



South Carolina Planning Education Advisory Committee (SCPEAC)

November 9, 2023

NOTICE OF DECISION

Title of Program: County Board of Zoning Appeals

Organization: Aiken County Government

The following action has been taken by the SCPEAC on this application:

RECEIVED BY THE COMMITTEE Date: October 9, 2023

REVIEWED BY THE COMMITTEE Date: October 10, 2023

ACCEPTED WITHOUT OBJECTION Date: _____

- a) X ACCREDITED for: 90 min. CE credits: 1.5
- b) _____ DENIED ACCREDITATION
- c) _____ RETURNED for more information

If accredited:

a) Authorized Course No.: 2023-04

b) Date of accreditation: October 10, 2023

Certification Signature, MASC Administrative Representative: *L.P. Floyd*

Certification Signature, SCPEAC Representative: *Stephanie Monroe Tilerson*

**For further information, contact Urica Floyd at 803-354-4754
or the committee at SCPEAC@masc.sc.**

Municipal Association of SC • 1411 Gervais Street • Columbia, SC • 29201

Phone: 803-933-1228

Email: SCPEAC@masc.sc

Website: <https://www.scstatehouse.gov/SCPEAC/>

**LOCAL OFFICIAL'S CERTIFICATION OF NEED
FOR CONTINUING EDUCATION PROGRAM**

NOTE: The Planning Director of a jurisdiction, or the COG Director serving a jurisdiction, may certify to the SCPEAC that a particular continuing education program is appropriate to meet the needs of that jurisdiction.

This certification form, together with the required information referenced therein, shall be submitted to the Committee. **If no objections are raised** by a member of the SCPEAC within 10 business days of receipt, the continuing education program shall be considered accepted. If an objection is raised, a teleconference meeting shall be scheduled, with appropriate public notice, as soon as reasonably possible, to review the application.

Applications are due no later than 30 days prior to the first scheduled presentation of a program or class. The Committee will consider extenuating circumstances where the 30 day deadline cannot be met.

1. Certifying Official's Information:

- a. Name: _____
- b. Title: _____
- c. Jurisdiction for which certification is being made: _____
- d. Address of Jurisdiction: _____
- e. City: _____ Zip Code: _____
- f. Telephone: _____ Email: _____
- g. For COG Directors:
 - i. Name of COG: _____
 - ii. Address of COG: _____
 - iii. City: _____ Zip Code: _____
 - iv. Telephone: _____ Email: _____

2. Information on Educational Program:

- a. Title of Program: _____
- b. Name of Organization providing/sponsoring the Program: _____
 - i. Address: _____
 - ii. City: _____ Zip Code: _____
 - iii. Contact Person: _____
 - iv. Title: _____
 - v. Telephone: _____ Email: _____
- c. Date(s) & Location(s) of Program:

- d. Briefly describe the program and why it is relevant to your jurisdiction:

3. Method of presentation: _____

4. Description of materials to be distributed: _____

5. When are materials distributed (before the program, at the time of the program): _____

6. Instruction Time:

a. Indicate the total number of minutes of instruction time: _____

NOTE: Breaks, meals, and introduction should not be counted. A reasonable period of Q & A should be included and counted.

7. Local contact person (if other than Certifying Official):

a. Name: _____

b. Title: _____

c. Jurisdiction: _____

d. Telephone: _____ Email: _____

8. Required attachments:

- a. Course description and outline including estimated time per section
- b. Brochure, if available
- c. Course Presenter(s) and credentials (include brief resumes and qualifications)
- d. Copies of all handouts and course materials
- e. Evaluation Form and method of evaluation (each program must be evaluated)

9. Certification. By submitting this application, the applicant agrees to:

- a. Allow in-person observation, without charge, of the Program by the SCPEAC Committee members. Any food, travel, or lodging costs will be the responsibility of the Committee member(s).
- b. The Certifying Official acknowledges that its approval for this Program may be withdrawn for violations of the regulations or failure to comply with the agreements and representations contained herein and as may be required by the SCPEAC.

10. Application and program materials shall be submitted:

- a. Electronically to each of the Committee members emails as listed on the website (<https://www.scstatehouse.gov/SCPEAC/members.htm>).

Bradley T. Farrar
105 Vista Springs Avenue
Lexington, SC 29072
(803) 359-0112 (h) (803) 348-4456 (m)
bradleyfarrar@yahoo.com

EXECUTIVE LEADERSHIP

General counsel, litigator, and United States Marine Corps Judge Advocate advising and trying cases for or involving the U.S. Government, the Department of Defense, the U.S. Marine Corps, U.S. Navy, U.S. Army, U.S. Air Force, U.S. Coast Guard, the State of South Carolina, and local governments for over twenty-nine years over the spectrum of legal practice areas. Author and public speaker focused on Christian Strategic Leadership Principles since 2012.

PROFESSIONAL EXPERIENCE

County Attorney/General Counsel
Aiken County, South Carolina

January 2001 to present

- General Counsel responsible for providing comprehensive legal services to Aiken County, South Carolina, its elected and appointed officials, department heads and personnel. Duties include counseling, litigating, representing County entities and personnel in administrative, judicial and appellate proceedings, drafting pleadings, opinions, memoranda, briefs, motions, ordinances, resolutions, proclamations, deeds, contracts, leases and other instruments. Plans, directs, implements and supervises the legal affairs of the County, manages cases handled by in-house and outside legal counsel, interacting closely with top local and State officials.
- Legal representative for distribution of County portion of proceeds from \$600,000,000 settlement with the U.S. Department of Justice for failure to timely remove nuclear waste from Savannah River Site.
- Managed County's opioid class action lawsuits against pharmaceutical manufacturers, distributors and sellers.
- Represented County in class action lawsuit successfully defeating challenge to the imposition of a road maintenance fee that generates millions of dollars of road and infrastructure funds.
- Coordinated County's receipt of American Rescue Plan Act (ARPA) funds and distribution through sub-recipient agreements.

**Operational Lawyer
Headquarters, U.S. European Command
Stuttgart, Germany**

January 2020 to present

- All work conducted in SCIF / Current Top Secret (TS/SCI) Clearance.
- Advised the U.S. European Command (USEUCOM) Staff Judge Advocate and the USEUCOM Command and Principal Staff on a range of Operational Law matters.
- Reviewed exercise and operational plans and provided direct support to same in order to ensure compliance with Rules of Engagement (ROE), international treaties, and NATO obligations to ensure command interests are protected.
- Operational Law (OpLaw) Watch Officer, Russia-Ukraine conflict.
- Published article on COVID-19 scams for Legal Assistance for Military Personnel (LAMP) and provided legal assistance to Marine Corps Installations East. Drafted and revised legal assistance "Take One" and "Co-Counsel" briefs on domestic law and probate issues.
- Reviewed and issued legal opinions on exercise and operational plans, public affairs guidance for Thracian Star 21 Exercise, Task Order (TASKORD) for Level Shadow 78, and Transfer of Authority (TOA) of NATO Air Policing.
- Member, Commander's Communication Synchronization Working Group, Joint Plans and Logistics Working Groups. Transitioned from Exercise support to Command COVID-19 response until departure due to DoD travel ban.

