

ZONING COMMENTS

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In December 2008, I began a five-year term as a member of the Columbia Board of Zoning Appeals. Because I teach a course on “Land Use Planning,” serving on this board seemed a very good way to combine public service with academic development.

Prior to beginning my term on the Board, I had attended numerous Board meetings (as well as meetings of the City Council, the Planning Commission, and the Design and Development Review Commission) over a period of over twenty years. I had also served as a member of the City of Columbia Planning Commission, including a term as chair. As a result of this experience and of my awareness of the practice in other local governments, I was familiar with the often informal and flexible approach of citizen boards to the application of rules. Because most people (including many lawyers) do not know much about how the zoning process works, I am going to post “Comments” at various times here on my faculty website. In addition, these Comments will provide me with a way to express my personal views in a more precise and organized fashion than is possible at Board meetings.

Several caveats or disclaimers about these Comments are necessary. First, the initial comments are necessarily preliminary and tentative in some respects. Boards change “personality” as membership changes, and I have only been a member of the Board for a few months as I begin these Comments.¹ It is likely that many observations and conclusions will be qualified or changed as time goes on. Second, these Comments are my personal views and do

¹ I have also tried to get a sense of what the Board did before I joined by skimming through minutes for meetings in the most recent years prior to my appointment to the Board.

not reflect the views or position of the Law School, the University, the City of Columbia, or the Board. Third, much of my background in “real world” zoning disputes has been in the role of advocate of neighboring owners or of neighborhood associations. This background could be viewed as the basis for a bias. Not surprisingly, I do not view myself as biased. For example, I have frequently worked with developers to help them with “good” projects. I have also helped draft legislation that strengthened property owners’ procedural rights in zoning disputes.

I would welcome comments or questions concerning these comments. My contact information is available on this website.

I. JUNE 2009

These first comments address four points: (1) a summary of regulatory provisions relating to the Board; (2) an overview of the Board’s powers; (3) a discussion of the Board’s composition and procedures; and (4) an analysis of one of the Board’s powers—the grant or denial of a special exception. Additional comments will be added later.

A. The Regulatory Framework

South Carolina has followed the practice of most states by enacting an “enabling act” that enables or authorizes local governments to adopt zoning schemes.² The enabling act provides the basic framework that all local governments must follow. Cities and counties, acting pursuant to the enabling act, adopt specific local zoning schemes applicable to their jurisdiction. Local

² See South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. CODE §§ 6-29-310 *et seq.*

governments are not required to have zoning, and many local governments in South Carolina have not adopted zoning schemes. Columbia’s scheme for planning, land development, and zoning is set forth in Chapter 17 of the Code of Ordinances of the City of Columbia. Article III of this chapter addresses zoning.

Because the South Carolina enabling act and Article III of Chapter 17 of the Columbia Code establish the framework for zoning, selections from both are set forth as an appendix to these comments. In addition, because the Board’s “Rules and Regulations” contain its rules of procedure,³ a copy of these by-laws is also attached.

B. The Three Powers of the Board

The Board makes three types of decisions. First, it hears and decides *appeals* from decisions made by a city zoning official.⁴ Second, it decides whether to grant a *special exception*.⁵ Generally, permitted uses of land are granted as a matter of right based on a table indicating permitted uses in a certain zoning category. For example, restaurants are permitted as a matter of right in a C-3 (General Commercial) district in Columbia because the City Council has determined that regular restaurants are always appropriate for C-3 districts. In contrast, a fast food restaurant may, or may not be, appropriate in a C-3 district. The Board determines on a case-by-case basis whether a proposed fast food restaurant is appropriate at a particular site and, if it is appropriate, grants a special exception, which permits the fast food restaurant to conduct

³ See S.C. CODE § 6-29-790.

⁴ See S.C. CODE § 6-299-800A(1); COLUMBIA CODE § 17-112(1).

⁵ S.C. CODE § 6-29-800A(2); COLUMBIA CODE § 17-112(2).

business at that site. Third, the Board considers requests for a *variance*.⁶ An example of such a case is a request by a homeowner in an RS-3 (small lot single family residential district) for a variance to allow him to build an addition to his home that will be six feet from a rear property line even though the ordinance requires a ten-foot setback from the rear line.

C. Composition and Procedures of the Board

1. The rules

The Board has seven members, who are appointed by the City Council for staggered five-year terms.⁷ It is a “quasi-judicial” body with a number of court-like aspects. For example, it has the power to administer oaths and to compel attendance of witnesses by subpoena, and it has a statutory duty to adopt rules of procedure.⁸ Columbia’s Board has adopted “Rules and Regulations,” which set forth, *inter alia*, its rules of procedure, which include a provision that “the opportunity to cross-examine opposing witnesses may be freely extended.”⁹ The Board is also like a trial court in that an appeal from it is based on a “record,” and this results in the need for procedures to create and maintain written orders and decisions, with separately stated findings of fact and conclusions of law.¹⁰ The Board is only quasi-judicial in nature because it is

⁶ S.C. CODE § 6-299-800A(3); COLUMBIA CODE § 17-112(3).

⁷ S.C. CODE § 6-299-780; COLUMBIA CODE § 17-111(a).

⁸ S.C. CODE § 6-299-790; COLUMBIA CODE § 17-111(b). The Board may also request the Circuit Court to impose a penalty for contempt by a person appearing before the Board. S.C. CODE § 6-29-810.

⁹ Rules and Regulations of the Zoning Board of Adjustment, Columbia South Carolina § 10.1 (rev. 2/11/97).

¹⁰ *See* S.C. CODE § 6-29-800(F); COLUMBIA CITY CODE § 17-113(b).

unlike a court in many respects. For example, the South Carolina Rules of Evidence do not apply to its proceedings.

2. The practice

Though the practice of the Board generally follows the legal framework, there are a number of interesting deviations. For example, the terms of the current members are “staggered” only in the sense that five expire in 2013 and two expire in 2014.

There is no requirement that members of the Board be lawyers. In Columbia, as in most cities and counties in South Carolina, most of the Board members are not lawyers. In addition, there are no lawyers on the Columbia zoning staff, and city attorneys do not routinely attend Board meetings. As a result, if the Board wants legal advice, it must ask for a city attorney to come give it advice, which is almost always given in executive session.¹¹ Because the Board and staff are nonlawyers, it is not surprising that some of the powers of the Board are *not* used. More specifically, I am not aware of a single instance where the Board has used its powers to issue subpoenas or to allow cross-examination.

