South Carolina

Planning Education Advisory Committee

February 20, 2020

Berkeley County
Alison Simmons, AICP
Planning & Zoning Director
1003 Highway 52
Moncks Corner, SC 29461

Re: *Application for Accreditation of CE credits for New Program*

Dear Ms. Simmons:

On February 3, 2020, I received the program materials you submitted for the "Conducting Effective Public Meetings in a Socially and Politically Dynamic Climate." Upon receipt of the materials, an email was sent to confirm receipt by all Committee members as well as a deadline set for comments.

Under the "no objection policy" adopted July 8, 2009, the request for accreditation of this program has been approved, and the signed "Notice of Decision" is attached. A formal after-the-fact approval will be handled as part of a Consent Agenda at the regular quarterly meeting of the Committee, scheduled at 10:00 a.m. on Tuesday, May 12, 2020.

Thank you for your efforts to help make this program a success.

Sincerely,

Stephen G. Riley, ICMA~CM
Chairman

cc: Phillip Lindler, Cliff Ellis, and Wayne Shuler

ONE TOWN CENTER COURT • HILTON HEAD ISLAND, SC • 29928
PHONE: 843-341-4700 • FAX: 843-842-7728
www.scstatehouse.net/SCPEAC/index.htm
Stever@hiltonheadislandsc.gov

South Carolina Planning Education Advisory Committee (SCPEAC)

NOTICE OF DECISION

Title of Program: Traffic Impact Decisions and there Cross-Jurisdictional Importance

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

ACCEPTED WITHOUT OBJECTION Date: February 20, 2020

REVIEWED BY FULL COMMITTEE Date: _____

a) __X__ ACCREDITED for: 90 min. CE credits: 1.5

b) _____ DENIED ACCREDITATION

c) _____ RETURNED for more information

If accredited:

a) Authorized Course No.: 2020-01

b) Date of accreditation: 02/20/2020

Signature of SCPEAC Representative: _____

For further information, contact Mr. Stephen G. Riley, Chairman,
843-341-4701 or stever@hiltonheadislandsc.gov

South Carolina Planning Education Advisory Committee (SCPEAC)

LOCAL OFFICIAL'S CERTIFICATION OF NEED FOR CONTINUING EDUCATION PROGRAM

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

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

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

1. Certifying Official's Information:

a. Name: Alison Simmons, AICP

b. Title: Planning and Zoning Director

c. Jurisdiction for which certification is being made: Berkeley County

d. Address of Jurisdiction: 1003 Hwy 52

e. City: Moncks Corner, SC

Zip Code 29461

f. Telephone: 843.719.4164

g. Email: alison.simmons@berkeleycountysc.gov

h. For COG Directors:

i. Name of COG: _____

ii. Address of COG: _____

iii. City: _____

Zip Code: _____

iv. Telephone: _____

v. Email: _____

2. Information on Educational Program:

a. Title of Program: Conducting Effective Public Meetings in a Socially and Politically Dynamic Climate

b. Name of Organization that is providing or sponsoring the Program:

i. Organization: Berkeley County

ii. Street Address: 1003 Hwy 52

iii. City: Moncks Corner

State: SC

Zip Code: 29461

iv. Contact Person: Alison Simmons, AICP

v. Title: Planning and Zoning Director

vi. Telephone: 843.719.4164

vii. Email: alison.simmons@berkeleycountysc.gov

c. Date(s) and Location(s) of Program:

2.25.2020, Berkeley County Administrative Complex @ 1003 Hwy 52 in Moncks Corner, SC, 4:00 PM

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

The County Attorney will present a 1.5-hour course on effective meeting procedures and defensible decision-making to ensure proper due process and prevent arbitrary and capricious decision making.