**Chief Deputy County Attorney
Richland County, South Carolina**

September 1999 to December 2020

- As Deputy Chief Legal Counsel, provided comprehensive legal services to Richland County (Columbia, South Carolina), its elected and appointed officials, department heads and personnel.
- Drafted ordinances and represented County in defeating legal challenges to \$1,000,000,000 transportation sales tax referendum.
- Represented County in complex land development, regulatory, contract, and tort cases, and managed litigation involving up to \$50,000,000 in controversy.

**International Lawyer
Headquarters, U.S. Africa Command
Kelley Barracks, Möhringen, Germany**

April 2016 to January 2020

- All work performed in SCIF/maintained TS/SCI Security Clearance.
- Served as Acting Chief and Deputy for International Law Division, advising the U.S. Africa Command (USAFRICOM) Staff Judge Advocate, the USAFRICOM Command Principal Staff and Ambassador on range of International law matters.
- Reviewed exercise and operational plans to ensure compliance with rules of engagement, international treaties and conventions, and provided support to USAFRICOM planning cycle to advise on the legal considerations of proposed programs or expenditures to ensure the Command's interests were protected under international agreements.
- Advised Command on legal issues concerning Acquisition and Cross-Servicing Agreements, defense cooperation and security assistance authorities, Military Postal Service System country review, Status of Forces Agreements (SOFA), misuse of Government Travel Credit Cards (GTCC), Foreign Liaison Officer reviews, and the application of African laws concerning customs, taxes, foreign criminal jurisdiction and status protection waivers for personnel theater clearance.
- While transitioning to USAFRICOM, led a team of lawyers to Montenegro to assist host nation attorneys and the Ministry of Defense prepare for NATO accession and the provision of comprehensive legal services to ensure interoperability with NATO, European Union and other partners.
- Supported current and future operations, counter-terrorism, counter-piracy, support to exercises, legal military-to-military engagements, legal subject training/capacity building.
- Authored position paper on operational control of infrastructure investment and military construction initiatives within the Area of Responsibility (AOR) in accordance with Title 10 and DoD Instructions. Responsible for development and maintenance of USAFRICOM international agreements and instructions, country law studies and international agreements database, mutual logistical support agreements, foreign claims, foreign tax and foreign criminal jurisdiction matters.
- Served as Operational Lawyer during troops in contact (TIC) event in Somalia.
- Analyzed and provided legal advice on Acquisition Cross Servicing Agreements, Foreign Liaison officers in the USAFRICOM AOR, Foreign Criminal Jurisdiction, Foreign Claims, and SOFA/Status Protection Agreements, and reviewed command instruction on targeting.
- Directorate representative to New Normal and orders rewriting operational planning teams (OPTs) to oversee command instruction on DoD support to U.S. Embassy military assisted departures. Member, Theater Posture Working Group, Joint Targeting Working Group and Joint Threat Working Group.

**International Lawyer/Civil Lawyer
Headquarters, U.S. European Command
Patch Barracks, Stuttgart, Germany**

July 2013 to April 2016

- Advised the USEUCOM Staff Judge Advocate, Command and Principal Staff on range of International Law Matters. Provided legal guidance on NATO obligations, Status of Forces Agreements, NATO Partnership for Peace issues, exercise and operational plans, Rules of Engagement, international treaties and conventions, Intelligence Law, Ballistic Missile Defense Agreements, Acquisition and Cross-Servicing Agreements, defense cooperation and security assistance authorities, and the application of European Union laws concerning customs and taxes.
- Reviewed European Command Instructions (ECIs) for Military Justice, ACCM USEUCOM Focal Point Program, and issued legal opinions on Informal Fund Operations, civil and administrative law issues, U.S. Air Force National Guard Title 10 General Court-Martial convening authority for deployed personnel, military justice and Article 15 guidance on senior officer misconduct case.
- Performed INF Treaty and country study reviews. Conducted Defense Support to Civilian Authorities (DSCA) training for II Marine Expeditionary Force, Camp Lejeune.
- Awarded Defense Meritorious Service Medal and Humanitarian Service Medal while serving as Title 10 Legal Advisor to the Commander, JTF-New Jersey ISO Hurricane SANDY.
- Legal Advisor, Austere Challenge 15. European Command Staff Judge Advocate representative to the Joint Targeting Working Group. Drafted information papers on the use of cluster munitions in Lithuania, deliberate and dynamic targeting review and approval process.
- Member, European Union ("EU") "Registration, Evaluation, Authorisation, and Restriction of Chemicals" ("REACH") Working Group to analyze the applicability of EU treaty on U.S. Department of Defense activities in Europe.
- Issued legal opinions on Concept and Funding Requests (CFR) for consistency with U.S. European Command Theater Campaign Plan and U.S. sources of legal authority and funding for activities throughout the USEUCOM area of responsibility and involving numerous NATO partners. Provided legal opinion on appropriate Use of Appropriated Funds for Official Representation Purposes (ORF).
- Author, "Ship to Objective Maneuver," selected for publication in Marine Corps Gazette. Author, "Leadership: Timeless Principles for Principled Times," General Robert E. Hogaboom Leadership Writing Contest.
- USEUCOM Instructor, State Partnership Program, Garmisch, Germany.

**Admin Law Chief/Engagements and Operational Lawyer
Headquarters, U.S. Africa Command
Kelley Barracks, Möhringen, Germany**

**May 2011 to June 2011
May 2010 to August 2010**

- Served as command Deputy Legal Counsel. Responsible for support to current and future ops, counter-terrorism, counter-piracy, support to exercises, military-to-military engagements, legal subject training/capacity building, reviewed misconduct cases, military justice matters and DoD IG ethics investigation.
- Reviewed command legal ethics program, authored guide for implementing legal ethics program w/FAQs for filers, supervisors/reviewers of OGE SF 450 financial disclosures, resources, timelines and training for transition to on-line Financial Disclosure Management system.
- Legal advisor for mil-to-mil/civ engagement during Personnel Recovery Conference, Garmisch, Germany, providing guidance on mission authorities, non-conventional assisted recovery (NAR), and funding sources.
- Reviewed/recommended disciplinary action for EUCOM IG Report of Investigation (ROI), civilian employee misconduct, improper personnel hiring actions and prohibited personnel practices. IMA rep, Commandant of the Marine Corps' (CMC) EUCOM/AFRICOM visit.
- As Admin Chief also responsible for joint command MilJus issues, separations and review of ACI for Legal Affairs and the Administration of Military Justice. Investigated/reviewed officer and enlisted misconduct cases, trespasser incident at CJTF-HOA, and DoD IG ethics investigation.
- USAFRICOM instructor for mil-to-mil/civ engagement during Defense Institute of International Legal Studies (DIILS) course, Legal Aspects of Counter-terrorism, Gako, Rwanda, instructing Rwandan Army Officers and NSS (Intel) personnel on border security, criminalizing terrorist offenses and the African Charter on Human Rights.
- Legal advisor, Judicious Response 10-2 TTX, Djibouti Harbor tanker incident. Operational lawyer for counter-terrorism and counter-piracy JPTs providing guidance on mission authorities and funding sources. Coordinated command's first USN admin separation, recommending changes for AFRICOM Command Instruction on MilJus and admin separation processing.

