CHAPTER 29

South Carolina Local Government Comprehensive Planning Enabling Act of 1994

ARTICLE 1

Creation of Local Planning Commission

**SECTION 6‑29‑310.** “Local planning commission” defined.

For purposes of this chapter, “local planning commission” means a municipal planning commission, a county planning commission, a joint city‑county planning commission, or a consolidated government planning commission.

HISTORY: 1994 Act No. 355, Section 1.

CROSS REFERENCES

County regulation of building construction, see Sections 4‑25‑10 et seq.

LIBRARY REFERENCES

Zoning and Planning 351.

Westlaw Key Number Search: 414k351.

C.J.S. Zoning and Land Planning Sections 97, 177, 181 to 183, 185.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Zoning and Planning Section 1 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

Zoning provision could not be enacted by initiative and referendum, despite statute providing that “any ordinance” except ones explicitly prohibited could be enacted by initiative and referendum; conflict between relatively free‑ranging initiative and referendum process and more recent, elaborate, and detailed zoning procedures were incompatible and hopelessly inconsistent, and allowing zoning by initiative and referendum potentially would nullify zoning and land use rules developed after extensive debate among a variety of interested persons. I’On, L.L.C. v. Town of Mt. Pleasant (S.C. 2000) 338 S.C. 406, 526 S.E.2d 716. Zoning And Planning 1033; Zoning And Planning 1138

**SECTION 6‑29‑320.** Bodies authorized to create local planning commissions.

The city council of each municipality may create a municipal planning commission. The county council of each county may create a county planning commission. The governing body of a consolidated government may create a planning commission. Any combination of municipal councils and a county council or any combination of municipal councils may create a joint planning commission.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 351.

Westlaw Key Number Search: 414k351.

C.J.S. Zoning and Land Planning Sections 97, 177, 181 to 183, 185.

Attorney General’s Opinions

An individual could serve on both the Orangeburg County Planning Commission and the City of Orangeburg Aviation Commission without violating the dual office holding provision of the State Constitution. S.C. Op.Atty.Gen. (April 29, 2014) 2014 WL 2120888.

**SECTION 6‑29‑330.** Areas of jurisdiction; agreement for county planning commission to act as municipal planning commission.

(A) A municipality may exercise the powers granted under the provisions of this chapter in the total area within its corporate limits. A county may exercise the powers granted under the provisions of this chapter in the total unincorporated area or specific parts of the unincorporated area. Unincorporated areas of the county or counties adjacent to incorporated municipalities may be added to and included in the area under municipal jurisdiction for the purposes of this chapter provided that the municipality and county councils involved adopt ordinances establishing the boundaries of the additional areas, the limitations of the authority to be exercised by the municipality, and representation on the boards and commissions provided under this chapter. The agreement must be formally approved and executed by the municipal council and the county councils involved.

(B) The governing body of a municipality may designate by ordinance the county planning commission as the official planning commission of the municipality. In the event of the designation, and acceptance by the county, the county planning commission may exercise the powers and duties as provided in this chapter for municipal planning commissions as are specified in the agreement reached by the governing authorities. The agreement must specify the procedures for the exercise of powers granted in the chapter and shall address the issue of equitable representation of the municipality and the county on the boards and commissions authorized by this chapter. This agreement must be formally stated in appropriate ordinances by the governing authorities involved.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 4, 351.

Westlaw Key Number Searches: 414k4; 414k351.

C.J.S. Zoning and Land Planning Sections 3, 5 to 7, 10, 85, 97, 177, 181 to 183, 185.

Attorney General’s Opinions

A county council has the authority under its police power, to adopt an ordinance regulating signs or billboards, within constitutional limitations. Annual fees, as regulatory rather than revenue‑raising measures, have been upheld, as have graduated fees based upon the size of the sign. Decided under former law. 1986 Op Atty Gen, No. 86‑16, p 66.

**SECTION 6‑29‑340.** Functions, powers, and duties of local planning commissions.

(A) It is the function and duty of the local planning commission, when created by an ordinance passed by the municipal council or the county council, or both, to undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction. The plans and programs must be designed to promote public health, safety, morals, convenience, prosperity, or the general welfare as well as the efficiency and economy of its area of jurisdiction. Specific planning elements must be based upon careful and comprehensive surveys and studies of existing conditions and probable future development and include recommended means of implementation. The local planning commission may make, publish, and distribute maps, plans, and reports and recommendations relating to the plans and programs and the development of its area of jurisdiction to public officials and agencies, public utility companies, civic, educational, professional, and other organizations and citizens. All public officials shall, upon request, furnish to the planning commission, within a reasonable time, such available information as it may require for its work. The planning commission, its members and employees, in the performance of its functions, may enter upon any land with consent of the property owner or after ten days’ written notification to the owner of record, make examinations and surveys, and place and maintain necessary monuments and marks on them, provided, however, that the planning commission shall be liable for any injury or damage to property resulting therefrom. In general, the planning commission has the powers as may be necessary to enable it to perform its functions and promote the planning of its political jurisdiction.

(B) In the discharge of its responsibilities, the local planning commission has the power and duty to:

(1) prepare and revise periodically plans and programs for the development and redevelopment of its area as provided in this chapter; and

(2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area:

(a) zoning ordinances to include zoning district maps and appropriate revisions thereof, as provided in this chapter;

(b) regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted as provided in this chapter;

(c) an official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights‑of‑way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights‑of‑way, building sites, or open spaces within its political jurisdiction or a specified portion of it, as set forth in this chapter;

(d) a landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;

(e) a capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budget; and

(f) policies or procedures to facilitate implementation of planning elements.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 353.

Westlaw Key Number Search: 414k353.

C.J.S. Zoning and Land Planning Sections 10, 178 to 179, 183.

Attorney General’s Opinions

A county government may, but is not required to, create a planning commission whose duty is to prepare a comprehensive county plan; the adoption of such a plan is a prerequisite to the promulgation of regulations pertaining to subdivisions and the approval of subdivision plats. Decided under former law. 1989 Op Atty Gen, No. 89‑47, p 121.

NOTES OF DECISIONS

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Validity 1

Variance 3

1. Validity

Determining whether a local ordinance is valid is a two‑step process: (1) determine whether the county had the power to adopt the ordinance and, if so, (2) determine whether the ordinance is consistent with the Constitution and general law of the State. McKeown v. Charleston County Bd. of Zoning Appeal (S.C.App. 2001) 347 S.C. 203, 553 S.E.2d 484. Counties 55

2. In general

A shelter would be permitted to remain on its current site after a tie vote by the Board of Adjustments on the issue of whether the shelter’s previously granted status would be rescinded, where the original decision of the board provided for a review as to whether the zoning designation had been changed or the shelter caused hardships on the neighbors, and the board made no finding regarding either of these issues. Brock v. Board of Adjustment and Appeals of City of Rock Hill (S.C. 1992) 308 S.C. 539, 419 S.E.2d 773.

City ordinance which denied the board the power to grant any variance is void as repugnant to Code 1962 Section 47‑1009 [Code 1976 Section 5‑23‑100]. Bostic v. City of West Columbia (S.C. 1977) 268 S.C. 386, 234 S.E.2d 224.

In exercising its discretion, the board of adjustment is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes. Stevenson v. Board of Adjustment of City of Charleston (S.C. 1957) 230 S.C. 440, 96 S.E.2d 456.

3. Variance

The office of a variance is to permit modification of an otherwise legitimate restriction in the exceptional case where, due to unusual conditions, it becomes more burdensome than was intended, and may be modified without impairment of the public purpose. Stevenson v Board of Adjustment of Charleston, 230 SC 440, 96 SE2d 456 (1957). Hodge v Pollock, 223 SC 342, 75 SE2d 752 (1953).

Before a variance can be allowed on the ground of “unnecessary hardship,” there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation. Stevenson v Board of Adjustment of Charleston, 230 SC 440, 96 SE2d 456 (1957). Hodge v Pollock, 223 SC 342, 75 SE2d 752 (1953).

A board of adjustment is vested with a wide discretion in determining whether a variance should be granted in a particular case on the ground of unnecessary hardship, and its decision should be given great weight and the discretion vested in such board should not be interfered with unless arbitrary or clearly erroneous. Stevenson v Board of Adjustment of Charleston, 230 SC 440, 96 SE2d 456 (1957). Hodge v Pollock, 223 SC 342, 75 SE2d 752 (1953).

A proceeding before the Board of Adjustment was a review pursuant to the express provisions previously enunciated in conjunction with a permit issued to a shelter for battered women, and not a proceeding for a variance from the terms of an ordinance thereafter enacted, where neighbors of the shelter sought review of the earlier previously issued permit; thus, the Court of Appeals erred by applying the more rigorous standard for granting a variance. Brock v. Board of Adjustment and Appeals of City of Rock Hill (S.C. 1992) 308 S.C. 539, 419 S.E.2d 773. Zoning And Planning 1625

When one, in good faith, purchases property solely in reliance upon a variance or exception lawfully granted by the board, he acquires a vested property right therein of which he cannot be deprived without cause or in the absence of public necessity. Nuckles v. Allen (S.C. 1967) 250 S.C. 123, 156 S.E.2d 633. Zoning And Planning 1565

Failure of the original owners to avail themselves of the right granted under a variance, by putting the property to the permitted use, did not make such right unavailable to the subsequent purchaser. Nuckles v. Allen (S.C. 1967) 250 S.C. 123, 156 S.E.2d 633. Zoning And Planning 1512

In determining whether to grant a variation in the application of a zoning restriction to a particular piece of property, it is proper to take into consideration the effect of granting such variation on the public generally. Rush v. City of Greenville (S.C. 1965) 246 S.C. 268, 143 S.E.2d 527.

Although it is an element in the situation which is entitled to fair and careful consideration mere disadvantage in property value or income, or both, to a single owner of property, resulting from application of zoning restrictions, ordinarily does not warrant relaxation in his favor on the ground of practical difficulty or unnecessary hardship. Rush v. City of Greenville (S.C. 1965) 246 S.C. 268, 143 S.E.2d 527.

Where one purchases realty with intention to apply for a variance, he cannot contend that restrictions caused him such peculiar hardship that entitles him to special privileges. Rush v. City of Greenville (S.C. 1965) 246 S.C. 268, 143 S.E.2d 527. Zoning And Planning 1481

A self‑created or self‑inflicted hardship intentionally created by an owner of premises for the purpose of laying a basis for an application for a variance cannot be considered for such purpose. Rush v. City of Greenville (S.C. 1965) 246 S.C. 268, 143 S.E.2d 527. Zoning And Planning 1482

4. Special exceptions

Denial of special exception permit to lessor of property seeking to operate residential halfway house for federal ex‑offenders based on findings of city zoning board of adjustment that any increase in traffic would adversely impact vehicle and pedestrian safety and that certain halfway house residents would be recidivists, which would adversely affect safety of pedestrians in area, was arbitrary, where there was no evidence that proposed use would result in traffic increase and study upon which board based finding regarding recidivists did not correlate recidivist rates of federal offenders to pedestrian safety. Bannum, Inc. v. City of Columbia (S.C. 1999) 335 S.C. 202, 516 S.E.2d 439. Zoning And Planning 1517

**SECTION 6‑29‑350.** Membership; terms of office; compensation; qualifications.

(A) A local planning commission serving not more than two political jurisdictions may not have less than five nor more than twelve members. A local planning commission serving three or more political jurisdictions shall have a membership not greater than four times the number of jurisdictions it serves. In the case of a joint city‑county planning commission the membership must be proportional to the population inside and outside the corporate limits of municipalities.

(B) No member of a planning commission may hold an elected public office in the municipality or county from which appointed. Members of the commission first to serve must be appointed for staggered terms as described in the agreement of organization and shall serve until their successors are appointed and qualified. The compensation of the members, if any, must be determined by the governing authority or authorities creating the commission. A vacancy in the membership of a planning commission must be filled for the unexpired term in the same manner as the original appointment. The governing authority or authorities creating the commission may remove any member of the commission for cause.

(C) In the appointment of planning commission members the appointing authority shall consider their professional expertise, knowledge of the community, and concern for the future welfare of the total community and its citizens. Members shall represent a broad cross section of the interests and concerns within the jurisdiction.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 351, 352.

Westlaw Key Number Searches: 414k351; 414k352.

C.J.S. Zoning and Land Planning Sections 97, 177, 181 to 183, 185.

**SECTION 6‑29‑360.** Organization of commission; meetings; procedural rules; records; purchases.

(A) A local planning commission shall organize itself electing one of its members as chairman and one as vice‑chairman whose terms must be for one year. It shall appoint a secretary who may be an officer or an employee of the governing authority or of the planning commission. The planning commission shall meet at the call of the chairman and at such times as the chairman or commission may determine.

(B) The commission shall adopt rules of organizational procedure and shall keep a record of its resolutions, findings, and determinations, which record must be a public record. The planning commission may purchase equipment and supplies and may employ or contract for such staff and such experts as it considers necessary and consistent with funds appropriated.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 357, 358.

Westlaw Key Number Searches: 414k357; 414k358.

C.J.S. Zoning and Land Planning Sections 185, 187, 189.

**SECTION 6‑29‑370.** Referral of matters to commission; reports.

The governing authority may provide for the reference of any matters or class of matters to the local planning commission, with the provision that final action on it may not be taken until the planning commission has submitted a report on it or has had a reasonable period of time, as determined by the governing authority to submit a report.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 353.1.

Westlaw Key Number Search: 414k353.1.

**SECTION 6‑29‑380.** Funding of commissions; expenditures; contracts.

A local planning commission may cooperate with, contract with, or accept funds from federal government agencies, state government agencies, local general purpose governments, school districts, special purpose districts, including those of other states, public or eleemosynary agencies, or private individuals or corporations; it may expend the funds; and it may carry out such cooperative undertakings and contracts as it considers necessary.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 353.1.

Westlaw Key Number Search: 414k353.1.

ARTICLE 3

Local Planning — The Comprehensive Planning Process

Editor’s Note

2007 Act No. 31, Section 6, provides as follows:

“All local governments that have adopted a local comprehensive plan in compliance with the provisions of Article 3, Chapter 29, Title 6 of the 1976 Code shall revise their local comprehensive plans to comply with the provisions of this act at the local government’s next review of its local comprehensive plan as provided in Section 6‑29‑510(E) following the effective date of this act.”

**SECTION 6‑29‑510.** Planning process; elements; comprehensive plan.

(A) The local planning commission shall develop and maintain a planning process which will result in the systematic preparation and continual re‑evaluation and updating of those elements considered critical, necessary, and desirable to guide the development and redevelopment of its area of jurisdiction.

(B) Surveys and studies on which planning elements are based must include consideration of potential conflicts with adjacent jurisdictions and regional plans or issues.

(C) The basic planning process for all planning elements must include, but not be limited to:

(1) inventory of existing conditions;

(2) a statement of needs and goals; and

(3) implementation strategies with time frames.

(D) A local comprehensive plan must include, but not be limited to, the following planning elements:

(1) a population element which considers historic trends and projections, household numbers and sizes, educational levels, and income characteristics;

(2) an economic development element which considers labor force and labor force characteristics, employment by place of work and residence, and analysis of the economic base;

(3) a natural resources element which considers coastal resources, slope characteristics, prime agricultural and forest land, plant and animal habitats, parks and recreation areas, scenic views and sites, wetlands, and soil types. Where a separate board exists pursuant to this chapter, this element is the responsibility of the existing board;

(4) a cultural resources element which considers historic buildings and structures, commercial districts, residential districts, unique, natural, or scenic resources, archaeological, and other cultural resources. Where a separate board exists pursuant to this chapter, this element is the responsibility of the existing board;

(5) a community facilities element which considers water supply, treatment, and distribution; sewage system and wastewater treatment; solid waste collection and disposal, fire protection, emergency medical services, and general government facilities; education facilities; and libraries and other cultural facilities;

(6) a housing element which considers location, types, age, and condition of housing, owner and renter occupancy, and affordability of housing. This element includes an analysis to ascertain nonessential housing regulatory requirements, as defined in this chapter, that add to the cost of developing affordable housing but are not necessary to protect the public health, safety, or welfare and an analysis of market‑based incentives that may be made available to encourage development of affordable housing, which incentives may include density bonuses, design flexibility, and streamlined permitting processes;

(7) a land use element which considers existing and future land use by categories, including residential, commercial, industrial, agricultural, forestry, mining, public and quasi‑public, recreation, parks, open space, and vacant or undeveloped;

(8) a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element, to ensure transportation efficiency for existing and planned development;

(9) a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years, and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools. The recommendation of those projects for public expenditure must be done through coordination with adjacent and relevant jurisdictions and agencies. For the purposes of this item, “adjacent and relevant jurisdictions and agencies” means those counties, municipalities, public service districts, school districts, public and private utilities, transportation agencies, and other public entities that are affected by or have planning authority over the public project. For the purposes of this item, “coordination” means written notification by the local planning commission or its staff to adjacent and relevant jurisdictions and agencies of the proposed projects and the opportunity for adjacent and relevant jurisdictions and agencies to provide comment to the planning commission or its staff concerning the proposed projects. Failure of the planning commission or its staff to identify or notify an adjacent or relevant jurisdiction or agency does not invalidate the local comprehensive plan and does not give rise to a civil cause of action.

(E) All planning elements must be an expression of the planning commission recommendations to the appropriate governing bodies with regard to the wise and efficient use of public funds, the future growth, development, and redevelopment of its area of jurisdiction, and consideration of the fiscal impact on property owners. The planning elements whether done as a package or in separate increments together comprise the comprehensive plan for the jurisdiction at any one point in time. The local planning commission shall review the comprehensive plan or elements of it as often as necessary, but not less than once every five years, to determine whether changes in the amount, kind, or direction of development of the area or other reasons make it desirable to make additions or amendments to the plan. The comprehensive plan, including all elements of it, must be updated at least every ten years.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31, Section 2, eff May 23, 2007.

Effect of Amendment

The 2007 amendment, in subsection (D), in paragraph (5) deleted “transportation network;” following “considers”, in paragraph (6) added the second sentence, added paragraph (8) pertaining to transportation elements, and added paragraph (9) pertaining to priority investment elements analyzing likely federal, state, and local funds available.

CROSS REFERENCES

Master plan adopted pursuant to this article constitutes “comprehensive plan” within meaning of Local Government Development Agreement Act, see Section 6‑31‑20.

LIBRARY REFERENCES

Zoning and Planning 30, 353.1.

Westlaw Key Number Searches: 414k30; 414k353.1.

C.J.S. Zoning and Land Planning Sections 2, 5, 12, 39.

Attorney General’s Opinions

A county government may, but is not required to, create a planning commission whose duty is to prepare a comprehensive county plan; the adoption of such a plan is a prerequisite to the promulgation of regulations pertaining to subdivisions and the approval of subdivision plats. Decided under former law. 1989 Op Atty Gen, No. 89‑47, p 121.

NOTES OF DECISIONS

In general 1

1. In general

County planning commission was required to recommend county comprehensive land use plan to county council before the council could approve the plan. McClanahan v. Richland County Council (S.C. 2002) 350 S.C. 433, 567 S.E.2d 240. Zoning And Planning 1127

County council and county planning commission were not judicially estopped, in challengers’ appeal of the summary judgment for council and commission in declaratory judgment action challenging the procedures for adoption of county comprehensive land use plan, from asserting that commission had recommended the plan before council’s first and second readings of the plan, where such fact was clear from the record before the trial court. McClanahan v. Richland County Council (S.C. 2002) 350 S.C. 433, 567 S.E.2d 240. Estoppel 68(2)

County planning commission satisfied the statutory requirement of recommending county comprehensive land use plan before county council’s first and second readings of the plan, even though the commission deferred its adoption of a planning element providing a “vision plan” to guide future growth and development. McClanahan v. Richland County Council (S.C. 2002) 350 S.C. 433, 567 S.E.2d 240. Zoning And Planning 1127

The court properly determined that the rezoning of property from residential to planned development‑mixed use complied with a land use plan adopted under Sections 6‑7‑510 et seq., and that the zoning ordinance did not create a means of evading traditional zoning classification, where (1) the plan characterized the rezoned tract as transitional in nature and suggested that portions of the property should not be used for purposes that exceeded current density limitations of the residential zoning district, (2) the zoning administrator and city planner testified that the plan development zoning of the property conformed with a comprehensive land use plan, and (3) the final site plan met all the conditions of the ordinance developed by the city council. Decided under former law. Petersen v. City of Clemson (S.C.App. 1993) 312 S.C. 162, 439 S.E.2d 317, rehearing denied. Zoning And Planning 1163

**SECTION 6‑29‑520.** Advisory committees; notice of meetings; recommendations by resolution; transmittal of recommended plan.