Most of the time, the Board uses an informal, nontechnical approach to procedural matters and pays little, if any, attention to the procedural requirements contained in its Rules and Regulations. This approach is used, and generally works well in practice, because most Board members, as well as many applicants and other members of the public, have little, if any,

¹¹ Though the Board is subject to the open meetings requirement of the South Carolina Freedom of Information Act, meetings may be closed for the receipt of legal advice. *See* S.C. CODE §§ 30-4-60, -70.

experience with technical procedural rules or formal public speaking. However, this approach can cause problems. For example, a recent decision of the Board was reversed by a court for failure to follow its rules.¹² Another example of the Board's lack of use of its "Rules and Regulations" is its pattern of allocating time at hearings without using its Rules and Regulations. Instead, it tends to allow persons to present evidence without time limitations. On the occasions when it does impose limits, it does so without reference to the Rules and Regulations.

This non-rule-based approach to time limits was used in a case before the Board at its May 2009 meeting. At this meeting, the Board allowed an applicant to speak in favor of its request for a special request with no time limits and then imposed a three-minute limit on all subsequent speakers, including a spokesperson for opponents.¹³ At no point did anyone refer to the "Rules and Regulations,"¹⁴ which provides at Section II.10:

¹² Dennis v. City of Columbia, Board of Zoning Adjustment, CA. No. 08-CP-40-9138 (Feb. 19, 2009).

¹³ Board Case No. 09-024-SE (Request for a special exception to operate a retail establishment in excess of 10,000 square feet in MX-1-5P district).

¹⁴ I participated in this failure because I did not refer to the Rules. Instead, I objected to the limitation of time for the opponents' spokesperson on the basis of fairness. I adopted this approach because the Columbia Board follows the general practice of zoning boards and commissions, which consist largely of nonlawyers. The general practice to imposing time limits is to use informal standards of fairness rather than "technical" rules in structuring input from applicants and other members of the public. This approach is more flexible as to time than the Board's formal rules, but the informal practice is usually similar in its concern for rough parity in time between opposing positions. My objections on the basis of fairness and parity were not shared by other members of the Board, and the spokesperson for the opposition was severely limited in the time allotted. Thus, it appears (at least to me) that the common standard of informal fairness was not followed at the meeting. Consequently, I will adopt a technical, rules-based position from this point forward when the Board considers imposing time limits on presentations even

Order. At the hearing the order shall be as follows:

- a. Statement of the case by the Chairman or the Secretary,
- b. Administrative officer's side of the case,
- c. Appellant's side of the case,
- d. Interested property owner's/owners' side of the case,
- e. Appellant's rebuttal,
- f. Opposition's rebuttal.

Five minutes shall be allotted for the appellant's side of the case and for the opposition's side of the case. Parties interested shall direct their statements and arguments to the Board and shall not direct them to their opponents; however, the opportunity to cross-examine opposing witnesses may be freely extended when conducted in an orderly manner.¹⁵

D. Analysis of Substantive Rules Governing Special Exceptions

The South Carolina enabling act says very little about special exceptions. The act simply provides that a board has the power "to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance. . . ."¹⁶ The Columbia Ordinance, which is something less than a model of clarity, has a number of substantive provisions relating to the grant or denial of a special exception. Three of these are particularly important in nearly all decisions. First, section 17-112(2)a4 provides that one of the duties of the Board is to "[d]eny special exceptions when not in harmony with the intent and purpose of this

though the inflexibility of this approach may present more problems than a fair informal system. For example, the time limits are very short and it is not clear how to identify the person or persons who would receive the five minutes for the opposition's side. *See infra* note 15 and accompanying text.

¹⁵ These provisions appear to be designed for use in appeals from an administrator's decision. However, section III.4 indicates that they also apply to special exceptions and variances because this section provides:

Approvals Required by Ordinance[sic]. Where approval by the Board is specifically required by the Zoning Ordinance, each such case shall be considered an appeal to the Board and these rules and regulations shall apply.

¹⁶ S.C. CODE § 6-299-800A(3).

article.” Second, section 17-112(2)b4 provides that the Board “shall make a finding that it is empowered under the section of this article described in the application to grant the special exception and that the special exception will not adversely affect the public interest.” Third, section 17-112(2)c provides:

Criteria for Special exceptions. In addition to definitive standards in this article, the board of zoning appeals shall consider the following:

1. Traffic impact;
2. Vehicle and pedestrian safety;
3. Potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property;
4. adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and
5. Orientation and spacing of improvements or buildings.

For purposes of discussion herein, the introductory phrase, “In addition to definitive standards in this article,” will be treated separately from the five criteria explicitly listed in section 17-112(2)c.

1. The five criteria explicitly listed

This discussion starts with the five listed criteria because these have been the main focus of the Board and of the city’s planning staff. More specifically, they are requirements on the City’s application form and on the city’s website. (The form also lists public interest; the website only lists the five criteria.) In addition, Board members are given a sheet listing them, along with public interest, and are urged to refer to them in making motions to grant or deny an application for a special exception.

Focusing on these criteria has an appeal because they seem so specific and concrete and thus appear to be less susceptible to manipulation and more amenable to objective review than concerns like “intent and purpose” and “public interest.” However, with the exception of the

direction to consider the impact of the proposed use on the “character of the environs,” these criteria, by themselves, actually provide virtually no guidance to decisionmaking by the Board or to review of its decisions by a court. For example, if a traffic engineer provides objective empirical evidence to show that the “traffic impact” of a proposed use will be five hundred cars visiting the site for the proposed use over the course of a week, what does a Board member do with this concrete, specific bit of data? As a Board member, the list itself provides me with no measure or guidance as to whether five hundred is acceptable or is too high. Like the famous quote about pornography, my decision as a Board member would be based on my ability to recognize “too high” when I see it.