3. Method of presentation (check all that apply. All sessions must have a Coordinator present):

a. Presentor(s) in room with participants ☑

b. Live presentation via close circuit TV, video conferencing, or similar; Coordinator present ☐

c. Videotape or CD/DVD presentation; Facilitator present ☐

d. Webinar or similar; Coordinator present ☐

e. Other (describe)

4. Description of materials to be distributed (check/fill in all that apply):

a. Powerpoint handout:	☑	number of slides: 55
b. Other handouts:	☑	total pages:

c. CD/DVD: ☐

d. Other (describe)

e. None: ☐

5. When are materials distributed?

a. Sent before the program: ☑

b. Handed out at the program: ☑

c. Other (describe)

6. Required attachments (5 copies distributed as described below):

a. Course description and outline including estimated time per section

b. Brochure, if available

c. Course Presenter(s) and credentials (include brief resumes and qualifications)

d. Copies of all handouts and course materials

e. Evaluation Form and method of evaluation (each program must be evaluated)

7. Instruction Time:

a. Indicate the total minutes of instruction time: 90

Note: Breaks, meals and introductions should not be counted. A reasonable period of Q and A should be included and counted.

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

a. Name: _____

b. Title: _____

c. Jurisdiction: _____

d. Telephone: _____

e. Email: _____

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

a. Allow in-person observation, without charge, of the Program by the SCPEAC Committee members. Any food, travel or lodging costs will be the responsibility of the Committee member(s).

b. The Certifying Official acknowledges that its approval for this Program may be withdrawn for violations of the regulations or failure to comply with the agreements and representations contained herein and as may be required by the SCPEAC.

c. I do hereby certify that this program satisfies the current continuing education needs of this community.

i. Name: Alison Simmons

ii . Title: Planning and Zoning Director

iii. Signature: _____

iv. Date: 2.3.20

Application and all Materials may be submitted in one of the following means:

1. Electronic submission to each ofthe committee members listed below via email; or
2. Hardcopy via U. S. Mail, 1 copy each to each committee member; or
3. Electronic submission of the application via email to all committee members, and submit hardcopy supporting materials via U.S. Mail to each member, if materials not available electronically.
4. Please cc all applications to the Chairman's assistant, Krista Wiedmeyer at kristaw@hiltonheadislandsc.gov

To access committee members email and postal addresses visit the link below:
https://www.scstatehouse.gov/SCPEAC/members.htm

CONTINUING EDUCATION LECTURE SERIES

SAVE THE DATE

Conducting Effective Public Meetings in a Socially and Politically Dynamic Climate

Hosted by: John O Williams, J.D., Berkeley County Attorney

TUESDAY, FEBRUARY 25, FROM 4:00 – 5:30 PM

Berkeley County Assembly Room Located at 1003 Hwy 52, Moncks Corner, SC

John O. Williams II was born and raised in Berkeley County. He graduated from Clemson University with a degree in Civil Engineering and the University of South Carolina with a Juris Doctor degree. After law school, he clerked for the Honorable R. Markley Dennis, Jr. of the South Carolina Circuit Court. He later served as an Assistant Solicitor with the Ninth Circuit Solicitor's Office and then spent several years in private practice. John joined the County as the County Attorney in 2015.

Please RSVP to Amy Ravenell, Berkeley County Planning and Zoning Department, at 843.719.4095 or amy.ravenell@berkeleycountysc.gov

Continuing Education

Conducting Effective Public Meetings in a Socially and Politically Dynamic Climate

Hosted by: John O Williams, J.D., Berkeley County Attorney

TUESDAY, FEBRUARY 25, FROM 4:00 – 5:30 PM

Berkeley County Assembly Room Located at 1003 Hwy 52, Moncks Corner, SC

John O. Williams II was born and raised in Berkeley County. He graduated from Clemson University with a degree in Civil Engineering and the University of South Carolina with a Juris Doctor degree. After law school, he clerked for the Honorable R. Markley Dennis, Jr. of the South Carolina Circuit Court. He later served as an Assistant Solicitor with the Ninth Circuit Solicitor's Office and then spent several years in private practice. John joined the County as the County Attorney in 2015.

BERKELEY COUNTY SC

RICH HISTORY. BRIGHT FUTURE.
One Berkeley

CONDUCTING EFFECTIVE PUBLIC MEETINGS

In a Socially and Politically Dynamic Climate

Continuing Education Training for Planning and Zoning Officials
February 25, 2020
4:00 - 5:30 PM; 1.5 Credits

Course Outline:

I. *Crash Course in Parliamentary Procedures & Rules of Conduct (45 minutes)*
II. *Defensible Decision-Making (30 minutes)*
   a. *Distilling Public Input*
   b. *Objective vs Subjective Findings*
   c. *Conditions? Who has the authority to impose them?*
   d. *Maintaining Proper Record*
III. *Appeals Process Summary and Alternative Dispute Resolution (15 minutes)*
   a. *Our Very Own Case Study*

Parliamentary Procedure

Why Use Parliamentary Procedure?

