrow a definition of "floor" from an unrelated stormwater management ordinance which has different wording and which is inapplicable to this property. The very fact that the stormwater management ordinance is worded differently suggests City Council understands how to word an ordinance to exclude a drive under house garage from the definition of "floor" when is used solely for parking. As to the variance, the denial of the variance should not be reversed. One of the key concepts of a variance is that the special circumstances of the property present a hardship. This developer already has approved plans for a non-elevated home for each parcel.

On appeal to the circuit court, the findings of fact by of zoning appeals shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence. See S.C. Code Ann. § 6-29-840; Austin v. BZA, Town of Hilton Head Island, 606 S.E.2d 209 (S.C. Ct. App. 2004); see also Heilker v. Zoning Bd. of Appeals for City of Beaufort, 552 S.E.2d 42, 44 (S.C. Ct. App. 2001). The court may use the

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transcript of proceedings and the minutes if they are sufficient or it can remand the matter to the Board for a written order to be prepared by the BAR setting forth its findings. Vulcan Materials Co. v. Greenville County Board of Zoning Appeals, 336 S.E.2d 892 (S.C. Ct. App. 2000). The court's review is "strictly limited to the facts and arguments raised to the board. Indeed, the circuit court is expressly forbidden from considering any new facts." Austin, 606 S.E.2d at 214.

Appellate courts are required to substantially defer "to the decisions of those charged with interpreting and applying local zoning ordinances," as they are in the best position to interpret, consider and apply those local rules. Id. at 916; Clear Channel Outdoor v. City of Myrtle Beach, 602 S.E.2d 76 (S.C. Ct. App. 2004). "To this end, a court will uphold the decisions of a reviewing body if there is any evidence in the record to support its decision." Clear Channel, 602 S.E.2d at 79 (emphasis added). See also Furr v. Horry Cty. Zoning Bd. of Appeals , 411 S.C. 178, 767 S.E.2d 221 (Ct. App. 2014) cert dismissed.

Of course, zoning ordinances are passed into law by the City Council. The City has a word-searchable copy of its zoning ordinances at https://library.municode.com/sc/charleston/codes/zoning and those are incorporated by reference. It is not the function of the zoning administrator, the Board of Zoning Appeals or the judiciary to determine what language should be used in the ordinance or what policy goals should be emphasized. It is the function of the Zoning Administrator, the Board of Zoning Appeals and the courts to apply the language passed by the elected City Council.

The City has limitations on the number of stories of buildings which differ depending on the applicable zoning zone. These properties are in in an SR-1 which has a two and a half story limit on homes. Zoning Code § 54-301. There is also an overall height limit. This applicant requested the Zoning Administrator to conclude that the proposed drive under the home garage should not count as a "story." Story is defined in the Zoning Code as "that portion of a building included between the surface of any floor and the surface of the next floor above." Zoning Code § 54-120. The clear implication of those words is that drive under the house garages have a surface (the garage floor) and the surface of the next floor would be classified as a "story." The Appellant would like the

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Court to borrow from the City's the stormwater management ordinances which do not use the word "story" and instead have a definition of "lowest floor" which specifically excludes a floor of a garage used solely for parking. This is consistent with certain provisions in the building code. And, importantly, this is consistent with federal standards which severely limit the right of cities to allow construction in certain flood prone areas.

However, the applicable zoning provision at issue here relating to a limit on the number of "stories" is not a term used in the stormwater management ordinance. Further, that entire section (division) of the stormwater ordinance is only applicable in special flood hazard areas, and this is not in one of those areas. Ordinance § § 27-105 and -105. This makes the stormwater code definition of "lowest floor" entirely inapplicable to this property and this issue. The purposes of that code and the building code are to allow drive under house garages to not to count as the "lowest floor" for various requirements relating to flooding but have no application to the zoning code definition of a "story."

If anything, the difference in language between the zoning code and the Stormwater Management and Flood Control ordinance shows City Council clearly understands how to write an ordinance which exempts first floors used only for parking but chose not to do so for the zoning code.

To the extent that the Appellants want to claim that homes in special flood zones which must be elevated do not have the lowest elevation counted as a floor, the plaintiffs lack standing to assert that someone else is getting a benefit that the Appellant is clearly not entitled to. See ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008) (competitor did not have right to file an appeal a rezoning allowing a cell-phone tower.)

As to the variance, per City of Charleston Ordinance 54-924 which tracks S.C. Code § 6-29-800 the test for a variance

> a. there are extraordinary and exceptional conditions pertaining to the particular piece of property;
>
> b. these conditions do not generally apply to other property in the vicinity;
>
> c. because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

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d. the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

Clearly, this test has not been met on multiple grounds. The Appellant had previously submitted for approval of a home that did not have a drive under garage. And that plan was approved. There is no hardship that would prevent construction on the lot in that manner. The appellant created this subdivision and should not be able to be heard as to the lot sizes being inadequate for their purposes (which they are not as evidenced by the submission and approval of homes without drive-under garages.) As to the hardship prong, it is also true that the Appellant could build a one and a half story house on top of drive under garage. Or the Appellant could build a house on a higher foundation than is required without creating a drive under the house garage with a constructed “floor.” So, there is clearly not a hardship here. As to the prong that the condition does not apply to other properties in the area, the Appellant sought variances for two adjacent properties, thus the conditions apply to more than one property in the area, thus making it inappropriate for a variance.

CONCLUSION

The City of Charleston through its duly-elected leaders set a two and a half “story” limit in the SR-1 zoning areas as part of its zoning code and provided a definition of “story.” The City Zoning administrator, whose decision and that of the Board of Zoning Appeals is entitled to substantial deference, is simply following the letter of the zoning ordinance per the definition used in the zoning ordinance. The Appellant’s position would essentially allow every single property, inside or outside any special flood zone,

to be elevated above a drive under garage with two and a half stories above that. Such a change in zoning should come from City Council. The Appellant makes valid points that the City of Charleston is at risk of increased flooding due to sea level rise. And the City of Charleston is engaged in an extensive effort to try to adapt to sea level rise. Certainly, if City Council wants to allow any citizen to have two and a half floors above a drive under the house garage, then it could do so. City Council could consider this for all of the City or just portions of the City. However, those changes must come from the legislative body which in this case is City Council.

s/Timothy A. Domin

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action No.: 2021-CP-10-04196
COUNTY OF CHARLESTON	)	
	)	
Crescent Homes SC, LLC,	)	
	)	**BRIEF OF APPELLANT**
Appellant,	)	**CRESCENT HOMES SC, LLC**
	)	
vs.	)	
	)	
City of Charleston Board of Zoning Appeals – Zoning,	)	
	)	
Respondent.	)	
	)	

INTRODUCTION

Appellant Crescent Homes SC, LLC ("Crescent Homes") submits the following Brief in Support of its Appeal of Respondent City of Charleston Board of Zoning Appeals – Zoning's ("BZA") decisions (1) affirming the denial of a building permit for 1012 Avenue of Oaks in the Avenue of Oaks subdivision in the City of Charleston, TMS No. 418-06-00-124, based on its interpretation of the term "story;" and (2) denying requests for a variance to allow construction of 3-story single-family residences at 1027 and 1029 Avenue of Oaks. As argued below, the City's interpretation of "story," as affirmed by the BZA, is in error as a matter of law because it is inconsistent with the legislative intent of City Council and the term's ordinary meaning. Also, the City's interpretation is arbitrary and capricious because it lacks textual support and is not rationally related to any lawful purpose. Instead, the City's interpretation undermines the purposes of zoning ordinances, which are intended to protect people and property from flooding. Last, the BZA's denial of the variance requests was arbitrary and capricious because it had previously found that the zoning ordinance imposed an unnecessary hardships on nine other similarly situated lots in the same community and granted the same variance that it denied in this case. In so doing, the BZA

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failed to provide written findings of fact and conclusions of law explaining its rationale or why it departed from its prior precedent.