(A) In the preparation or periodic updating of any or all planning elements for the jurisdiction, the planning commission may use advisory committees with membership from both the planning commission or other public involvement mechanisms and other resource people not members of the planning commission. If the local government maintains a list of groups that have registered an interest in being informed of proceedings related to planning, notice of meetings must be mailed to these groups.

(B) Recommendation of the plan or any element, amendment, extension, or addition must be by resolution of the planning commission, carried by the affirmative votes of at least a majority of the entire membership. The resolution must refer expressly to maps and other descriptive matter intended by the planning commission to form the whole or element of the recommended plan and the action taken must be recorded in its official minutes of the planning commission. A copy of the recommended plan or element of it must be transmitted to the appropriate governing authorities and to all other legislative and administrative agencies affected by the plan.

(C) In satisfying the preparation and periodic updating of the required planning elements, the planning commission shall review and consider, and may recommend by reference, plans prepared by other agencies which the planning commission considers to meet the requirements of this article.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 30, 358.1.

Westlaw Key Number Searches: 414k30; 414k358.1.

C.J.S. Zoning and Land Planning Sections 2, 5, 12, 39.

NOTES OF DECISIONS

In general 1

1. In general

Statute providing that county comprehensive land use plan can be recommended to the county council by the county planning department only if the resolution to recommend is carried by the affirmative votes of at least a majority of the members of the commission does not require the commission to make the recommendation before the council gives the plan a first reading. McClanahan v. Richland County Council (S.C. 2002) 350 S.C. 433, 567 S.E.2d 240. Zoning And Planning 1127

**SECTION 6‑29‑530.** Adoption of plan or elements; public hearing.

The local planning commission may recommend to the appropriate governing body and the body may adopt the plan as a whole by a single ordinance or elements of the plan by successive ordinances. The elements shall correspond with the major geographical sections or divisions of the planning area or with functional subdivisions of the subject matter of the comprehensive plan, or both. Before adoption of an element or a plan as a whole, the governing authority shall hold a public hearing on it after not less than thirty days’ notice of the time and place of the hearings has been given in a newspaper having general circulation in the jurisdiction.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 30, 359.

Westlaw Key Number Searches: 414k30; 414k359.

C.J.S. Zoning and Land Planning Sections 2, 5, 12, 39, 93, 95, 187 to 189.

NOTES OF DECISIONS

In general 1

1. In general

County planning commission satisfied the statutory requirement of recommending county comprehensive land use plan before county council’s first and second readings of the plan, even though the commission deferred its adoption of a planning element providing a “vision plan” to guide future growth and development. McClanahan v. Richland County Council (S.C. 2002) 350 S.C. 433, 567 S.E.2d 240. Zoning And Planning 1127

The court properly determined that the rezoning of property from residential to planned development‑mixed use complied with a land use plan adopted under former Sections 6‑7‑510 et seq., and that the zoning ordinance did not create a means of evading traditional zoning classification, where (1) the plan characterized the rezoned tract as transitional in nature and suggested that portions of the property should not be used for purposes that exceeded current density limitations of the residential zoning district, (2) the zoning administrator and city planner testified that the plan development zoning of the property conformed with a comprehensive land use plan, and (3) the final site plan met all the conditions of the ordinance developed by the city council. Decided under former law. Petersen v. City of Clemson (S.C.App. 1993) 312 S.C. 162, 439 S.E.2d 317, rehearing denied. Zoning And Planning 1163

**SECTION 6‑29‑540.** Review of proposals following adoption of plan; projects in conflict with plan; exemption for utilities.

When the local planning commission has recommended and local governing authority or authorities have adopted the related comprehensive plan element set forth in this chapter, no new street, structure, utility, square, park, or other public way, grounds, or open space or public buildings for any use, whether publicly or privately owned, may be constructed or authorized in the political jurisdiction of the governing authority or authorities establishing the planning commission until the location, character, and extent of it have been submitted to the planning commission for review and comment as to the compatibility of the proposal with the comprehensive plan of the community. In the event the planning commission finds the proposal to be in conflict with the comprehensive plan, the commission shall transmit its findings and the particulars of the nonconformity to the entity proposing the facility. If the entity proposing the facility determines to go forward with the project which conflicts with the comprehensive plan, the governing or policy making body of the entity shall publicly state its intention to proceed and the reasons for the action. A copy of this finding must be sent to the local governing body, the local planning commission, and published as a public notice in a newspaper of general circulation in the community at least thirty days prior to awarding a contract or beginning construction. Telephone, sewer and gas utilities, or electric suppliers, utilities and providers, whether publicly or privately owned, whose plans have been approved by the local governing body or a state or federal regulatory agency, or electric suppliers, utilities and providers who are acting in accordance with a legislatively delegated right pursuant to Chapter 27 or 31 of Title 58 or Chapter 49 of Title 33 are exempt from this provision. These utilities must submit construction information to the appropriate local planning commission.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 30, 238.

Westlaw Key Number Searches: 414k30; 414k238.

C.J.S. Zoning and Land Planning Sections 2, 5, 12, 39, 109.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

The Lexington‑Richland School District Five is in violation of Section 6‑29‑540 for not sharing their plans to build a new school with the Planning Commission in order to determine whether the new school complies with the community’s comprehensive plan before commencing construction and should now submit the plans, although tardy, in an attempt to cure the violation. S.C. Op.Atty.Gen. (August 24, 2011) 2011 WL 3918178.

ARTICLE 5

Local Planning — Zoning

**SECTION 6‑29‑710.** Zoning ordinances; 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. To these ends, zoning ordinances must be made with reasonable consideration of the following purposes, where applicable:

(1) to provide for adequate light, air, and open space;

(2) to prevent the overcrowding of land, to avoid undue concentration of population, and to lessen congestion in the streets;

(3) to facilitate the creation of a convenient, attractive, and harmonious community;

(4) to protect and preserve scenic, historic, or ecologically sensitive areas;

(5) to regulate the density and distribution of populations and the uses of buildings, structures and land for trade, industry, residence, recreation, agriculture, forestry, conservation, airports and approaches thereto, water supply, sanitation, protection against floods, public activities, and other purposes;

(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. “Other public requirements” which the local governing body intends to address by a particular ordinance or action must be specified in the preamble or some other part of the ordinance or action;

(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.

HISTORY: 1994 Act No. 355, Section 1.

CROSS REFERENCES

Zoning of land surrounding public‑owned airports, see Section 55‑9‑240.

LIBRARY REFERENCES

Zoning and Planning 2, 21, 27.

Westlaw Key Number Searches: 414k2; 414k21; 414k27.

C.J.S. Zoning and Land Planning Sections 4, 18 to 21, 37 to 38.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, administrative law. 40 S.C. L. Rev. 3 (Autumn 1988).

Attorney General’s Opinions

Impact of traffic is sufficient basis to deny request for rezoning, variance, or special exception. Thus, requirements of Section 6‑7‑710 that zoning regulations be resigned to lessen congestion in streets, among other requirements, would be met by considering traffic implications and acting accordingly. Decided under former law. 1990 Op Atty Gen No. 90‑30.

The exemption in Act No. 590 of 1988 for utility companies, exempting them from tree ordinances, is applicable to electrical or utility lines existing on the effective date of the act, as well as to those electrical or utility lines to be erected in the future. Decided under former law. 1989 Op Atty Gen, No. 89‑3, p 20.

The five‑acre limitation for the residential classification of land is a maximum limitation; there is no requirement that “at least” five acres of a parcel be classified as residential, the requirement being that land up to five acres, the use of which is for residential purposes, be so classified. Decided under former law. 1978 Op Atty Gen, No 78‑216, p 250.

NOTES OF DECISIONS

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1. In general

This section [Code 1962 Section 47‑1001] authorizes the zoning of property within a municipality for the purpose of promoting health, safety, morals and the general welfare of the community therein. Bob Jones University, Inc. v Greenville, 243 SC 351, 133 SE2d 843 (1963). Rush v. City of Greenville (S.C. 1965) 246 S.C. 268, 143 S.E.2d 527.

The authority of a municipality to enact zoning ordinances, restricting the use of privately owned property is founded in the police power. Bob Jones University, Inc. v Greenville, 243 SC 351, 133 SE2d 843 (1963). Rush v City of Greenville, 246 SC 268, 143 SE2d 527 (1965).

Determining whether a local ordinance is valid is a two‑step process: (1) determine whether the county had the power to adopt the ordinance and, if so, (2) determine whether the ordinance is consistent with the Constitution and general law of the State. McKeown v. Charleston County Bd. of Zoning Appeal (S.C.App. 2001) 347 S.C. 203, 553 S.E.2d 484. Counties 55

In order for there to be a conflict between a State law and a municipal ordinance, which would invalidate ordinance, both must contain either express or implied conditions that are inconsistent and irreconcilable with each other; if either is silent where the other speaks, there is no conflict. McKeown v. Charleston County Bd. of Zoning Appeal (S.C.App. 2001) 347 S.C. 203, 553 S.E.2d 484. Municipal Corporations 111(2)

1962 Code Section 14‑350.16 [1976 Code Section 6‑7‑710] is broad in its scope and gives to the municipalities much authority in the field of zoning, but the municipality may exercise only such authority as is granted to it. Decided under former law. Dunbar v. City of Spartanburg (S.C. 1976) 266 S.C. 113, 221 S.E.2d 848.

Tree protection ordinance is constitutionally invalid because it is not authorized by 1962 Code Section 14‑350.16 [1976 Code Section 6‑7‑710]. Decided under former law. Dunbar v. City of Spartanburg (S.C. 1976) 266 S.C. 113, 221 S.E.2d 848.

The burden of proving invalidity of a zoning ordinance is on the party attacking it, to establish that the acts of the city council were arbitrary, unreasonable and unjust. Rush v. City of Greenville (S.C. 1965) 246 S.C. 268, 143 S.E.2d 527.

A city, in enacting zoning regulations for a single‑family‑home district, may not constitutionally define “family” so as to interfere with family relationships by blood, marriage or adoption. Moore v. City of East Cleveland, Ohio, 1977, 97 S.Ct. 1932, 431 U.S. 494, 52 L.Ed.2d 531.

2. Presumption in favor of legislative classification

The governing bodies of municipalities clothed with authority to determine residential and industrial districts are better qualified by their knowledge of the situation to act upon such matters than are the courts, and they will not be interfered with in the exercise of their police power to accomplish desired end unless there is plain violation of the constitutional rights of citizens. Bob Jones University, Inc. v Greenville, 243 SC 351, 133 SE2d 843 (1963). Rush v City of Greenville, 246 SC 268, 143 SE2d 527 (1965).

The power to declare an ordinance invalid because it is so unreasonable as to impair or destroy constitutional rights is one which will be exercised carefully and cautiously, as it is not the function of the courts to pass upon the wisdom or expediency of municipal ordinances or regulations. Bob Jones University, Inc. v Greenville, 243 SC 351, 133 SE2d 843 (1963). Rush v City of Greenville, 246 SC 268, 143 SE2d 527 (1965).

There is a strong presumption in favor of the validity of municipal zoning ordinances, and in favor of the validity of their application, and where the planning and zoning commission and the city council of a municipality has acted after considering all of the facts, a court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion, or unless it has acted illegally and in excess of its lawfully delegated authority. Bob Jones University, Inc. v Greenville, 243 SC 351, 133 SE2d 843 (1963). Rush v. City of Greenville (S.C. 1965) 246 S.C. 268, 143 S.E.2d 527.

The Supreme Court has no power to zone property. Rush v. City of Greenville (S.C. 1965) 246 S.C. 268, 143 S.E.2d 527. Zoning And Planning 1017

The extent of the business area in a municipality and its location are matters which cannot be controlled and determined by judicial decision. Rush v. City of Greenville (S.C. 1965) 246 S.C. 268, 143 S.E.2d 527. Zoning And Planning 1621

If the validity of a classification made for zoning purposes be fairly debatable, the legislative judgment must be allowed to control. Bob Jones University, Inc. v. City of Greenville (S.C. 1963) 243 S.C. 351, 133 S.E.2d 843, appeal dismissed 84 S.Ct. 1913, 378 U.S. 581, 12 L.Ed.2d 1036.

There is a presumption in favor of the validity of municipal zoning ordinances. The power of zoning is reserved to the legislative branch under the police power, and when exercised reasonably it will not be disturbed by the courts. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control. Momeier v. John McAlister, Inc. (S.C. 1957) 231 S.C. 526, 99 S.E.2d 177.

3. Enactment

Zoning provision could not be enacted by initiative and referendum, despite statute providing that “any ordinance” except ones explicitly prohibited could be enacted by initiative and referendum; conflict between relatively free‑ranging initiative and referendum process and more recent, elaborate, and detailed zoning procedures were incompatible and hopelessly inconsistent, and allowing zoning by initiative and referendum potentially would nullify zoning and land use rules developed after extensive debate among a variety of interested persons. I’On, L.L.C. v. Town of Mt. Pleasant (S.C. 2000) 338 S.C. 406, 526 S.E.2d 716. Zoning And Planning 1033; Zoning And Planning 1138

4. Power to suspend or amend zoning code

The city improperly denied a landowner a building permit where the denial was based on a resolution of the city council placing a moratorium on the issuance of such permits because (1) a municipality does not possess the authority to suspend a zoning ordinance by merely passing a motion creating a moratorium, and (2) a municipality cannot amend or repeal an ordinance by a mere resolution; rather, the ordinance must be either repealed or succeeded by another ordinance or an instrument of equal dignity. Simpkins v. City of Gaffney (S.C.App. 1993) 315 S.C. 26, 431 S.E.2d 592.

5. Reconsideration of earlier decision

City board of adjustment did not abuse its discretion nor act arbitrarily in reconsidering earlier decision denying request for variance requested by developer, where neither developer, his architect, nor his attorney who was most familiar with project, were present at hearing, and as there was need to submit additional facts and data. Decided under former law. Bennett v. City of Clemson (S.C. 1987) 293 S.C. 64, 358 S.E.2d 707. Zoning And Planning 1553

6. Exhaustion of administrative remedies

Property owners who alleged that a county zoning ordinance enacted pursuant to Section 6‑7‑710 et seq. constituted an unconstitutional taking of their property without just compensation, were required to exhaust their administrative remedies before pursuing judicial relief where, under the ordinance itself, the property owners could apply for a permit to make a material change in the use of their land and, additionally, the property owners could apply for a variance under Section 6‑7‑740. Until the available administrative remedies were exhausted, a judicial determination of whether the property owners had suffered a “taking” was impossible; the final impact of the ordinance on the property in question was uncertain. Decided under former law. Moore v. Sumter County Council (S.C. 1990) 300 S.C. 270, 387 S.E.2d 455.

7. Sexually oriented businesses

Comprehensive Planning Act, which governed zoning, did not evince legislative intent to completely prohibit any other local enactments from touching upon zoning or land use, and thus, the Act did not preempt a county ordinance regulating the location of sexually oriented businesses, enacted pursuant to county’s statutory police powers. Greenville County v. Kenwood Enterprises, Inc. (S.C. 2003) 353 S.C. 157, 577 S.E.2d 428. Zoning And Planning 1033

A county ordinance regulating sexually oriented businesses was a proper exercise of the county’s statutory zoning authority. The regulation of sexually oriented businesses and their interiors, pertaining as it does to the public use of buildings, is plainly embraced by Sections 4‑9‑30(9) and 6‑7‑710. Decided under former law. Centaur, Inc. v. Richland County (S.C. 1990) 301 S.C. 374, 392 S.E.2d 165.

8. “Spot” zoning

Even if the zoning of a single tract to allow a medical office building in an unincorporated, residential, county area could be considered spot zoning, such zoning would not be invalidated by the court where the zoning was consistent with the plan to integrate less restrictive zones in the area, the introduction of medical facilities would be an improvement, and other landowners in the area were in favor of the zoning; the decision of a municipality will not be overturned so long as it is “fairly debatable.” Knowles v. City of Aiken (S.C. 1991) 305 S.C. 219, 407 S.E.2d 639.

9. Mobile homes

The granting of a mandatory injunction sought by a town which required the removal of a mobile home from an area not zoned for mobile homes, was neither unconstitutional nor an unreasonable exercise of the police power where the town had enacted a comprehensive zoning ordinance for the purpose of promoting the welfare of the community, the ordinance restricted all mobile homes to a designated mobile home district, and the mobile home owner did not show through clear and convincing evidence that the ordinance was arbitrary and capricious. Decided under former law. Town of Scranton v. Willoughby (S.C. 1991) 306 S.C. 421, 412 S.E.2d 424.

10. Interaction of former zoning laws

Former Sections 5‑23‑10, 5‑23‑40, and 5‑23‑50, which granted, inter alia, municipal corporations the authority to provide for the manner in which zoning regulations are established and repealed, did not grant a municipal corporation the power to suspend an ordinance. Simpkins v. City of Gaffney (S.C.App. 1993) 315 S.C. 26, 431 S.E.2d 592.

South Carolina Code Sections 5‑23‑10 et seq. are consistent with, and are not repealed by implication by Sections 6‑7‑10 et seq. since both result in appointment of a commission to study zoning laws and future growth, formation of a comprehensive plan, and require that zoning ordinances be adopted in accordance with a comprehensive plan; moreover, the legislature, in enacting Chapter 7 of Title VI, clearly manifested its intention that Title V be preserved as an operative statute. Johnston v. City of Myrtle Beach (S.C.App. 1984) 283 S.C. 288, 321 S.E.2d 627. Zoning And Planning 1020

Charleston zoning ordinance adopted under this article. The zoning ordinance of the city of Charleston was adopted on October 19, 1931, pursuant to the statutory law of the State, which is now codified as this article. Stevenson v. Board of Adjustment of City of Charleston (S.C. 1957) 230 S.C. 440, 96 S.E.2d 456.

11. Rezoning

Zoning ordinances which limited density in Agricultural Preservation district to a maximum of one dwelling unit per 10 acres but allowed an increase to a “highest allowed density” of one dwelling unit to five acres “if a request is processed through the Planned Development process” did not allow planned development which exceeded one dwelling unit per five acres, despite planned development zoning ordinance which provided “for variations from other ordinances and the regulations of the other established zoning districts concerning use, setbacks, lot area, density, bulk and other requirements.” Mikell v. County of Charleston (S.C. 2009) 386 S.C. 153, 687 S.E.2d 326. Zoning And Planning 1228

**SECTION 6‑29‑715.** Church‑related activities; zoning ordinances for single family residences.

(A) For purposes of this section, “church‑related activities” does not include regularly scheduled worship services.

(B) Notwithstanding any other provision of law, no zoning ordinance of a municipality or county may prohibit church‑related activities in a single‑family residence.

HISTORY: 1998 Act No. 276, Section 2.

LIBRARY REFERENCES

Zoning and Planning 76, 288.

Westlaw Key Number Searches: 414k76; 414k288.

C.J.S. Zoning and Land Planning Sections 46, 63, 134, 146.