- Promote harmony and efficiency
- Ensure equal rights and privileges for all members
- Ensure the majority has the right to decide, but that the minority has the right to be heard


MODERN PARLIAMENTARY PROCEDURE
THE "LIKES" HAVE IT.
E-mail: ThavesOne@aol.com
©2016 Thaves. Dist. by Universal/Uclick
7-16
THAVES

Beginning the Meeting

- Quorum
- Chairperson
- Agenda
- Call to Order
- Roll Call
- Minutes

Quorum (BZA)

Section 3. Quorum.

A simple majority of the members of the Board shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.

Quorum (PC)

SECTION 5 – QUORUM

At any meeting of the Planning Commission a quorum shall consist of five (5) members that when duly assembled is legally competent to transact business.

"Does it still qualify as a quorum if half the participants slept through the meeting?"

Chairperson (BZA)

Section 3. Chairperson.

The chairperson shall be a non-voting member of the Board (except to break a tie) and shall:

a. Call meetings of the Board;
b. Preside at meetings and hearings; and swear in witnesses;
c. Act as spokesperson for the Board;
d. Sign documents for the Board;
e. Have orders of the Board served on parties; and
f. Perform other duties approved by the Board.

Officers (PC)

SECTION 10 – OFFICERS

The officers of the Planning Commission shall consist of a Chairperson and Vice-Chairperson elected by the Commission for one (1) year. The Chairman shall appoint a three-person Nominating Committee for this purpose at the November meeting, the Nominating Committee to report nominations to the full Commission for vote at the January meeting or at the next available meeting in which all members of the Planning Commission have been appointed by County Council for the current term. The elected Chairperson and Vice-Chairperson will assume their duties at the February meeting or the next available meeting at which all seats of the Planning Commission have been filled by County Council for the current term. Until the elected officers assume their respective offices, the outgoing officers will retain all official duties and responsibilities.

A Planning Department staff member shall serve in the capacity of secretary for the Commission.

DUTIES OF OFFICERS (PC)

SECTION 11 – DUTIES OF OFFICERS

A. Chairperson

1. Preside at all meetings of the Commission.
2. Call special and emergency meetings of the Commission in accordance with these rules and regulations.
3. Sign documents of the Commission.
4. Ensure that all actions of the Commission are properly taken.
5. Act as spokesperson for the Commission at large.