FACTS

Crescent Homes SC, LLC is a limited liability company organized and existing under the laws of the State of South Carolina. Crescent Homes is the owner and builder of residential lots in the Avenue of Oaks subdivision in the Maryville neighborhood of West Ashley. (R. p. 10.)

The BZA is quasi-judicial body created by the City of Charleston, an incorporated municipality within the State of South Carolina that has adopted zoning and planning ordinances pursuant to enabling legislation, including certain ordinances governing real property within the City of Charleston. Zoning Code Appendix C. The BZA is authorized to hear and decide appeals of alleged errors in a determination of a zoning official's decision in the enforcement of a zoning ordinance and for variances from the requirements of a zoning ordinance. *Id.*; S.C. Code Ann. § 6-29-800(A)(1)-(2).

Avenue of Oaks is in zoning district SR-1, and it was developed subject to the cluster development requirements under Zoning Code §§ 54-299.11, *et seq*. (R. p. 8.) Under the City's zoning code, cluster developments are intended to "[u]tilize creative and flexible site design" and "[p]rovide a mixture of lot sizes and housing options within a development." Zoning Code § 54-299.11.

Avenue of Oaks is adjacent to the marshland of Oldtown Creek, which is a relatively low area with a higher risk of flooding. (R. p. 10.) The final plat of Avenue of Oaks, with 42 developable lots, was approved by the City in March 2020. (*Id.* at pp. 15-17.) At the time the final plat was approved, all residential lots were in Flood Zones AE-14 or AE-13, which are special flood hazards under Code § 27-105. (*Id.)*

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In the SR-1 zoning district, the maximum height for structures is 35' and 2 ½ stories. Zoning Code § 54-301. Under Zoning Code § 54-120, "story" is defined as "that portion of a building included between the surface of any floor and the surface of the next floor above, or if there be no floor above, then the space between such and the ceiling next above it." Although the City has not always interpreted this term consistently, the City's Planning Department recent interpretation of "story" has not included unfinished drive-under areas if such areas are within a flood zone. (R. p. 19.)

Based on that interpretation, Crescent Homes designed 22 of the lots with a drive-under design and two stories of livings space over the drive-under area. (*Id.* at p. 11.) Of those, 13 lots had already received building permits from the City before the events giving rise to this appeal occurred. (*Id.*)

In January 2021, FEMA's revised flood maps for Charleston County became effective pursuant to City Ordinance No. 2020-140. (*Id.*; Ordinance No. 2020-140.) Under the new flood maps, 25 of the lots in Avenue of Oaks are now within Flood Zone X, and the other 17 lots are now within Flood Zone AE-11. (R. pp. 11, 28-29.) Of the 25 lots that are now within Flood Zone X, 11 lots were planned to utilize the drive-under design but did not have building permits. (*Id.*)

On March 29, 2021, Crescent Homes applied for a building permit for 1012 Avenue of Oaks (Lot 6). (*Id.* at pp. 30-32.) The permit application included a schedule of building plans depicting the design for the home. (*Id.* at pp. 35-41.) The building plans show two-stories of living space supported by piers and over a drive-under garage that serves as the home's foundation. (*Id.*) The building plans also show that the drive-under garage is unfinished and unheated. (*Id.*) The garage's side and rear have louvered wood exterior walls, and the front of the home has two garage doors surrounded by brick exterior walls covering the piers. (*Id.*)

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On April 15, 2021, Sean Killion, Associate Planner for the City, emailed Crescent Homes to provide notice that the proposed design for 1012 Avenue of Oaks did not comply with applicable zoning requirements. (*Id*. at p. 43.) According to Mr. Killion, "[T]he proposed design has a drive under in an X flood zone. This would make the house 3 stories and therefore non-conforming to the SR-1 regulations. Please revise for zoning approval." (*Id.*)

On May 17, 2021, Crescent Homes submitted to the BZA its appeal of the City's denial of the building permit for 1012 Avenue of Oaks based on the City's interpretation that the home's designed drive-under garage area is a "story," as defined by the City's zoning code. (*Id.* at pp. 8-9.)

The appeal was heard at the BZA's meeting on June 15, 2021. (*Id*. at pp. 2-7, 134-158.) During this meeting, the BZA granted a variance to allow 1012 Avenue of Oaks and eight other lots within the same neighborhood to exceed the 2 ½ story height limitation in the SR-1 zoning district. (*Id.*) Due to this variance, the BZA deferred deciding Crescent Homes' appeal of the denial of the building permit for 1012 Avenue of Oaks at the June 15th meeting. (*Id.* at pp. 157-158.)

Following the June 15, 2021 BZA meeting, Crescent Homes submitted separate requests for variances to exceed the 2 ½ story height limitation in the SR-1 zoning district for 1027 and 1029 Avenue of Oaks. (*Id.* at pp. 177-204.) The BZA held a meeting August 3, 2021, during which it considered Crescent Homes' appeal of the denial of building permit for 1012 Avenue of Oaks and the variance requests for 1027 and 1029 Avenue of Oaks. (*Id.* at pp. 206-218.) At that meeting, the BZA denied Crescent Homes' appeal and both requests for a variance. (*Id*.) Notices of the decisions were emailed to Crescent Homes on August 12, 2021. Crescent Homes then timely appealed those decisions pursuant to S.C. Code Ann. § 6-29-820.

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STANDARD OF REVIEW

A circuit court hearing an appeal from a board of zoning appeals must determine "whether the decision of the board is correct as a matter of law." S.C. Code Ann. § 6-29-840(A). Under this standard, the court must treat a zoning board's findings of facts in the same manner as a finding of fact by a jury. *Id.* However, "issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) (citing *Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009). Furthermore, courts need not show any deference to the rulings below on novel issues of law. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 718-19 (2000). A decision of a zoning 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 County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999).

ARGUMENT

I. Appeal of Interpretation of Definition of "Story"

A. *The City's interpretation of "story" is incorrect as a matter of law because it is inconsistent with the legislative intent and the term's common meaning.*

This appeal involves the interpretation of the City's zoning ordinance, specifically the definition of "story" under Zoning Code § 54-120. In reviewing a zoning ordinance, courts should give the ordinance a "practical, reasonable and fair interpretation consonant with the purposes, design, and policy of the lawmakers." *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018). The ordinance's language must be construed in context, and "the meaning of particular terms in a statute may be ascertained by

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reference to words associated with them in the statute. The language must also be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Id.*

In analyzing zoning ordinances, courts should be guided by the well-founded principle of law that:

> Statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed as they are in derogation of the common law right to use private property so as to realize its highest utility and should not be impliedly extended to cases not clearly within their scope and purpose. It follows that the terms limiting the use of the property must be liberally construed for the benefit of the property owner.