**SECTION 6‑29‑720.** Zoning districts; matters regulated; uniformity; zoning techniques.

(A) When the local planning commission has prepared and recommended and the governing body has adopted at least the land use element of the comprehensive plan as set forth in this chapter, the governing body of a municipality or county may adopt a zoning ordinance to help implement the comprehensive plan. The zoning ordinance shall create zoning districts of such number, shape, and size as the governing authority determines to be best suited to carry out the purposes of this chapter. Within each district the governing body may regulate:

(1) the use of buildings, structures, and land;

(2) the size, location, height, bulk, orientation, number of stories, erection, construction, reconstruction, alteration, demolition, or removal in whole or in part of buildings and other structures, including signage;

(3) the density of development, use, or occupancy of buildings, structures, or land;

(4) the areas and dimensions of land, water, and air space to be occupied by buildings and structures, and the size of yards, courts, and other open spaces;

(5) the amount of off‑street parking and loading that must be provided, and restrictions or requirements related to the entry or use of motor vehicles on the land;

(6) other aspects of the site plan including, but not limited to, tree preservation, landscaping, buffers, lighting, and curb cuts; and

(7) other aspects of the development and use of land or structures necessary to accomplish the purposes set forth throughout this chapter.

(B) The regulations must be made in accordance with the comprehensive plan for the jurisdiction, and be made with a view to promoting the purposes set forth throughout this chapter. Except as provided in this chapter, all of these regulations must be uniform for each class or kind of building, structure, or use throughout each district, but the regulations in one district may differ from those in other districts.

(C) The zoning ordinance may utilize the following or any other zoning and planning techniques for implementation of the goals specified above. Failure to specify a particular technique does not cause use of that technique to be viewed as beyond the power of the local government choosing to use it:

(1) “cluster development” or the grouping of residential, commercial, or industrial uses within a subdivision or development site, permitting a reduction in the otherwise applicable lot size, while preserving substantial open space on the remainder of the parcel;

(2) “floating zone” or a zone which is described in the text of a zoning ordinance but is unmapped. A property owner may petition for the zone to be applied to a particular parcel meeting the minimum zoning district area requirements of the zoning ordinance through legislative action;

(3) “performance zoning” or zoning which specifies a minimum requirement or maximum limit on the effects of a land use rather than, or in addition to, specifying the use itself, simultaneously assuring compatibility with surrounding development and increasing a developer’s flexibility;

(4) “planned development district” or a development project comprised of housing of different types and densities and of compatible commercial uses, or shopping centers, office parks, and mixed‑use developments. A planned development district is established by rezoning prior to development and is characterized by a unified site design for a mixed use development;

(5) “overlay zone” or a zone which imposes a set of requirements or relaxes a set of requirements imposed by the underlying zoning district when there is a special public interest in a particular geographic area that does not coincide with the underlying zone boundaries;

(6) “conditional uses” or zoning ordinance provisions that impose conditions, restrictions, or limitations on a permitted use that are in addition to the restrictions applicable to all land in the zoning district. The conditions, restrictions, or limitations must be set forth in the text of the zoning ordinance; and

(7) “priority investment zone” in which the governing authority adopts market‑based incentives or relaxes or eliminates nonessential housing regulatory requirements, as these terms are defined in this chapter, to encourage private development in the priority investment zone. The governing authority also may provide that traditional neighborhood design and affordable housing, as these terms are defined in this chapter, must be permitted within the priority investment zone.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31, Section 3, eff May 23, 2007.

Effect of Amendment

The 2007 amendment added paragraph (C)(7) relating to “priority investment zone”.

LIBRARY REFERENCES

Zoning and Planning 4, 33, 61.

Westlaw Key Number Searches: 414k4; 414k33; 414k61.

C.J.S. Zoning and Land Planning Sections 3, 5 to 7, 10, 25, 43, 48, 85.

NOTES OF DECISIONS

Practice and procedure 1

1. Practice and procedure

Landowner’s Fifth Amendment takings claim, based on county planning commission’s denial of his application for a conditional use permit to build a townhouse development, was not ripe for review, where landowner had not pursued state compensation procedures or presented evidence that no such procedures were available. Henry v. Jefferson County Planning Com’n, 2002, 34 Fed.Appx. 92, 2002 WL 864267, Unreported, certiorari denied 123 S.Ct. 1620, 538 U.S. 944, 155 L.Ed.2d 484. Eminent Domain 277

County council was required to meet the parameters of a planned development under the Local Government Comprehensive Planning Enabling Act of 1994 once it chose to employ that process for rezoning landowners’ property and thus rezoning ordinance which failed to meet those parameters was invalid even if council could have used another technique to reduce minimum lot size of landowners’ property. Sinkler v. County of Charleston (S.C. 2010) 387 S.C. 67, 690 S.E.2d 777. Zoning And Planning 1159

The essence of a planned development under the Local Government Comprehensive Planning Enabling Act of 1994 is that the property will provide for mixed use. Sinkler v. County of Charleston (S.C. 2010) 387 S.C. 67, 690 S.E.2d 777. Zoning And Planning 1262

Rezoning ordinance which changed land from agricultural to planned development violated the Local Government Comprehensive Planning Enabling Act of 1994, as ordinance, which only reduced minimum lot size, did not meet the parameters for a planned development, and thus ordinance was invalid; ordinance did not provide for housing of different types and densities and compatible commercial use, create a new mixed use development, or plan for future diversity of development. Sinkler v. County of Charleston (S.C. 2010) 387 S.C. 67, 690 S.E.2d 777. Zoning And Planning 1167

**SECTION 6‑29‑730.** Nonconformities.

The regulations may provide that land, buildings, and structures and the uses of them which are lawful at the time of the enactment or amendment 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. The governing authority also may provide for the termination of a nonconformity by specifying the period or periods in which the nonconformity is required to cease or be brought into conformance, or by providing a formula where the compulsory termination of nonconformities may be so fixed as to allow for the recovery or amortization of the investment in the nonconformity.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 321.

Westlaw Key Number Search: 414k321.

C.J.S. Zoning and Land Planning Sections 154 to 155, 157 to 159.

Attorney General’s Opinions

County zoning regulations do not apply to a county school district. Decided under former law. 1974‑75 Op Atty Gen, No 4046, p 123.

NOTES OF DECISIONS

In general 1

Burden of proof 3

Protection of nonconforming use 2

1. In general

Landowner did not possess property interest in conditional use permit to build townhouses on his property, as required to support substantive due process claim based on county planning commission’s denial of his application for such a permit; issuance of permit was within the discretion of the commission, guided by process and factors enumerated in county’s zoning ordinance. Henry v. Jefferson County Planning Com’n, 2002, 34 Fed.Appx. 92, 2002 WL 864267, Unreported, certiorari denied 123 S.Ct. 1620, 538 U.S. 944, 155 L.Ed.2d 484. Constitutional Law 4093; Zoning And Planning 1360

A landowner acquires a vested right to continue a nonconforming use already in existence at the time his property is zoned in the absence of a showing that the continuance of the use would constitute a detriment to the public health, safety or welfare. Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals (S.C.App. 2000) 342 S.C. 480, 536 S.E.2d 892. Zoning And Planning 1300

A county zoning board properly determined that the operation of a commercial motorcross racetrack was not a permitted use in a forest and agricultural district on the basis that such use was capable of adversely affecting the basic agricultural or open character of the district, in view of evidence that the racetrack had caused noise, littering, and traffic problems in the area. Decided under former law. Burton v. County of Abbeville (S.C.App. 1994) 312 S.C. 359, 440 S.E.2d 396, rehearing denied. Zoning And Planning 1505

A landowner acquires a vested right to continue a nonconforming use already in existence at the time his property is zoned in the absence of a showing that the continuance of the use would constitute a detriment to the public health, safety or welfare. Decided under former law. Daniels v. City of Goose Creek (S.C.App. 1993) 314 S.C. 494, 431 S.E.2d 256, rehearing denied. Zoning And Planning 1300

2. Protection of nonconforming use

Owner of property was not entitled to damages based on rezoning of property from use as multi‑family development to single family development, even though reclassification allegedly caused property to be sold at discount of at least $1 million dollars, and owner incurred expenses for developing infrastructure of property, including constructing roads, and installing water, sewer, and drainage system, where owner made only limited improvements to subject property during approximately 13 years, infrastructure was not limited to multi‑family use, but could also be used to support single family development, since completion of infrastructure, property remained dormant and there was no suggestion that owner ever intended or attempted to construct structures on property, but rather owner continued to market property for sale for over a decade, and owner apparently only entered into contracts to sell property to prospective buyers who would then develop property as they desired, and owner never sought or obtained any building permits for actual construction of structures on property. Lake Frances Properties v. City of Charleston (S.C.App. 2002) 349 S.C. 118, 561 S.E.2d 627, rehearing denied, certiorari denied. Eminent Domain 2.10(6)

A mineral lessee’s development of unzoned property by spending nearly $2 million to find granite and arranging for the removal of overburden established a nonconforming use when the county zoned the property for residential use, and, thus, the lessee had a vested right to mine the site as a nonconforming; it was merely awaiting a mine operating permit when the restrictive zoning stopped the development. Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals (S.C.App. 2000) 342 S.C. 480, 536 S.E.2d 892. Zoning And Planning 1302; Zoning And Planning 1303

Acts of a landowner in development of his land, in order to require a finding that he has acquired a vested right to continue development as a nonconforming use, should rise beyond mere contemplated use or preparation. Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals (S.C.App. 2000) 342 S.C. 480, 536 S.E.2d 892. Zoning And Planning 1303

A landowner’s contemplated use of the property on the date the city changed the zoning was not protected as a nonconforming use where the landowner had not incurred any expenses toward developing the nonconforming use and there were no structures or nonconforming uses in place. Decided under former law. Daniels v. City of Goose Creek (S.C.App. 1993) 314 S.C. 494, 431 S.E.2d 256, rehearing denied. Zoning And Planning 1303

3. Burden of proof

Burden of proving a nonconforming use is on the party claiming a prior nonconforming use. Lake Frances Properties v. City of Charleston (S.C.App. 2002) 349 S.C. 118, 561 S.E.2d 627, rehearing denied, certiorari denied. Zoning And Planning 1302

**SECTION 6‑29‑740.** Planned development districts.

In order to achieve the objectives of the comprehensive plan of the locality and to allow flexibility in development that will result in improved design, character, and quality of new mixed use developments and preserve natural and scenic features of open spaces, the local governing authority may provide for the establishment of planned development districts as amendments to a locally adopted zoning ordinance and official zoning map. The adopted planned development map is the zoning district map for the property. The planned development provisions must encourage innovative site planning for residential, commercial, institutional, and industrial developments within planned development districts. Planned development districts may provide for variations from other ordinances and the regulations of other established zoning districts concerning use, setbacks, lot size, density, bulk, and other requirements to accommodate flexibility in the arrangement of uses for the general purpose of promoting and protecting the public health, safety, and general welfare. Amendments to a planned development district may be authorized by ordinance of the governing authority after recommendation from the planning commission. These amendments constitute zoning ordinance amendments and must follow prescribed procedures for the amendments. The adopted plan may include a method for minor modifications to the site plan or development provisions.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 29.5, 245, 278.1.

Westlaw Key Number Searches: 414k29.5; 414k245; 414k278.1.

C.J.S. Zoning and Land Planning Sections 21, 101.

NOTES OF DECISIONS

Enforcement of covenants 1.5

Existing uses 2

Restrictive covenants 1

Rezoning 3

1. Restrictive covenants

Trial court did not improperly rely on uses allowed for planned unit development (PUD) area rather than applicable restrictive covenants when deciding whether lot could be used as “jumping off point” for access to two islands; court merely pointed out conflict between the restriction in the covenants to residential uses “as shown in the PUD” and the allowance of commercial uses listed in the PUD for the area, and court found that, despite the conflict, owners association did not have right to deny access to islands. Seabrook Island Property Owners Ass’n v. Marshland Trust, Inc. (S.C.App. 2004) 358 S.C. 655, 596 S.E.2d 380. Common Interest Communities 96(2)

1.5. Enforcement of covenants

Restrictive covenants requiring that lots in subdivision be used only for residential purposes were enforceable against car dealership that planned to use lots for parking, although the lots were located between unrestricted lots and near other businesses and car dealership expended over $700,000 in improvements and allegedly would be required to relocate if not able to expand; residential landowners testified that commercial development of lots created additional light and noise pollution and adversely affected property values, it was inequitable to consider commercial landowners’ financial loss since they were on notice of covenants when they purchased property, residential landowners did not waive rights, and could not be estopped from enforcing the covenants. Buffington v. T.O.E. Enterprises (S.C. 2009) 383 S.C. 388, 680 S.E.2d 289. Covenants 69(1)

2. Existing uses

The essence of a planned development under the Local Government Comprehensive Planning Enabling Act of 1994 is that the property will provide for mixed use. Sinkler v. County of Charleston (S.C. 2010) 387 S.C. 67, 690 S.E.2d 777. Zoning And Planning 1262

Lot was not “set” as a residential property even though surrounding area contained purely residential developments, as governing planned unit development provisions did not limit area to residential use, but rather set property as mixed commercial/residential use. Seabrook Island Property Owners Ass’n v. Marshland Trust, Inc. (S.C.App. 2004) 358 S.C. 655, 596 S.E.2d 380. Zoning And Planning 1262

3. Rezoning

Rezoning ordinance which changed land from agricultural to planned development violated the Local Government Comprehensive Planning Enabling Act of 1994, as ordinance, which only reduced minimum lot size, did not meet the parameters for a planned development, and thus ordinance was invalid; ordinance did not provide for housing of different types and densities and compatible commercial use, create a new mixed use development, or plan for future diversity of development. Sinkler v. County of Charleston (S.C. 2010) 387 S.C. 67, 690 S.E.2d 777. Zoning And Planning 1167

Zoning ordinances which limited density in Agricultural Preservation district to a maximum of one dwelling unit per 10 acres but allowed an increase to a “highest allowed density” of one dwelling unit to five acres “if a request is processed through the Planned Development process” did not allow planned development which exceeded one dwelling unit per five acres, despite planned development zoning ordinance which provided “for variations from other ordinances and the regulations of the other established zoning districts concerning use, setbacks, lot area, density, bulk and other requirements.” Mikell v. County of Charleston (S.C. 2009) 386 S.C. 153, 687 S.E.2d 326. Zoning And Planning 1228

County council had authority, under statute and county’s zoning and land development regulations (ZLDR), to adopt planned development ordinance, which resulted in rezoning of parcels from agricultural residential and agricultural preservation districts to a planned development district; statute permitted local governing authority to provide for establishment of planned development districts as amendments to zoning ordinance, and ZLDR gave county council final decision‑making authority on matters concerning planned developments, including zoning map amendments. Mikell v. County of Charleston (S.C.App. 2007) 375 S.C. 552, 654 S.E.2d 92, rehearing denied, certiorari granted, reversed 386 S.C. 153, 687 S.E.2d 326. Zoning And Planning 1140; Zoning And Planning 1167

**SECTION 6‑29‑750.** Special development district parking facility plan; dedication.

In accordance with a special development district parking facility plan and program, which includes guidelines for preferred parking locations and indicates prohibited parking areas, the planning commission may recommend and the local governing body may adopt regulations which permit the reduction or waiver of parking requirements within the district in return for cash contributions or dedications of land earmarked for provision of public parking or public transit which may not be used for any other purpose. The cash contributions or the value of the land may not exceed the approximate cost to build the required spaces or provide the public transit that would have incurred had not the reduction or waiver been granted.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 77.1, 280.

Westlaw Key Number Searches: 414k77.1; 414k280.

C.J.S. Zoning and Land Planning Sections 136, 143.

**SECTION 6‑29‑760.** Procedure for enactment or amendment of zoning regulation or map; notice and rights of landowners; time limit on challenges.

(A) Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days’ notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. In cases involving rezoning, 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. If the local government maintains a list of groups that have expressed an interest in being informed of zoning proceedings, notice of such meetings must be mailed to these groups. No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure. When the required public hearing is held by the planning commission, no public hearing by the governing authority is required before amending the zoning ordinance text or maps.

(B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days’ notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property.

(C) An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party.

(D) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission.

HISTORY: 1994 Act No. 355, Section 1.

CROSS REFERENCES

Procedure for adopting, amending, and repealing zoning regulations, see Section 55‑9‑320.

LIBRARY REFERENCES

Zoning and Planning 134, 194, 571, 584.

Westlaw Key Number Searches: 414k134; 414k194; 414k571; 414k584.

C.J.S. Zoning and Land Planning Sections 12 to 13, 16, 87 to 89, 95 to 96, 266 to 268, 302.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 76, City Ordinances and Appointive Powers.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

Thirty‑day period allotted to county planning commission to review and make recommendations as to proposed zoning amendments, pursuant to Section 6‑7‑730, would begin to run when county council submits such proposed change to planning commission subsequent to required public hearing, regardless of which entity holds public hearing. Decided under former law. 1990 Op Atty Gen No. 90‑27.

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1. In general

A municipality has the legislative power to amend its general zoning ordinance and rezone small areas, so long as its action is not arbitrary or unreasonable. Mikell v. County of Charleston (S.C.App. 2007) 375 S.C. 552, 654 S.E.2d 92, rehearing denied, certiorari granted, reversed 386 S.C. 153, 687 S.E.2d 326. Zoning And Planning 1140; Zoning And Planning 1143

A provision in a rezoning amendment, asserting that the city would not initiate rezoning of residential parcels adjacent to a 35‑acre parcel rezoned from residential to planned development‑mixed use, was severable and thus, if invalid, did not invalidate the entire rezoning amendment, since (1) it related only to surrounding property, which was not before the city council for rezoning, and (2) other provisions of the amendment stood complete without the challenged provision. Decided under former law. Petersen v. City of Clemson (S.C.App. 1993) 312 S.C. 162, 439 S.E.2d 317, rehearing denied. Zoning And Planning 1163

The city improperly denied a landowner a building permit where the denial was based on a resolution of the city council placing a moratorium on the issuance of such permits because (1) a municipality does not possess the authority to suspend a zoning ordinance by merely passing a motion creating a moratorium, and (2) a municipality cannot amend or repeal an ordinance by a mere resolution; rather, the ordinance must be either repealed or succeeded by another ordinance or an instrument of equal dignity. Simpkins v. City of Gaffney (S.C.App. 1993) 315 S.C. 26, 431 S.E.2d 592.

Ordinarily, a municipal ordinance cannot be amended or repealed by a mere resolution. To accomplish that result a new ordinance must be passed. Some jurisdictions, moreover, have held that the same formalities necessary to the enactment of an ordinance must be observed in its repeal or amendment. To permit a previous ordinance to be amended or repealed by an indefinite motion or resolution would result in repeated confusion. Lominick v. City of Aiken (S.C. 1964) 244 S.C. 32, 135 S.E.2d 305.

This section [Code 1962 Section 47‑1005] authorizes municipalities to amend such regulations restrictions and boundaries after a public hearing in the manner authorized by Code 1962 Section 47‑1004. Hence, a municipality has the legislative power to amend its general zoning ordinance and rezone small areas, so long as its action is not arbitrary or unreasonable. Bob Jones University, Inc. v. City of Greenville (S.C. 1963) 243 S.C. 351, 133 S.E.2d 843, appeal dismissed 84 S.Ct. 1913, 378 U.S. 581, 12 L.Ed.2d 1036.

Nowhere in the State Constitution or statutes is there a minimum limitation on the size of an area that the legislative body must consider in amending a zoning ordinance. A city has the legislative power to amend its general zoning ordinance and rezone a small area, so long as its action is not arbitrary or unreasonable. Momeier v. John McAlister, Inc. (S.C. 1957) 231 S.C. 526, 99 S.E.2d 177.