Some outside standard is needed because the literal language of Section 17-112(2)c requires only that the Board “consider” the listed criteria. Thus, the Board could satisfy this language simply by considering the criteria and could not be reversed for failure to “consider” them no matter what the consideration reveals and no matter how it decides. In order to avoid such an absurd result, the South Carolina Supreme Court was forced to devise a measure of “too much” traffic in *Bannum v. City of Columbia*,¹⁷ which appears to say that: (1) an applicant is allowed to select a use that is permitted as a matter of right; and (2) the application satisfies the “traffic impact” requirement so long as the proposed use has no greater impact than the selected use permitted as a matter of right.¹⁸ Though this approach provides a standard, it clearly results from judicial inventiveness rather than clear guidance from the ordinance.

¹⁷ 335 S.C. 202, 516 S.E.2d 439 (S.C. 1999).

¹⁸ See 516 S.E.2d at 440 n.4.

The approach also raises questions about the process for considering applications for special exceptions. One question concerns the treatment of the other factors on the list. If an applicant picks a specific permitted use for comparing traffic, is the applicant bound to this same use for comparison with other factors on the list, or can the applicant pick and choose permitted uses for comparison as to each listed factor? In addition, there will be situations where this approach would not apply. For example, retail uses are permitted as a matter of right in an MX-1 (mixed use) district but only if the size of the use does not exceed 10,000 square feet.¹⁹ A special exception is required for stores larger than 10,000 square feet.²⁰ On the one hand, stores larger than 10,000 square feet will generate more customers, and thus more traffic. From this perspective, there is a negative impact on traffic. On the other hand, a 15,000 square foot store on a particular parcel of land will generate about the same amount of traffic as two 7,500 square foot stores on the same parcel of land. This view suggests no negative impact on traffic. Without some substantive measure, how does one determine which perspective to use in assessing traffic impact?

In practice, the Board appears not to follow the approach used in *Bannum*. Instead of comparing impact to that of permitted uses, the Board uses a variety of techniques to provide substantive content. Perhaps the most common technique is to make decisions to approve based simply on an ad hoc application of a de minimus approach. For example, negative traffic impact will be regarded as so small that there is no “real” impact given the amount of traffic currently

¹⁹ COLUMBIA CODE § 17-263(b).

²⁰ *Id.* A similar scheme is used for C-2 zoning, which requires a special exception for stores in excess of 5,000 square feet and prohibits stores larger than 10,000 square feet. COLUMBIA CODE § 17-263(a).

existing. This approach is consistent with a common tendency of people to discount or ignore small incremental changes. However, the cumulative effect of small changes can result in what can be viewed as “death by a thousand cuts.” Global warming is an extreme example of such slow, gradual change resulting from multiple actions, none of which, by itself, causes the problem. Because of this problem of cumulative impact, it is important to consider not only the impact of a particular use in terms of some measure, but also the cumulative impact of such uses. For example, it is important to resist the urge to approve a new store larger than 10,000 square feet in an MX-1 district where most existing stores are less than 10,000 square feet by using a de minimus approach because, over time, the cumulative effect of such approvals would be that the general character of the district could become stores over 10,000 square feet.

2. “Definitive standards”

One logical approach to interpreting the phrase “definitive standards” in Section 17-112(2)c is to treat it as a reference to specific standards applicable to a particular special exception. For example, the requirements for off-site parking set forth at Section 17-345(b)(2). In the past, the Board has focused on the five listed criteria and given this phrase less, if any, concern. However, there is reason to believe more attention will be placed on this language in the future.

3. Public policy

The necessary substantive content for determining whether five hundred cars is too much impact on traffic under the first listed criteria could come from public policy. Prior to 2009, the Board occasionally relied on public policy as the basis for denying a request for special exception. However, at the May 2009 meeting of the Board, Board members and the zoning

administrator stated that the Board's present official position is that, based on advice of legal counsel, public policy is satisfied if the five criteria are satisfied. This position was reiterated at the start of the June 2009 meeting. Thus, the Board does not use public policy as an independent guide in considering applications for special exceptions. Though I do not agree with this view, I am very much in the minority in my view.

4. Intent and Purpose of this Article

The reference to "intent and purpose of this article" in Section 17-112(2)a4 could be used to provide both a separate, independent standard for granting or denying special exceptions and a substantive measure for assessing both public interest and the five listed criteria. For example, assessing an application for a special exception in the case of a store larger than 10,000 square feet in an MX-1 district could be addressed by reference to section 17-285, which discusses what the "MX-1 district is intended" to do and indicates a concern for promoting "pedestrian-oriented" streets in MX-1 districts.²¹ Currently, the only MX-1 district in Columbia is the Five Points area, which is subject to a "5P overlay district." (The zoning classification for Five Points is, therefore, MX-1-5P.) Section 17-284 provides, in part, as follows:

The 5P overlay district is intended to enhance the urban village character within the area known as Five Points. This character is defined by attributes such as mixed uses, pedestrian oriented buildings and signage, urban open spaces, and eclectic expressions of architecture and signage.

²¹ Section 17-258 provides:

The MX-1 district is intended to accommodate the development of a wide range of residential and compatible nonresidential uses along corridors and in neighborhood commercial contexts. To promote development that exhibits the physical design characteristics of pedestrian-oriented streets, the district provides flexibility from conventional use and bulk requirements of other zoning districts.

Considered together, sections 17-284 and 17-285 provide important guidance as to the “intent and purpose” of the zoning article in the City Code. Thus, they provide a standard for decisions regarding a special exception for a store larger than 10,000 square feet. Because smaller stores are allowed as a matter of right, it is clear that the city council has determined that size matters to promoting a pedestrian-friendly village feel. But larger stores are permissible; the ordinance allows stores larger than 10,000 square feet if a special exception is granted. Thus, the Board cannot simply reject all stores larger than 10,000 square feet. Instead, given the intent and purpose of sections 17-284 and 17-285, larger stores should be measured in terms of whether the increased size promotes a pedestrian-friendly urban village. If it does not, the application should be rejected. However, if, for example, the increased size promotes a pedestrian-friendly urban village because that increase is necessary for the commercial viability of a use that fosters a village feel, granting a special exception would be consistent with sections 17-284 and 17-285.

It was explicitly stated at the start of the June 2009 meeting that, based on advice of legal counsel, the Board does not accept this approach of using section 17-112(2)a4 in addressing applications for special exceptions. Instead, it considers only the listed criteria. As a result, the Board is prevented from doing such things as using section 17-112(2)a4 to incorporate sections 17-284 and 17-285 into the consideration of a store larger than 10,000 square feet in the MX-1-5P district. Because I believe the Board should use section 17-112(2)a4 in such a manner, I am clearly in the minority on this issue.