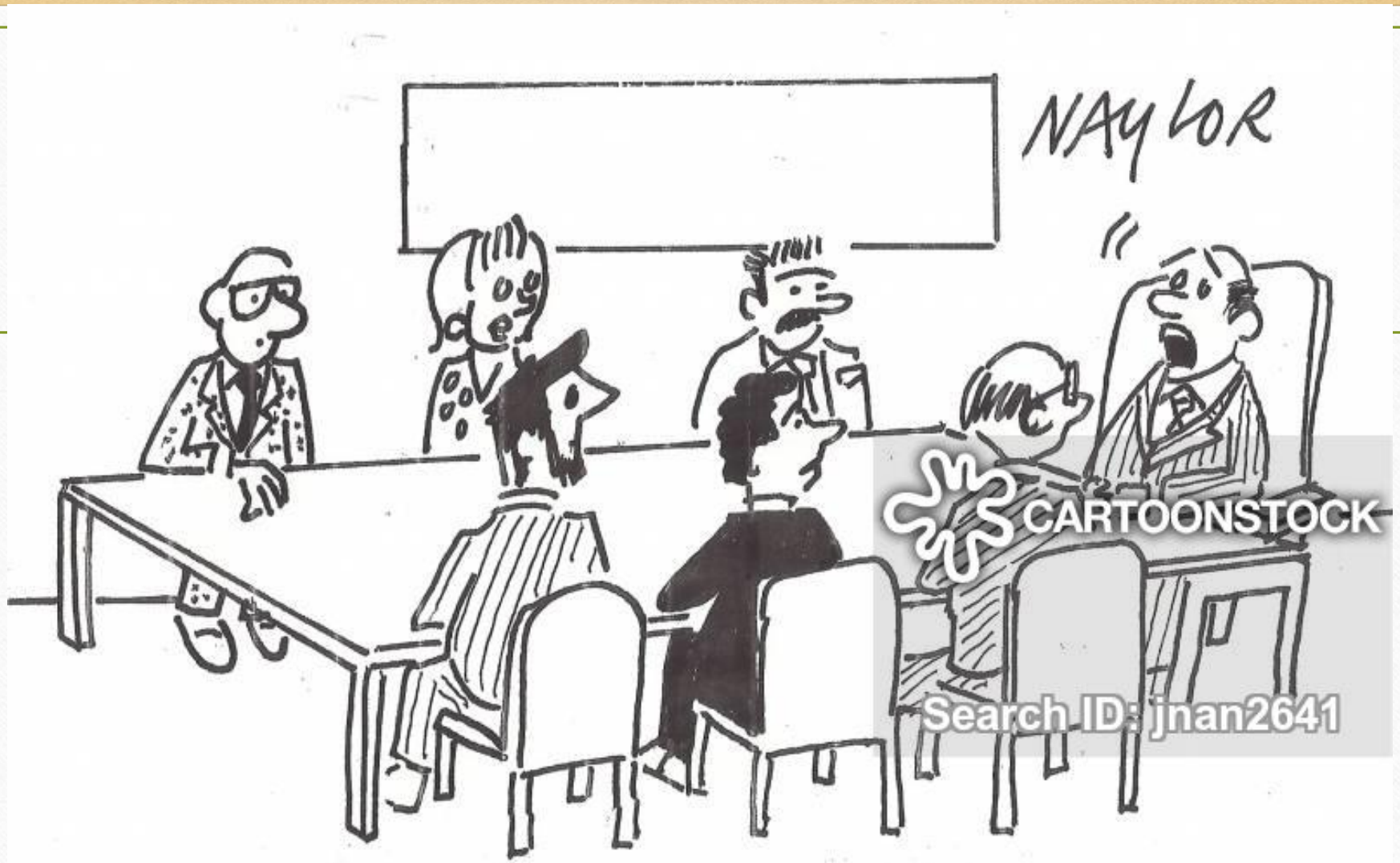
DUTIES OF OFFICERS (PC)

SECTION 11 – DUTIES OF OFFICERS

B. Vice-Chairperson

During the absence, disability or disqualification of the Chairperson, the Vice-Chairperson shall exercise or perform all the duties and be subject to all the responsibilities of the Chairperson.

For training purposes the Vice-Chairperson shall be required to chair (1) meeting per year.



"Surely somebody must know why we're here?"

Agenda (BZA)

Section 2. Agenda.

A written agenda shall be furnished by the secretary to each member of the Board and the news media, and shall be posted at least five (5) days prior to each regular meeting, and at least twenty-four (24) hours prior to a special meeting. Items may be removed from the agenda or postponed at a meeting by majority vote of the members present. Variance requests and special exception requests must be submitted to the Planning & Zoning Department at least twenty-five (25) days prior to the next regularly scheduled Board meeting.

Agenda (PC)

SECTION 8 – AGENDAS and MINUTES

A copy of the Agenda and draft Minutes of each Planning Commission meeting shall be mailed via U S POSTAL SERVICE to each Commission member and shall be received by the Wednesday preceding the fourth Tuesday of the month. Copies of the Agenda and Minutes will be available as a public record at the Berkeley County Planning Commission Office. A nominal charge will be imposed when responding to requests for copies.