2. Time for challenge

Purchaser of real property was statutorily barred from challenging the validity of zoning ordinances enacted nearly 30 years earlier; statute precluded challenges to the validity of a regulation or map, or amendment to it 60 days after the decision of the governing body if there was substantial compliance with notice requirements or the established procedures of the governing authority or planning commission. Quail Hill, LLC v. County of Richland (S.C.App. 2008) 379 S.C. 314, 665 S.E.2d 194, rehearing denied, certiorari granted, affirmed in part, reversed in part 387 S.C. 223, 692 S.E.2d 499. Zoning And Planning 1590

This section [Code 1962 Section 47‑1005] does not explicitly state when or where the protest is to be filed, and thus an ordinance requiring it to be filed with the city clerk not later than five days before the date set in the notice for the public hearing merely makes definite the statutory law, and is not repugnant to or in conflict with the same. Central Realty Corp. v. Allison (S.C. 1951) 218 S.C. 435, 63 S.E.2d 153.

This section [Code 1962 Section 47‑1005] contemplates that a written protest be offered or presented before or at the time of the advertised public hearing. Central Realty Corp. v. Allison (S.C. 1951) 218 S.C. 435, 63 S.E.2d 153.

2.5. Standing

Cellular telephone tower builder that owned property about one mile from tract of land that owner leased to competitor did not have statutory standing to challenge rezoning of that property to allow building of tower. ATC South, Inc. v. Charleston County (S.C. 2008) 380 S.C. 191, 669 S.E.2d 337. Zoning And Planning 1587

3. Staff report

A zoning administrator’s oral report to a city council, accompanied by a copy of the minutes of the planning commission meeting which contained extensive consideration of factors raised by a proposed zoning change, satisfied the requirement of a zoning ordinance that the planning commission prepare a report and make recommendations on a proposed change, considering certain factors, and stating its findings and its evaluation of the request. Decided under former law. Petersen v. City of Clemson (S.C.App. 1993) 312 S.C. 162, 439 S.E.2d 317, rehearing denied. Zoning And Planning 1178

4. Notice

Property owners had sufficient notice of proposed comprehensive plan ordinance to satisfy their due process and equal protection rights; notice was published in newspaper of general circulation, ordinance was not rezoning that required posting of notice near affected properties, and owners attended public hearings on ordinance and at least one owner received one of 40,000 mailed notices regarding ordinance. Glover v. County of Charleston (S.C. 2004) 361 S.C. 634, 606 S.E.2d 773. Constitutional Law 3512; Constitutional Law 4096; Zoning And Planning 1130

The 15‑day notice requirement of Section 6‑7‑730 for public hearing on rezoning amendment was satisfied where a newspaper notice of the hearing, scheduled for February 14, 1991, was published on January 16, 1991 and January 30, 1991. Decided under former law. Petersen v. City of Clemson (S.C.App. 1993) 312 S.C. 162, 439 S.E.2d 317, rehearing denied. Zoning And Planning 1181

Section 6‑7‑730 specifies no particular content for public notices relating to zoning amendments, but it is subject to general principles of due process that require notice which fairly and reasonably apprises those whose rights may be affected of the nature and character of the action proposed. An advertisement of a proposed amendment to a zoning ordinance, which stated that the amendment would “simplify and clarify the existing land use table and reduce the number of zoning districts,” did not reasonably apprise a landowner that the amendment could potentially restrict the use of his land by changing the use as an outdoor gun range from a use of right to a conditional use; the advertisement gave no indication that the character of any use would be changed, since one does not contemplate that in simplifying and clarifying the existing land use table and reducing the number of zoning districts, the county could also enact an amendment restricting existing uses. Decided under former law. Brown v. County of Charleston/Charleston County Council (S.C.App. 1990) 303 S.C. 245, 399 S.E.2d 784.

5. Hearing

Under Section 6‑7‑730, a city council was not required to hold a public hearing before amending a zoning ordinance, where it unanimously voted to set the hearing for a date and time recommended by the planning commission, public notice described the hearing as a joint city council/planning commission public hearing, and the planning commission conducted the public hearing with a majority of the city council members present. Decided under former law. Petersen v. City of Clemson (S.C.App. 1993) 312 S.C. 162, 439 S.E.2d 317, rehearing denied. Zoning And Planning 1180

6. Burden of proof

A municipal zoning ordinance is presumably valid. Hence, the burden of proof is upon the party attacking the amendment to establish that the acts of the city council were arbitrary, unreasonable and unjust. Bob Jones University, Inc. v. City of Greenville (S.C. 1963) 243 S.C. 351, 133 S.E.2d 843, appeal dismissed 84 S.Ct. 1913, 378 U.S. 581, 12 L.Ed.2d 1036. Zoning And Planning 1689

**SECTION 6‑29‑770.** Governmental entities subject to zoning ordinances; exceptions.

(A) Agencies, departments, and subdivisions of this State that use real property, as owner or tenant, in any county or municipality in this State are subject to the zoning ordinances.

(B) A county or agency, department or subdivision of it that uses any real property, as owner or tenant, within the limits of any municipality in this State is subject to the zoning ordinances of the municipality.

(C) A municipality or agency, department or subdivision of it, that uses any real property, as owner or tenant, within the limits of any county in this State but not within the limits of the municipality is subject to the zoning ordinances of the county.

(D) The provisions of this section do not require a state agency, department, or subdivision to move from facilities occupied on June 18, 1976, regardless of whether or not their location is in violation of municipal or county zoning ordinances.

(E) The provisions of this section do not apply to a home serving nine or fewer mentally or physically handicapped persons provided the home provides care on a twenty‑four hour basis and is approved or licensed by a state agency or department or under contract with the agency or department for that purpose. A home is construed to be a natural family or such similar term as may be utilized by any county or municipal zoning ordinance to refer to persons related by blood or marriage. Prior to locating the home for the handicapped persons, the appropriate state agency or department or the private entity operating the home under contract must first give prior notice to the local governing body administering the pertinent zoning laws, advising of the exact site of any proposed home. The notice must also identify the individual representing the agency, department, or private entity for site selection purposes. If the local governing body objects to the selected site, the governing body must notify the site selection representative of the entity seeking to establish the home within fifteen days of receiving notice and must appoint a representative to assist the entity in selection of a comparable alternate site or structure, or both. The site selection representative of the entity seeking to establish the home and the representative of the local governing body shall select a third mutually agreeable person. The three persons have forty‑five days to make a final selection of the site by majority vote. This final selection is binding on the entity and the governing body. In the event no selection has been made by the end of the forty‑five day period, the entity establishing the home shall select the site without further proceedings. An application for variance or special exception is not required. No person may intervene to prevent the establishment of a community residence without reasonable justification.

(F) Prospective residents of these homes must be screened by the licensing agency to ensure that the placement is appropriate.

(G) The licensing agency shall conduct reviews of these homes no less frequently than every six months for the purpose of promoting the rehabilitative purposes of the homes and their continued compatibility with their neighborhoods.

(H) The governing body of a county or municipality whose zoning ordinances are violated by the provisions of this section may apply to a court of competent jurisdiction for injunctive and such other relief as the court may consider proper.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 236.1, 237.

Westlaw Key Number Searches: 414k236.1; 414k237.

C.J.S. Zoning and Land Planning Sections 106, 108.

Attorney General’s Opinions

A County has the authority to require a development site review for the County’s School District’s facilities. S.C. Op.Atty.Gen. (Feb. 24, 2010) 2010 WL 928440.

So long as the fee charge for a development site review is valid in all other respects, a County can assess a per square foot fee for this review. S.C. Op.Atty.Gen. (Feb. 24, 2010) 2010 WL 928440.

The Federal Fair Housing Amendments Act (FHAA) of 1988 does not summarily or automatically supersede or preempt Section 6‑7‑830; but to the extent that such State law may purport to require or permit any action that would be a discriminatory housing practice under the FHAA, a court would most likely determine the State law to be invalid. Decided under former law. 1994 Op Atty Gen, No. 94‑47, p. 105.

Construction of a town hall would most probably be considered a governmental function and would be permitted in any area of the town notwithstanding the zoning classification. However, the final determination of the site for a town hall remains with the town council. 1988 Op Atty Gen, No. 88‑65, p 184.

Section 6‑7‑830 would prevail as to override the R‑1 Residential zoning classification, to permit a group home for the mentally retarded to be built within any zoning classification. However, once the location is decided upon, the group home is then subject to institutional standards contained within the Standard Building Code as to structural requirements. Decided under former law. 1987 Op Atty Gen, No. 87‑21, p 66.

The Act of the 1976 Legislature, R765, H3396 [1976 Act No. 653] requires state, county and municipal agencies, departments and subdivisions to affirmatively comply with county and municipal zoning ordinances, but does not require the State to obtain permits or to submit to local adopted means of enforcing those ordinances. Decided under former law. 1975‑76 Op Atty Gen, No 4437, p 295.

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1. In general

Section 6‑9‑110, providing that local ordinances or regulations do not apply to state agencies, applies only to building codes‑such things as electrical, plumbing and gas requirements‑and is inapplicable to zoning ordinances under former Section 6‑7‑830, which regulate not only the use of a building, but also its facade. City of Charleston v. South Carolina State Ports Authority (S.C. 1992) 309 S.C. 118, 420 S.E.2d 497.

Former Section 6‑7‑830 required agencies to comply with local zoning ordinances, and, if a state agency refused, then the municipality could seek injunctive relief through the Circuit Court. City of Charleston v. South Carolina State Ports Authority (S.C. 1992) 309 S.C. 118, 420 S.E.2d 497. Zoning And Planning 1218; Zoning And Planning 1800

2. Non‑discriminatory land use

County may apply non‑discriminatory land use considerations, such as traffic or parking concerns, when determining whether to object to a proposed group home site. County of Charleston v. Sleepy Hollow Youth, Inc. (S.C.App. 2000) 340 S.C. 174, 530 S.E.2d 636. Zoning And Planning 1071

Genuine issues of material fact existed as to whether county’s objection to placement of group home for emotionally disabled children was result of discriminatory attitudes towards the disabled held by county residents, precluding summary judgment in group home sponsor’s action against county for discrimination in violation of the Fair Housing Act (FHA). County of Charleston v. Sleepy Hollow Youth, Inc. (S.C.App. 2000) 340 S.C. 174, 530 S.E.2d 636. Judgment 181(15.1)

**SECTION 6‑29‑775.** Use of property obtained from federal government.

Notwithstanding the provisions of Section 6‑29‑770 of the 1976 Code or any other provision of law, a state agency or entity that acquires real property from the federal government or from a state instrumentality or redevelopment agency that received it from the federal government shall be permitted to use the property in the same manner the federal government was permitted to use the property. Further, the property in the hands of the state agency or entity shall be subject only to the same restrictions, if any, as it was in the hands of the federal government, and no county or municipality of this State by zoning or other means may restrict this permitted use or enjoyment of the property.

HISTORY: 2002 Act No. 256, Section 3.

Code Commissioner’s Note—

Codified as Section 6‑29‑775 at the direction of the Code Commissioner.

LIBRARY REFERENCES

Zoning and Planning 237.

Westlaw Key Number Search: 414k237.

C.J.S. Zoning and Land Planning Sections 106, 108.

**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.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 351, 352.

Westlaw Key Number Searches: 414k351; 414k352.

C.J.S. Zoning and Land Planning Sections 97, 177, 181 to 183, 185.

**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.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 351, 357, 358.

Westlaw Key Number Searches: 414k351; 414k357; 414k358.

C.J.S. Zoning and Land Planning Sections 97, 177, 181 to 183, 185, 187, 189.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**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.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 2, eff June 2, 2003.

Effect of Amendment

The 2003 amendment rewrote this section.

LIBRARY REFERENCES

Zoning and Planning 354, 443.

Westlaw Key Number Searches: 414k354; 414k443.

C.J.S. Zoning and Land Planning Sections 180 to 181, 183 to 186, 189, 215.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

Section 6‑29‑800 and a Jasper County Zoning Ordinance do not preclude a property owner from seeking an extension of its non‑conforming use status before the Jasper County Planning Commission. S.C. Op.Atty.Gen. (April 13, 2011) 2011 WL 1740751.

The Abbeville City Council does not have the authority to grant a zoning variance for a mobile home park. Decided under former law. 1968‑69 Op Atty Gen, No 2730, p 193.

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1. Validity

Zoning ordinance prohibiting location of an adult establishment within 500 feet of a residential district did not violate the first amendment; ordinance was not aimed at content of speech but, rather, at the secondary effects of such businesses on the surrounding community and ordinance did not unreasonably limit alternative avenues of communication. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Constitutional Law 2213; Zoning And Planning 1112

2. In general

Where developer submits revised plan to city planning commission after initial request for zoning variance had been denied, revised plan would be considered under city ordinance as revised subsequent to denial of developer’s initial request but prior to submission of revised plan. Decided under former law. Bennett v. City of Clemson (S.C. 1987) 293 S.C. 64, 358 S.E.2d 707. Zoning And Planning 1566

Powers of board of adjustment are prescribed by this section [Code 1962 Section 14‑350.19]. ‑ The powers which a particular board of adjustment may validly exercise are prescribed by this section [Code 1962 Section 14‑350.19]. Decided under former law. Holler v. Ellisor (S.C. 1972) 259 S.C. 283, 191 S.E.2d 509.

3. Construction with other law

Ordinance authorizing board of adjustment to grant special exceptions invalid. The provisions of an ordinance authorizing a board of adjustment to hear, decide and grant special exceptions to the ordinance exceed the powers authorized under this section [Code 1962 Section 14‑350.19] and are, accordingly, invalid. Decided under former law. Holler v. Ellisor (S.C. 1972) 259 S.C. 283, 191 S.E.2d 509. Zoning And Planning 1469

3.5. Jurisdiction

Town Board of Zoning Appeals’ decision upholding building permit issued by town did not exceed its subject matter jurisdiction, even though property owner who challenged issuance of permit for neighboring lot asserted that board’s decision effectively altered abutting street by designating it a park; board answered specific issue raised by property owner as to whether town erred in issuing permit based on contention that setbacks were improper, and board answered that specific issue in its decision. Austin v. Board of Zoning Appeals (S.C.App. 2004) 362 S.C. 29, 606 S.E.2d 209. Zoning And Planning 1439

4. Variance

Landowner did not possess property interest in conditional use permit to build townhouses on his property, as required to support substantive due process claim based on county planning commission’s denial of his application for such a permit; issuance of permit was within the discretion of the commission, guided by process and factors enumerated in county’s zoning ordinance. Henry v. Jefferson County Planning Com’n, 2002, 34 Fed.Appx. 92, 2002 WL 864267, Unreported, certiorari denied 123 S.Ct. 1620, 538 U.S. 944, 155 L.Ed.2d 484. Constitutional Law 4093; Zoning And Planning 1360

Zoning board’s grant of a variance to owner of steel fabrication business on the basis of an unnecessary hardship was not precluded, even though owner may have created the conditions that necessitated the variance, and knew when he purchased the property that it was subject to a zoning regulation, absent a showing that the board’s decision to grant the variance was arbitrary or capricious. Black v. Lexington County Bd. of Zoning Appeals (S.C.App. 2012) 396 S.C. 453, 722 S.E.2d 22, rehearing denied. Zoning And Planning 1492

Zoning board was not precluded from granting zoning variance to owner of steel fabrication business on the basis there were no extraordinary and exceptional conditions pertaining to the property and that any such conditions did not apply to other properties in the vicinity; zoning board found buffering restrictions in zoning ordinance created setbacks that made it impossible for any feasible expansion or improvements, the property contained the only steel fabrication facility in the area, and the buffering restrictions did not apply to other properties in the area comprised of residential, rural, agricultural and light commercial use. Black v. Lexington County Bd. of Zoning Appeals (S.C.App. 2012) 396 S.C. 453, 722 S.E.2d 22, rehearing denied. Zoning And Planning 1492

Failure to grant zoning variance to allow owner of steel fabrication plant to bring paint shed into compliance and to construct sand‑blasting shed would have prohibited or unreasonably restricted the use of the property, for purposes of ordinance and statutory provision that allowed for such a variance in the event a denial would effectively prohibit or unreasonably restrict the utilization of the property, where sandblasting was a normal and necessary accessory activity to the business, and without the structure to contain or reduce the noise, the business would continue to be in violation of zoning ordinance. Black v. Lexington County Bd. of Zoning Appeals (S.C.App. 2012) 396 S.C. 453, 722 S.E.2d 22, rehearing denied. Zoning And Planning 1490

Zoning board’s grant of a variance to owner of steel fabrication business did not violate statutory prohibition against the utilization of property more profitably as grounds for the grant of a variance request, where the board did not determine that by granting the variance request the property could be used more profitably, but rather determined the variance would allow for a reduction in noise produced by sand‑blasting equipment, and would create an improvement for the adjacent properties, the public good, and the character of the district. Black v. Lexington County Bd. of Zoning Appeals (S.C.App. 2012) 396 S.C. 453, 722 S.E.2d 22, rehearing denied. Zoning And Planning 1492

When deciding whether to grant a variance, a local zoning board must be guided by standards which are specific in order to prevent the ordinance from being invalid and arbitrary. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1473

Granting a variance from terms of zoning regulation is an exceptional power which should be sparingly exercised and can be validly used only where a situation falls fully within the specified conditions in regulation. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1471

County board of adjustments and zoning appeals was not required to grant adult entertainment establishment a variance from adult use zoning regulation based on establishment’s unrebutted testimony that its operation did not produce any negative secondary effects on the community. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1524

Natural barrier of the Atlantic Intracoastal Waterway did not prevent even the possibility of negative secondary effects from arising in the future from operation of adult entertainment establishment, and thus did not require that establishment be granted a variance from adult use zoning ordinance, where testimony revealed that a bridge was being constructed across the waterway very near the establishment and that a nearby tram ferried persons across the waterway. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1524

Denial of special exception permit to lessor of property seeking to operate residential halfway house for federal ex‑offenders based on findings of city zoning board of adjustment that any increase in traffic would adversely impact vehicle and pedestrian safety and that certain halfway house residents would be recidivists, which would adversely affect safety of pedestrians in area, was arbitrary, where there was no evidence that proposed use would result in traffic increase and study upon which board based finding regarding recidivists did not correlate recidivist rates of federal offenders to pedestrian safety. Decided under former law. Bannum, Inc. v. City of Columbia (S.C. 1999) 335 S.C. 202, 516 S.E.2d 439. Zoning And Planning 1517

A board of adjustment properly granted a variance to allow building on a lot which was rendered unbuildable by a change in set‑back requirements, where the town council, in amending the zoning ordinance, had indicated that lots rendered substandard by amendment should be granted a variance; a variance was not precluded by the requirement of Section 6‑7‑740 that conditions leading to the grant of a variance be “peculiar” to the particular piece of property involved, although other lots were also rendered substandard in size by the zoning ordinance change, since only a few other pieces of property shared the hardship imposed by the change. Decided under former law. Bennett v. Sullivan’s Island Bd. of Adjustment (S.C.App. 1993) 313 S.C. 455, 438 S.E.2d 273. Zoning And Planning 1492

A commercial property owner was properly granted a variance from the requirement that 75 percent of his parking be on‑site where the owner acquired the property in accordance with his plan to build a motel prior to the 1988 Beachfront Management Act, the provisions of the act resulted in the loss of 62 feet of the property, and the owner’s revised plan provided for 39 percent on‑site parking with the remainder of the parking to be located on a lot directly across the street. Decided under former law. Dolive v. J.E.E. Developers, Inc. (S.C.App. 1992) 308 S.C. 380, 418 S.E.2d 319.