5. Conclusion

The Board’s current practice is to base its decisions solely on its consideration of the five listed factors. This approach is wrong in several respects. First, the Board generally considers

the factors without any reference or evidence relating to the comparison suggested by *Bannum*. As a result, it uses ad hoc techniques like the de minimus approach. Second, even if the Board did follow *Bannum* consistently, there would be many cases where the *Bannum* approach of comparison with a permitted use might not apply. Third, considering only the listed factors is, in effect, a decision to ignore separate, explicit language requiring the Board to “[d]eny special exceptions when not in harmony with the intent and purpose of this article” and to make a finding . . . that the special exception will not adversely affect the public interest.” Because the most logical reason to include this language in the ordinance is that the Board should use it in making decisions, refusing to use these requirements appears contrary to the legislative intent of the Columbia City Council, which adopted the language.

APPENDIX TO ZONING COMMENTS

- A. Selections from South Carolina Local Government Comprehensive Planning Enabling Act of 1994 – Sections 6-29-780 through 6-29-860
- B. Selections from City of Columbia Code of Ordinances—Chapter 17, Planning, Land - Development and Zoning—Sections 17-111 through 17-114
- C. Rules and Regulations of the Zoning Board of Adjustment, Columbia, S.C. (rev. 2/11/97)

SECTION 6-29-780. Board of zoning appeals; membership; terms of office; vacancies; compensation.

(A) As 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. Local governing bodies with a joint planning commission and adopting a common zoning ordinance may create a board to be known as the joint board of appeals. All of these boards are referred to as the board.

(B) The board consists of not less than three nor more than nine members, a majority of which constitutes a quorum, appointed by the governing authority or authorities of the area served. The members shall serve for overlapping terms of not less than three nor more than five years or after that time until their successors are appointed. A vacancy in the membership must be filled for the unexpired term in the same manner as the initial appointment. The governing authority or authorities creating the board of zoning appeals may remove any member of the board for cause. The appointing authorities shall determine the amount of compensation, if any, to be paid to the members of a board of zoning appeals. None of the members shall hold any other public office or position in the municipality or county.

SECTION 6-29-790. Board of zoning appeals; officers; rules; meetings; notice; records.

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. Meetings of the board must be 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. The chairman or, in his or her absence, the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena. 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.

SECTION 6-29-800. Powers of board of appeals; variances; special exceptions; remand; stay; hearing; decisions and orders.

(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;

(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. 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;
 - (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.
- (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. Other requirements may be prescribed by the zoning ordinance.

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.

(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;

(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

(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. A party's motion for remand may be denied if the board determines that the record is sufficient 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.

(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, as provided by the zoning ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of appeals notice of appeal specifying the grounds for the appeal. If no time limit is provided, the appeal must be taken within thirty days from the date the appealing party has received actual notice of the action from which the appeal is taken. 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.

(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. In that case, proceedings may not be stayed other than by a restraining order which may be granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(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 by attorney.

(E) In exercising the above power, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board, in the execution of the duties specified in this chapter, may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

(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.

SECTION 6-29-810. Contempt; penalty.

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.

SECTION 6-29-820. Appeal from zoning board of appeals to circuit court; pre-litigation mediation; filing requirements.

(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.

(B) A property owner whose land is the subject of a decision of the board of appeals may appeal either:

(1) as provided in subsection (A); or

(2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-825.

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

(C) Any filing of an appeal from a particular board of appeals decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to Section 8-21-310(11)(a).

SECTION 6-29-825. Pre-litigation mediation; notice; settlement approval; effect on real property; unsuccessful mediation.

(A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted, and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. 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.

(B) The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (A) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

(C) Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

(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 as provided in subsection (G).

(E) Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

(F) If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of:

- (1) the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or
- (2) the failure to approve the settlement by the local governing body.

(G) The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:

- (1) in the same manner as provided by law for appeals from other judgments of the circuit court; or
- (2) by filing an appeal pursuant to subsection (F).

SECTION 6-29-830. Notice of appeal; transcript; supersedeas.

(A) Upon the filing of an appeal with a petition as provided in Section 6-29-820(A) or Section 6-29-825(F), 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.

(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.

SECTION 6-29-840. Determination of appeal; costs; trial by jury.

(A) At the next term of the circuit court or in chambers, upon ten days' notice to the parties, 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. 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.

(B) When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of appeals, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.

SECTION 6-29-850. Appeal to Supreme Court.

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.

SECTION 6-29-860. Financing of board of zoning appeals.

The governing authority may appropriate such monies, otherwise unappropriated, as it considers fit to finance the work of the board of appeals and to generally provide for the enforcement of any zoning regulations and restrictions authorized under this chapter which are adopted and may accept and expend grants of money for those purposes from either private or public sources, whether local, state, or federal.

SECTION 6-29-870. Board of architectural review; membership; officers; rules; meetings; records.

(A) A local government which enacts a zoning ordinance which makes specific

- B. Selections from City of Columbia Code of Ordinances—Chapter 17, Planning, Land - Development and Zoning—Sections 17-111 through 17-114



Everybody Counts, Everybody Contributes, Everybody Benefits

CHAPTER 17

PLANNING, LAND DEVELOPMENT AND ZONING

CITY OF COLUMBIA SOUTH CAROLINA

This pamphlet is a reprint of Chapter 17, Planning, Land Development and Zoning, of the Code of Ordinances of the City of Columbia, South Carolina, published by order of the City Council.

NOTICE:

This version of Chapter 17 of the Code of Ordinances is current as of November 8, 2006 (Supplement 6). For amendments passed after this effective date, please visit our website at

www.columbiadevelopmentservices.net

Sec. 17-88. Complaints regarding violations.

Whenever a violation of this article occurs, or is alleged to have occurred, any person may file a verbal complaint. The complaint, stating fully the causes and basis thereof, shall be filed with the zoning administrator. He shall record the complaint properly, investigate promptly, and take action thereon as provided by this article.

(Code 1979, § 6-3178)

Sec. 17-89. Remedies.