Amending the Agenda

- Prior to the Meeting
- During the Meeting

Procedure for Voting

- Request to be Recognized by the Chairperson
- Chair Recognizes the Mover
- Mover States Motion
- Chair Requests a Second
- Another Member Seconds the Motion
- Chair Repeats the Motion Opens the Floor for Discussion
- End Discussion and Call for the Question
- Chair Takes the Vote
- Chair Announces the Results of the Vote
- EXAMPLE: limit the agenda to one page

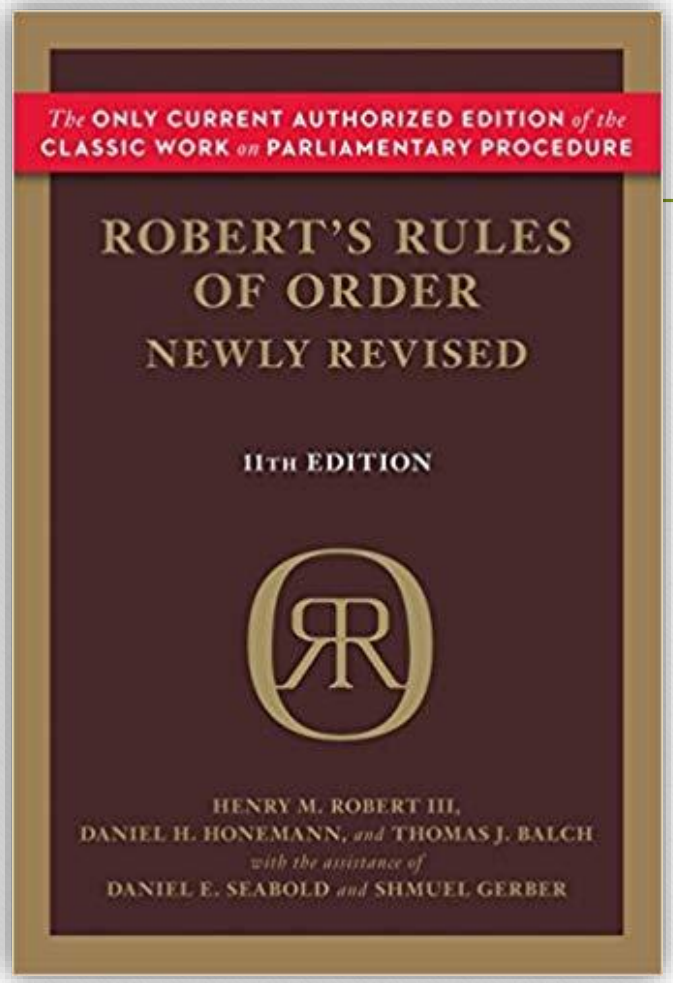
Making a Motion

- Main Motion
  - Brings business before the assembly
  - Example: Motion to Approve or Deny an Agenda Item
- Subsidiary Motions
  - Affects the main motion before voting on the main motion
  - Example: Motion Lay on Table, Postpone, or to Amend the Main Motion (App requests 10', amend to 5')
- Privileged Motions
  - Brings up urgent matters that cannot wait
  - Example: Recess, Adjourn, Point of Order
- Order of Priority

Table, Postpone, or Pull?

- Motion to Lay on the Table
  - This motion is used when BZA prefers to lay the main motion aside without setting a time for resuming consideration
  - The main motion can be taken up again whenever a majority of BZA so decides
    - *FOIA and Deadlines
- Motion to Postpone
  - This motion is used when BZA prefers to consider the main motion at a later time in the meeting or at another meeting
  - The date and time for resuming debate on the item is also stated
- Motion to Amend (Remove an Item from the Agenda)
  - This should only be made in the form of a Motion to Amend the Agenda at the outset of a meeting.

Additional Resources



Robert's Rules Cheat Sheet

To:	Say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Decided by:
Adjourn	"I move to adjourn."	No	Yes	No	No	Majority vote
Recess	"I move to recess for/until..."	No	Yes	No	Yes	Majority vote
Complain about hearing, comfort, etc.	"Point of privilege..."	Yes	No	No	No	Chair
End debate and vote on question	"I move the previous question."	No	Yes	No	No	Majority vote
Suspend further consideration of something	"I move to table this matter."	No	Yes	No	No	2/3 vote
Postpone deciding the question	"I move to postpone this matter until...	No	Yes	Yes	Yes	Majority vote
Amend a motion	"I move to amend this motion by..."	No	Yes	Yes	Yes	Majority vote
Introduce business (a **main motion**)	"I move that..."	No	Yes	Yes	Yes	Majority vote

The motions and points listed above are in order of preference. When a motion or point of inquiry is pending, only those listed *above* the pending point may be raised.