Helicopter Solutions, Inc. v. Hinde, 414 S.C. 1, 13, 776 S.E.2d 753, 759 (2015). Furthermore, zoning ordinances must be construed "to allow people to use their property so as to realize its highest utility" when the ordinances are drafted so that people do not have a clear understanding as to what they are permitted to do with their property. *Kean/Sherratt P'ship by Keane v. Hodge*, 292 S.C. 459, 465, 357 S.E.2d 193, 196 (Ct. App. 1987).

Under these principles, the City's interpretation of "story" as including unfinished drive-under garages is in error because the City's ordinances demonstrate that City Council did not intend for such areas to be a "story." As stated above, the zoning code defines "story," in pertinent part, to mean "that portion of a building included between the surface of any floor and the surface of the next floor above." Zoning Code § 54-120. Therefore, whether a drive-under garage constitutes a "story" necessarily depends on whether it has a "floor."

Although the City's zoning code does not define "floor," City Council defined that term in its stormwater management ordinance. As a result, it is appropriate to look to that ordinance for guidance in determining the meaning of "floor." *See Mathis v. Hair*, 358 S.C. 48, 53, 594 S.E.2d 851, 854 (2003) (considering definitions of term in other statutes to determine statutory term's meaning); *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371

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(1988) ("Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme."); *Brown v. Gardner*, 513 U.S. 115, 118 (1994) (looking to how ambiguous term is used in analogous statutes). This principle is especially applicable here because the City's interpretation of "story" depends on whether the home is located in a flood zone. *See Boehm*, 423 S.C. at 184, 813 S.E.2d at 881 (stating that a zoning ordinance "must also be read in a sense that harmonizes with its subject matter and accords with its general purpose"). Thus, the City's stormwater management ordinance provides the best guidance as to whether a drive-under garage in a flood zone is a "floor," and, thus, a "story."

In the stormwater management ordinance, the surface of an unfinished drive-under garage is not a "floor." This ordinance defines "floor" to mean "the top surface of an enclosed area in a building (including basement) i.e., top slap in concrete slab construction or top of wood flooring in wood frame construction. *The term does not include the floor of a garage used solely for parking vehicles*." Zoning Code § 27-103 (emphasis added). Furthermore, the stormwater ordinance further defines "lowest floor" as not including unfinished garages or enclosures. "An unfinished or flood resistant enclosure, usable solely for parking vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevated design requirements of this article." *Id.*

Here, the drive-under garage designed for 1012 Avenue of Oaks does not fall within the definitions of "floor" or "lowest floor" because it meets the express criteria for exclusion. It is an unfinished garage that is only partially enclosed and designed solely for parking vehicles and storage. Therefore, it is not a "floor," and consequently, it is not a "story."

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Yet not only is interpreting "story" to not include an unfinished garage consistent with other portions of the City's ordinances, it is also consistent with the ordinary and legal meaning of this term. For example, Ballentine's Law Dictionary defines "story" as "[a] habitable space between two floors of a building." Ballentine's Law Dictionary, 3rd Ed., p. 1221. In fact, several courts have defined "story" consistently with this definition, thereby requiring a story to consist of habitable space. *See Biber v. O'Brien*, 138 Cal. App. 353, 360 (1st Dist. Ct. App. 1934) ("A story has been defined as the habitable space between two floors."); *Hunter v. Narragansett Electric Lighting Co.*, 50 R.I. 196, 199, 146 A. 624, 625 (1929) ("A story is defined in Webster's Dictionary as the habitable space between two floors."); *BCH Dev., LLC v. Lakeview Heights Addition Prop. Owners' Assoc.*, No. 05-17-01096-CV, 2019 Tex. App. LEXIS 4170, at *17 (Tex. Ct. App. 5th Dist. May 21, 2019) ("The term 'story' refers to the habitable space between two floors."). Because the designed drive-under garages for Avenue of Oaks are unfinished and not habitable, they do not meet the definition of story as it has been commonly defined by other jurisdictions.

For these reasons, the City's interpretation of "story" is incorrect as a matter of law, and the BZA's decision affirming that interpretation should be reversed.

B. *The City's interpretation is incorrect as a matter of law because it is inherently inconsistent, lacks textual support, and has no rational relationship to a lawful purpose.*

In addition to being contrary to the intended and ordinary meaning of "story," the City's interpretation of that term is arbitrary and capricious and has no rational relationship to a lawful purpose. Therefore, the BZA's denial of Crescent Homes' appeal and adoption of the City's interpretation was in error.

"Arbitrary" means "based alone upon one's will, and not upon any course of reasoning and exercise of judgment; bound by no law; done capriciously or at pleasure, without adequate

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determining principle, nonrational; not governed by any fixed rules or standards." *Hatcher v. South Carolina Dist. Council of Assemblies of God*, 267 S.C. 107, 117, 226 S.E.2d 253, 258 (1976).

Here, the City's interpretation of "story" is arbitrary and capricious because it is based on an arbitrary distinction of whether the home is in a certain flood zone when there is nothing in definition of "story" that allows such a distinction. The City approved building permits for other houses with drive-under garages in Avenue of Oaks on lots that were in Flood Zones AE-14 and AE-13 prior to the issuance of the new FEMA flood maps. In so doing, the City did not consider the drive-under garages on those lots to be a story, thereby concluding that the proposed design did not exceed the 2 ½ story maximum height in the SR-1 zoning district. Now, however, the City takes the position that a drive-under garage is a story if it is located on a lot in Flood Zone X.

Yet nothing in the definition of "story" or any other zoning provision suggests that the term's meaning changes based on the location of a flood zone. In fact, the definition does not use the term "flood zone" in any manner. As a result, if a drive-under garage is not a story when it is in a flood zone, there is nothing in the Zoning Code that renders it a story when it is outside of a flood zone. Put simply, the definition of "story" has one statutory meaning, and the City's attempt to give two inconsistent meanings is not based on any fixed rule or standard.

As further evidence of the arbitrary and capricious nature of the City's interpretation, the City's planning department has never articulated in writing which specific flood zones or conditions permit a drive-under garage to be excluded from the definition of "story." Instead, the definition appears to be determined on the whims of the City's planning department, which has failed to provide property owners with a clear understanding of what criteria apply for determining

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whether a drive-under garage constitutes a "story." This type of decision making is the epitome of arbitrariness that cannot be tolerated under the rule of law.

Furthermore, the City's interpretation of "story" to exclude some – but not all – drive under garages from its meaning has no rational relationship to any lawful purpose. In fact, the City has never explained the purpose of excluding drive-under garages located in non-flood zones from the meaning of "story." Restricting the use of drive-under garages with two stories of living space above them in the SR-1 zoning district does not advance any of the enumerated purposes of zoning ordinances as established in S.C. Code Ann. § 6-29-710(A). Although local governments can enact zoning codes "to facilitate the creation of convenient, attractive, and harmonious communit[ies]" and "to provide for adequate light, air, and open space" (*see* § 6-29-710(A)(1) & (3)), the City's interpretation of "story" does not serve any of those purposes. Rather, these purposes are already accomplished by the City's height restriction of 35' in the SR-1 zoning district.