**Operational Lawyer
Headquarters, NORAD - U.S. Northern Command
Peterson Air Force Base, Colorado Springs, CO**

October 2010 to July 2013

- Provided legal support to current and future operations for NORAD and U.S. Northern Command (USNORTHCOM), Defense Support to Civilian Authorities (DSCA),

Homeland Security within National Response Framework and National Incident Management System.

- Served as Title 10 Legal Advisor to the New Jersey TAG during Super Storm Sandy.
- USNORTHCOM Legal Advisor to Democratic National Convention, Charlotte (2012).
- Legal advisor, Vigilant Shield 12, NORAD-USNORTHCOM Tier 1 Exercise supported by Joint Coalition Warfighting, Joint Staff/J7, NORAD-USNORTHCOM HQ staffs in Homeland Defense and Homeland Security, linked to Joint Staff POS RESPONSE 12-1, VIGILANT GUARD-Arizona, and Canada Command's DETERMINED DRAGON 11.
- Legal advisor, Ardent Sentry 12, providing guidance on casualty evacuation, Personnel Recovery (PR), domestic imagery, Standing Rules of Engagement and Rules for the use of Force (SROE/SRUF), Title 10/Title 32 status of National Guard, Defense Support to Civil Authorities (DSCA), interagency coordination, Posse Comitatus Act, National Search and Rescue (SAR) plan, NORAD Northern Sovereignty Operations, Arctic mission, CANUS Civil Assistance Plan, nuclear weapons accident response operations.
- Author, "The Navy-Marine Team: Crisis Responders in a Dynamic Threat Environment," LtCol Earl Pete Ellis Contest 2012.

Legislative Coordination Officer
Office of the Chief of Marine Corps Reserve
Headquarters, U.S. Marine Corps, Washington, D.C.

December 2007 to December 2010

- Prepared and presented 2008 USMC Reserve Equipment Management Brief to Assistant Secretary of Defense for Reserve Affairs and DASN Reserve Affairs.
- Drafted executive summary, Defense Materiel Readiness Board's First Report to Congress, supplemental funding and effects on reset, joint expeditionary base working group, and proposed Title 10 change, enabling documents for official recognition of the Office of the Chief Marine Corps Reserve.
- Action Officer for NGREA funding of VTC, counter-intel HUMINT equipment suites, liaison with Systems Command and Program Manager TRASYS for USMCR equipment purchasing and fielding for NDAA and OCO supplemental funding. Submitted OCMCR nominations for CMC Joint Staff Working Group, and Management HQMC quarterly report to the Assistant Commandant of the Marine Corps. Drafted Justice Marion Chambers Award revision, MCO 1650R.35C. Provided legal assistance, ethics and MARCORSEPS guidance to command, and wrote professional awards citations for HQMC Marines.

Operations Officer, Manpower and Reserve Affairs
Headquarters, U.S. Marine Corps, Quantico, VA

May 2006 to July 2006

**Senior Legal Advisor
Deployment Processing Command, Camp Lejeune, NC**

August 2003 to October 2007

- Responsible for Mobilization Processing Center Legal Section in the mobilization and deployment of service members and civilian contractors in support of Operation Iraqi Freedom and other contingencies. Principal legal advisor to Command in military, civil, administrative law and legal assistance matters. Counseled military members, dependents and retirees across full spectrum of legal issues.
- Augmented Base SJA in legal assistance, civil law and special project work when not engaged in primary mobilization and Command advisor mission.

**Legal Affairs Officer
Office of Marine Forces Reserve, Arlington, VA**

June 2007 to August 2007

**Legal Assistance Officer
Deployment Processing Command, Camp Lejeune, NC**

April 2003 to August 2007

- Responsible for Mobilization Processing Center Legal Section in the mobilization and deployment of service members and civilian contractors in support of Operation Iraqi Freedom and other contingencies. Principal legal advisor to Command in military, civil, administrative law and legal assistance matters.
- Counseled military members, dependents and retirees across full spectrum of legal issues. Augmented Base SJA in legal assistance, civil law and special project work when not engaged in primary mobilization and Command advisor mission.

**Operations Officer
Manpower and Reserve Affairs
Headquarters, U.S. Marine Corps, Quantico, VA**

July 2006 to August 2006

- Responsible for coordinating Reserve Affairs responses to full spectrum of issues impacting Reserve Marines. Prepared briefs, position/point papers, Naval Correspondence, After Action and other reports and Congressional Testimony for Director, Reserve Affairs, for General Officers and other briefers.

**Officer in Charge, Civil Law
Staff Judge Advocate, Camp Lejeune, NC**

March 2003 to August 2003

- Coordinated and supervised efforts of all staff attorneys, civil process personnel, paralegals and enlisted Marines.
- Rendered ethics opinions for Base Commanding General and his commands on issues including the following: standards of conduct, OGE 450/SF 278 financial disclosure, gifts, conflicts of interest, fiscal law, use of government resources, political activities of

federal employees, relations with non-Federal entities, non-appropriated fund activities, fundraising, government travel and transportation, contractors in the workforce, outside activities, post-government employment, ethics in disaster relief, and Reserve component personnel ethics, Operation Enduring Freedom/Noble Eagle and Operation Iraqi Freedom Related Opinions.

Senior Legal Advisor **January 2003 to March 2003**
Mobilization Support Battalion, Camp Lejeune, NC

Adjunct Professor, College of Criminal Justice **August 2000 to December 2001**
University of South Carolina, Columbia, SC

Legal Assistance Officer **October 2000 to January 2003**
Reserve Support Battalion, Camp Lejeune, NC

Associate, King and Vernon, P.A., Columbia, SC **February 1999 to September 1999**

- Represented clients in complex domestic cases, criminal and civil litigation.

Associate, Harris and McLeod, Cheraw, SC **July 1998 to December 1998**

- Extensive and varied caseload included insurance defense, domestic relations, criminal law, PCR, appellate cases, real estate transactions, wills and estate planning, probate, litigation, contracts. Firm represented Town of Cheraw, corporate, and individual clients.

Defense Counsel, U.S. Marine Corps **October 1996 to July 1998**
Marine Corps Base Camp Lejeune, NC

- Defended more than 200 Marines and Sailors charged with crimes including attempted murder, rape, assault, battery, maiming, sexual molestation, larceny, munitions theft and sale, drug use, possession and distribution, unauthorized absences, orders violations and other military offenses. Served as defense counsel for Marine charged in FBI Operation Longfuse.
- Lead counsel in more than 200 courts-martial and administrative discharge boards in cases involving drug abuse, commission of a serious offense (murder, armed robbery, larcenies), and pattern of misconduct.

Legal Assistance Attorney **October 1995 to October 1996**
Marine Corps Base Camp Lejeune, NC

- Counseled over 1,400 active duty military personnel, reservists, retirees and dependents in broad range of civil and criminal matters, including domestic, estate planning, contracts, torts, insurance, and consumer law. Prepared hundreds of wills, living wills, trusts, and powers of attorney for deploying Marines, retirees and their spouses. Drafted more than 160 separation and property settlement agreements. Prepared numerous

divorce, child custody, spousal and child support pleadings. Assisted in the recovery of thousands of dollars in contract damages.