5. Hardship

Variance applicants are not required to prove that without the variance there exists no feasible conforming use for the property in question in order to show unnecessary hardship. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1480

A claim of unnecessary hardship entitling applicant to variance from terms of zoning regulation cannot be based upon conditions created by the owner nor can one who purchases property after the enactment of a zoning regulation complain that a nonconforming use would work an unnecessary hardship upon him. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1482

Before a variance can be allowed on the ground of unnecessary hardship, there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1481

Financial hardship does not automatically constitute unnecessary hardship entitling applicant to variance from terms of zoning regulation. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1483

Adult entertainment establishment’s claims that business disruption, loss of goodwill, relocation costs, and contractual obligations to existing location entitled it to variance from adult use zoning regulations all fell within the scope of financial hardship, which alone did not constitute unnecessary hardship entitling it to variance. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1524

Adult businesses cannot exclude themselves from legitimate zoning regulation by providing expert testimony that they do not currently produce negative secondary effects. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1112

The term “peculiar” in Section 6‑7‑740 (which allows a board of adjustment to grant a variance from a zoning ordinance when extraordinary conditions creating unnecessary hardship are peculiar to the particular piece of property involved) does not mean “unique,” but describes a situation that is “unusual, odd, rare, or strongly deviating” from the norm. Decided under former law. Bennett v. Sullivan’s Island Bd. of Adjustment (S.C.App. 1993) 313 S.C. 455, 438 S.E.2d 273. Zoning And Planning 1481

Since a property owner, in seeking a variance, may not complain of the hardship which he has created, a property owner was not entitled to a variance, where he knew, or should have known, when he purchased the property that 50 feet of frontage on the public street was required by the law in the county, and he obviously knew that the entire tract had only 50 feet of frontage on a public street and, thus, could not be subdivided. Decided under former law. Georgetown County Bldg. Official v. Lewis (S.C.App. 1986) 290 S.C. 513, 351 S.E.2d 584.

6. Gaming

Once county amended its video poker machine ordinance’s “grandfather clause” to remove restriction on establishment from having more than number of games in operation on ordinance’s effective date, which requirement was replaced with language stating that if licensee is entitled to any video poker machines at location, it is entitled to “number of such machines permitted at such location under applicable provisions of state statutes, county ordinances or applicable regulations,” licensee that met requirements for two machines at location was entitled to three more machines to reach maximum number permitted by applicable law. Decided under former law. R.L. Jordan Oil Co. of North Carolina, Inc. v. York County Zoning Bd. of Appeals (S.C. 1999) 335 S.C. 370, 517 S.E.2d 436. Gaming And Lotteries 319(1)

7. Final decisions and orders

Minutes normally constitute the board of zoning appeals’ (BZA) final findings, but transcript can constitute final findings if 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. Zoning and Planning 1340(3)

Board of zoning appeals exercises substantial power in its review of zoning administrators’ decisions; few restrictions encumber the scope of the board’s authority. Clear Channel Outdoor v. City of Myrtle Beach (S.C.App. 2004) 360 S.C. 459, 602 S.E.2d 76, rehearing denied, certiorari granted, affirmed 372 S.C. 230, 642 S.E.2d 565. Zoning And Planning 1333(1)

Board of zoning appeals was not restricted on appeal to considering zoning ordinance that allegedly was sole basis of zoning administrator’s denial of billboard permit; rather than binding board to the conclusion or reasoning of the zoning administrator, statute and city’s zoning ordinance authorized board to review the basis of the zoning administrator’s decision, consider the basis of the appeal, and apply the appropriate provisions of the zoning ordinance as dictated by the facts before it. Clear Channel Outdoor v. City of Myrtle Beach (S.C.App. 2004) 360 S.C. 459, 602 S.E.2d 76, rehearing denied, certiorari granted, affirmed 372 S.C. 230, 642 S.E.2d 565. Zoning And Planning 1438

Generally, the format of a final administrative 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. Administrative Law And Procedure 507

Transcript of hearing before board of zoning appeals could be treated by a reviewing court as the board’s final decision; it was a writing and contained findings of fact and conclusions of law separately stated. Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals (S.C.App. 2000) 342 S.C. 480, 536 S.E.2d 892. Zoning And Planning 1340(3)

Letter sent by zoning administrator to applicant for use on review of contiguous lots, in which he informed applicant that her applications had been denied by the board of zoning adjustments, did not constitute final decision of the board, where letter did not contain separately stated findings of fact and conclusions of law. Decided under former law. Massey v. City of Greenville Bd. of Zoning Adjustments (S.C.App. 2000) 341 S.C. 193, 532 S.E.2d 885. Zoning And Planning 1429

Findings of fact and conclusions prepared by zoning administrator in support of board of zoning adjustment’s denial of applications for use on review of contiguous lots after applicant filed appeal from board’s denial of her applications did not constitute the final decision of the board, where it was shown to only two of the five board members. Decided under former law. Massey v. City of Greenville Bd. of Zoning Adjustments (S.C.App. 2000) 341 S.C. 193, 532 S.E.2d 885. Zoning And Planning 1429

Transcript of hearings held by board of zoning adjustments on applications for use on review of contiguous lots did not constitute the final decision of the board, where transcript was virtually indecipherable and did not contain separate findings of fact and legal conclusions. Decided under former law. Massey v. City of Greenville Bd. of Zoning Adjustments (S.C.App. 2000) 341 S.C. 193, 532 S.E.2d 885. Zoning And Planning 1429

7.5. Writing requirement

Municipal Board of Zoning Appeals’ letter to protesting property owner denying her request to rescind a building permit on neighboring property satisfied statutory requirement that board’s decision be in writing; issue was limited to factual determination as to whether traffic levels on abutting street required setback of 20 feet rather than 10 feet, letter stated the evidence considered by board, letter stated board’s findings, and letter stated board’s final decision. Austin v. Board of Zoning Appeals (S.C.App. 2004) 362 S.C. 29, 606 S.E.2d 209. Zoning And Planning 1458

8. Burden of proof

Variance applicant bears the burden of proving its entitlement to a variance from terms of zoning regulation. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1544

Variance applicant bore burden of establishing existence of four statutory criteria for variance to be granted. Decided under former law. Restaurant Row Associates v. Horry County (S.C.App. 1997) 327 S.C. 383, 489 S.E.2d 641, rehearing denied, certiorari granted, affirmed as modified 335 S.C. 209, 516 S.E.2d 442, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1544

9. Zoning decisions

Evidence supported board of zoning appeals’ decision that, under ordinance stating that the right to maintain any nonconforming sign shall cease to exist whenever the sign is destroyed, owner of billboards did not have right to erect a new billboard; spacing requirement rendered owner’s billboards nonconforming, and tornado destroyed owner’s billboards. Clear Channel Outdoor v. City of Myrtle Beach (S.C.App. 2004) 360 S.C. 459, 602 S.E.2d 76, rehearing denied, certiorari granted, affirmed 372 S.C. 230, 642 S.E.2d 565. Zoning And Planning 1316

10. Appeal

Property owners who objected to the construction of 195 foot tall telecommunications tower, but failed to join in appeal of the staff decision that approved the conditional use to the Board of Zoning Appeals, were not precluded from participating in the judicial review proceedings in the circuit court, or to maintain an appeal in the Court of Appeals. Bevivino v. Town of Mount Pleasant Bd. of Zoning Appeals (S.C.App. 2013) 402 S.C. 57, 737 S.E.2d 863. Zoning And Planning 1601; Zoning And Planning 1740

**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.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 801.

Westlaw Key Number Search: 414k801.

C.J.S. Zoning and Land Planning Sections 355, 357, 360.

**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).

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 3, eff June 2, 2003.

Effect of Amendment

The 2003 amendment added subsections (B) and (C) and designated the existing paragraph as subsection (A).

LIBRARY REFERENCES

Zoning and Planning 571, 584, 589.1.

Westlaw Key Number Searches: 414k571; 414k584; 414k589.1.

C.J.S. Zoning and Land Planning Sections 266 to 268, 302.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 40, Time for Service.

Attorney General’s Opinions

A city council is not authorized to serve as an appellate body between the board of appeals or board of adjustment and the circuit court, to review or change decisions made by the board of appeals or board of adjustment; until changed by order of the circuit court (or higher appellate court), the board’s decision will be deemed final and conclusive. A municipal ordinance varying from these statutes would most probably be found void if challenged in court. Decided under former law. 1988 Op Atty Gen, No. 88‑22, p 74.

NOTES OF DECISIONS

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1. In general

Landowner did not possess property interest in conditional use permit to build townhouses on his property, as required to support substantive due process claim based on county planning commission’s denial of his application for such a permit; issuance of permit was within the discretion of the commission, guided by process and factors enumerated in county’s zoning ordinance. Henry v. Jefferson County Planning Com’n, 2002, 34 Fed.Appx. 92, 2002 WL 864267, Unreported, certiorari denied 123 S.Ct. 1620, 538 U.S. 944, 155 L.Ed.2d 484. Constitutional Law 4093; Zoning And Planning 1360

A decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1631; Zoning And Planning 1649

In the context of zoning, a decision of a reviewing body will not be disturbed if there is evidence in the record to support its decision; a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1642; Zoning And Planning 1697

A development permittee is a necessary party to an appeal of its permit. Spanish Wells Property Owners Ass’n, Inc. v. Board of Adjustment of Town of Hilton Head Island (S.C. 1988) 295 S.C. 67, 367 S.E.2d 160. Zoning And Planning 1602

Where the landowner owned a large brick residence in a declining residential neighborhood, on a heavily traveled street across from a public school and near commercially zoned property, and there were several other day care centers nearby which had received variances, it was permissible to rezone residential property for a day care center. Hartman v. City of Columbia (S.C. 1977) 268 S.C. 44, 232 S.E.2d 15.

The standard of review in a zoning case is that the Zoning Board of Adjustment may not be reversed by a trial judge except in a case of abuse of discretion. Hartman v. City of Columbia (S.C. 1977) 268 S.C. 44, 232 S.E.2d 15.

The question of whether evidence will be taken upon review of a decision of the Board is within the sound discretion of the reviewing court. It therefore follows that testimony must be presented in the first instance to the reviewing court with whom discretion in the matter rests, or it will not be considered on appeal to the Supreme Court. Niggel v. City of Columbia (S.C. 1970) 254 S.C. 19, 173 S.E.2d 136.

Certiorari under this section [Code 1962 Section 47‑1014] is heard on the record returned in obedience to the writ. Niggel v. City of Columbia (S.C. 1970) 254 S.C. 19, 173 S.E.2d 136.

A court may take additional testimony where considered necessary. Niggel v. City of Columbia (S.C. 1970) 254 S.C. 19, 173 S.E.2d 136.

2. Necessary parties

Successful applicant for preliminary development permit before town planning commission is necessary party to appeal of action approving preliminary development permit. Decided under former law. Spanish Wells Property Owners Ass’n, Inc. v. Board of Adjustment of Town of Hilton Head Island (S.C. 1988) 295 S.C. 67, 367 S.E.2d 160.

Where a developer submits revised plan to city planning commission after initial request for zoning variance had been denied, revised plan would be considered under city ordinance as revised subsequent to denial of developer’s initial request but prior to submission of revised plan. Decided under former law. Bennett v. City of Clemson (S.C. 1987) 293 S.C. 64, 358 S.E.2d 707. Zoning And Planning 1566

3. Expert testimony

In adult use zoning cases, a reviewing body must take the expert testimony of the applicant seeking a variance into consideration, but the zoning board of appeals still has the authority to deny the variance if its zoning ordinance is constitutionally proper. Decided under former law. Restaurant Row Associates v. Horry County (S.C. 1999) 335 S.C. 209, 516 S.E.2d 442, rehearing denied, certiorari denied 120 S.Ct. 528, 528 U.S. 1020, 145 L.Ed.2d 409. Zoning And Planning 1524

4. Timeliness

Zoning ordinance which stated that appeals from the zoning board were controlled by “Title 6, Chapter 29” adopted the new, optional statutory scheme for the timeliness of an appeal of a board decision; thus, appeal was timely filed within thirty days of mailing. Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals (S.C.App. 2000) 342 S.C. 480, 536 S.E.2d 892. Zoning And Planning 1605

The timeliness of an appeal from a zoning board’s decision is a jurisdictional requirement and, as such, may be raised at anytime by either party or sua sponte by the Court of Appeals. Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals (S.C.App. 2000) 342 S.C. 480, 536 S.E.2d 892. Zoning And Planning 1592; Zoning And Planning 1605

5. Exhaustion of administrative remedies

Property owners who alleged that a county zoning ordinance enacted pursuant to Section 6‑7‑710 et seq. constituted an unconstitutional taking of their property without just compensation, were required to exhaust their administrative remedies before pursuing judicial relief where, under the ordinance itself, the property owners could apply for a permit to make a material change in the use of their land and, additionally, the property owners could apply for a variance under Section 6‑7‑740. Until the available administrative remedies were exhausted, a judicial determination of whether the property owners had suffered a “taking” was impossible; the final impact of the ordinance on the property in question was uncertain. Decided under former law. Moore v. Sumter County Council (S.C. 1990) 300 S.C. 270, 387 S.E.2d 455.

6. Final decisions of the board

Document executed only by the chairman of the board of zoning appeals was at best a nullity and not the final action of the board; the chairman and secretary had no authority to promulgate an order on behalf of the board. Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals (S.C.App. 2000) 342 S.C. 480, 536 S.E.2d 892. Zoning And Planning 1340(3)

Generally, the format of a final administrative 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. Administrative Law And Procedure 507

Transcript of hearing before board of zoning appeals could be treated by a reviewing court as the board’s final decision; it was a writing and contained findings of fact and conclusions of law separately stated. Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals (S.C.App. 2000) 342 S.C. 480, 536 S.E.2d 892. Zoning And Planning 1340(3)

7. Amendment of petitions

Circuit court correctly refused property owner’s request to amend her petition appealing decision of town Board of Zoning Appeals denying her application to rescind building permit for neighboring property after the expiration of 30‑day period for filing the appeal, even though owner asserted that rules allowing liberal amendment to pleadings should apply; circuit court’s review of administrative proceedings was limited to issues brought before board and appeal was limited to 30 days. Austin v. Board of Zoning Appeals (S.C.App. 2004) 362 S.C. 29, 606 S.E.2d 209. Zoning And Planning 1612

**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).

HISTORY: 2003 Act No. 39, Section 4, eff June 2, 2003.

**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.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 5, eff June 2, 2003.

Effect of Amendment

The 2003 amendment, in subsection (A) inserted “with a petition as provided in Section 6‑29‑820(A) or Section 6‑29‑825(F)” preceding “, the clerk of circuit court”, substituted “the appeal” for “it”, inserted “duly” preceding “certified copy”, and substituted “the board” for “it”, in subsection (B) substituted “any” for “a” and “does” for “shall”, and in subsections (A) and (B) made nonsubstantive changes.

LIBRARY REFERENCES

Zoning and Planning 574, 588.

Westlaw Key Number Searches: 414k574; 414k588.

C.J.S. Zoning and Land Planning Sections 278 to 279, 304.

**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.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 6, eff June 2, 2003.

Effect of Amendment

The 2003 amendment added subsection (B), designated the existing paragraph as subsection (A), and made nonsubstantive changes.

LIBRARY REFERENCES

Zoning and Planning 601, 721, 726, 729.

Westlaw Key Number Searches: 414k601; 414k721; 414k726; 414k729.

C.J.S. Zoning and Land Planning Sections 269, 314 to 315, 319.

NOTES OF DECISIONS

In general 1

Amendment of petitions 1.5

Findings of fact 2

Record 1.75

Standard of review 4

Sufficiency of evidence 3

1. In general

By law, the trial court must uphold a decision by the planning commission unless there is no evidence to support it. Furr v. Horry County Zoning Bd. of Appeals (S.C.App. 2014) 411 S.C. 178, 767 S.E.2d 221, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 415 S.C. 440, 783 S.E.2d 51. Zoning and Planning 1697

A decision of a city zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion. Clear Channel Outdoor v. City of Myrtle Beach (S.C. 2007) 372 S.C. 230, 642 S.E.2d 565. Zoning And Planning 1631; Zoning And Planning 1649

A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. Clear Channel Outdoor v. City of Myrtle Beach (S.C. 2007) 372 S.C. 230, 642 S.E.2d 565. Administrative Law And Procedure 760

In reviewing questions presented on appeal from a city board, the court must determine only whether the decision of the board is correct as a matter of law. Clear Channel Outdoor v. City of Myrtle Beach (S.C. 2007) 372 S.C. 230, 642 S.E.2d 565. Municipal Corporations 104

Appeal to the circuit court is only for a determination of whether zoning board’s decision is correct as a matter of law. Clear Channel Outdoor v. City of Myrtle Beach (S.C.App. 2004) 360 S.C. 459, 602 S.E.2d 76, rehearing denied, certiorari granted, affirmed 372 S.C. 230, 642 S.E.2d 565. Zoning And Planning 1624

Applicant for use on review of contiguous lots who elected to proceed with judicial review of the denial of her applications by board of zoning adjustments under the Local Government Comprehensive Planning Enabling Act was not entitled to present testimony on appeal that was not presented at board’s hearings. Massey v. City of Greenville Bd. of Zoning Adjustments (S.C.App. 2000) 341 S.C. 193, 532 S.E.2d 885. Zoning And Planning 1655

The Circuit Court properly allowed a respondent to reconstruct the record of a zoning proceeding by means of an affidavit where, through no fault of the respondent, portions of the stenographer’s tape from the hearing were incapable of being transcribed. Decided under former law. Dolive v. J.E.E. Developers, Inc. (S.C.App. 1992) 308 S.C. 380, 418 S.E.2d 319.

The standard of review set forth in Section 6‑7‑780, which has been interpreted to require an affirmance of a zoning board decision if supported by any evidence, does not deny a litigant due process guaranteed by the State and Federal Constitutions where the litigant is provided a fair hearing before the zoning board. Decided under former law. Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach (S.C.App. 1988) 294 S.C. 475, 366 S.E.2d 15.

1.5. Amendment of petitions

Circuit court correctly refused property owner’s request to amend her petition appealing decision of town Board of Zoning Appeals denying her application to rescind building permit for neighboring property after the expiration of 30‑day period for filing the appeal, even though owner asserted that rules allowing liberal amendment to pleadings should apply; circuit court’s review of administrative proceedings was limited to issues brought before board and appeal was limited to 30 days. Austin v. Board of Zoning Appeals (S.C.App. 2004) 362 S.C. 29, 606 S.E.2d 209. Zoning And Planning 1612

1.75. Record

Circuit court did not abuse its discretion in refusing to supplement the record in property owner’s appeal of decision of town Board of Zoning Appeals denying her application to rescind building permit issued for neighboring lot to include plat for the lot, based on only brief mention of plat in transcript of board proceedings that did not clearly show that plat was in evidence before board. Austin v. Board of Zoning Appeals (S.C.App. 2004) 362 S.C. 29, 606 S.E.2d 209. Zoning And Planning 1594

2. Findings of fact

Determination by board of zoning appeals, in finding that helicopter sight‑seeing tour facility was not a permitted use within an amusement commercial district, that operation of facility was not consistent with uses of district, was a conclusion of law rather than a finding of fact, and thus trial court, which left board’s findings undisturbed, did not improperly substitute its own factual determination for that of board, where zoning administrator made an administrative interpretation of county ordinance, which neighboring homeowner appealed to board, and homeowner challenged board’s construction of ordinance as it applied to facility. Helicopter Solutions, Inc. v. Hinde (S.C.App. 2015) 414 S.C. 1, 776 S.E.2d 753. Zoning and Planning 1253

A reviewing court in a zoning case may rely on uncontroverted facts which appear in the record, but not in a zoning board’s findings. Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals (S.C.App. 2000) 342 S.C. 480, 536 S.E.2d 892. Zoning And Planning 1594

Zoning Board’s findings of fact are final and conclusive on appeal, and appeal to circuit court is only for determination of whether Board’s decision is correct as matter of law, and further appeal to Supreme Court is in same manner as appeals from other circuit court judgments in law cases, such that on appeal, Zoning Board’s decisions should not be interfered with unless it is arbitrary and clearly erroneous. Decided under former law. Bishop v. Hightower (S.C.App. 1987) 292 S.C. 358, 356 S.E.2d 420. Zoning And Planning 1624; Zoning And Planning 1735

Factual findings by the board of zoning appeals that an appellant had violated a zoning ordinance are final and conclusive. Decided under former law. Wells v. Finley (S.C. 1973) 260 S.C. 291, 195 S.E.2d 623.