In anything, the City's different and inconsistent interpretation of "story" creates the potential that communities will be developed in ways that are not harmonious. For example, in communities that include some lots in a flood zone and others that are not, the City's interpretation of "story" will simultaneously permit and prohibit two-story homes with drive-under garages and prohibit two-story homes with drive-under garages within the same community. The fact that the exact same house can be both permitted and prohibited in the same neighborhood proves that the City's interpretation encourages disharmonious development rather than harmonious communities.

Also, the City's interpretation undermines one of the underlying purposes of zoning ordinances, which is "to secure safety from fire, flood, and other dangers." § 6-29-710(A)(7).

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Avenue of Oaks borders a marsh and is in a flood zone. Although the new flood map indicates the flooding risk is less than previously determined under the prior flood map, that risk has not been eliminated. The elevated design that utilizes drive-under garages helps protect property and residents from flooding risk. This fact was recently recognized by the City in its Dutch Dialogues efforts, which encourages using elevated designs to protect the City's residents and their property not just from flooding today but also from the uncertain but growing threats from climate change and sea-level rise in the future. (R. pp. 44-55.) By interpreting "story" to include drive-under garages, the City is discouraging homebuilders and homeowners from using this design feature, thereby increasing the threat to safety and property from flooding. This interpretation is contrary to the purposes of the zoning ordinances and the City's other recent efforts to protect its residents and their property from flooding.

The City's interpretation of "story" that is dependent upon the location of a flood zone is especially contrary to the purpose of zoning ordinances because it is short-sighted and does not reflect the growing threat of climate change and sea-level rise. Indeed, South Carolina law requires that zoning ordinances "must be for the general purpose of guiding development in accordance with existing and ***future*** needs." S.C. Code Ann. § 6-29-710(A) (emphasis added). Yet the City's interpretation effectively assumes that the flood zones of today will be the flood zones of tomorrow. Recent history has proven that assumption to be incorrect. By discouraging homebuilders and buyers from utilizing the elevated drive-under garage design, the City's interpretation endangers the property of the City's residents, thereby undermining the purposes of zoning ordinances.

Therefore, the City's interpretation of "story" is arbitrary and capricious and is not rationally related to a lawful purpose.

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II. Appeal of Denial of Variance[1]

In denying Crescent Homes' request for a variance to allow for the construction of three-story homes at 1027 and 1029 Avenue of Oaks, the only rationale articulated by the BZA was that Crescent had failed to demonstrate the strict application of the zoning ordinance would result in an unnecessary hardship. This conclusion was in error and arbitrary and capricious in light of its prior approval of the exact same variance for nine other homes in the same community.

To prove unnecessary hardship under S.C. Code Ann. § 6-29-800, "[v]ariance applicants are not required to prove that without the variance there exists no feasible conforming use for the property." *Rest. Row Assocs.*, 335 S.C. at 217, 516 S.E.2d at 446. Consistent with the principle, the BZA previously found that Crescent Homes had established an unnecessary hardship with respect to nine other lots in the same subdivision and thus granted a variance to allow Crescent Homes to construct homes utilizing two stories over a drive-under garage on those lots. (R. pp. 153-156.) Yet for some reason, which the BZA failed to explain, it ruled that there was no unnecessary hardship as to lots at 1027 and 1029 Avenue of Oaks. (R. pp. 213-214, 217-218.)

Although governmental bodies are not necessarily bound by their prior decisions, those decisions are entitled to great weight. *Duke Energy Carolinas, LLC v. S.C. Office of Regulatory Staff*, 864 S.E.2d 873, 2021 S.C. LEXIS 145, at *16 (S.C. Oct. 27, 2021). To depart from its prior rule or practice, the body must rationally justify its change in position. *Id.; see also, Nat' l Treasury Employees Union v. FLRA*, 404 F.3d 454, 457 (D.C. Cir. 2005) (stating that "any agency's unexplained departure from prior agency determinations is inherently arbitrary and capricious.")

[1] If the Court reverses the City's and the BZA's interpretation of "story," then that determination would moot the issue on appeal challenging the denial of the variance. In which case, the Court need not rule on this issue.

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Here, the BZA failed to explain its departure from its prior decisions approving the decisions. And, to be sure, the differential treatment between the nine lots that received a variance and the two that were denied the same variance demonstrates that the BZA's denial was not based on any fixed rules or standards and was, therefore, arbitrary and capricious. Indeed, the facts surrounding the variance requests for all eleven lots were exactly the same in all material respects. Like the nine lots that received the variances, 1027 and 1029 Avenue of Oaks were previously in a flood zone that would have precluded the need for a variance prior to the change in the flood maps. (*Id.* at pp. 16-17, 207, 213.) And just as the nine lots that received the variances were originally designed to have homes with two stories over drive-under garages, so were 1027 and 1029 Avenue of Oaks. (*Id.*) As a result, if Crescent Homes sufficiently demonstrated unnecessary hardship to warrant a variance for the other nine lots, it also demonstrated unnecessary hardship for 1027 and 1029 Avenue of Oaks.

Although the BZA argues on appeal that Crescent Homes cannot prove unnecessary hardship because it can build two-story homes without drive-under garages or one-story homes over drive-under garages, it never articulated that rationale during the August 3, 2021 meeting. In fact, the BZA offered no specific rationale for its decision, including whether Crescent Homes had satisfied the specific criteria required to be addressed under § 6-29-800(A)(2), either during the meeting or in its written final decision. (*Id.* at pp. 213-218.) By failing to do so, the BZA failed to comply with § 6-29-800(F), which requires that the BZA's "findings of fact and conclusions of law must be separately stated in final decisions or orders . . . which must be delivered to parties of interest by certified mail."

Yet even if this argument is considered, it does not change the arbitrariness of the BZA's decision. 1027 and 1029 Avenue of Oaks are no different than the other nine lots which received

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variances with respect to the use of designs consisting of two stories over drive-under garages. Just as 1027 and 1029 Avenue of Oaks can utilize designs other than two stories over a drive-under garage, the nine lots that received a variance could have as well. So the City's argument on appeal does not explain the differential treatment between the variance requests separated by just a few weeks. Moreover, the fact that other designs can be utilized does not negate the unnecessary hardship imposed on Crescent Homes. The test for determining hardship does not require a variance applicant to prove no other feasible use or design. Instead, it looks to whether the ordinance "unreasonably restricts the utilization of the property." *See* § 6-29-800(A)(2)(c). Because the BZA found that the definition of "story" as interpreted by the City unreasonably restricted the nine lots that received the variance, that conclusion must also hold for 1027 and 1029 Avenue of Oaks as they are all similarly situated.

Therefore, the BZA's denial of the variance for 1027 and 1029 Avenue of Oaks was arbitrary and capricious and should be reversed if the Court affirms the City's interpretation of "story."

CONCLUSION

Based on the foregoing, Appellant Crescent Homes respectfully requests that the Court issue its Order reversing the August 3, 2021 decisions of the BZA denying the building permit for 1012 Avenue of Oaks and denying a request for a variance to allow construction of 3-story single-family residences at 1027 and 1029 Avenue of Oaks.