To:	Say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Decided by:
Redress any violation of the body's Rules	"Point of order..."	Yes	No	No	No	Chair
Request information	"Point of inquiry..."	Yes	No	No	No	N/A
Verify a recent voice vote by actual count (before next motion only)	"I call for division."	Yes	No	No	No	Majority vote
Prevent body from considering a matter	"I object to considering this question."	Yes	No	No	No	2/3
Consider a suspended matter	"I move to take from the table..."	Yes	Yes	No	No	Majority
Reconsider a previous motion	"I move to reconsider..."	Yes	Yes	No	No	2/3
Consider something out of schedule	"I move to suspend the rules to consider..."	No	Yes	No	No	2/3
Vote on the Chair's decision	"I appeal the Chair's decision."	Yes	Yes	Yes	No	Majority

The motions and points above have no precedence. Any of them may be raised in response to any motion or question, with the exception of the **three items in gray** (motion to adjourn, motion to recess, and point of privilege

Defensible Decision-Making


I'VE GOTTEN TO THE POINT WHERE I DON'T TRUST MY OWN DECISION-MAKING ANYMORE.
SO FROM NOW ON, I MAKE ALL MY DECISIONS BY A ROLL OF THE DICE.
11/25
AHA... FOUR!!
IT IS DECIDED THAT I SHALL HAVE 4 OREO COOKIES.

BZA Powers

A. To hear and decide appeals where it is alleged there is error in any determination by an administrative officer

B. 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:**

BZA Powers

- There are extraordinary and exceptional conditions pertaining to the particular piece of property; and
- These conditions do not generally apply to other property in the vicinity; and
- 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
- The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.

BZA Powers


OOO, I'M SORRY. WHAT WE WERE LOOKING FOR WAS
A HARDSHIP
memegenerator.net

BZA Powers

- **The board may not grant a variance to:**
  - Allow the establishment of a use not otherwise permitted
  - Extend a nonconforming use of land
  - Change the zoning district boundaries shown on the official map
  - Allow for use of land, a building, or a structure that is prohibited in a given district
  - The fact that property may be utilized more profitably, should a variance be granted

- * 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.

Planning Commission Powers

(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

Planning Commission Powers

(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

Distilling public input

NIMBY cows.

Distilling Public Input

- How do you obtain valuable and pluralistic feedback?
  - "Is there anyone in the audience who would like to speak, **either for or against**, this item?"
  - If you ask for those in **opposition** to speak, you must ask for those in **support**.
- Cannot rely simply on a "show of hands"
- When to seek input from representatives of those in support and those in opposition
- When to ask for a "show of hands" and properly accounting for attendance

Distilling Public Input

- Separate Factual Information from Emotional Responses
- Public Comment Example:
- "His proposal to rezone his property is a terrible idea. I will never be able to turn out of my driveway. Traffic is already backed up to outer Mongolia. Murder and burglary will run rampant and the world may come to an end."

Distilling Public Input

- What do you do when you hear a member of the public say something like this?

- FIRST
- BZA: Is there an unnecessary hardship with extraordinary and exceptional conditions, which do not generally apply to other properties in the vicinity and, because of these conditions, application of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property?
- PC: What does the comprehensive plan say?

Distilling Public Input

Ask questions only when necessary.

- **Can you please provide more detail regarding the issue of [blank]?**
- *"I agree. Bad stuff is going to happen out there if we approve this. Further, it looks like there are 10 people against it and only 2 for it. I vote no."*

NOT GOOD

- *"Based on concerns for traffic and quality of life, I move to deny the request."*

GOOD

Objective vs. Subjective Findings

- Objective: *adjective*
  - Not influenced by personal feelings or opinions in considering and representing facts.
- Subjective: *adjective*
  - Based on or influenced by personal feelings, tastes, or opinions.

-Oxford Dictionary

"Look, I'm not disputing that I'm 'big' and 'a wolf' but 'bad' is such a subjective word!"