In case any building or structure is erected, constructed, reconstructed, altered, maintained or used in violation of this article or regulations in furtherance of this article, the city council, city attorney, zoning administrator or any person aggrieved may, in addition to other remedies provided by law, institute injunction, abatement or any other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

(Code 1979, § 6-3179)

Sec. 17-90. Penalty.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land is used in violation of this article, or there is a violation of any condition or requirement in connection with special exceptions, variances or rezonings under the terms of this article, that violation shall constitute a misdemeanor, punishable, upon conviction, in accordance with section 1-5. Violation of this article or failure to comply with any of the requirements of this article shall be a misdemeanor. Each day such violation continues after due notice to discontinue that violation shall be considered a separate offense. The owner or tenant of any building, structure, premises or part thereof, and any architect, surveyor, builder, engineer, contractor, agent or other person who commits, participates in, assists in or maintains that violation, may each be found guilty of a separate offense and suffer the penalties provided in this section. Nothing contained in this section shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

(Code 1979, § 6-3180)

Secs. 17-91—17-110. Reserved.**DIVISION 3. BOARD OF ZONING APPEALS*****Sec. 17-111. Organization and procedures.**

(a) *Establishment; membership.* A board of zoning appeals is hereby established, which shall consist of seven members appointed by the city council, a majority of which shall constitute a quorum. The members shall be appointed for staggered terms of five years and

***Editor's note**—Ord. No. 99-011, § 2, adopted Apr. 21, 1999, changed the designation of div. 3 from "board of adjustment" to "board of zoning appeals."

until successors are appointed and qualified. Members may be removed for cause by the city council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board shall elect one of its members chairman for a one-year term.

(b) *Meetings and rules of procedure; records.*

- (1) The board shall adopt rules necessary to the conduct of its affairs in accordance with the provisions of this article. Meetings of the board shall be held at the call of the chairman and at those other times as the board may determine. The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
- (2) 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 such facts, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the zoning administrator and shall be a public record.

(c) *Appeal procedure.* Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the zoning administrator. That appeal shall be taken within 30 days by filing with the zoning administrator from whom the appeal is taken and with the board of zoning appeals a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board of zoning appeals shall fix a reasonable time for hearing the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the appeal within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

(d) *Stay of proceedings pending appeal.* An appeal stays all proceedings in furtherance of the action appealed from, unless the zoning administrator from whom the appeal is taken certifies to the board of zoning appeals, after notice of appeal is filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of zoning appeals or by a court of record on application, on notice to the zoning administrator from whom the appeal is taken and on due cause shown. (Code 1979, § 6-3191; Ord. No. 99-011, § 2, 4-21-99)

Sec. 17-112. Powers and duties.

The board of zoning appeals shall have the following powers and duties:

- (1) *Administrative review.* The board of zoning appeals shall hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article, provided that those appeals must be taken within 30 days after the order, requirement, decision or determination which is alleged to be in error is made.

(2) *Special exceptions.*

a. *Duties.* Duties of the board are as follows:

1. Hear and decide only the applications for special exceptions as the board of zoning appeals is specifically authorized to pass upon by terms of this article;
2. Decide the questions as are involved in determining whether special exceptions should be granted;
3. Prescribe appropriate conditions and safeguards in conformity with this article; and
4. Deny special exceptions when not in harmony with the intent and purpose of this article.

b. *Procedures in consideration of special exception applications.*

1. A written application for a special exception shall be submitted indicating the section of this article under which the special exception is sought and stating the grounds on which it is requested.
2. Notice of public hearing shall be posted on the property for which special exception is sought and shall be published at least 15 days prior to the public hearing in a newspaper of general circulation in the city.
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.
4. The board of zoning appeals shall make a finding that it is empowered under the section of this article described in the application to grant the special exception and that the special exception will not adversely affect the public interest.
5. The board of zoning appeals shall not vary the conditions and/or provisions of sections 17-259 through 17-274 that establish specific standards that must be met prior to the establishment of several principal uses that require a special exception.
6. The board of zoning appeals may prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both.

c. *Criteria for special exceptions.* In addition to definitive standards in this article, the board of zoning appeals shall consider the following:

1. Traffic impact;
2. Vehicle and pedestrian safety;
3. Potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property;
4. Adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and

5. Orientation and spacing of improvements or buildings.

d. *Effect of failure to meet conditions.*

1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which a special exception is granted, shall be deemed a violation of this article, punishable under the penalties established in this article.
2. Failure to begin or complete, or begin and complete, an action for which a special exception is required, within the time limit specified, when such time limit is made a part of the terms under which the special exception is granted, shall void the special exception.

(3) *Variances.*a. *Duties.* Duties of the board are as follows:

1. It shall be the duty of the board to authorize upon appeal in specific cases a variance from the terms of this article as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in unnecessary hardship, so that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of appeals that the conditions listed under subsection (3)b of this section have been met.
2. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts, shall be considered grounds for the issuance of a variance.
3. In granting any variance, the board may prescribe conditions and safeguards in conformity with this article.

b. *Procedures in consideration of request for variance.*

1. A written application for a variance shall be submitted demonstrating that:
 - (i) There are extraordinary and exceptional conditions pertaining to the piece of property;
 - (ii) These conditions do not generally apply to other property in the vicinity;
 - (iii) Because of these conditions, the application of this division to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
 - (iv) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.
2. The board may not grant a variance the effects of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to

extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably should a variance be granted, may not be considered grounds for a variance.

3. Notice of public hearing shall be given as described in subsection (2)b.2 of this section.
 4. The hearing shall be held. Any party may appear in person, or by agent or by attorney.
 5. The board of zoning appeals shall make findings that the requirements of subsection (3)b.1 of this section have been met by the applicant for a variance.
 6. The board of zoning appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
 7. The board of zoning appeals shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 8. The board of zoning appeals may prescribe a time limit within which the action for which the variance is requested shall be begun or completed, or both.
- c. *Effect of failure to meet conditions.*
1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article, punishable under penalties established in this article.
 2. Failure to begin or complete, or begin and complete, an action for which a variance is granted, within the time limit specified, when such time limit is made a part of the terms under which the variance is granted, shall void the variance.

(4) *Joint applications for special exception and variance(s).* Whenever in conjunction with an application for special exception, an applicant files an application for variance, the board of zoning appeals may combine the applications and consider them simultaneously, provided that the procedures established for special exceptions and variances within this section 17-112 shall not be varied.