Respectfully submitted,

s/E. Brandon Gaskins

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January 6, 2021
Charleston, South Carolina

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RECEIVED
Jan 26 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Paul M. Burch, Circuit Court Judge

Case No. 2021-CP-10-4196

Crescent Homes SC, LLC.....Appellant,

v.

City of Charleston Board of Zoning Appeals - Zoning. .....Respondent,

Of whom Crescent Homes SC, LLC is the.....Appellant,

City of Charleston Board of Zoning Appeals – Zoning is the.....Respondent.

NOTICE OF APPEAL

Appellant Crescent Homes SC, LLC appeals the Order of the Honorable Paul M. Burch in the above-captioned matter, which was filed on January 18, 2022. Appellant received written notice of entry of this order on January 18, 2022 (a copy of which is attached as Exhibit "A").

January 26, 2022.

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Attorney for Respondent
City of Charleston Board of Zoning Appeals – Zoning

RECEIVED
Jan 26 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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City of Charleston Board of Zoning Appeals - Zoning. .....Respondent,

Of whom Crescent Homes SC, LLC is the.....Appellant,

City of Charleston Board of Zoning Appeals – Zoning is the .....Respondent.

PROOF OF SERVICE

This is to certify that I have this day served counsel for the Respondent in the foregoing matter with a copy of the foregoing **Notice of Appeal** via electronic mail only, addressed as follows:

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January 26, 2022

Charleston, SC

ELECTRONICALLY FILED - 2022 Jan 18 11:45 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004196

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Crescent Homes SC, LLC, Appellant, vs. City of Charleston Board of Zoning Appeals - Zoning, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-04196 **ORDER**

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Jan 26 2022
SC Court of Appeals

This matter came before me on January 6, 2022, as an appeal from a decision of the City of Charleston Board of Zoning Appeals—Zoning.

The Appellant seeks to overturn two related decisions made by the Board. The first decision was an appeal to the Board from the decision of the Zoning Administrator who concluded a proposed drive under the house garage would be a "story" for the purposes of the two and a half story height limit established by the zoning code. Second, the Appellant asked for variances on two adjacent lots to exceed the two and a half story limit if the drive under house garage is considered a "story." The Board denied the request for a variance noting the lack of hardship to the Appellant who was already permitted for a home on each lot without a drive under the house garage.

The Respondent argues this Court sitting as an appellate court should defer "to the decisions of those charged with interpreting and applying local zoning ordinances," as they are in the best position to interpret, consider and apply those local rules. Christ Cent. Ministries v. City of Columbia Bd. of Zoning Appeals , 424 S.C. 358, 818 S.E.2d 30 (Ct. App. 2018) The Appellant argues the interpretation of the language of the ordinance should be a matter of law where no deference is given to the Board's decision. Helicopter Solutions, Inc. v. Hinde, 414 S.C. 1, 776 S.E.2d 753 (Ct. App. 2015). This court concludes that regardless of the standard of deference, the decision of the Board should be affirmed with respect to both decisions.

The City has limitations on the number of stories of buildings which differ depending on the applicable zoning classification of the property. These properties are

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in an SR-1 zoning classification which has a two and a half story limit on homes. Zoning Code § 54-301. The Zoning Administrator determined the proposed drive under the home garage should count as a "story" based on the definition in the zoning code. "Story" is defined in the zoning code as "that portion of a building included between the surface of any floor and the surface of the next floor above." Zoning Code § 54-120. The Appellant would like the Court to borrow from the City's stormwater management ordinance which does not use the word "story" and instead has a definition of "lowest floor" which specifically excludes a garage used solely for parking. But Respondent argues there is no reason to borrow a definition from a different ordinance for a different word. The Respondent also argues the purposes of the zoning ordinance and stormwater ordinances are different. A zoning limit on the number of stories is intended to limit the size and mass of the structure. The purpose of the stormwater ordinance is to comply with the federal flood standards which do not allow significant construction at a level prone to flooding. So, it is understandable the stormwater ordinance declares an area used only for parking does not need to be built above base flood elevation and does not count as the "lowest floor" of the structure. Further, the City notes the entire portion of the stormwater ordinance where the definition of "lowest floor" is found is only applicable in special flood hazard areas, and this is not in one of those areas. See Stormwater Ordinance § § 27-104 and -105.

Overall, the Court agrees with the Zoning Administrator and Board's affirmance of that decision that the definition of the word "story" as defined in the zoning code would seem to apply to the area between the finished concrete garage floor and the next floor above it. The Court agrees with the Respondent's position that differences in the words and purposes of the zoning ordinance versus the stormwater ordinance make it inappropriate to try to reconcile the two ordinances in this respect.

The Appellant makes a policy argument that due to increased flooding in the greater Charleston area, homebuilders should be encouraged to elevate their structures and a drive under the home garage is a popular and desirable design. But the courts cannot override the language provided by City Council on this basis. It is best for City Council to decide where a drive under the house garage design should be encouraged

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or discouraged or whether it should be allowed in all neighborhoods or just some.

To the extent that the Appellants want to claim that homes in special flood zones which are required to be elevated by the stormwater ordinance have not had the lowest elevation counted as a floor by the City, the plaintiffs lack standing to assert that someone else is getting a benefit the Appellant is clearly not entitled to obtain. See ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008) (competitor did not have right to file an appeal a rezoning allowing a cell-phone tower.)

As to the variance, per City of Charleston zoning ordinance § 54-924, which tracks S.C. Code § 6-29-800, the test for a variance is as follows:

> a. there are extraordinary and exceptional conditions pertaining to the particular piece of property;
>
> b. these conditions do not generally apply to other property in the vicinity;
>
> c. because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
>
> d. the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

The Appellant previously obtained approval of a home that did not have a drive under the house garage. The Board discussed that there did not appear to be a showing of hardship. The Appellant also argues variances in the same subdivision were granted to this same builder by the same Board at a prior meeting. However, the Respondent argues those properties are different and the decision it made as to other properties do not necessarily apply to this property. Further there is a potential problem that if Appellant claims the properties are all the same, the standard for a variance includes the requirement that the condition creating the basis for the variance is not generally applicable to other property in the vicinity.

As to the variance portion of the Board's decision, substantial deference must be given to the Board. The Court cannot say that the Board's decision as to the denial of the variances is incorrect as a matter of law or an abuse of discretion. For these reasons, I would affirm the decision of the Board denying the variances.

For the reasons stated above, the decision of the Board of Zoning Appeals is affirmed.

_____

Paul M Burch
Presiding Judge

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Charleston Common Pleas

Case Caption: Crescent Homes Sc Llc VS Board Of Zoning Appeals Zoning Charleston City Of

Case Number: 2021CP1004196

Type: Order/Other

So Ordered

s/Paul M. Burch, Judge #2048

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	2021-CP-10-04196

----------x

CRESCENT HOMES, SC, LLC,)
)
Appellant,)
)
vs.) TRANSCRIPT OF RECORD
)
BOARD OF ZONING APPEALS,)
CHARLESTON CITY OF,)
)
Respondent.)