3. Sufficiency of evidence

Evidence supported County Zoning Board of Appeals’s decision that landowner’s hospice facility was a permitted use in the Commercial Forest Agricultural (CFA) zone as either group housing or a nursing home; county ordinances did not specifically prohibit a hospice in a CFA zone, and hospice facility was like a nursing home based on the type of care that would be provided and based on the type of staffing. Furr v. Horry County Zoning Bd. of Appeals (S.C.App. 2014) 411 S.C. 178, 767 S.E.2d 221, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 415 S.C. 440, 783 S.E.2d 51. Zoning and Planning 1268

A ruling by a board of adjustment that the cost to repair a sign would exceed 50 percent of the sign’s replacement cost, and that the ordinance thus prohibited repair of the sign, was not sustained by the testimony of an expert who rode past the damaged sign and stated that it “looked like it was pretty well blowed away,” since the expert provided no evidence of the cost to repair or replace the sign, and the only other evidence in the record showed that the cost of repair was approximately 40 percent of the replacement cost. Decided under former law. National Advertising Co., Inc. v. Mount Pleasant Bd. of Adjustment (S.C. 1994) 312 S.C. 397, 440 S.E.2d 875. Zoning And Planning 1314

4. Standard of review

The Supreme Court will uphold the trial judge’s decision on review of a decision by a town planning commission unless it was based on an error of law or is not supported by the evidence. Town of Hollywood v. Floyd (S.C. 2013) 403 S.C. 466, 744 S.E.2d 161, certiorari denied 134 S.Ct. 792, 187 L.Ed.2d 595. Zoning and Planning 1747; Zoning and Planning 1754

A trial court must uphold a decision by a town planning commission unless there is no evidence to support it. Town of Hollywood v. Floyd (S.C. 2013) 403 S.C. 466, 744 S.E.2d 161, certiorari denied 134 S.Ct. 792, 187 L.Ed.2d 595. Zoning and Planning 1697

A court will refrain from substituting its judgment for that of a board of zoning appeals, even if it disagrees with the decision; however, a decision of a city zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion. Bevivino v. Town of Mount Pleasant Bd. of Zoning Appeals (S.C.App. 2013) 402 S.C. 57, 737 S.E.2d 863. Zoning And Planning 1631; Zoning And Planning 1642; Zoning And Planning 1649

Decision of municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion. Wyndham Enterprises, LLC v. City of North Augusta (S.C.App. 2012) 401 S.C. 144, 735 S.E.2d 659. Zoning and Planning 1624; Zoning and Planning 1631; Zoning and Planning 1649

In reviewing questions presented by appeal of zoning board decision, court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with decision. Wyndham Enterprises, LLC v. City of North Augusta (S.C.App. 2012) 401 S.C. 144, 735 S.E.2d 659. Zoning and Planning 1642

In reviewing questions presented by appeal of zoning board decision, court shall determine only whether decision of board is correct as a matter of law. Wyndham Enterprises, LLC v. City of North Augusta (S.C.App. 2012) 401 S.C. 144, 735 S.E.2d 659. Zoning and Planning 1624

In reviewing the questions presented by the appeal of a zoning board decision, the circuit court shall determine only whether the decision of the board is correct as a matter of law; furthermore, a court will refrain from substituting its judgment for that of the zoning board, even if it disagrees with the decision. Black v. Lexington County Bd. of Zoning Appeals (S.C.App. 2012) 396 S.C. 453, 722 S.E.2d 22, rehearing denied. Zoning And Planning 1624; Zoning And Planning 1642

A decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion. Black v. Lexington County Bd. of Zoning Appeals (S.C.App. 2012) 396 S.C. 453, 722 S.E.2d 22, rehearing denied. Zoning And Planning 1631; Zoning And Planning 1649

Circuit court applied correct standard of review to decision of municipal board of zoning appeals decision denying a property owner’s application to rescind a building permit on a neighboring property, even though the circuit court applied an “any evidence” standard and statute required “no evidence” standard; affirmance of board’s decision if “any evidence” supported findings was essentially the same as affirmance unless “no evidence” supported findings. Austin v. Board of Zoning Appeals (S.C.App. 2004) 362 S.C. 29, 606 S.E.2d 209. Zoning And Planning 1697

In reviewing the questions presented by the appeal, reviewing court shall determine only whether the decision of the Board of Zoning Appeals is correct as a matter of law, and it will refrain from substituting its judgment for that of the board, even if it disagrees with the decision. Austin v. Board of Zoning Appeals (S.C.App. 2004) 362 S.C. 29, 606 S.E.2d 209. Zoning And Planning 1642

**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.

HISTORY: 1994 Act No. 355, Section 1; 1999 Act No. 55, Section 10.

LIBRARY REFERENCES

Zoning and Planning 741.

Westlaw Key Number Search: 414k741.

C.J.S. Zoning and Land Planning Sections 322, 326, 328.

NOTES OF DECISIONS

In general 1

1. In general

Zoning Board’s findings of fact are final and conclusive on appeal, and appeal to circuit court is only for determination of whether Board’s decision is correct as matter of law, and further appeal to Supreme Court is in same manner as appeals from other circuit court judgments in law cases, such that on appeal, Zoning Board’s decisions should not be interfered with unless it is arbitrary and clearly erroneous. Decided under former law. Bishop v. Hightower (S.C.App. 1987) 292 S.C. 358, 356 S.E.2d 420. Zoning And Planning 1624; Zoning And Planning 1735

**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.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 351.

Westlaw Key Number Search: 414k351.

C.J.S. Zoning and Land Planning Sections 97, 177, 181 to 183, 185.

**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 provision for the preservation and protection of historic and architecturally valuable districts and neighborhoods or significant or natural scenic areas, or protects or provides, or both, for the unique, special, or desired character of a defined district, corridor, or development area or any combination of it, by means of restriction and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the areas, may provide for appointment of a board of architectural review or similar body.

(B) The board shall consist of not more than ten members to be appointed by the governing body of the municipality or the governing body of the county which may restrict the membership on the board to those professionally qualified persons as it may desire. The governing authority or authorities creating the board may remove any member of the board which it has appointed.

(C) The appointing authorities shall determine the amount of compensation, if any, to be paid to the members of a board of architectural review. None of the members may hold any other public office or position in the municipality or county.

(D) 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 board of architectural review. The board shall adopt rules of procedure in accordance with the provisions of any 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. 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 immediately must be filed in the office of the board and must be a public record.

HISTORY: 1994 Act No. 355, Section 1.

CROSS REFERENCES

Special property tax assessments for “rehabilitated historic property” or “low and moderate income rental property”, approval of rehabilitation work by reviewing authority, see Section 4‑9‑195.

LIBRARY REFERENCES

Environmental Law 61, 91.

Zoning and Planning 351.

Westlaw Key Number Searches: 149Ek61; 149Ek91; 414k351.

C.J.S. Zoning and Land Planning Sections 97, 177, 181 to 183, 185.

Attorney General’s Opinions

Discussion of whether a County or Municipality is required to have an Architectural Board of Appeals if they have Ordinances requiring Architectural Standards. S.C. Op.Atty.Gen. (Oct. 2, 2013) 2013 WL 5572750.

**SECTION 6‑29‑880.** Powers of board of architectural review.

The board of architectural review has those powers involving the structures and neighborhoods as may be determined by the zoning ordinance. Decisions of the zoning administrator or other appropriate administrative official in matters under the purview of the board of architectural review may be appealed to the board where there is an alleged error in any order, requirement, determination, or decision.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Environmental Law 91.

Westlaw Key Number Search: 149Ek91.

**SECTION 6‑29‑890.** Appeal to board of architectural review.

(A) 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 architectural review notice of appeal specifying the grounds of it. 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. Upon a motion by a party or the board’s own motion, the board may remand a matter to an administrative official 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) 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 otherwise than by a restraining order which may be granted by the board or by a court of record on application, upon notice to the officer from whom the appeal is taken, and on due cause shown.

(C) The board must fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice of the hearing, as well as due notice to the parties in interest, and decide the appeal or other matter within a reasonable time. At the hearing, any party may appear in person, by agent, or by attorney.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 7, eff June 2, 2003.

Effect of Amendment

The 2003 amendment, in subsection (A) added the last four sentences relating to remand procedures, in subsection (C) substituted “the hearing” for “it” and “appeal or other matter” for “same”, and in subsections (A),(B), and (C) made nonsubstantive changes.

LIBRARY REFERENCES

Environmental Law 91.

Westlaw Key Number Search: 149Ek91.

**SECTION 6‑29‑900.** Appeal from board of architectural review to circuit court; pre‑litigation mediation; filing requirements.

(A) A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of 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 affected party receives actual notice of the decision of the board of architectural review.

(B) A property owner whose land is the subject of a decision of the board of architectural review 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 6‑29‑915.

A 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 architectural review 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).

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 8, eff June 2, 2003.

Effect of Amendment

The 2003 amendment added subsections (B) and (C) and designated the existing paragraph as subsection (A).

CROSS REFERENCES

Review of rehabilitation work, designated historic buildings, see S.C. Code of Regulations R. 12‑124.

LIBRARY REFERENCES

Environmental Law 621.

Westlaw Key Number Search: 149Ek621.

Attorney General’s Opinions

A city council is not authorized to serve as an appellate body between the board of appeals or board of adjustment and the circuit court, to review or change decisions made by the board of appeals or board of adjustment; until changed by order of the circuit court (or higher appellate court), the board’s decision will be deemed final and conclusive. A municipal ordinance varying from these statutes would most probably be found void if challenged in court. Decided under former law. 1988 Op Atty Gen, No. 88‑22, p 74.

NOTES OF DECISIONS

In general 1

1. In general

The triggering mechanism for the 30‑day period for appealing from an adverse decision of a board of architectural review is actual notice of the decision, not receipt of written notice. Blind Tiger, LLC v. City of Charleston (S.C.App. 2005) 366 S.C. 182, 621 S.E.2d 361, rehearing denied, certiorari denied. Zoning And Planning 1607

Owner of pub in city’s historic district had “actual notice” of decision by city’s board of architectural review denying its application for approval of the installation of tinted window film and a design on an interior front window of the pub, so as to trigger 30‑day period for filing an appeal, at time of hearing at which the board, in the presence of pub owner’s representatives, issued oral ruling ordering pub owner to remove the film and design within ten days, even though pub owner did not receive written notice of the decision until more than two months later. Blind Tiger, LLC v. City of Charleston (S.C.App. 2005) 366 S.C. 182, 621 S.E.2d 361, rehearing denied, certiorari denied. Environmental Law 671

**SECTION 6‑29‑910.** Contempt; penalty.

In case of contempt by a party, witness, or other person before the board of architectural review, the board may certify the 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.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Environmental Law 97, 98.

Westlaw Key Number Searches: 149Ek97; 149Ek98.

**SECTION 6‑29‑915.** 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 architectural review.

(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).

HISTORY: 2003 Act No. 39, Section 9, eff June 2, 2003.

**SECTION 6‑29‑920.** Notice of appeal; transcript; supersedeas.

(A) Upon filing of an appeal with a petition as provided in Section 6‑29‑900(A) or Section 6‑29‑915(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 architectural review, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

(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.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 10, eff June 2, 2003.

Effect of Amendment

The 2003 amendment, in subsection (A) inserted “with a petition as provided in Section 6‑29‑900(A) or Section 6‑29‑915(F)” preceding “, the clerk of circuit court”, and in subsections (A) and (B) made clarifying and nonsubstantive changes.

LIBRARY REFERENCES

Environmental Law 659.

Westlaw Key Number Search: 149Ek659.

**SECTION 6‑29‑930.** 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 resident 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 architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter must be remanded to the board of architectural review for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. In the event that the decision of the board is reversed by the circuit court, the board must be charged with the costs which must be paid by the governing authority which established the board of architectural review.

(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 architectural review, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 11, eff June 2, 2003.

Effect of Amendment

The 2003 amendment added subsection (B), designated the existing paragraph as subsection (A), and made nonsubstantive changes.

LIBRARY REFERENCES

Environmental Law 677, 694.

Westlaw Key Number Searches: 149Ek677; 149Ek694.

**SECTION 6‑29‑940.** 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.

HISTORY: 1994 Act No. 355, Section 1; 1999 Act No. 55, Section 11.

LIBRARY REFERENCES

Environmental Law 704.

Westlaw Key Number Search: 149Ek704.

**SECTION 6‑29‑950.** Enforcement of zoning ordinances; remedies for violations.

(A) The governing authorities of municipalities or counties may provide for the enforcement of any ordinance adopted pursuant to the provisions of this chapter by means of the withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken by an entity not having a proper building or zoning permit, or both. It is unlawful to construct, reconstruct, alter, demolish, change the use of or occupy any land, building, or other structure without first obtaining the appropriate permit or permit approval. No permit may be issued or approved unless the requirements of this chapter or any ordinance adopted pursuant to it are complied with. It is unlawful for other officials to issue any permit for the use of any land, building, or structure, or the construction, conversion, demolition, enlargement, movement, or structural alteration of a building or structure without the approval of the zoning administrator. A violation of any ordinance adopted pursuant to the provisions of this chapter is a misdemeanor. In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use continues is considered a separate offense.

(B) In case a building, structure, or land is or is proposed to be used in violation of an ordinance adopted pursuant to this chapter, the zoning administrator or other designated administrative officer may in addition to other remedies issue and serve upon a person pursuing the activity or activities a stop order requiring that entity stop all activities in violation of the zoning ordinance.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 378, 761, 771, 801.

Westlaw Key Number Searches: 414k378; 414k761; 414k771; 414k801.

C.J.S. Zoning and Land Planning Sections 195, 199, 334, 337, 351 to 352, 354 to 355, 357, 360.

Attorney General’s Opinions

Counties are precluded from delegating their authority to enforce ordinances to an individual or private entity, such as a homeowner’s association. S.C. Op.Atty.Gen. (August 4, 2010) 2010 WL 3505050.

Under the council‑administrator form of government, a county administrator, rather than a county council itself, would have authority to employ and discharge a zoning administrator once that position is established by council following the advent of home rule. Decided under former law. 1986 Op Atty Gen, No. 86‑48, p 141.

NOTES OF DECISIONS

In general 1

Justiciability 2

1. In general

Holder of conservation easement on property near pier terminal was not an “adjacent or neighboring property owner” entitled to bring a nuisance action challenging a cruise ship operator’s use of the terminal under the statute governing standing to bring a zoning action. Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n (S.C. 2014) 407 S.C. 67, 753 S.E.2d 846. Nuisance 26

Tenant that rented property near pier terminal was not an “adjacent or neighboring property owner” entitled to bring a nuisance action challenging a cruise ship operator’s use of the terminal under the statute governing standing to bring a zoning action. Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n (S.C. 2014) 407 S.C. 67, 753 S.E.2d 846. Nuisance 26

Unadjudicated citations and accompanying affidavits were not sufficient proof that proprietor operated a sexually‑oriented business in violation of county ordinance, and thus county was not entitled to preliminary injunction enjoining proprietor from operating business until final adjudication of merits of action; unadjudicated citations were mere evidence of violations, not proof thereof, and closing business without first adjudicating merits of citations would not preserve parties’ positions pending final hearing on the underlying merits of the actions. County of Richland v. Simpkins (S.C.App. 2002) 348 S.C. 664, 560 S.E.2d 902. Zoning And Planning 1804

In order for a governmental entity to get injunction for zoning violation, as specifically authorized by statute, it must show: (1) that it has an ordinance covering the situation, and (2) that there is a violation of that ordinance; in such circumstances, no showing of irreparable harm need be made by the governmental entity, nor must the court consider whether the injunction is in the public interest. County of Richland v. Simpkins (S.C.App. 2002) 348 S.C. 664, 560 S.E.2d 902. Zoning And Planning 1800

2. Justiciability

Neighbors’ and conservationists’ associations’ nuisance and zoning claims against cruise ship operator for allegedly violating city’s zoning, noise, height, and signage ordinances in the operation of a cruise ship at a pier terminal were not within the public importance exception to the requirement of standing, even though the Supreme Court had decided to exercise original jurisdiction on the basis that “the public interest is involved” in the case, since the case presented no issue of the constitutionality or legality of government action, and the claims asserted by the associations could be brought by other parties who could show the required injury. Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n (S.C. 2014) 407 S.C. 67, 753 S.E.2d 846. Associations 20(1); Nuisance 26; Zoning and Planning 1782

The statutory requirement that a private party seeking to enjoin a zoning violation must be specially damaged incorporates the particularized injury requirement of general standing doctrine as a requirement for the statute to apply. Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n (S.C. 2014) 407 S.C. 67, 753 S.E.2d 846. Nuisance 26

Associations of neighbors and conservationists lacked standing to bring nuisance and zoning claims against cruise ship operator for allegedly violating city’s zoning, noise, height, and signage ordinances in the operation of a cruise ship at a pier terminal, since neither the associations nor their members suffered a concrete, particularized harm to a legally protected interest, even if the operator’s alleged violations caused the neighborhood to suffer traffic congestion, pollution, noises, and obstructed views. Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n (S.C. 2014) 407 S.C. 67, 753 S.E.2d 846. Nuisance 26; Zoning and Planning 1782

**SECTION 6‑29‑960.** Conflict with other laws.

When the regulations made under authority of this chapter require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under another statute, or local ordinance or regulation, the regulations made under authority of this chapter govern. When the provisions of another statute require more restrictive standards than are required by the regulations made under authority of this chapter, the provisions of that statute govern.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 14.

Westlaw Key Number Search: 414k14.

C.J.S. Zoning and Land Planning Section 11.

ARTICLE 7

Local Planning — Land Development Regulation

**SECTION 6‑29‑1110.** Definitions.

As used in this chapter:

(1) “Affordable housing” means in the case of dwelling units for sale, housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than twenty‑eight percent of the annual household income for a household earning no more than eighty percent of the area median income, by household size, for the metropolitan statistical area as published from time to time by the U.S. Department of Housing and Community Development (HUD) and, in the case of dwelling units for rent, housing for which the rent and utilities constitute no more than thirty percent of the annual household income for a household earning no more than eighty percent of the area median income, by household size for the metropolitan statistical area as published from time to time by HUD.

(2) “Land development” means the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics.

(3) “Market‑based incentives” mean incentives that encourage private developers to meet the governing authority’s goals as developed in this chapter. Incentives may include, but are not limited to:

(a) density bonuses, allowing developers to build at a density higher than residential zones typically permit, and greater density bonuses, allowing developers to build at a density higher than residential affordable units in development, or allowing developers to purchase density by paying into a local housing trust fund;

(b) relaxed zoning regulations including, but not limited to, minimum lot area requirements, limitations of multifamily dwellings, minimum setbacks, yard requirements, variances, reduced parking requirements, and modified street standards;

(c) reduced or waived fees including those fees levied on new development projects where affordable housing is addressed, reimburse permit fees to builder upon certification that dwelling unit is affordable and waive up to one hundred percent of sewer/water tap‑in fees for affordable housing units;

(d) fast‑track permitting including, but not limited to, streamlining the permitting process for new development projects and expediting affordable housing developments to help reduce cost and time delays;

(e) design flexibility allowing for greater design flexibility, creating preapproved design standards to allow for quick and easy approval, and promoting infill development, mixed use and accessory dwellings.

(4) “Subdivision” means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, lease, or building development, and includes all division of land involving a new street or change in existing streets, and includes re‑subdivision which would involve the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law; or, the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, and includes combinations of lots of record; however, the following exceptions are included within this definition only for the purpose of requiring that the local planning agency be informed and have a record of the subdivisions:

(a) the combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of the governing authority;

(b) the division of land into parcels of five acres or more where no new street is involved and plats of these exceptions must be received as information by the planning agency which shall indicate that fact on the plats; and

(c) the combination or recombination of entire lots of record where no new street or change in existing streets is involved.

(5) “Traditional neighborhood design” means development designs intended to enhance the appearance and functionality of the new development so that it functions like a traditional neighborhood or town. These designs make possible reasonably high residential densities, a mixture of residential and commercial land uses, a range of single and multifamily housing types, and street connectivity both within the new development and to surrounding roadways, pedestrian, and bicycle features.