(Code 1979, § 6-3192; Ord. No. 99-011, §§ 2, 3, 4-21-99; Ord. No. 2004-058, 7-21-04)

Sec. 17-113. Actions and decisions of board in favor of applicant.

(a) Upon appeal of a decision of the zoning administrator, the board of zoning appeals may, in conformity with the provisions of this article, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the zoning administrator from whom the appeal is taken.

(b) All final decisions and orders of the board shall be in writing and be permanently filed in the office of the zoning administrator as a proper record. All findings of fact and conclusions of law shall be separately stated in final decisions or orders of the board.

(Code 1979, § 6-3193; Ord. No. 99-011, § 2, 4-21-99)

Sec. 17-114. Appeals from decisions of board.

Any person who may have a substantial interest in any decision of the board of zoning appeals, or any officer or bureau of the city having authority, may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after the decision of the board is rendered.

(Code 1979, § 6-3194; Ord. No. 99-011, § 2, 4-21-99)

Secs. 17-115—17-130. Reserved.

DIVISION 4. AMENDMENTS

Sec. 17-131. Authorized.

The city council may, from time to time, amend any part of the text or map of this article.
(Code 1979, § 6-3201)

Sec. 17-132. Initiation.

(a) *Text amendments.* Amendments to the zoning text may be initiated by:

- (1) Adoption of a motion by the planning commission.
- (2) Application by a member of the city council.
- (3) The zoning administrator or city manager.

(b) *Map amendments.* An amendment to the zoning map may be initiated by:

- (1) Adoption of a motion by the city planning commission.
- (2) Application by a member of the city council.
- (3) The zoning administrator or city manager.
- (4) The filing of an application by the property owner or his authorized agent.

(Code 1979, § 6-3202)

Sec. 17-133. Contents of application.

The application for amendment shall contain at least the following information:

- (1) Name, address and telephone number of the applicant;
- (2) Tax map reference (sheet, block and lot numbers) and street address of the property;

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Sec. 17-260. Warehousing (SIC 4227 and 424).

(a) *Private commercial storage (SIC 424).* Warehousing, or other storage of wares, is permitted in the various districts as follows:

(1) *C-1 and C-6 districts.* In C-1 and C-6 districts, warehousing is permitted as an accessory use not involving over 2,000 square feet of area;

(2) *C-2 districts.* In C-2 districts, warehousing is permitted as an accessory use not involving over 2,000 square feet of area, and as a special exception it may be permitted as an accessory use not involving over 3,000 square feet of area;

(3) *C-3, C-4, and MX-1 districts.* In C-3, C-4, and MX-1 districts, warehousing is allowed as a permitted principal use or as an accessory use not involving over 8,000 square feet of area, and as a special exception involving not over 12,000 square feet of area; and

(4) *C-5 district.* In the C-5 district, warehousing is a permitted accessory use, but it must not involve the storage of goods to be wholesaled in excess of 2,000 square feet of gross floor space.

(b) *Miniwarehousing (SIC 4227).* Miniwarehouses are allowed subject to the following provisions:

(1) *Buffer yard.* Where the lot is adjacent to a residential zoning district, a buffer yard shall be provided on the property line adjacent to the residential zoning district in accordance with section 17-313 and table 3.

(2) *Fencing or walls.* Fencing or walls shall be required around the open perimeter of the project. The fence or wall shall be a minimum of six feet in height. Where the lot is adjacent to a residential zoning district, the fence or wall shall be constructed of materials approved by the board of zoning appeals.

(3) *Setback.* Any side of the building providing doorways to storage areas shall be set back from the property line not less than 25 feet (in addition to that setback required in subsection (b)(1) of this section, if applicable).

(4) *Parking requirements.* Off-street parking shall be required as follows:

a. One space for each ten storage cubicles. This parking requirement can be accomplished with the parking lanes as set forth in subsection (b)(5) of this section;

b. Two spaces for the manager's quarters; and

c. One space for every 50 storage cubicles, to be located at the project office for use of prospective clients.

(5) *Driveway widths.* On-site driveway widths shall be required as follows:

a. All one-way driveways shall provide for one ten-foot parking lane and one 15-foot travel lane. Traffic direction and parking shall be designated by signing or painting.

b. All two-way driveways shall provide for one ten-foot parking lane and two 12-foot travel lanes.

c. The parking lanes may be eliminated when the driveway does not serve storage cubicles.

(6) *Prohibited uses.* Retail or wholesale uses and storage of hazardous materials shall be prohibited in miniwarehouses, and notice of such prohibition shall be given to customers by a conspicuous sign posted at the entrance of the property, or by provisions in the lease agreement, or both.

(7) *Storage of vehicles, boats, etc.* Any outdoor storage area for vehicles, trailers, campers, boats or the like shall be separate from any structures and located to one side of or to the rear of the development. In no case shall these spaces be construed to meet the parking requirements of this subsection.

(8) *Lighting.* All lights shall be shielded to direct light onto the uses established and away from adjacent property, but lighting may be of sufficient intensity to discourage vandalism and theft.

Sec. 17-263. Retail trade (SIC 52-59).

(a) *C-2 district.* In C-2 zoning districts, any retail trade activities must not occupy in excess of 5,000 square feet in area. Retail trade occupying between 5,000 and 10,000 square feet may be permitted as a special exception. Retail trade occupying in excess of 10,000 square feet is prohibited. Gasoline pumps may be added as an accessory use by special exception.

(b) *C-6 and MX-1 districts.* In C-6 and MX-1 zoning districts, all retail trade activities are allowed as a permitted use up to 10,000 square feet in area. Retail trade occupying more than 10,000 square feet may be allowed as a special exception by the board of zoning appeals.

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Sec. 17-284. -5P five points district.

The 5P overlay district is intended to enhance the urban village character within the area known as Five Points. This character is defined by attributes such as mixed uses, pedestrian oriented buildings and signage, urban open spaces, and eclectic expressions of architecture and signage. Development within the 5P area must comply with design guidelines adopted by City Council on June 18, 2008, entitled "Future Five, Design Development Guidelines, January, 2008."

The 5P area consists of approximately 65 acres in the area generally bounded to the north by Gervais Street, to the west by the Southern RR, to the south by parcels fronting Blossom Street, to the east by Hilton Street and continuing in a straight line northerly to Lee Street, along Pavilion Street, continuing north mid block behind Pavilion Street to Stark Street, along Walnut Street to Senate Street and behind parcels fronting Harden Street to Gervais Street.