- Taught classes (up to Battalion size) in estate planning, consumer law, marriage preparation legal workshops, pre-deployment, welcome aboard briefs, and pre-retirement seminars.

Platoon Commander **July 1995 to August 1995**
Midshipmen Leadership Training, Quantico, VA

Staff Attorney **November 1993 to December 1994**
Richland County Attorney's Office, Columbia, SC

Law Clerk, Gergel, Burnette, Columbia, SC **August 1993 to November 1993**

Legal Marketing Director **February 1991 to August 1991**
Sherrill and Rogers, P.C., Columbia, SC

Law Clerk, Bowers & Orr, Columbia, SC **May 1990 to August 1990**

EDUCATION

May 1993 **University of South Carolina School of Law, Columbia, SC**

- J.D., May 1993. Member, South Carolina Bar, since November 1993.
- Captain, American Bar Association Moot Court Bar, National Appellate Advocacy Competition, Baltimore, MD, Spring 1992.
- Finalist, 1992 J. Woodrow Lewis Moot Court Competition.
- Member Order of the Barristers, Moot Court Bar, Phi Delta Phi Legal Fraternity, Christian Legal Society.

1989-1990 **Graduate School, Political Science, University of South Carolina, Columbia, SC**

- Completed all course work and requirements while also attending law school as a full-time student.
- Member, South Carolina Political Science Association. Presented paper, "Decision Making on the South Carolina Court of Appeals," Spring 1990 meeting of S.C. Political Science Association.

1987-1989 **B.A., Political Science, University of South Carolina, Columbia, SC**

- Dean's List; Assistant Editor, Garnet and Black yearbook; Viewpoint Editor, The Gamecock; Lacrosse team

1985-1987

Wittenberg University, Springfield, Ohio

- Awarded Wittenberg Alumni Scholarship; Phi Gamma Delta scholarship winner; Member, Phi Gamma Delta fraternity; Varsity Lacrosse team; English tutor.

MILITARY EDUCATION

2016

Air War College DEP

2011

Marine Corps Command and Staff College

2007

Naval Justice School Reserve Lawyer Course, Newport, RI

2003

Ethics Advisors Course, TJAGSA, Charlottesville, VA

2003

Basic Operational Law Training, Newport, RI

2002

Legal Assistance Course, JTAGSA, Charlottesville, VA

1997

Law of War Course, Camp Pendleton, CA

1996

National Institute of Trial Advocacy (NITA) Training, New River Air Station, Jacksonville, NC

1996

Army Legal Assistance Course, Charlottesville, VA

1995

Naval Justice School, Newport, RI

1995

Marine Officer Basic School, Quantico, VA

1992

Marine Officer Candidate School, Quantico, VA

PROFESSIONAL ASSOCIATIONS

Member, South Carolina Bar

U.S. District Court, South Carolina

Court of Appeals for the Armed Forces

Order of the Barristers

Phi Delta Phi Legal Fraternity

Christian Legal Society

MILITARY AWARDS

Defense Meritorious Service Medal (x4 with Bronze Oak Leaf Cluster)

National Defense Service Medal (x2)

Navy and Marine Corps Overseas Service Ribbon

Navy Meritorious Unit Commendation (x2)

Humanitarian Service Medal

Joint Meritorious Unit Award

Armed Forces Reserve Medal (x3 with "M" device and Bronze Hour Glass)

Sea Service Deployment Ribbon

Navy and Marine Corps Achievement Medal

Navy and Marine Corps Commendation Medal

Joint Service Achievement Medal (x2)

Selected Marine Corps Reserve Medal (x4)

Global War On Terrorism Service Medal

Session Evaluation

County Board of Zoning Appeals

Aiken County Board of Appeals Training

October 12, 2022, 2:00 p.m., Aiken Co. Government Ctr, Sandlapper Rm.

Presenter: Brad Farrar, Aiken County Attorney

Please submit feedback regarding the training session you just attended/viewed. Any and all feedback is important and appreciated as the Planning and Development Department continues to improve our training.

How would you rate the training session overall (with 1 being poor and 5 being excellent)?

1 2 3 4 5

How do you feel the training session content matched the description provided?

Yes Somewhat No

What did you like most about this training, if anything? (Feel free to include comments on the presenter, topic, and/or the format.)

How would you improve this training, if at all? (Feel free to include comments on the presenter, topic, and/or the format.)

To help us plan for future training, please list any topics of interest to you as an attendee.

Any additional comments.

Name (optional): _____

County Board of Zoning Appeals

Brad Farrar
Aiken County Attorney
Bfarrar@aikencountysc.gov

S.C.Code Ann. § 6-29-780

(A) ...part of the administrative mechanism designed to enforce the zoning ordinance, the zoning ordinance may provide for the creation of a board to be known as the board of zoning appeals...

- Citizen board to help enforce the County's zoning ordinance and policies.
- Not involved in day-to-day operations of zoning or planning departments.
- The Board hears matters as needed and that cannot be handled at the department or staff level.
- Separate from but may overlap in some ways with the Planning Commission (*e.g.*, a parcel of property may be subject to a rezoning and also to a request for variance or special exception).
- A part of the overall land use planning vision as set by the County.

S.C.Code Ann. § 4-9-30

Counties in South Carolina, “...shall have the following powers which shall be exercised by the respective governing bodies thereof:

...(6) to establish such agencies, departments, **boards**, commissions and positions in the county as may be necessary and proper to provide services of local concern for public purposes...

...(9) **to provide for land use** and promulgate regulations pursuant thereto subject to the provisions of Chapter 7 of **Title 6**;

...(14) to enact **ordinances** for the implementation and enforcement of the powers granted in this section...”

S.C.Code Ann. § 6-29-780(B)

- The board consists of between 3-9 members.
- Appointed by the governing authority that created the Board (*i.e.*, County Council).
- A majority of members constitutes a quorum.
 - A quorum is the number of members of an organization needed to conduct business at a meeting.
 - How is a quorum determined?
 - Actual number of members or the number of members the Board *should* have?
 - Should be defined in Board's Rules or Bylaws, or the ordinance establishing the Board.

S.C.Code Ann. § 6-29-780(B)

- The governing authority creating the board may remove any member of the board for cause...
 - “Cause” should be spelled out in the ordinance creating the Board, or its Rules or Bylaws.
 - Typically, excessive unexcused absences, or the type of cause that might be identified in the County Personnel policies or manual.
 - How a member votes is not ordinarily a “cause” for removal.

S.C.Code Ann. § 6-29-780(B)

- None of the members shall hold any other public office or position in the municipality or county.
 - Why?

“No person may hold two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public.”

S.C. Constitution, Article XVII, Section 1.A.

“Dual office holding”

First Principles

- “I’ve been appointed to the County Zoning Board! Now what?”
- Life experiences, common sense, unique perspective, desire and willingness to serve.
- Public service is often “OJT.”
- What is a “quasi-court?”

First Principles

“You’ve been through one FEMA disaster...you’ve been through one FEMA disaster.”