----------x

January 6, 2022

B E F O R E:

The Honorable Paul Burch, Presiding Judge

A P P E A R A N C E S:

E. Brandon Gaskins, Esq.
Attorney for the Appellant

Tim Domin, Esq.
Attorney for the Respondent

Court Reporter: Bobbi Fisher, RPR

I N D E X

WITNESS/DESCRIPTION	PAGE
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E X H I B I T S

None.

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(*Whereupon*, the following proceedings started at 3:23 p.m.:)

THE COURT: Ready?

MR. GASKINS: Yes, Your Honor. Good afternoon, Your Honor. May it please the Court. My name is Brandon Gaskins, and I represent the appellant, Crescent Homes, S.C., LLC, in its appeal of a decision of the Charleston Board of Zoning Appeals.

This appeal involves two matters: One is a denial of a building permit based on the City's interpretation of the term "story," and secondly, a related request for a variance to allow Crescent to build two homes in excess of their two-and-a-half-story height limitation.

This case arises from Crescent Homes residential subdivision that it is developing called Avenue of Oaks, which is in the Ashleyville/Maryville area of Charleston in West Ashley. This is an area that borders Old Town Creek next to the marsh. It was originally planned to have 42 lots, and at the time that the final plat was approved, all of the lots were in an AE flood zone.

Crescent started constructing the development, received permits for several homes, including some with a design that is popular along the coast that is basically two stories on top of a drive-under garage. This is in the SR-1 zoning district, which has a height limitation of two-and-a-half

stories and 35 feet. Because these original lots were in the AE flood zone, the City determined that the drive-under garage was not a story, and as such, it was below the two-and-a-half-story height restriction for SR-1 zoning.

I believe it was in January of 2021, Charleston -- FEMA updated its flood maps, which were adopted by the City of Charleston, and parts of the development that were in the AE flood zone were now in Flood Zone X, which is at a lower risk of flooding.

According to the City's interpretation of the term "story," it depends on whether the house in the garage is located in a flood zone above Flood Zone X for that drive-under area to be considered a story.

So they applied for a building permit for 1012 Avenue of Oaks with the same design that had already been utilized in that neighborhood on several homes. It is, again, two stories above a drive-under garage, which is enclosed with louvered wood -- not fully enclosed but just louvered wood garage doors. It is unfinished. It is unheated. The only thing that it can really be used for is storage of a car and other household items.

So under the City's interpretation, they said, well, because it is no longer in a flood zone, AE or above -- it was still in Flood Zone X -- this is now considered a story, and it exceeds the two-and-a-half-story height limitation. So

that building permit was denied. We appealed that to the Board of Zoning Appeals, which affirmed the City's interpretation, and we're now appealing that issue to this court.

And so this case involves the interpretation of the term "story." And because it involves the interpretation of an ordinance, it is a matter of law, and the Court is not -- does not have to provide any particular deference to the findings below. Basically, a de novo review.

And so the interpretation or the term "story" as defined in the zoning code as quote "that portion of a building included between the surface of any floor and the surface of the next floor above."

So, for the determination of whether a drive-under garage is a story, it depends on whether the garage is a floor. Floor is not defined in the zoning code; however, it is in the stormwater management ordinance that the City has adopted.

And there are two relevant definitions that we believe demonstrate that the garage -- a drive-under garage is not a story. The first one, in the stormwater management ordinance, defines for it to mean, quote, "The top surface of an enclosed area in its building, including basement, i.e. top slab and concrete slab construction or top of wood flooring and wood framing construction. The term does not include the floor of a garage used solely for parking vehicles."

The stormwater management ordinance goes on to define lowest floor is not including the garage, garages, or enclosures. Quote, "An unfinished or flood-resistant enclosure useable solely for parking vehicles. Building access for storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevated design requirements of this article."

So our position is that because you have -- because the term "floor" is not defined, you should look to other areas of the ordinance to give meaning to those terms, and that's consistent with well-established cannons of statutory construction.

In addition to that, we believe that the term "story" should be interpreted in that the City's interpretation was in error because the common meaning of "story" does not include garages that are not habitable. Ballentine's Law Dictionary defines "story" as, quote, "a habitable space between two floors of a building."

And there are several cases that have adopted that interpretation, and they are cited in the brief. Because these garages are not habitable, we also think that the common meaning of "story" does not include drive-under garages.

In addition to that being, we think the plain and

ordinary meaning of the term inconsistent with the City Council has defined it in other areas of the ordinance, we also believe that the City's interpretation is arbitrary and capricious and not rationally related to any lawful purpose.

In support of that, I think what is important to look at is the definition of "story." There is nothing in that definition that says -- that makes its meaning dependent on whether the house or the garage is located in a flood zone. Flood zone never appears in the statutory definition.

So what we have is a zoning administrator basically making up the rules as he goes. There is no written interpretation saying that, well, a story includes a garage if it's in this flood zone and not in this flood zone. It's basically decided at the whim of the zoning administrator, which we believe is arbitrary and capricious, and we also think that it's not rationally related to any lawful purpose of the zoning ordinances.

Certainly municipalities and other local governments have the ability to adopt zoning ordinances to effectuate certain purposes which are enumerated in S.C. Code Section 629-800 -- or 710. I'm sorry; cited the wrong section. And their definition to exclude or to include garages, unfinished, inhabitable garages as a story is not consistent with any of those purposes enumerated.

One of those purposes that has been used by the zoning

administrator is to facilitate the creation of convenient, attractive, and harmonious communities and also to provide for adequate light, air, and open space.

This definition of the "story" doesn't advance those purposes because there is a separate restriction on height: 35 feet. So those homes in question are not going to exceed the 35-foot height. So we believe that the two-and-a-half story restriction serves no legitimate purpose.

In addition to that, we believe that the interpretation adopted by the City undermines the actual enumerated purposes of zoning, which include to secure the -- sorry -- to secure safety from fire, flood, and other dangers.

The reason that this design is so popular in this area -- one of the reasons -- is because we are experiencing a lot of flooding from increasing sea rise, more intense storms. It's becoming a more common recurrence. So this product -- and I think this is outlined as well in the homebuilder's association amicus brief -- has been very popular with home buyers, and home builders are just trying to meet their demand. And by using these elevated designs, they are protecting the homeowner's property from further danger, but the City's interpretation would require -- would discourage that type of decision and require them to build lower to the ground, thereby subjecting them to increased risk of flooding.

And I think it's important to realize that the City has

gone through this recent Dutch dialogue efforts, and it specifically identified elevated homes as one way to mitigate the risk of flooding. So we believe that the City's interpretation actually undermines the purpose of zoning instead of being rationally related to that purpose.

So, for those reasons, we would ask the Court grant our appeal and reverse the BZA's decision.

Separately, we have filed an appeal on the denial of a variance for two other homes. So, in that same meeting where the appeal was denied, the Board of Zoning Appeals also granted a variance to nine homes in the Avenue of Oaks community that would allow these homes to be constructed with the drive-under garage and the above -- the two-and-a-half-story restriction based on their interpretation.

After those nine lots were approved for a variance, Crescent Homes also applied for a variance for two other lots in the same subdivision which were also previously in an AE flood zone. However, the BZA this time denied the variance request. And the record has been filed. It's available for you to review.