(6) “Nonessential housing regulatory requirements” mean those development standards and procedures that are determined by the local governing body to be not essential within a specific priority investment zone to protect the public health, safety, or welfare and that may otherwise make a proposed housing development economically infeasible. Nonessential housing regulatory requirements may include, but are not limited to:

(a) standards or requirements for minimum lot size, building size, building setbacks, spacing between buildings, impervious surfaces, open space, landscaping, buffering, reforestation, road width, pavements, parking, sidewalks, paved paths, culverts and storm water drainage, and sizing of water and sewer lines that are excessive; and

(b) application and review procedures that require or result in extensive submittals and lengthy review periods.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31, Section 4, eff May 23, 2007.

Effect of Amendment

The 2007 amendment added item (1) defining “Affordable housing”, item (3) defining “Market‑based incentives” and item (5) defining “Traditional neighborhood design” and redesignated item (1), “Land development”, as item (2) and item (2), “Subdivision”, as item (4).

CROSS REFERENCES

The Uniform Land Sales Practice Act, see Sections 27‑29‑10 et seq.

LIBRARY REFERENCES

Zoning and Planning 245.

Westlaw Key Number Search: 414k245.

C.J.S. Zoning and Land Planning Section 101.

**SECTION 6‑29‑1120.** Legislative intent; purposes.

The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties, or consolidated political subdivisions is authorized for the following purposes, among others:

(1) to encourage the development of economically sound and stable municipalities and counties;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments;

(3) to assure the adequate provision of safe and convenient traffic access and circulation, both vehicular and pedestrian, in and through new land developments;

(4) to assure the provision of needed public open spaces and building sites in new land developments through the dedication or reservation of land for recreational, educational, transportation, and other public purposes; and

(5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 2, 245, 371.

Westlaw Key Number Searches: 414k2; 414k245; 414k371.

C.J.S. Zoning and Land Planning Sections 4, 101, 191, 199, 203.

**SECTION 6‑29‑1130.** Regulations.

(A) When at least the community facilities element, the housing element, and the priority investment element of the comprehensive plan as authorized by this chapter have been adopted by the local planning commission and the local governing body or bodies, the local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction. These regulations may provide for the harmonious development of the municipality and the county; for coordination of streets within subdivision and other types of land developments with other existing or planned streets or official map streets; for the size of blocks and lots; for the dedication or reservation of land for streets, school sites, and recreation areas and of easements for utilities and other public services and facilities; and for the distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, appearance, prosperity, or the general welfare. In particular, the regulations shall prescribe that no land development plan, including subdivision plats, will be approved unless all land intended for use as building sites can be used safely for building purposes, without danger from flood or other inundation or from other menaces to health, safety, or public welfare.

(B) These regulations may include requirements as to the extent to which and the manner in which streets must be graded, surfaced, and improved, and water, sewers, septic tanks, and other utility mains, piping, connections, or other facilities must be installed as a condition precedent to the approval of the plan. The governing authority of the municipality and the governing authority of the county are given the power to adopt and to amend the land development regulations after a public hearing on it, giving at least thirty days’ notice of the time and place by publication in a newspaper of general circulation in the municipality or county.

HISTORY: 1994 Act No. 355, Section 1; 2007 Act No. 31, Section 5, eff May 23, 2007.

Effect of Amendment

The 2007 amendment, in subsection (A) in the first sentence added “, the housing element, and the priority investment element” and substituted “have” for “has”.

CROSS REFERENCES

Power of municipal council in council‑manager form of municipal government to adopt plats, see Section 5‑13‑30.

LIBRARY REFERENCES

Zoning and Planning 4, 29.5, 245, 381.5.

Westlaw Key Number Searches: 414k4; 414k29.5; 414k245; 414k381.5.

C.J.S. Zoning and Land Planning Sections 3, 5 to 7, 10, 21, 85, 101.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 6‑29‑1140.** Development plan to comply with regulations; submission of unapproved plan for recording is a misdemeanor.

After the local governing authority has adopted land development regulations, no subdivision plat or other land development plan within the jurisdiction of the regulations may be filed or recorded in the office of the county where deeds are required to be recorded, and no building permit may be issued until the plat or plan bears the stamp of approval and is properly signed by the designated authority. The submission for filing or the recording of a subdivision plat or other land development plan without proper approval as required by this chapter is declared a misdemeanor and, upon conviction, is punishable as provided by law.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 381.5, 801.

Westlaw Key Number Searches: 414k381.5; 414k801.

C.J.S. Zoning and Land Planning Sections 355, 357, 360.

**SECTION 6‑29‑1145.** Determining existence of restrictive covenant; effect.

(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.

(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.

(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.

HISTORY: 2007 Act No. 45, Section 3, eff June 4, 2007, applicable to applications for permits filed on and after July 1, 2007; 2007 Act No. 113, Section 2, eff June 27, 2007.

Effect of Amendment

The 2007 amendment, in subsection (A), substituted “in the application or by written instructions to an applicant whether” for “if”, rewrote subsection (B); and in subsection (C), added paragraph (1) defining “actual notice” and redesignated paragraphs (1) and (2) as paragraphs (2) and (3).

Attorney General’s Opinions

Discussion of phrase “for residential purposes only” contained in subdivision restrictive covenant. S.C. Op.Atty.Gen. (October 2, 2012) 2012 WL 4836949.

**SECTION 6‑29‑1150.** Submission of plan or plat to planning commission; record; appeal.

(A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval. Time limits, not to exceed sixty days, must be set forth for action on plans or plats, or both, submitted for approval or disapproval. Failure of the designated authority to act within sixty days of the receipt of development plans or subdivision plats with all documentation required by the land development regulations is considered to constitute approval, and the developer must be issued a letter of approval and authorization to proceed based on the plans or plats and supporting documentation presented. The sixty‑day time limit may be extended by mutual agreement.

(B) A record of all actions on all land development plans and subdivision plats with the grounds for approval or disapproval and any conditions attached to the action must be maintained as a public record. In addition, the developer must be notified in writing of the actions taken.

(C) Staff action, if authorized, to approve or disapprove a land development plan may be appealed to the planning commission by any party in interest. The planning commission must act on the appeal within sixty days, and the action of the planning commission is final.

(D)(1) An appeal from the decision of the planning commission must be taken to the circuit court within thirty days after actual notice of the decision.

(2) A property owner whose land is the subject of a decision of the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre‑litigation mediation in accordance with Section 6‑29‑1155.

A notice of appeal and request for pre‑litigation mediation must be filed within thirty days after the decision of the board is mailed.

(3) Any filing of an appeal from a particular planning commission 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).

(4) 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 planning commission, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.

HISTORY: 1994 Act No. 355, Section 1; 2003 Act No. 39, Section 12, eff June 2, 2003.

Effect of Amendment

The 2003 amendment substituted “considered” for “deemed” in subsection (A), made nonsubstantive changes in subsection (C), added subsections (D)(2), (D)(3), and (D)(4), redesignated subsection (D) as (D)(1), and in newly designated (D)(1) substituted “must’ for “may” and inserted “the” preceding “circuit court”.

LIBRARY REFERENCES

Zoning and Planning 372.1, 381.5, 431.

Westlaw Key Number Searches: 414k372.1; 414k381.5; 414k431.

C.J.S. Zoning and Land Planning Sections 191, 204, 207.

**SECTION 6‑29‑1155.** 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 planning commission.

(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).

HISTORY: 2003 Act No. 39, Section 13, eff June 2, 2003.

**SECTION 6‑29‑1160.** Recording unapproved land development plan or plat; penalty; remedies.

The county official whose duty it is to accept and record real estate deeds and plats may not accept, file, or record a land development plan or subdivision plat involving a land area subject to land development regulations adopted pursuant to this chapter unless the development plan or subdivision plat has been properly approved. If a public official violates the provisions of this section, he is, in each instance, subject to the penalty provided in this article and the affected governing body, private individual, or corporation has rights and remedies as to enforcement or collection as are provided, and may enjoin any violations of them.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 372.1.

Westlaw Key Number Search: 414k372.1.

C.J.S. Zoning and Land Planning Section 191.

**SECTION 6‑29‑1170.** Approval of plan or plat not acceptance of dedication of land.

The approval of the land development plan or subdivision plat may not be deemed to automatically constitute or effect an acceptance by the municipality or the county or the public of the dedication of any street, easement, or other ground shown upon the plat. Public acceptance of the lands must be by action of the governing body customary to these transactions.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Dedication 16.1.

Zoning and Planning 461.

Westlaw Key Number Searches: 119k16.1; 414k461.

C.J.S. Dedication Sections 11 to 12, 14, 16.

C.J.S. Zoning and Land Planning Section 218.

NOTES OF DECISIONS

Acceptance 2

Dedication 1

1. Dedication

The party seeking to establish dedication must prove two elements: (1) the owner must express in a positive and an unmistakable manner the intention to dedicate his property to public use, and (2) there must be, within a reasonable time, an express or implied public acceptance of the property offered for dedication. Decided under former law. Van Blarcum v. City of North Myrtle Beach (S.C.App. 1999) 337 S.C. 446, 523 S.E.2d 486. Dedication 1

If a landowner subdivides and plats an area of land into lots and streets and then sells lots with reference to the plat, the owner manifests an intent to dedicate those common areas to be used by both the purchasers and the public, absent evidence of a contrary intent. Decided under former law. Van Blarcum v. City of North Myrtle Beach (S.C.App. 1999) 337 S.C. 446, 523 S.E.2d 486. Dedication 19(5)

Plat filed by original subdivision developer unequivocally manifested intent to dedicate for public use beach area seaward of landowners’ lots down to high‑water mark of Atlantic Ocean; according to plat, there were approximately 90 feet between seaward lot lines and high‑water mark. Decided under former law. Van Blarcum v. City of North Myrtle Beach (S.C.App. 1999) 337 S.C. 446, 523 S.E.2d 486. Dedication 19(2)

Payment of taxes on disputed property may be considered as evidence contrary to intent to dedicate property to public as street. Decided under former law. Anderson v. Town of Hemingway (S.C. 1977) 269 S.C. 351, 237 S.E.2d 489.

Town’s burden of proving dedication of property to public for street is not met by introducing maps which show alleged street,but requires plainly manifested intention to dedicate. Decided under former law. Anderson v. Town of Hemingway (S.C. 1977) 269 S.C. 351, 237 S.E.2d 489. Dedication 44

Standard of proof for dedication of land to public is that proof must be strict, cogent and convincing. Decided under former law. Anderson v. Town of Hemingway (S.C. 1977) 269 S.C. 351, 237 S.E.2d 489.

Dedication involves not only offer to dedicate, but acceptance thereof, either express or implied, by public authority having power to pass on matter. Decided under former law. Anderson v. Town of Hemingway (S.C. 1977) 269 S.C. 351, 237 S.E.2d 489. Dedication 31

To constitute valid dedication there must not only be intention on part of owner to dedicate property to public use, but such dedication must be manifested in positive and unmistakable manner. Decided under former law. Anderson v. Town of Hemingway (S.C. 1977) 269 S.C. 351, 237 S.E.2d 489. Dedication 15

Where no evidence of dedication, either express or implied, by either present property owner or predecessor in title, was introduced by town in action to determine whether dedicated street existed across lot, and where property owner introduced tax receipts indicating payment of taxes on property claimed by town, town failed in burden to prove dedication had been made and accepted. Decided under former law. Anderson v. Town of Hemingway (S.C. 1977) 269 S.C. 351, 237 S.E.2d 489.

2. Acceptance

Evidence showed that city accepted public dedication of beach area seaward of landowners’ lots down to high‑water mark of Atlantic Ocean, even though landowners and their predecessors in title paid taxes assessed on that property; aside from any use of that property by public at large, city maintained it, raked it, cleaned it, planted sea grass to protect its dunes, built dune crossovers and stairways upon it, and protected its users with lifeguard, public safety, and rescue services. Decided under former law. Van Blarcum v. City of North Myrtle Beach (S.C.App. 1999) 337 S.C. 446, 523 S.E.2d 486. Dedication 44

The use, repair, and working of streets by public authorities is a mode of acceptance of dedication, but the mere fact that county has approved plat does not constitute acceptance of proposed public dedication. Decided under former law. Tupper v. Dorchester County (S.C. 1997) 326 S.C. 318, 487 S.E.2d 187. Dedication 35(1); Dedication 35(3); Dedication 37

**SECTION 6‑29‑1180.** Surety bond for completion of site improvements.

In circumstances where the land development regulations adopted pursuant to this chapter require the installation and approval of site improvements prior to approval of the land development plan or subdivision plat for recording in the office of the county official whose duty it is to accept and record the instruments, the developer may be permitted to post a surety bond, certified check, or other instrument readily convertible to cash. The surety must be in an amount equal to at least one hundred twenty‑five percent of the cost of the improvement. This surety must be in favor of the local government to ensure that, in the event of default by the developer, funds will be used to install the required improvements at the expense of the developer.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 382.4.

Westlaw Key Number Search: 414k382.4.

**SECTION 6‑29‑1190.** Transfer of title to follow approval and recording of development plan; violation is a misdemeanor.

The owner or agent of the owner of any property being developed within the municipality or county may not transfer title to any lots or parts of the development unless the land development plan or subdivision has been approved by the local planning commission or designated authority and an approved plan or plat recorded in the office of the county charged with the responsibility of recording deeds, plats, and other property records. A transfer of title in violation of this provision is a misdemeanor and, upon conviction, must be punished in the discretion of the court. A description by metes and bounds in the instrument of transfer or other document used in the process of transfer does not exempt the transaction from these penalties. The municipality or county may enjoin the transfer by appropriate action.

HISTORY: 1994 Act No. 355, Section 1.

LIBRARY REFERENCES

Zoning and Planning 372.1, 801.

Westlaw Key Number Searches: 414k372.1; 414k801.

C.J.S. Zoning and Land Planning Sections 191, 355, 357, 360.

**SECTION 6‑29‑1200.** Approval of street names required; violation is a misdemeanor; changing street name.

(A) A local planning commission created under the provisions of this chapter shall, by proper certificate, approve and authorize the name of a street or road laid out within the territory over which the commission has jurisdiction. It is unlawful for a person in laying out a new street or road to name the street or road on a plat, by a marking or in a deed or instrument without first getting the approval of the planning commission. Any person violating this provision is guilty of a misdemeanor and, upon conviction, must be punished in the discretion of the court.

(B) A commission may, after reasonable notice through a newspaper having general circulation in which the commission is created and exists, change the name of a street or road within the boundary of its territorial jurisdiction:

(1) when there is duplication of names or other conditions which tend to confuse the traveling public or the delivery of mail, orders, or messages;

(2) when it is found that a change may simplify marking or giving of directions to persons seeking to locate addresses; or

(3) upon any other good and just reason that may appear to the commission.

(C) On the name being changed, after reasonable opportunity for a public hearing, the planning commission shall issue its certificate designating the change, which must be recorded in the office of the register of deeds or clerk of court, and the name changed and certified is the legal name of the street or road.

HISTORY: 1994 Act No. 355, Section 1; 1997 Act No. 34, Section 1.

LIBRARY REFERENCES

Municipal Corporations 651.5.

Zoning and Planning 381.5, 801.

Westlaw Key Number Searches: 268k651.5; 414k381.5; 414k801.

C.J.S. Municipal Corporations Section 1423.

C.J.S. Zoning and Land Planning Sections 355, 357, 360.

**SECTION 6‑29‑1210.** Land development plan not required to execute a deed.

Under this chapter, the submission of a land development plan or land use plan is not a prerequisite and must not be required before the execution of a deed transferring undeveloped real property. A local governmental entity may still require the grantee to file a plat at the time the deed is recorded.

HISTORY: 2016 Act No. 144 (H.3972), Section 1, eff March 14, 2016.

ARTICLE 9

Educational Requirements for Local Government Planning or Zoning Officials or Employees

**SECTION 6‑29‑1310.** Definitions.

As used in this article:

(1) “Advisory committee” means the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees;

(2) “Appointed official” means a planning commissioner, board of zoning appeals member, or board of architectural review member;

(3) “Clerk” means the clerk of the local governing body;

(4) “Local governing body” means the legislative governing body of a county or municipality;

(5) “Planning or zoning entity” means a planning commission, board of zoning appeals, or board of architectural review;

(6) “Professional employee” means a planning professional, zoning administrator, zoning official, or a deputy or assistant of a planning professional, zoning administrator, or zoning official.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003.

**SECTION 6‑29‑1320.** Identification of persons covered by act; compliance schedule.

(A) The local governing body must:

(1) by no later than December 31st of each year, identify the appointed officials and professional employees for the jurisdiction and provide a list of those appointed officials and professional employees to the clerk and each planning or zoning entity in the jurisdiction; and

(2) annually inform each planning or zoning entity in the jurisdiction of the requirements of this article.

(B) Appointed officials and professional employees must comply with the provisions of this article according to the following dates and populations based on the population figures of the latest official United States Census:

(1) municipalities and counties with a population of 35,000 and greater: by January 1, 2006; and

(2) municipalities and counties with a population under 35,000: by January 1, 2007.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003; 2004 Act No. 287, Section 3, eff July 22, 2004.

Effect of Amendment

The 2004 amendment, in paragraph (B)(1), substituted “of 35,000 and greater” for “above 70,000”.

**SECTION 6‑29‑1330.** State Advisory Committee; creation; members; terms; duties; compensation; meetings; fees charged.

(A) There is created the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees.

(B) The advisory committee consists of five members appointed by the Governor. The advisory committee consists of:

(1) a planner recommended by the South Carolina Chapter of the American Planning Association;

(2) a municipal official or employee recommended by the Municipal Association of South Carolina;

(3) a county official or employee recommended by the South Carolina Association of Counties;

(4) a representative recommended by the University of South Carolina’s Institute for Public Service and Policy Research; and

(5) a representative recommended by Clemson University’s Department of Planning and Landscape Architecture. Recommendations must be submitted to the Governor not later than the thirty‑first day of December of the year preceding the year in which appointments expire. If the Governor rejects any person recommended for appointment, the group or association who recommended the person must submit additional names to the Governor for consideration.

(C) The members of the advisory committee must serve a term of four years and until their successors are appointed and qualify; except that for the members first appointed to the advisory committee, the planner must serve a term of three years; the municipal official or employee and the county official or employee must each serve a term of two years; and the university representatives must each serve a term of one year. A vacancy on the advisory committee must be filled in the manner of the original appointment for the remainder of the unexpired term. The Governor may remove a member of the advisory committee in accordance with Section 1‑3‑240(B).

(D) The advisory committee’s duties are to:

(1) compile and distribute a list of approved orientation and continuing education programs that satisfy the educational requirements in Section 6‑29‑1340;

(2) determine categories of persons with advanced degrees, training, or experience, that are eligible for exemption from the educational requirements in Section 6‑29‑1340; and

(3) make an annual report to the President Pro Tempore of the Senate and Speaker of the House of Representatives, no later than April fifteenth of each year, providing a detailed account of the advisory committee’s:

(a) activities;

(b) expenses;

(c) fees collected; and

(d) determinations concerning approved education programs and categories of exemption.

(E) A list of approved education programs and categories of exemption by the advisory committee must be available for public distribution through notice in the State Register and posting on the General Assembly’s Internet website. This list must be updated by the advisory committee at least annually.

(F) The members of the advisory committee must serve without compensation and must meet at a set location to which members must travel no more frequently than quarterly, at the call of the chairman selected by majority vote of at least a quorum of the members. Nothing in this subsection prohibits the chairman from using discretionary authority to conduct additional meetings by telephone conference if necessary. These telephone conference meetings may be conducted more frequently than quarterly. Three members of the advisory committee constitute a quorum. Decisions concerning the approval of education programs and categories of exemption must be made by majority vote with at least a quorum of members participating.