“Everyone has a plan until he gets punched in the mouth.”

Mike Tyson

“It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly...”

President Theodore Roosevelt

S.C.Code Ann. § 6-29-710

Zoning Ordinance Purposes

“(A) Zoning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare...:

- (1) to provide for adequate light, air, and open space;
- (2) to prevent overcrowding of land, undue concentration of people, to lessen street congestion;
- (3) to facilitate the creation of a convenient, attractive, and harmonious community;
- (4) to protect and preserve scenic, historic, or ecologically sensitive areas;

S.C.Code Ann. § 6-29-710

Zoning Ordinance Purposes

“(A) Zoning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare...:

...(5) to regulate the density and distribution of populations and the uses of buildings and land...;

(6) to facilitate the adequate provision or availability of transportation, police and fire protection, water, sewage, schools, parks, and other recreational facilities, affordable housing, disaster evacuation, and other public services and requirements...;

(7) to secure safety from fire, flood, and other dangers; and

(8) to further the public welfare in any other regard specified by a local governing body.

S.C.Code Ann. § 6-29-730

Nonconformities

“...land, buildings, and structures...which are lawful at the time of the enactment of zoning regulations may be continued although not in conformity with the regulations or amendments, which is called a **nonconformity**. The governing authority of a municipality or county may provide in the zoning ordinance or resolution for the continuance, restoration, reconstruction, extension, or substitution of nonconformities...”

S.C.Code Ann. § 6-29-790

- The board shall elect one of its members **chairman**, who shall serve for one year or until he is re-elected or his successor is elected and qualified.
- The board shall appoint a **secretary** who may be an officer of the governing authority or of the zoning board.
- The board shall adopt **rules of procedure** in accordance with the provisions of an ordinance adopted pursuant to this chapter.

S.C.Code Ann. § 6-29-790

- Meetings held at the call of the chairman and at such other times as the board may determine.
- Public notice of all meetings of the board of appeals shall be provided by publication in a newspaper of general circulation in the municipality or county.
- In cases involving variances or special exceptions conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property.

S.C.Code Ann. § 6-29-790

- The chairman or, in his or her absence, the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena.
 - Oaths
 - Compelling witnesses by subpoena

S.C.Code Ann. § 6-29-790

“The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which must be immediately filed in the office of the board and must be a public record.”

- Minutes
- Votes
- Records of official actions

S.C.Code Ann. § 6-29-800

Board's Powers

(A) The board of appeals has the following powers:

(1) to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;

- “Administrative review”

S.C.Code Ann. § 6-29-800

Appeals

(B) Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county.

- The appeal must be taken within a reasonable time (no later than 30 days after notice of “the decision” to be appealed);
- specifying the grounds for the appeal.
- The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.

S.C.Code Ann. § 6-29-800

Appeals

(C) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property...

S.C.Code Ann. § 6-29-800

Appeals

(D) The board must fix a reasonable time for the hearing of the appeal or other matter referred to the board, and give at least fifteen days' public notice of the hearing in a newspaper of general circulation in the community, as well as due notice to the parties in interest, and decide the appeal or matter within a reasonable time.

At the hearing, any party may appear:

- in person or
- by agent or [“letter of authority”]
- by attorney.

S.C.Code Ann. § 6-29-800

Variances

(A)(2) to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship.

- This sounds subjective...because it is.

S.C.Code Ann. § 6-29-800

Variances

(A)(2) ...A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing 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;

S.C.Code Ann. § 6-29-800

Variances

...(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.

S.C.Code Ann. § 6-29-800

Variances

- (a) extraordinary and exceptional conditions...
- (b) that do not generally apply to other property...
- (c) If variance not granted, unreasonable treatment of the property; and
- (d) not be of substantial detriment to others

S.C.Code Ann. § 6-29-800

Variances

With variances, does “degree” come into play?

- The “*de minimis*” exception
 - Too trivial or minor to merit consideration, especially in law.
 - What is the “price point” on the scale of reasonableness?
 - Relates to the “not be of substantial detriment” prong of variance criteria.

S.C.Code Ann. § 6-29-800

Variances

(A)(2)(i) The board may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance...

- Variances cannot create new uses, expand a nonconformity, or change zoning district boundaries.
- Profitability of the land (*e.g.*, “highest and best use”) is not a factor.

S.C.Code Ann. § 6-29-800

Variances

(A)(2)(ii) 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;

- “Conditions” (more subjectivity)

S.C.Code Ann. § 6-29-800

Board's Powers

(A)(2)(i) ...A local governing body by ordinance may permit or preclude the granting of a variance for a use of land, a building, or a structure that is prohibited in a given district, and if it does permit a variance, the governing body may require the affirmative vote of two-thirds of the local adjustment board members present and voting. Notwithstanding any other provision of this section, the local governing body may overrule the decision of the local board of adjustment concerning a use variance.

S.C.Code Ann. § 6-29-800

Special Exceptions

(A)(3) to permit uses by **special exception** subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance; and

[SAMPLE Special Exception ordinance]

(a) *Purpose.* Special exceptions are established to provide for the location of those uses that are generally compatible with other land uses within a zoning district. However, because of their unique characteristics or potential impacts on the surrounding neighborhood and the county, these uses require individual consideration of their location, design, configuration, and/or operation at the particular location proposed...

SAMPLE Special Exception Ordinance

- (2) *Standard of review.* The board shall consider the following in reviewing a special exception:
- a. Traffic impact;
 - b. Vehicle and pedestrian safety;
 - c. Potential impact of noise, lights, fumes, or obstruction of air flow on adjoining properties;
 - d. Adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and
 - e. Orientation and spacing of improvements or buildings.

S.C.Code Ann. § 6-29-800

Special Exceptions

[SAMPLE Special Exception ordinance]

(3) *Conditions:* In granting a special exception, the board may prescribe conditions and safeguards in addition to those spelled out in this chapter. The board of zoning appeals may also prescribe a time limit within which the special exception shall be begun or completed, or both...

S.C.Code Ann. § 6-29-800

Remand

(A)(4) to **remand** a matter to an administrative official, upon motion by a party or the board's own motion, **if the board determines the record is insufficient for review.**

- The board must set a rehearing on the remanded matter without further public notice for a time certain within sixty days unless otherwise agreed to by the parties.
- The board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

S.C.Code Ann. § 6-29-800

Board Action

(E) In exercising the above power, the board of appeals may:

- reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination...
- The board may subpoena witnesses;
- “...and in case of contempt may certify this fact to the circuit court having jurisdiction.”

S.C.Code Ann. § 6-29-810

Contempt

“In case of contempt by a party, witness, or other person before the board of appeals, the board may certify this fact to the circuit court of the county in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.”

- Use sparingly, if at all.
- If breach of the peace is a concern, ask for law enforcement to attend.

Documenting the Board's Decisions

- Written order or decision (minutes or transcript)
- Findings
 - Clear
 - Relevant
 - Supported by the record
- Stipulations or Conditions
 - Practical
 - Relevant
 - Understandable
 - Enforceable

Witnesses and Exhibits

- Do questions and answers stick to the request?
 - Relevant
 - Not cumulative
- Purpose of questions
 - Addressing the criteria for SE or variance?
- Value of discussion, openness of debate
 - Different from jury/judge deliberations
- Dealing with prior decisions, different Boards, “precedent”

S.C.Code Ann. § 6-29-800

Final Decisions and Orders

(F) All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.