Objective Vs. Subjective Findings

Objective Findings

- Quantifiable Impacts
  - Noise
  - Traffic
  - Utilities, Infrastructure, Public Facilities Adequacy, Capacity, and Availability
- Quality of Life
- Character Preservation
- Comprehensive Plan

Subjective Findings

- Discriminatory
- Exclusionary
- Unfounded Impacts

What do you do when you do not have sufficient information to make a decision based on factual, objective information?

Imposing Conditions – Conditional Zoning Prohibited

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

- *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.*

Per the MASC 2014 Comprehensive Planning Guide:

- *Zoning Functions: In the past, some local governments allowed their planning commission to perform zoning functions delegated by law to the board of zoning appeals. The 1994 Act makes it clear the planning commission does not have authority to administer the zoning ordinance. It cannot grant variances, use variances or special exceptions. The Act does not allow the planning commission or the governing body to grant "special uses," "conditional uses" or "uses upon review." Appeals, variances and special exceptions all come within the exclusive jurisdiction of the board of zoning appeals. Conditional uses require no review because they must be described in the text of the zoning ordinance (Page 4).*

Imposing Conditions – Conditional Uses

- **Conditional Uses –** A specific type of use for which supplemental regulations are established in the text of the zoning ordinance and applied in addition to the restrictions of the applicable zoning district.
- **Special Exception Uses** - The board of appeals has the exclusive power to permit uses by special exception subject to standards and conditions in the zoning ordinance. S.C. Code § 6-29-800(A)(3). The zoning ordinance must include the standards and conditions the board must follow when considering such appeals. Standards and conditions for special exceptions could relate to access, noise, screening, lighting, compatibility with adjoining uses and traffic generation. In some zoning ordinances, conditional uses granted after review should be designated as special exceptions.

Imposing Conditions

Who has the authority to impose conditions?

- PC: No flexibility when reviewing legislative items for recommendation
- BZA: *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.*

Imposing Conditions - BZA

- As with considerations of variance requests, the board, in granting or denying a request for a special exception, must apply the standards and conditions imposed by the zoning ordinance. Generally, reviewing courts will not disturb the findings of the BZA unless such findings or decision resulted from action of the board which is arbitrary, an abuse of discretion, illegal or in excess of lawfully delegated authority. Wyndham v. City of North Augusta, 401 S.C. 144, 735 S.E. 2d 659 (2012); Bannum v. City of Columbia, 335 S.C. 202, 516 S.E.2d 439 (1999).
- In Bannum, the court reversed the board's denial of a special exception to a residential halfway house facility for released federal prisoners. The court determined that the board's decision arbitrarily discounted or disregarded all evidence offered by the applicant to show satisfaction of the ordinance requirements. The court concluded that the board's decision was based on the fears of neighboring residents rather than on the requirements for a special exception set out in the ordinance.

Imposing Conditions - BZA

11.2.2. *Conditions*. The board of zoning appeals may impose additional conditions on the approval of a special exception. All conditions and restrictions shall be written and given to the applicant within five business days of approval. The applicant shall submit a written statement agreeing to the approval and all conditions within ten business days of receipt of written conditions. If no agreement is offered, the application shall be considered denied. The board of zoning appeals may impose additional conditions to accomplish any of the following:

A. Ensure the special exception is developed exactly as presented in drawings, exhibits, and assertions made at the hearing.

B. Limit the length of time a use may exist, or provide for periodic review of the appropriateness of the use, or provide for the elimination of the use.

C. Impose conditions that ensure the general purposes and goals of the comprehensive plan and this ordinance are met.

D. Prevent or minimize adverse effects from the proposed use and development on other properties in the neighborhood and on the public health, safety, and welfare.