The 5P area is further delineated as Upper Five Points and Lower Five Points. Upper Five Points is described as the area north of Greene Street, but not to include parcels or portions of parcels fronting Greene Street. Lower Five Points includes all parcels south of Greene Street, in addition to the parcels or portions of parcels north of Greene that abut the Greene Street right-of-way.

These boundaries are outlined on the official City of Columbia zoning map.

Sec. 17-285. MX-1 mixed-use district corridor/neighborhood.

The MX-1 district is intended to accommodate the development of a wide range of residential and compatible non-residential uses along corridors and in neighborhood commercial contexts. To promote development that exhibits the physical design characteristics of pedestrian-oriented streets, the district provides flexibility from conventional use and bulk requirements of other zoning districts.

Sec. 17-286. Motor vehicle, boat, and recreation vehicle dealers.

Motor vehicle dealers (new and used), Motor vehicle dealers (used only), Boat dealers, Auto and home supply stores, and Recreational and Utility Trailer dealers are permitted in MX-1 districts provided that no merchandise or equipment shall be displayed or stored outside of an enclosed structure.

Sec. 17-287. Used merchandise stores.

Used Merchandise Stores are permitted in C-3, C-3A, C-4, C-5, C-6, and MX-1 districts, subject to the following conditions:

- (1) No merchandise or equipment shall be displayed or stored outside of an enclosed structure;
- (2) If donations are accepted, merchandise shall only be received during normal business hours, and signs shall be posted alerting donors that donations are not accepted except during normal business hours,
- (3) No weapons or ammunition of any type, including knives, shall be sold, bartered, traded, or otherwise processed.

Sec. 17-288. Offices and clinics of other health practitioners including therapeutic massage.

(a) Offices And Clinics Of Other Health Practitioners including Therapeutic Massage are permitted in C-1, C-2, C-3, C-3A, C-4, C-5, C-6, and MX-1 district provided that a massage therapist must show proof of licensure through the SC Department of Labor, Licensing, and Regulation.

RULES AND REGULATIONS
OF
THE ZONING BOARD OF ADJUSTMENT
COLUMBIA, SOUTH CAROLINA
(Revised 2/11/97)

ORGANIZATION

Section I

I. 1—**Chairman – Vice Chairman.** At annual meetings of the Board in January of each year, the Board shall elect one of its members as Chairman and one of its members as Vice-Chairman, each to serve for a period of twelve (12) months. These officers may not be elected to serve more than two (2) consecutive terms. However, the Chairman and Vice-Chairman may be re-elected after a time interval of one (1) year.

I. 2—**Secretary.** The Zoning Administrator, or in his absence, the Zoning/Planning Coordinator, shall serve as Secretary of the Board.

I. 3—**Chairman to Preside.** The Chairman shall preside at all meetings of the Board, except in the event of his absence or disability the Vice-Chairman shall preside.

I. 4—**Procedure.** The Chairman, subject to these rules, shall decide all points of procedure unless otherwise directed by a majority of the board in Session at the time. Any points not addressed in these Rules and Regulations will be covered by Robert's Rules of Procedure.

I. 5—**Supervision of Secretary.** The Chairman shall supervise the work of the Secretary.

I. 6—**Duties of the Secretary.** The Secretary, subject to the direction of the Board Chairman, shall conduct all correspondence of the Board, receive and file all appeals, attend all meetings of the Board and all hearings, scrutinize all appeals to insure that these rules are complied with, prepare and keep calendars, dockets and summary minutes of each meeting and hearing shall be signed by the secretary and the Chairman.

I. 7—**Minute Book.** The Secretary shall keep a minute book and keep the same recorded to date, showing all important facts pertaining to each meeting and hearing, and including a copy of each resolution acted upon by the Board, the vote of each member upon each resolution or those absent or failing to vote, and such other details as the Board or its Chairman shall direct. The minutes of each meeting and hearing shall be signed by the secretary and the Chairman.

I. 8—**Docket.** The Secretary shall keep a docket of each case, name and address of appellant, brief description of the premises involved, date of filing appeal and final disposition of the case.

I. 9—**Index.** The Secretary shall maintain an index systems indicating by address all cases coming before the Board and the docket number of each. All record of appeal shall be kept in the office of the Secretary and in such manner as to be accessible to the public at all reasonable hours.

I. 10—**Inspections.** When not feasible for the entire membership of the Board to make personal inspections, the Chairman may designate not less than two members to make such inspections, when such are deemed necessary by the Board. When requested by the Chairman, the members so designated shall file with the Board a written report of the findings.

MEETINGS

Section II

II. 1—**Time.** Regular meetings of the Board shall be held on the second Tuesday of each month, at 10:00am., in the Council Chambers at City Hall. The regular meeting in January shall be the annual meeting of the Board.

II. 2—**Cancellation.** Whenever there are no appeals to be considered, and there appears to be no other business to be transacted by the Board at any regular meeting, other than the annual meeting the Chairman may dispense with such meeting by notifying each member of the Board not more than five (5) days, no less than twenty-four (24) hours prior to the time for such meeting.

II. 3—**Hearings.** Hearings of appeals may be held at regular or special meetings of the Board, at such hours as shall be determined by the Board.

II. 4—**Open to the Public.** All regular meeting shall be open to the public, except that the Board may go into executive session in accordance with the provisions of Section 1-20 of the Code of Laws of South Carolina as amended May, 1976.

II. 5—**Quorum.** A quorum for a meeting by the Board shall consist of four (4) members, but a lesser number may meet and adjourn a meeting a specified time.

II. 6—**Appearances.** The appellant or any party in interest may appear in person or by agent or attorney.

II. 7—**Proof of Ownership.** 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.

II. 8—**No Appearances.** In the absences of any personal appearance on behalf of the appellant, or in opposition thereto, or both, the Board may proceed to dispose of the matter on the record before it, or may postpone action on affirmative vote of three members present.

II. 9—**Oath.** All parties presenting testimony shall be under oath, except when granted an exception by a majority of the members of the Board present.