S.C.Code Ann. § 6-29-800

Final Decisions and Orders

- The South Carolina Administrative Procedures Act recognizes both written documents and records of proceedings as appropriate formats for final decisions in contested cases. S.C. Code Ann. § 1-23-350 (Supp. 1999).
- Generally, the format of a final decision is immaterial as long as the substance of the decision is sufficiently detailed so as to allow a reviewing court to determine if the decision is supported by the facts of the case. *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals* (S.C.App. 2000), 342 S.C. 480, 536 S.E.2d 892.

S.C.Code Ann. § 6-29-800

Final Decisions and Orders

- The minutes normally constitute the BZA's final findings. S.C. Code Ann. § 6-29- 800(F) ("All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders..."). But the transcript can constitute the final findings if the minutes are found invalid. *Wyndham Enterprises, LLC. v. City of North Augusta*, (S.C.App. 2012), 401 S.C. 144, 735 S.E.2d 659.

S.C.Code Ann. § 6-29-800

Final Decisions and Orders

- Practice Tip:

Consider incorporating agenda, staff comments, all submitted material into findings.

S.C.Code Ann. § 6-29-820

Appeal from the Zoning Board

(A) A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed.

- Who has a “substantial interest” in a board decision?
 - Property owner
 - Immediate neighbors
 - Others?

S.C.Code Ann. § 6-29-820

Appeal from the Zoning Board

(B)...Any notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is postmarked.

- What is “pre-litigation mediation?”

S.C.Code Ann. § 6-29-825

Pre-litigation Mediation

(A) ...the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules...

A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of appeals.

- Typical SC mediation rules.
- A neighbor or other “interested party” may be allowed to participate in the case.

S.C.Code Ann. § 6-29-825

Pre-litigation Mediation

(B) ...The governmental entity must be represented by at least one person for purposes of mediation.

- Who is that going to be?

S.C.Code Ann. § 6-29-825

Pre-litigation Mediation

(D) Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

(1) the local legislative governing body in public session;

and

(2) the circuit court...

(G) The circuit court judge must approve the settlement if the settlement has a rational basis...

S.C.Code Ann. § 6-29-830

Appeals

(A) Upon the filing of an appeal...the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

- “Record on Appeal”
- Staff generally prepares

S.C.Code Ann. § 6-29-830

Appeals

(B) The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedeas, but the judge of the circuit court may in his discretion grant a supersedeas upon such terms and conditions as may seem reasonable and proper.

- Supersedeas = a “stay” of proceedings

S.C.Code Ann. § 6-29-840

Appeals

(A) ...the presiding **judge of the circuit court** of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings.

The **findings of fact** by the board of appeals must be treated in the same manner as a finding of fact by a jury, and **the court may not take additional evidence.**

S.C.Code Ann. § 6-29-840

Appeals

(A) ...In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing.

In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. In the event that the decision of the board is reversed by the circuit court, the board is charged with the costs, and the costs must be paid by the governing authority which established the board of appeals.

S.C.Code Ann. § 6-29-850

Appeals

“A party in interest who is aggrieved by the judgment rendered by the circuit court upon the appeal may appeal in the manner provided by the South Carolina Appellate Court Rules.”

- S.C. Court of Appeals

S.C.Code Ann. § 6-29-1145

Restrictive Covenants

(A) In an application for a permit, **the local planning agency must inquire** in the application or by written instructions to an applicant whether the tract or parcel of land is restricted by **any recorded covenant** that is contrary to, conflicts with, or prohibits the permitted activity.

- Duty to ask, not to go looking for these.
- Must be recorded (ROD, RMC Office).
- County is not a substitute for an HOA.

S.C.Code Ann. § 6-29-1145

Restrictive Covenants

(B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:

(1) in the application for the permit;

(2) from materials or information submitted by the person or persons requesting the permit; or

(3) from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.

- What does “**actual notice**” mean?

S.C.Code Ann. § 6-29-1145

Restrictive Covenants

(C) As used in this section:

(1) "actual notice" is not constructive notice of documents filed in local offices concerning the property, and does not require the local planning agency to conduct searches in any records offices for filed restrictive covenants;

(2) "permit" does not mean an authorization to build or place a structure on a tract or parcel of land; and

(3) "restrictive covenant" does not mean a restriction concerning a type of structure that may be built or placed on a tract or parcel of land.

S.C.Code Ann. § 6-29-1520

Vested Rights

(10) "Vested right" means the right to undertake and complete the development of property under the terms and conditions of a site specific development plan or a phased development plan as provided in this article and in the local land development ordinances or regulations adopted pursuant to this chapter.

S.C.Code Ann. § 6-29-1530

Vested Rights

(A)(1) A vested right is established for two years upon the approval of a site specific development plan.

- What does “approval” mean?

"Approved" or "approval" means a final action by the local governing body or an exhaustion of all administrative remedies that results in the authorization of a site specific development plan or a phased development plan.

§ 6-29-1530(1)

S.C.Code Ann. § 6-29-1530

Vested Rights

(2) On or before July 1, 2005, in the local land development ordinances or regulations adopted pursuant to this chapter, a local governing body must provide for:

(a) the establishment of a two-year vested right in an approved site specific development plan; and

(b) a process by which the landowner...may apply...for an annual extension of the vested right.

The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval.

S.C.Code Ann. § 6-29-1340

Educational Requirements

...attend a minimum of six hours of orientation training in one or more of the subjects listed in subsection (C) during first year on Board; and

annually, after the first year of service or employment, but no later than three hundred and sixty-five days after each anniversary of the initial date of appointment or employment, attend no fewer than three hours of continuing education in any of the subjects listed in subsection (C).

S.C.Code Ann. § 6-29-1340

Educational Requirements

(C) The subjects for the education may include, but not be limited to, the following:

(1) land use planning; (2) zoning; (3) floodplains; (4) transportation; (5) community facilities; (6) ethics; (7) public utilities; (8) wireless telecommunications facilities; (9) parliamentary procedure; (10) public hearing procedure; (11) administrative law; (12) economic development; (13) housing; (14) public buildings; (15) building construction; (16) land subdivision; and (17) powers and duties of the planning commission, board of zoning appeals, or board of architectural review.

S.C.Code Ann. § 6-29-1350

Exemption

(A) An appointed official or professional employee who has one or more of the following qualifications is exempt from the educational requirements of Section 6-29-1340:

- (1) certification by the American Institute of Certified Planners;
- (2) a masters or doctorate degree in planning from an accredited college or university;
- (3) a masters or doctorate degree or specialized training or experience in a field related to planning as determined by the advisory committee;
- (4) a license to practice law in South Carolina.

§ 6-29-1360. Certification.

...report compliance with the educational requirements to the clerk of the local governing body no later than the anniversary date of your appointment or employment.