(G) The advisory committee may assess by majority vote of at least a quorum of the members a nominal fee to each entity applying for approval of an orientation or continuing education program; however, any fees charged must be applied to the operating expenses of the advisory committee and must not result in a net profit to the groups or associations that recommend the members of the advisory committee. An accounting of any fees collected by the advisory committee must be made in the advisory committee’s annual report to the President Pro Tempore of the Senate and Speaker of the House of Representatives.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003; 2008 Act No. 273, Section 2, eff June 4, 2008.

Effect of Amendment

The 2008 amendment, in subsection (B), in the introductory paragraph deleted “with the advice and consent of the Senate” from the end of the first sentence; and in paragraph (B)(5) deleted “or the Governor’s appointment is not confirmed by the Senate” following “appointment”.

**SECTION 6‑29‑1340.** Educational requirements; time‑frame for completion; subjects.

(A) Unless expressly exempted as provided in Section 6‑29‑1350, each appointed official and professional employee must:

(1) no earlier than one hundred and eighty days prior to and no later than three hundred and sixty‑five days after the initial date of appointment or employment, attend a minimum of six hours of orientation training in one or more of the subjects listed in subsection (C); and

(2) 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).

(B) An appointed official or professional employee who attended six hours of orientation training for a prior appointment or employment is not required to comply with the orientation requirement for a subsequent appointment or employment after a break in service. However, unless expressly exempted as provided in Section 6‑29‑1350, upon a subsequent appointment or employment, the appointed official or professional employee must comply with an annual requirement of attending no fewer than three hours of continuing education as provided in this section.

(C) The subjects for the education required by subsection (A) 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.

(D) In order to meet the educational requirements of subsection (A), an educational program must be approved by the advisory committee.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003.

**SECTION 6‑29‑1350.** Exemption from educational requirements.

(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.

(B) An appointed official or professional employee who is exempt from the educational requirements of Section 6‑29‑1340 must file a certification form and documentation of his exemption as required in Section 6‑29‑1360 by no later than the first anniversary date of his appointment or employment. An exemption is established by a single filing for the tenure of the appointed official or professional employee and does not require the filing of annual certification forms and conforming documentation.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003.

**SECTION 6‑29‑1360.** Certification.

(A) An appointed official or professional employee must certify that he has satisfied the educational requirements in Section 6‑29‑1340 by filing a certification form and documentation with the clerk no later than the anniversary date of the appointed official’s appointment or professional employee’s employment each year.

(B) Each certification form must substantially conform to the following form and all applicable portions of the form must be completed:

EDUCATIONAL REQUIREMENTS

CERTIFICATION FORM

FOR LOCAL GOVERNMENT PLANNING OR ZONING

OFFICIALS OR EMPLOYEES

To report compliance with the educational requirements, please complete and file this form each year with the clerk of the local governing body no later than the anniversary date of your appointment or employment. To report an exemption from the educational requirements, please complete and file this form with the clerk of the local governing body by no later than the first anniversary of your current appointment or employment. Failure to timely file this form may subject an appointed official to removal for cause and an employee to dismissal.

Name of Appointed Official or Employee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Initial Date of Appointment or Employment: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Filing Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I have attended the following orientation or continuing education program(s) within the last three hundred and sixty‑five days. (Please note that a program completed more than one hundred and eighty days prior to the date of your initial appointment or employment may not be used to satisfy this requirement.):

Program Name Sponsor Location Date Held Hours of Instruction

Also attached with this form is documentation that I attended the program(s).

OR

I am exempt from the orientation and continuing education requirements because (Please initial the applicable response on the line provided):

\_\_\_\_ I am certified by the American Institute of Certified Planners.

\_\_\_\_ I hold a masters or doctorate degree in planning from an accredited college or university.

\_\_\_\_ I hold a masters or doctorate degree or have specialized training or experience in a field related to planning as determined by the State Advisory Committee on Educational Requirements for Local Government Planning or Zoning Officials and Employees. (Please describe your advanced degree or specialty on the line provided.)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_ I am licensed to practice law in South Carolina.

Also attached with this form is documentation to confirm my exemption.

I certify that I have satisfied or am exempt from the educational requirements for local planning or zoning officials or employees.

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(C) Each appointed official and professional employee is responsible for obtaining written documentation that either:

(1) is signed by a representative of the sponsor of any approved orientation or continuing education program for which credit is claimed and acknowledges that the filer attended the program for which credit is claimed; or

(2) establishes the filer’s exemption.

The documentation must be filed with the clerk as required by this section.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003.

**SECTION 6‑29‑1370.** Sponsorship and funding of programs; compliance and exemption; certification as public records.

(A) The local governing body is responsible for:

(1) sponsoring and providing approved education programs; or

(2) funding approved education programs provided by a sponsor other than the local governing body for the appointed officials and professional employees in the jurisdiction.

(B) The clerk must keep in the official public records originals of:

(1) all filed forms and documentation that certify compliance with educational requirements for three years after the calendar year in which each form is filed; and

(2) all filed forms and documentation that certify an exemption for the tenure of the appointed official or professional employee.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003.

**SECTION 6‑29‑1380.** Failure to complete training requirements; false documentation.

(A) An appointed official is subject to removal from office for cause as provided in Section 6‑29‑350, 6‑29‑780, or 6‑29‑870 if he:

(1) fails to complete the requisite number of hours of orientation training and continuing education within the time allotted under Section 6‑29‑1340; or

(2) fails to file the certification form and documentation required by Section 6‑29‑1360.

(B) A professional employee is subject to suspension or dismissal from employment relating to planning or zoning by the local governing body or planning or zoning entity if he:

(1) fails to complete the requisite number of hours of orientation training and continuing education within the time allotted under Section 6‑29‑1340; or

(2) fails to file the certification form and documentation required by Section 6‑29‑1360.

(C) A local governing body must not appoint a person who has falsified the certification form or documentation required by Section 6‑29‑1360 to serve in the capacity of an appointed official.

(D) A local governing body or planning or zoning entity must not employ a person who has falsified the certification form or documentation required by Section 6‑29‑1360 to serve in the capacity of a professional employee.

HISTORY: 2003 Act No. 39, Section 14, eff June 2, 2003.

ARTICLE 11

Vested Rights

**SECTION 6‑29‑1510.** Citation of article.

This article may be cited as the “Vested Rights Act”.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

**SECTION 6‑29‑1520.** Definitions.

As used in this article:

(1) “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.

(2) “Building permit” means a written warrant or license issued by a local building official that authorizes the construction or renovation of a building or structure at a specified location.

(3) “Conditionally approved” or “conditional approval” means an interim action taken by a local governing body that provides authorization for a site specific development plan or a phased development plan but is subject to approval.

(4) “Landowner” means an owner of a legal or equitable interest in real property including the heirs, devisees, successors, assigns, and personal representatives of the owner. “Landowner” may include a person holding a valid option to purchase real property pursuant to a contract with the owner to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan pursuant to this article.

(5) “Local governing body” means: (a) the governing body of a county or municipality, or (b) a county or municipal body authorized by statute or by the governing body of the county or municipality to make land‑use decisions.

(6) “Person” means an individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any legal entity as defined by South Carolina laws.

(7) “Phased development plan” means a development plan submitted to a local governing body by a landowner that shows the types and density or intensity of uses for a specific property or properties to be developed in phases, but which do not satisfy the requirements for a site specific development plan.

(8) “Real property” or “property” means all real property that is subject to the land use and development ordinances or regulations of a local governing body, and includes the earth, water, and air, above, below, or on the surface, and includes improvements or structures customarily regarded as a part of real property.

(9) “Site specific development plan” means a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties. The plan may be in the form of, but is not limited to, the following plans or approvals: planned unit development; subdivision plat; preliminary or general development plan; variance; conditional use or special use permit plan; conditional or special use district zoning plan; or other land‑use approval designations as are used by a county or municipality.

(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.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

**SECTION 6‑29‑1530.** Two‑year vested right established on approval of site specific development plan; conforming ordinances and regulations; renewal.

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

(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 of real property with a vested right may apply at the end of the vesting period to the local governing body 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.

(B) A local governing body may provide in its local land development ordinances or regulations adopted pursuant to this chapter for the establishment of a two‑year vested right in a conditionally approved site specific development plan.

(C) A local governing body may provide in its local land development ordinances or regulations adopted pursuant to this chapter for the establishment of a vested right in an approved or conditionally approved phased development plan not to exceed five years.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

**SECTION 6‑29‑1540.** Conditions and limitations.

A vested right established by this article and in accordance with the standards and procedures in the land development ordinances or regulations adopted pursuant to this chapter is subject to the following conditions and limitations:

(1) the form and contents of a site specific development plan must be prescribed in the land development ordinances or regulations;

(2) the factors that constitute a site specific development plan sufficient to trigger a vested right must be included in the land development ordinances or regulations;

(3) if a local governing body establishes a vested right for a phased development plan, a site specific development plan may be required for approval with respect to each phase in accordance with regulations in effect at the time of vesting;

(4) a vested right established under a conditionally approved site specific development plan or conditionally approved phased development plan may be terminated by the local governing body upon its determination, following notice and public hearing, that the landowner has failed to meet the terms of the conditional approval;

(5) the land development ordinances or regulations amended pursuant to this article must designate a vesting point earlier than the issuance of a building permit but not later than the approval by the local governing body of the site specific development plan or phased development plan that authorizes the developer or landowner to proceed with investment in grading, installation of utilities, streets, and other infrastructure, and to undertake other significant expenditures necessary to prepare for application for a building permit;

(6) a site specific development plan or phased development plan for which a variance, regulation, or special exception is necessary does not confer a vested right until the variance, regulation, or special exception is obtained;

(7) a vested right for a site specific development plan expires two years after vesting. The land development ordinances or regulations must authorize a process by which the landowner of real property with a vested right may apply at the end of the vesting period to the local governing body 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. The land development ordinances or regulations may authorize the local governing body to:

(a) set a time of vesting for a phased development plan not to exceed five years; and

(b) extend the time for a vested site specific development plan to a total of five years upon a determination that there is just cause for extension and that the public interest is not adversely affected. Upon expiration of a vested right, a building permit may be issued for development only in accordance with applicable land development ordinances or regulations;

(8) a vested site specific development plan or vested phased development plan may be amended if approved by the local governing body pursuant to the provisions of the land development ordinances or regulations;

(9) a validly issued building permit does not expire or is not revoked upon expiration of a vested right, except for public safety reasons or as prescribed by the applicable building code;

(10) a vested right to a site specific development plan or phased development plan is subject to revocation by the local governing body upon its determination, after notice and public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval;

(11) a vested site specific development plan or vested phased development plan is subject to later enacted federal, state, or local laws adopted to protect public health, safety, and welfare including, but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right. The issuance of a building permit vests the specific construction project authorized by the building permit to the building, fire, plumbing, electrical, and mechanical codes in force at the time of the issuance of the building permit;

(12) a vested site specific development plan or vested phased development plan is subject to later local governmental overlay zoning that imposes site plan‑related requirements but does not affect allowable types, height as it affects density or intensity of uses, or density or intensity of uses;

(13) a change in the zoning district designation or land‑use regulations made subsequent to vesting that affect real property does not operate to affect, prevent, or delay development of the real property under a vested site specific development plan or vested phased development plan without consent of the landowner;

(14) if real property having a vested site specific development plan or vested phased development plan is annexed, the governing body of the municipality to which the real property has been annexed must determine, after notice and public hearing in which the landowner is allowed to present evidence, if the vested right is effective after the annexation;

(15) a local governing body must not require a landowner to waive his vested rights as a condition of approval or conditional approval of a site specific development plan or a phased development plan; and

(16) the land development ordinances or regulations adopted pursuant to this article may provide additional terms or phrases, consistent with the conditions and limitations of this section, that are necessary for the implementation or determination of vested rights.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

**SECTION 6‑29‑1550.** Vested right attaches to real property; applicability of laws relating to public health, safety and welfare.

A vested right pursuant to this section is not a personal right, but attaches to and runs with the applicable real property. The landowner and all successors to the landowner who secure a vested right pursuant to this article may rely upon and exercise the vested right for its duration subject to applicable federal, state, and local laws adopted to protect public health, safety, and welfare including, but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right. This article does not preclude judicial determination that a vested right exists pursuant to other statutory provisions. This article does not affect the provisions of a development agreement executed pursuant to the South Carolina Local Government Development Agreement Act in Chapter 31 of Title 6.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

**SECTION 6‑29‑1560.** Establishing vested right in absence of local ordinances providing therefor; significant affirmative government acts.

(A) If a local governing body does not have land development ordinances or regulations or fails to adopt an amendment to its land development ordinances or regulations as required by this section, a landowner has a vested right to proceed in accordance with an approved site specific development plan for a period of two years from the approval. The landowner of real property with a vested right may apply at the end of the vesting period to the local governing body 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. For purposes of this section, the landowner’s rights are considered vested in the types of land use and density or intensity of uses defined in the development plan and the vesting is not affected by later amendment to a zoning ordinance or land‑use or development regulation if the landowner:

(1) obtains, or is the beneficiary of, a significant affirmative government act that remains in effect allowing development of a specific project;

(2) relies in good faith on the significant affirmative government act; and

(3) incurs significant obligations and expenses in diligent pursuit of the specific project in reliance on the significant affirmative government act.

(B) For the purposes of this section, the following are significant affirmative governmental acts allowing development of a specific project:

(1) the local governing body has accepted exactions or issued conditions that specify a use related to a zoning amendment;

(2) the local governing body has approved an application for a rezoning for a specific use;

(3) the local governing body has approved an application for a density or intensity of use;

(4) the local governing body or board of appeals has granted a special exception or use permit with conditions;

(5) the local governing body has approved a variance;

(6) the local governing body or its designated agent has approved a preliminary subdivision plat, site plan, or plan of phased development for the landowner’s property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or

(7) the local governing body or its designated agent has approved a final subdivision plat, site plan, or plan of phased development for the landowner’s property.

HISTORY: 2004 Act No. 287, Section 2, eff July 1, 2005.

ARTICLE 13

Federal Defense Facilities Utilization Integrity Protection

Code Commissioner’s Note

Redesignated as Article 13 at the direction of the Code Commissioner.

**SECTION 6‑29‑1610.** Short title.

This article may be cited as the “Federal Defense Facilities Utilization Integrity Protection Act”.

HISTORY: 2005 Act No. 1, Section 1, eff October 28, 2004.

Code Commissioner’s Note

Redesignated from Section 6‑29‑1510 to Section 6‑29‑1610 at the direction of the Code Commissioner.

**SECTION 6‑29‑1620.** Legislative purpose.

The General Assembly finds:

(1) As South Carolina continues to grow, there is significant potential for uncoordinated development in areas contiguous to federal military installations that can undermine the integrity and utility of land and airspace currently used for mission readiness and training.

(2) Despite consistent cooperation on the part of local government planners and developers, this potential remains for unplanned development in areas that could undermine federal military utility of lands and airspace in South Carolina.

(3) It is, therefore, desirous and in the best interests of the people of South Carolina to enact processes that will ensure that development in areas near federal military installations is conducted in a coordinated manner that takes into account and provides a voice for federal military interests in planning and zoning decisions by local governments.

HISTORY: 2005 Act No. 1, Section 1, eff October 28, 2004.

Code Commissioner’s Note

Redesignated from Section 6‑29‑1520 to Section 6‑29‑1620 at the direction of the Code Commissioner.

**SECTION 6‑29‑1625.** Definitions.

(A) For purposes of this article, “federal military installations” includes Fort Jackson, Shaw Air Force Base, McEntire Air Force Base, Charleston Air Force Base, Beaufort Marine Corps Air Station, Beaufort Naval Hospital, Parris Island Marine Recruit Depot, and Charleston Naval Weapons Station.

(B) For purposes of this article, a “federal military installation overlay zone” is an “overlay zone” as defined in Section 6‑29‑720(C)(5) in a geographic area including a federal military installation as defined in this section.

HISTORY: 2005 Act No. 1, Section 1, eff October 28, 2004.

Code Commissioner’s Note

Redesignated from Section 6‑29‑1525 to Section 6‑29‑1625 at the direction of the Code Commissioner.

**SECTION 6‑29‑1630.** Local planning department investigations, recommendations and findings; incorporation into official maps.

(A) In any local government which has established a planning department or other entity, such as a board of zoning appeals, charged with the duty of establishing, reviewing, or enforcing comprehensive land use plans or zoning ordinances, that planning department or other entity, with respect to each proposed land use or zoning decision involving land that is located within a federal military installation overlay zone or, if there is no such overlay zone, within three thousand feet of any federal military installation, or within the three thousand foot Clear Zone and Accident Potential Zones Numbers I and II as prescribed in 32 C.F.R. Section 256, defining Air Installation Compatible Use Zones of a federal military airfield, shall:

(1) at least thirty days prior to any hearing conducted pursuant to Section 6‑29‑530 or 6‑29‑800, request from the commander of the federal military installation a written recommendation with supporting facts with regard to the matters specified in subsection (C) relating to the use of the property which is the subject of review; and

(2) upon receipt of the written recommendation specified in subsection (A) (1) make the written recommendations a part of the public record, and in addition to any other duties with which the planning department or other entity is charged by the local government, investigate and make recommendations of findings with respect to each of the matters enumerated in subsection (C).

(B) If the base commander does not submit a recommendation pursuant to subsection (A)(1) by the date of the public hearing, there is a presumption that the land use plan or zoning proposal does not have any adverse effect relative to the matters specified in subsection (C).

(C) The matters the planning department or other entity shall address in its investigation, recommendations, and findings must be:

(1) whether the land use plan or zoning proposal will permit a use that is suitable in view of the fact that the property under review is within the federal military installation overlay zone, or, if there is no such overlay zone located within three thousand feet of a federal military installation or within the three thousand foot Clear Zone and Accident Potential Zones Numbers I and II as prescribed in 32 C.F.R. Section 256, defining Air Installation Compatible Use Zones of a federal military airfield;

(2) whether the land use plan or zoning proposal will adversely affect the existing use or usability of nearby property within the federal military installation overlay zone, or, if there is no such overlay zone, within three thousand feet of a federal military installation, or within the three thousand foot Clear Zone and Accident Potential Zones Numbers I and II as prescribed in 32 C.F.R. Section 256, defining Air Installation Compatible Use Zones of a federal military airfield;

(3) whether the property to be affected by the land use plan or zoning proposal has a reasonable economic use as currently zoned;

(4) whether the land use plan or zoning proposal results in a use which causes or may cause a safety concern with respect to excessive or burdensome use of existing streets, transportation facilities, utilities, or schools where adjacent or nearby property is used as a federal military installation;

(5) if the local government has an adopted land use plan, whether the zoning proposal is in conformity with the policy and intent of the land use plan given the proximity of a federal military installation; and

(6) whether there are other existing or changing conditions affecting the use of the nearby property such as a federal military installation which give supporting grounds for either approval or disapproval of the proposed land use plan or zoning proposal.

(D) Where practicable, local governments shall incorporate identified boundaries, easements, and restrictions for federal military installations into official maps as part of their responsibilities delineated in Section 6‑29‑340.

HISTORY: 2005 Act No. 1, Section 1, eff October 28, 2004.

Code Commissioner’s Note

Redesignated from Section 6‑29‑1530 to Section 6‑29‑1630 at the direction of the Code Commissioner.

**SECTION 6‑29‑1640.** Application to former or closing military installations.

Nothing in this article is to be construed to apply to former military installations, or approaches or access related thereto, that are in the process of closing or redeveloping pursuant to base realignment and closure proceedings, including the former naval base facility on the Cooper River in and near the City of North Charleston, nor to the planned uses of, or construction of facilities on or near, that property by the South Carolina State Ports Authority, nor to the construction and uses of transportation routes and facilities necessary or useful thereto.

HISTORY: 2005 Act No. 1, Section 1, eff October 28, 2004.

Code Commissioner’s Note

Redesignated from Section 6‑29‑1540 to Section 6‑29‑1640 at the direction of the Code Commissioner.