And, in doing so, the BZA did not explain its rational for denying the variance other than to say that Crescent Homes had not satisfied the burden of demonstrating unnecessary hardship. And 629-800 sets forth the specific criteria that

an applicant has to meet to be entitled to a variance. And under 629-800(f), the BZA is required to issue its findings of fact and conclusions of law in a final written opinion, which it didn't do. It did issue a final written opinion, but it didn't identify -- it didn't address any of the criteria.

So all we have to go on is the -- one of the BZA member's statements that the applicant, Crescent Homes, did not meet the burden, but we believe that that decision was arbitrary and capricious because it is directly contrary to its prior determination to the nine other lots that were similarly situated did show an unnecessary hardship.

And it's important to remember that, in demonstrating an unnecessary hardship, variance applicants are not required to prove that, without the variance, there is just no feasible conforming use of the property. So just because there are other designs that could be used, that does not necessarily preclude a finding of unnecessary hardship. Instead, what the Applicant has to show is that the ordinance -- I want to make sure I get the language exact -- that the ordinance unreasonably restricts the utilization of the property.

And, here, the BZA previously found that this ordinance unreasonably restricted Crescent Homes' use of the property in such a way that it could not construct these homes that it originally planned to construct prior to the change in the zoning map. And because the BZA did not explain its rationale

in departing from its prior decisions, we believe that was arbitrary and capricious.

Your Honor, that last issue, I don't think, has to be resolved if you grant the appeal and reverse the BZA's decision on its interpretation of a story. Thank you, Your Honor.

THE COURT: Thank you, Counsel.

MR. DOMIN: Your Honor, may I remove my mask to argue?

THE COURT: Yes, sir.

MR. DOMIN: Thank you. My name is Tim Domin. I represent the City of Charleston Board of Zoning Appeals/Zoning. The appellant seeks to overturn the decision of the zoning administrator, which was appealed to the Board of Zoning Appeals, and now comes to you in appellate capacity. The case law in this area is pretty clear that the appellate court, which is you, should give deference to both the decision of the zoning administrator as well as that of the Board of Zoning Appeals because they're working on the ins and outs of the zoning ordinance every day and have developed a great familiarity with the issues that are presented.

And, indeed, this is a complicated and interesting issue, but at its heart, it comes down to one of statutory interpretation, and the appellants in this case, not liking the definition that the legislature, which, in this case, the legislature is City Council -- not those guys in Columbia but

City Council -- passes the zoning ordinance -- they act in a legislative capacity -- and they specifically put a definition of "story" in the zoning code. And the appellant doesn't like that definition, and so it says let me borrow a definition from the stormwater ordinance.

And I think it's valuable to note that the stormwater ordinance is only applicable in special flood zones, and this is not a special flood zone, and so that flood standard is not applicable.

I think you're going to realize there are two things going on here. Your stormwater code, which is -- I don't want to say mandated by the federal government, but if you want to participate in the federal flood insurance program, you have to follow the guidelines of the feds. They're concerned about what you are going to build at ground level, and they say it's okay if you build a drive-under garage or storage space that's only used for the storage of vehicles.

Zoning code is concerned with the appropriateness of where particular uses go within the city. And when you take an even deeper dive on that, in some neighborhoods, you may want to allow higher buildings, and in some neighborhoods, you want a lot lower buildings. In some neighborhoods, irrespective of the absolute height limit, you want to have a two-and-a-half-story limit, and in other neighborhoods, you don't want a two-and-a-half-story limit; you may want a

four-story limit.

And those issues, of course, are worked through by the planning commission, which is yet a different body, and then they go through to City Council, which, in its legislative capacity, decides what is best.

And, in this case, the fact that there is this other definition from the stormwater ordinance, if anything else, it's my position it shows that City Council knows how it can use a different definition and it decided not to. In this case, it decided to use the word "story," which, in the zoning code, is interpreted as that space between the floor and the next level. And so long as there is a floor on the drive-under-the-house garage, then that area underneath is going to count as a story.

Now, of course I want to be very clear. The City of Charleston is not prohibiting the builder from raising the height of the building. They could raise the height up one feet, two feet, three feet. It's not requiring them to build at grade level. It is saying that you can't have a finished floor underneath that area of living space because that then becomes the first floor.

Now, Your Honor, it sounds like they want to complain that, in some situations, the City has, in some flood zones -- in the special flood zones, the ones where the stormwater ordinance requires there to be nothing on the ground -- it has

allowed construction of these drive-under garages. But that's like saying, you know, you need to let me speed because somebody else got to speed. You don't get to say I should get the benefit of that, and you have to give me that as a matter of right. We don't think that that is as a matter of right.

They did -- the builder in this case did apply for a variance, which I do think is an appropriate way to approach the problem. And there are some unique aspects to this development, and as the home builder appellant noted, the flood maps actually changed during the course of the development, and so certain houses were permitted and already being built with a drive-under garage and would have been adjacent to other properties that they requested a variance on.

But these two are different. They're at the beginning of the neighborhood. And, in fact, these two are different because they already had an approval for a home on each of the properties without a drive-under garage.

So while the appellant says I shouldn't have to show an impossibility to get my hardship standard met -- in fact, there is a house that's already permitted that they could build tomorrow if they wanted it. So, with due respect, we don't think that that meets the hardship test.

And, in fact, you know, people came out and spoke against this at -- spoke against the variance at the meeting of the

BZA, and detriment to other properties is also relevant. The properties on which variances are granted were not the same properties as these. Inherently, they're in difference spaces and next to different properties, and as a result, you can't just say, Well, you gave me a variance for those house, you have to give me a variance now on these two houses.

Your Honor, there are very interesting policy arguments that appellant makes regarding The Dutch Dialogues, which we sent some people over to Holland and learned from them as to what they have been doing for quite a few years, and those were called The Dutch Dialogues. And, certainly, it is appropriate for us to consider how additional storm events and rising sea levels are going to impact building, but that's clearly for City Council to do. And the good news is they are doing it. The City Council is actively engaged in trying to address various issues concerning flooding.

This, however, is something that can't be fixed judicially. It has to be addressed by the City Council as a legislative body. If, indeed, everybody in this town wants drive-under-the-house garages, then they can call on the legislative body and seek counsel to do that, but that has not happened today.

And I think there were concerns, which are also legitimate, that maybe it could be good in some areas of the city but not other areas of the city. You know, there are

certain areas you drive through in any city, including this one, where you have a bunch of older houses that are all at grade level, and it may be kind of a sore thumb effect if you, all of a sudden say, poof, everybody is allowed to build a drive-under-the-house garage on this empty lot that's otherwise in the middle of the neighborhood that doesn't have houses of that type.

So those are the kind of things that a legislative body has the ability to try to work out and try to say, Well, in this area, we'll allow it, and in this are, we don't. But as of right now, it's not allowed. The zoning administrator, who is in this zoning code, every single day says it's not allowed, the BZA backed him up and said it's not allowed, and the clear language of the ordinance says it would not be allowed.

So, for all of those reasons, we believe that the decision of the BZAZ should be affirmed in all respects. Thank you.

THE COURT: Thank you.

MR. GASKINS: Your Honor, I'll try to be brief and just address three points. So, first, the standard of review. We believe the law is clear that, because this is not an appeal of the BZA's findings of fact, there is no deference as required to its decisions. In fact, in the case of *Helicopter Solutions vs. Hindi*, the Court said issues involving the

construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.