Ex Parte Communications

“In view of the quasi-judicial nature of service on the Board of Zoning Appeals, Board members shall not discuss any case pending before the Board with parties of record or other interested persons, except as part of a public hearing concerning that case. If a member is contacted by a party of record or other interested person, the member shall decline to discuss the case and inform the contacting person of the opportunity to appear before the Board at a public hearing to present his or her views on the record...”

Ex Parte Communications

“If contact or a relationship between an interested party and a member is such that it compromises, or appears to compromise, the ability of the member or the Board to render a fair and unbiased decision in a case, it shall be the duty of the member to disclose the contact on the record at the start of the meeting where the case is to be heard, and to recuse himself or herself from participation in the discussion and any vote concerning the case wherein the contact or relationship exists.”

S.C.Code Ann. § 30-4-60. Meetings of public bodies shall be open

- Every meeting of all public bodies shall be open to the public unless closed pursuant to Section 30-4-70 of this chapter.

S.C.Code Ann. § 30-4-70

(“Executive sessions”)

(a) A public body may hold a meeting closed to the public for one or more of the following reasons:

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee...

(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege...

§ 30-4-70. (“Executive Sessions)

(b) Before going into executive session the public agency **shall...announce the specific purpose of the executive session...**No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session.

(c) No chance meeting, social meeting, or electronic communication may be used in circumvention of the spirit of requirements of this chapter to act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

Executive Sessions

- When can Board hold one of these?
- For what purpose(s)?
- Legal advice vs. substantive decision
- Not to be used to avoid public discussion
- No action taken in executive session
 - No “polling”

QUESTIONS?

RULES OF PROCEDURE
Of the Board of Zoning Appeals
Of _____ County, South Carolina

ARTICLE I.

Rules

These rules of procedure are adopted pursuant to S.C. Code of Laws Annotated Section 6-29-790 (1994)¹ for the _____ County Board of Zoning Appeals, and should be read in conjunction with the Board's bylaws, the laws and constitution of South Carolina, and the _____ County Code of Ordinances for reference to the authority governing the operation of the Board.

Robert's Rules of Order Newly Revised, latest edition, shall govern the conduct of meetings except as otherwise provided by the bylaws or rules of procedure adopted by the Board or laws applicable to the Board's operation.

ARTICLE II.

Appeals Procedure

2.1 Form of Appeal.

Appeals from administrative decisions, applications for variances, and applications for special exceptions shall be filed on forms approved by the Board and provided to applicants by the secretary or the Development Services Division (Zoning) of the _____ County Planning Department. The Board may require additional information as deemed necessary to decide an appeal. The failure to submit adequate information may be grounds for dismissal of an appeal.

2.1a Applications filed by Agents.

An application filed by an agent shall be accompanied by written designation of the agent signed by the applicant or party in interest. In cases where it is clear to the Board that the applicant or party in interest is unable to provide written designation, alternate proof of the agent's authority to act on behalf of the applicant, such as a valid

¹ Title 6, Chapter 29 of the South Carolina Code of Laws, "South Carolina Local Government Comprehensive Planning Enabling Act of 1994."

order from a court of competent jurisdiction, or other proof may be considered by the Board in allowing an agent to proceed.

Misrepresentation of an agent's authority to act on behalf of an applicant by the agent or any other person may be grounds for voiding an administrative decision, special exception, variance or any other relief granted by the Board, in addition to any other civil or criminal consequences that may accompany such misrepresentation.

2.2. Amendments.

Technical or minor amendments to applications may be allowed to conform to the true nature of the request provided such amendments would not appear to the Board to substantially prejudice the rights of any party. Reconsideration of a matter may be appropriate where an amendment believed to be minor subsequently work injustice upon a party not noticed of the amendment.

2.3 Withdrawal of Appeal.

Any appeal or application may be withdrawn at any time prior to action by the Board. Withdrawn applications may be re-filed three (3) months from the date of withdrawal or thereafter and shall be placed on the docket for hearing based on the date re-filed.

An appeal from an administrative decision that is withdrawn may not be re-filed after the thirty (30) day period for appeal (as set forth in Section _____ of the _____ County Code of Ordinances) has expired.

2.4 Continuances and Deferrals.

The Board may continue or defer an appeal or application for good cause shown upon its own motion or at the request of any applicant, witness or interested party.

2.4a Administrative Deferrals.

The Development Services Manager (Zoning Administrator) or his or her designee may administratively defer any appeal or application upon good cause shown at any time prior to the call of the matter before the Board; provided, however, that no appeal or application may be administratively deferred more than twice under this subsection absent leave of the Board. The deferral and the reason therefor shall be made known to the Board as soon after the deferral is granted as is practical and the agenda so noted to inform the public of such action.

ARTICLE III.

Hearing Procedure

3.1 Appearances.

The applicant or any party in interest may appear in person or by agent or attorney. The Board may treat the failure to appear by or on behalf of an applicant as a withdrawal, or it may postpone any matter before it in the absence of such an appearance for a period other than that prescribed for a withdrawal.

3.2 Witnesses.

Parties in interest may present testimony under oath. Witnesses may be compelled to attend by subpoena pursuant to S.C. Code of Laws Annotated Section 6-29-790 (1994). The Board may call its own witnesses when deemed appropriate.

Each witness shall state his or her name and address for the record. Owners of neighboring property appearing for or against the granting of appeal shall, upon request, furnish the Board with descriptions of the neighboring property which they own and with affidavits of such ownership, or in the absence of such descriptions and affidavits of ownership, may, after being sworn, testify thereto.

No party shall have the right to cross-examine witnesses. Witnesses shall not examine Board members except for *voir dire* to determine whether a member may have a conflict of interest that may call into question that member's impartiality in the matter in which the *voir dire* is taken.

Intimidation of witnesses is prohibited. Witness exchanges with the audience or staff members is not permitted except by leave of the Board. Contempt of the Board may be certified to the circuit court pursuant to S.C. Code of Laws Annotated Section 6-29-810 (1994).

Misrepresentation of an agent's authority to act on behalf of an applicant by the agent or any other person may be grounds for voiding an administrative decision, special exception, variance or any other relief granted by the Board, in addition to any other civil or criminal consequences that may accompany such misrepresentation.

3.2a Oath.

All witnesses shall be sworn by the Chairman or the acting chairman pursuant to S.C. Code of Laws Annotated Section 6-29-790 (1994), or an official authorized to

administer oaths on behalf of the Board prior to presenting testimony, except that unsworn testimony may be allowed as provided for in section 3.3.

3.3 Evidence.

Original documents, photographs, maps, plans, plats, drawings and the like, or legible copies thereof, may be received in the record without authentication.

The chairman, or in his or her absence, the acting chairman shall rule on all evidentiary matters. Testimony that is irrelevant, immaterial, conjectural, embarrassing, degrading, hearsay, that assumes facts not in evidence, misquotes a witness or misstates a witness' testimony, violates a privilege, is cumulative or repetitive, or is prejudicial beyond its probative value may be disallowed. Evidence may be placed in the record with any objections noted.

Petitions and unsworn statements may be accepted but will be given lesser weight than affidavits or testimony given under oath.