II. 10—**Order.** At the hearing the order shall be as follows:

- a. Statement of the case by the Chairman or the Secretary,
- b. Administrative officer's side of the case,
- c. Appellant's side of the case,

- d. Interested property owner's / owners' side of the case,
- e. Appellant's rebuttal,
- f. Opposition's rebuttal.

Five minutes shall be allotted for the appellant's side of the case and for the opposition's side of the case. Parties interested shall direct their statements and arguments to the Board and shall not direct them to their opponents; however, the opportunity to cross-examine opposing witnesses may be freely extended when conducted in an orderly manner.

II. 11—**Special Meetings.** Special meetings may be called by the chairman at the request of two members or by the secretary at the request of two members, provided that notice of the same shall be mailed to each member of the board at least forty-eight (48) hours prior to the time set for such meeting. Provided further, however, that the announcement of a special meeting at which a quorum is present shall be sufficient notice of such meeting.

CASES BEFORE THE BOARD

Section III

III. 1—**Form of Appeal.** Every appeal shall be made upon the form furnished by the Secretary, which form shall have been approved by the Board. The information and data called for in such form shall be supplied in sufficient detail so as to afford all the information necessary for a clear understanding and considered action by the Board. If additional information is deemed necessary, it shall be supplied by the appellant upon request of the Chairman or Secretary of the Board. Any failure or refusal on the part of the appellant to furnish such additional information as may be reasonably required by the Chairman or Secretary may be grounds for dismissal of the appeal by the Board.

III. 2—**Insufficient Notice.** Any communication purporting to be an appeal or application to the Board for a permit shall be regarded as a mere notice of intent to seek relief until it is made in the form required.

III. 3—**Who May Appeal.** Each appeal shall be made by the owner of the property affected or the owner's authorized agent and shall deal with a specific case. This rule shall not prevent the bringing of an appeal by an aggrieved neighboring property owner or lessee who is seeking the renovation of a permit, which he deems to have been improperly issued by the Zoning Administrator.

III. 4—**Approvals Required by Ordinance.** Where approval by the Board is specifically required by the Zoning Ordinance, each such case shall be considered an appeal to the Board and these rules and regulations shall apply.

III. 5—**Public Notices.** The property shall be posted not less than fifteen (15) days prior to the date of the hearing; with notice of intent to appeal for relief; such notice shall be posted on or near the property lines, and shall be in full view of the public. A notice of appeal to the Board shall be published in a local newspaper of general circulation in the City of Columbia at least fifteen (15) days prior to the meeting. Such

notice shall state the name of the appellant, location of the property, zoning district, and describe the nature of the appeal.

CALENDAR AND DOCKET

Section IV

IV. 1—**Docketing Cases.** Each appeal filed on the proper form shall be numbered serially, docketed, and shall be placed on the calendar of the Board by the Secretary for hearing. The serial numbers shall begin anew on January of each year and shall be hyphenated with the number of the year in which the appeal is filed.

IV. 2—**Time of Hearing.** All cases docketed more than twenty (20) days preceding a regular meeting day, shall be automatically set for hearing at such meeting. Cases docketed less than twenty (20) days prior to a regular meeting day may be set for hearing on the second regular meeting day after such docketing, unless a different date be specifically set for such hearing by the Board.

IV. 3—**Order of Hearing.** Appeals shall be heard by the Board in the order in which they are set for hearing on the calendar, except that an appeal may be advanced or postponed for hearing by order of the Board upon good cause there being shown.

IV. 4—**Adjournments.** When all appeals cannot be disposed of on the day set, the Board may adjourn from day to day or to a day certain as it may order, and such adjournment day shall be constructed as a continuance of the meeting and no further notice need be given thereof.

FINAL DISPOSITION OF CASE

Section V

V. 1—**Form.** The final disposition of any appeal shall be in the form of a motion granting, reversing, varying or modifying the order, requirement, decision or determination appealed, or affirming the order and denying the appeal, or dismissing the appeal for lack of jurisdiction or prosecution. Such motion may show the reasons for the board's determination, but must receive a majority vote of the participating board members to carry. In the event of a tie vote, an alternative motion may be made. If no affirmative action on a motion is taken by the board, it will be determined that the appeal did not receive the requested relief from the board, and therefore the appeal is denied.

V. 2—**Conditions.** Wherever the Board authorizes any variation or imposes any condition with respect to a permit so as to carry out the intent and purpose of the Zoning Ordinance, such variation and condition shall be specifically stated in the motion referred to in paragraph 5.1 and also in the zoning permit issued pursuant thereto by the Zoning Administrator. Such permit shall remain valid only as long as the conditions upon which it was granted are conformed or maintained.

V. 3—**Laying Over.** In any case where only four members of the Board are present and the vote stands three in favor and one against the appellant, the matter shall be laid over for consideration and final determination at the next meeting of the Board.

Notice of such fact shall be given to absent members of the Board, the appellant, and the spokesman for the opponents at least three days prior to the date of the next meeting.

V. 4—**Withdrawal.** Any appellant may automatically withdraw his appeal prior to action thereon, if such request for withdrawal is received in writing by the Zoning Administrator or the zoning office. This written request must be received prior to the Board meeting. Any request for withdrawal will be subject to the Board's approval.

V. 5—**Rehearing.** No request to grant a rehearing within six months of its dismissal or denial by the Board shall be entertained unless substantial new evidence is submitted which could not reasonably have been presented at the previous hearing. In all cases, the request for a rehearing shall be in writing, reciting the reasons for the request, and shall be duly verified and accompanied by the necessary data and reasons for the request. The party requesting the rehearing shall be notified to appear before the Board on a date to be set by the Board, of which he shall be notified. If motion to grant a rehearing receives the affirmative vote of four (4) or more members of the Board, the case shall be put on the calendar for a rehearing. Rehearing shall be subject to the same requirements as to notices as the original hearing.

V. 6—**Authentication.** The minutes of every meeting shall be signed by the Chairman or Vice-Chairman and attested by the Secretary as evidence of the action of the Board.

AMENDMENTS TO RULE

Section VI

VI. 1—**Amendments to Rules.** Amendments to these rules and regulations may be by the Board at any regular meeting or at any special meeting, provided notice in writing thereof has been given to each member of the Board at least five days prior to such meeting, or provided such amendment was read at the last preceding regular meeting of the Board. The suspension of any rule or procedure may be ordered at any meeting by vote of not less than four members of the Board.