Secondly, in rebuttal to the City/BZA's argument that the ordinance is clear, I think their own actions demonstrate that it is not, because there is but one definition, and if that definition is clear, then one design of a house cannot be two stories and three stories at the same time. If that ordinance is so unclear that it allows for the exact same -- same house design to be considered two different stories, it is, by nature, ambiguous. And so, if it is ambiguous, you turn to the ordinary rules of construction. You look to legislative intent. You look to the purpose of the act.

And I think it's important to remember that these are zoning codes that restrict people's property rights. And under the same case that I just cited, *Helicopter Solutions vs. Hindi*, statutes or ordinances in derogation of natural rights of persons over their property are to be strictly construed, as they are in derogation of the common law right to use private property.

And there is also a case cited that, where the ordinances are not clear, they should be construed to allow people to use their property so as to realize its highest utility. So when you combine all these cannons of construction, I think it leads to one result, and that is that the City's

interpretation is in error, it doesn't further the purpose of the zoning code.

Last, with respect to the variance, Mr. Gilman talked about the detriment to the other areas and the residents who came to the meeting, the virtual meeting and spoke against it. And what I think is significant about that and further illustrates the arbitrary nature of the BZA's decision, is that the individuals who spoke against the variance requests lived in an adjacent neighborhood that is not in the City of Charleston. It is in Charleston County. And all of this is in the record.

For that area in Charleston County, the zoning, there is no story restriction. It has the same height restriction. So those same people that were complaining about this variance have, to this day, the right to tear down their house and build the same house that the City will not allow Crescent Homes to build. So, clearly, there can be no detriment to the community when this exact design is allowed under the adjacent zoning.

So, for those reasons, we believe that the denial of the variance was arbitrary. Thank you, Your Honor.

THE COURT: Thank you. All right. Get me proposed orders in ten days, and we'll take a look at it.

MR. DOMIN: Very well. Thank you.

(At 3:50 p.m., the above hearing concluded.)

CERTIFICATE OF COURT REPORTER

State of South Carolina)
)
County of Charleston)

I, Bobbi J. Fisher, Registered Professional Reporter (RPR) and Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case in the Court of Common Pleas for Charleston County, South Carolina, on the 6th of January, 2022.

Prepared: February 13, 2022

__/s/ Bobbi Fisher_____

Bobbi J. Fisher, RPR

Official Court Reporter

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August 3, 2021

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VIA EMAIL
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City of Charleston
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Charleston, South Carolina 29401

Re: *Crescent Homes SC, LLC*
Appeal of Denial of Building Permit for 1012 Avenue of Oaks

Dear Members of the City of Charleston Board of Zoning Appeals:

Pursuant to S.C. Code Ann. § 6-29-800(A)(1) and City Zoning Code § 54-926, I am writing in support of Crescent Homes SC, LLC's appeal of the City Planning Department's denial of a building permit for 1012 Avenue of Oaks in the Avenue of Oaks subdivision in the City of Charleston. As you recall, this appeal was heard at the BZA's meeting on June 15, 2021. During that same meeting, the BZA also granted a variance to allow this property and others within the same neighborhood to exceed the 2 ½ story height limitation in the SR-1 zoning district. As a result of this variance, the BZA deferred deciding the appeal.

In the interest of efficiency, I incorporate into this letter by reference the previous legal arguments made in support of the appeal at the June 15th meeting and respectfully request that the BZA refer to those arguments and materials. I am also writing to address the separate issue of whether the issue is moot as the BZA discussed during the June 15th meeting. For the reasons discussed below, declaring the issue moot will not make it go away, and the BZA should decide the appeal because the case falls within the recognized exceptions to the mootness doctrine.

According to the South Carolina Supreme Court, a "case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." *S.C. Pub. Interest Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 121, 804 S.E.2d 854, 860 (2017). However, the Supreme Court has also recognized the following three exceptions to the mootness doctrine:

> First, if the issue is raised is capable of repetition but generally will evade review, the appellate court can take jurisdiction. Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct. Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case.

Id. (citations omitted). In this case, all three exceptions apply.

First, the issue of whether the City's interpretation of "story" is correct is capable of repetition and will likely evade review as demonstrated by other items on the agenda for the BZA's meeting on

August 3rd. Crescent Homes is applying for a variance to allow for the construction of two three-story (as defined by the City) residences in Avenue of Oaks, which is the same subdivision from which this appeal and the previous variance requests arose. Because this appeal was deferred at the June 15th meeting, Crescent Homes was forced to apply for a variance for these two properties. Also, the issue is capable of repetition because Crescent Homes intends to use the drive-under garage design in other planned developments in the City beyond Avenue of Oaks, such Central Park, Twin Lakes, and Oak Bluff. And by supporting variances whenever its interpretation of "story" is challenged, the City can effectively evade review of its interpretation as demonstrated by this case.

Second, it is imperative that the BZA decide this issue to address the urgent need of protecting property and people from the increasing risks of flooding. As stated in our previous letter in support of the appeal, the drive-under design mitigates the risk of flooding and will help ensure that future homes will be built to withstand future sea-level rise and increased flooding. Consistent with this design, the City's elected officials have embraced elevating homes as a way of combatting the "existential threat" of climate change and sea rise. In fact, Mayor Tecklenburg, in a recent *New York Times* article, emphasized the urgency of elevating homes in Charleston to protect against increasing flooding. (*See New York Times*, July 24, 2021, "In Charleston, S.C. Saving Historic Homes Means Hoisting Them in the Air.")[1]

Despite these proclamations, the City's interpretation of "story" discourages homes from being elevated and increases the likelihood that flooding will threaten property and residents in Avenue of Oaks and other vulnerable neighborhoods. Unlike Crescent Homes, many builders may be unwilling to challenge or go through the time-consuming and uncertain process of seeking a variance from the City's interpretation. The BZA should resolve this issue once and for all so that builders can take necessary action to protect future homeowners from flooding.

Third, a decision on this issue will affect future developments and have collateral consequences for Crescent Homes and the City. As stated above, Crescent Homes desires and intends to utilize the drive-under design for future developments in the City. This design is preferred by consumers not only because it protects against flooding, but also because it maximizes use of lot space and provides the most efficient home product. The demand for this design ensures that the issue is not going away, and it makes little sense to delay resolution any longer, as it is certain that the issue will be subject to further appeal, litigation, and administrative review if not decided now.

For these reasons, Crescent Homes respectfully requests that the BZA consider the appeal, not deem it moot, and reject the City's interpretation of "story."

Sincerely,



E. Brandon Gaskins

[1] https://www.nytimes.com/2021/07/24/us/charleston-sc-flooding-climate-change.html?action=click&module=Well&pgtype=Homepage&section=US%20News&mc_cid=951c064af8&mc_eid=3b75ae2f31.

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No.:2022-000092
Case No.: 2021-CP-10-4196

Crescent Homes, SC, LLC,……..…….....Appellant,

v.

City of Charleston Board of Zoning Appeals-Zoning,……..….....Respondent.

CERTIFICATE OF COUNSEL

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

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May 19, 2022
Charleston, South Carolina