3.4 Conduct of Hearing.

The order of hearing, subject to modification by the chairman or acting chairman shall be:

- a. Statement of the matter to be heard by Zoning Administrator of designee;
- b. Presentation by applicant, including any witnesses applicant may call or who wish to testify in support of applicant (**Fifteen (15) minute limit**);
- c. Presentation by opponents (**Three (3) minute limit per opponent. However, a spokesperson for an established body or for a group of three or more may be given five minutes provided the other members of the body or group for whom the spokesperson speaks do not otherwise participate**); and
- d. Rebuttal by applicant (**Five (5) minute limit**).

The Board may question a witness at any point in the hearing. The Board may extend the above time periods as deemed appropriate.

No witness may yield or cede time to any other witness. Spokespersons are welcome and encouraged, especially when it appears that testimony is likely to be cumulative.

3.5 Disposition.

a) The Board shall make disposition of a matter by majority vote of members present and qualified (*i.e.*, not subject to recusal or challenge by an interested party based on a conflict of interest or other good cause shown) to vote, provided not less than a quorum is qualified to vote.

b) Tie Vote

Any motion that receives a tie vote is considered to have failed for lack of a majority.

c) Impasse

i. Tie Vote on Motion to Approve/No Motion to Deny Offered

In cases where there is a motion to approve a request for a special exception or for a variance or to affirm an administrative decision and such motion to approve or to affirm results in a tie vote (and thus, is deemed to have failed for lack of a majority) and there is no motion to deny the request in the same case, the Chair, or in his/her absence, the Vice Chair, may declare the case to have been denied for lack of a majority on the motion to approve or to affirm and no further motion (such as a motion to deny) having been offered. Nothing in this rule prohibits the Board from continuing a case for any purpose authorized by law or by these rules or the Board's bylaws.

ii. Tie Vote on Motion to Deny/No Motion to Approve Offered

In cases where there is a motion to deny a request for a special exception or for a variance or to overturn an administrative decision and such motion to deny or to overturn results in a tie vote (and thus, is deemed to have failed for lack of a majority) and there is no motion to approve the request in the same case, the Chair, or in his/her absence, the Vice Chair, may declare the case to have been denied for lack of a majority on the motion to deny or to overturn and no further motion (such as a motion to approve) having been offered. Nothing in this rule prohibits the Board from continuing a case for any purpose authorized by law or by these rules or the Board's bylaws.

d) Disposition may be taken at the conclusion of the case unless another time is selected by the Board. A member may not vote on a matter that he or she has not heard. Deliberating and voting shall be done in public.

3.6 Notice of Decision.

The Board may dispose of a matter by granting, denying, modifying or dismissing the matter for lack of jurisdiction, lack of prosecution or other reason, with such conditions as may be deemed necessary, or by affirming, modifying or reversing an administrative decision.

The Zoning Administrator shall give written notice of the decision in a matter to the applicant as soon as practical after the matter has been decided. The notice shall include reference to the appeal procedure as provided by S.C. Code of Laws Annotated Section 6-29-820 (1994).

3.7 Reconsideration.

At any time prior to the approval of the minutes reflecting the action taken, any member of the Board who voted for any disposition of the matter may make a motion that the action taken on that matter be reconsidered. If a majority of the Board votes to reconsider the matter, it will be placed on the next available agenda of the Board. The secretary shall notify, or cause to be notified, the applicant of the Board's decision to be reconsidered. Notice of reconsideration shall be given as provided for in Section 3.13.

Neither a request for reconsideration nor a motion for reconsideration is required to be advertised, as cases remain open until finally disposed of by the Board in accordance with Section 3.8 of these rules.

3.7a Requests for Reconsideration.

There is no right of reconsideration of any decision by the Board. However, a person who may have a substantial interest in any decision of the Board may request reconsideration at any time prior to the approval of the minutes reflecting the action taken. Requests for reconsideration shall be delivered to the Zoning Administrator in writing, setting forth plainly, fully, and distinctly why the decision of the Board is in error based on the following reasons:

- a) mistake of law;
- b) mistake of fact;
- c) inadvertence;
- d) excusable neglect;
- e) newly discovered evidence which by due diligence could not have been discovered in time for the hearing;
- f) fraud;
- g) misrepresentation;
- h) other misconduct of a party in interest; or
- i) evidence of a material clerical or other error.

Unmeritorious requests for reconsideration or requests based on an aggrieved party's desire simply for another hearing shall be denied.

A request for reconsideration shall be based and acted upon entirely the written request submitted pursuant to this subsection; provided, however, that testimony may be allowed only by leave of the Board. The Board may call witnesses for limited testimony if needed to develop an understanding of the nature of the request.

3.8 Finality of Decision.

A decision of the Board is final upon approval of the minutes reflecting the action taken.

3.9 Appeal.

Notwithstanding section 3.8, appeals from the Board may be made to circuit court pursuant to S.C. Code of Laws Annotated Section 6-29-820 (1994), which provides:

A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to circuit court in and for the county by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed.

3.10 Resubmission.

No appeal that has been denied shall be considered again by the Board within twelve (12) months of its denial, subject to Section 3.11.

3.11 Rehearing.

No request to grant a rehearing within twelve (12) months of its denial by the Board shall be entertained unless substantial new evidence is submitted which could not reasonably have been presented at the previous hearing, or upon a finding of fraud, misrepresentation or other misconduct of a party.

Requests for rehearing shall be delivered to the Zoning Administrator in writing, setting forth plainly, fully, and distinctly why the decision of the Board is in error. Unmeritorious requests for rehearing or requests based on an aggrieved party's desire

simply for another hearing shall be denied. Testimony is allowed only by leave of the Board. The Board may call witnesses for limited testimony if needed to develop an understanding of the nature of the request.

Once the request for rehearing is placed on the agenda, the party requesting the rehearing shall be notified to appear before the Board. If a motion to grant a rehearing is approved, the case shall be put on the calendar for a rehearing. Rehearing shall be subject to the same notice requirements as original hearings.

3.12 Notice.

Notice shall be given at least fifteen (15) days in advance of a public hearing. The owner of the property with respect to which any matter for determination is before the Board shall be notified by mail, directed to such owner or his agent of record. Notice to the public shall be given by publication in a newspaper of general circulation in _____ County and posting the property with respect to which hearing is to be held. Such public notice shall identify the property involved and shall contain a statement advising the public of what relief is sought.

3.13 Minutes.

The secretary or his or her designee shall record all meetings and hearings of the Board on tape that shall be preserved until final action is taken on all matters presented. The secretary or designee shall prepare minutes of each meeting for approval by the Board. Members in attendance at the meeting for which the minutes were prepared shall sign the original version of the minutes. Minutes shall be maintained as public records.

ARTICLE IV.

Amendment, Suspension and Adoption

4.1 Amendment.

These rules may be amended at any meeting of the Board by majority vote of the appointed members of the Board at least five (5) days after the written amendment is delivered to all appointed members of the Board.

4.2 Suspension.

In case of any exigency or circumstance shown upon good cause and as is needed to prevent or abate a manifest injustice these rules may be suspended at any meeting by two-thirds vote of the appointed members of the Board.

4.3 Adoption.

These rules of procedure were adopted and became effective by vote of a majority of the Board at a public meeting on _____, 2023.

Attest _____
Secretary