Imposing Conditions – PC Waivers

Sec. 59-8. - Variances. (PC Waivers)

Whenever, in the opinion of the administrative officer, the strict application of the requirements contained in this chapter would result in extreme practical difficulties or undue misuse of property, the planning commission may modify such requirements as necessary so that the subdivider is allowed to develop his or her property in a reasonable manner, providing that public interests are protected and the general intent and spirit of this chapter are preserved. The planning commission shall grant such variance or modification only upon a determination that:

1. The variance will not be detrimental to the public health, safety, and general welfare of the county;

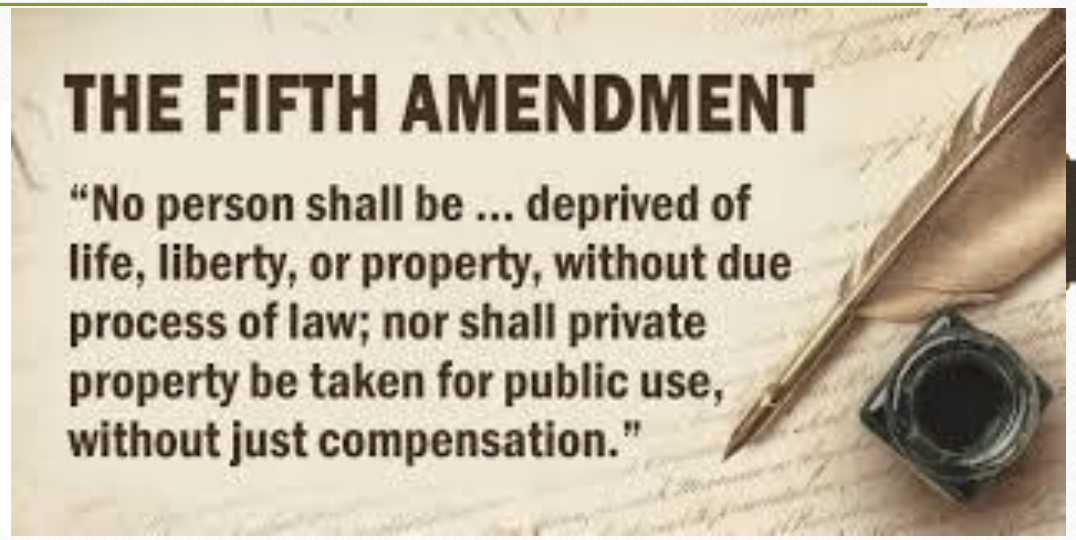
2. The variance will not adversely affect the reasonable development of adjacent property;

3. The variance is justified because of topography or other special conditions unique to the property involved, and the variance is not requested due to mere inconvenience or financial disadvantage; and

4. The variance is consistent with the objectives of this chapter and will not have the effect of nullifying the intent or purpose of this chapter or any other pertinent county or state regulations.

Imposing Conditions – In General

- Takings Law -
  - Nollan/Dolan "rational nexus and rough proportionality"



Record

- Why is it important to have a clean record?
  - Decision (and its basis) is clear
  - Vote count is clear
  - Defend the decision

Appeals Process


YOU'VE EXHAUSTED THE APPEALS PROCESS.
COVERLY
7-3 SPEEDBUMP.COM
DIST. BY CREATORS

Important date restrictions (BZA)

Section 2. Time for Appeal.

An appeal from an administrative decision must be filed within thirty (30) days after actual notice of the decision by delivery of the approved appeal form to the secretary of the Board.

Section 4. Withdrawal of Appeal.

Any appeal or application may be withdrawn by written notice delivered to the secretary prior to action by the Board. An appeal from an administrative decision which is withdrawn may not be refiled after the thirty (30) day time for appeal has expired. Withdrawn applications for variances and special exceptions may be refiled after twelve (12) months and shall be placed on the calendar according to the date refiled.

Section 5. Continuances.

The hearing of an appeal or application may be continued one time by the Board for good cause shown.

Section 5. Disposition.

The Board may deliberate and make a final disposition of a matter by simple majority vote of members present at the hearing. The vote may be taken at the same or a subsequent meeting. A member may not vote on a matter which the member has not heard. Deliberations shall be conducted and voting shall be in public.

Appeals - PC

Sec. 59-9. - Appeals.

(a) The administrative officer's action to approve or disapprove a land development plan or a subdivision plat may be appealed to the planning commission by any party in interest. The appeal shall be in writing and shall contain whatever additional information the aggrieved party believes is pertinent. If the aggrieved party believes that one or more provisions of this chapter have been violated, then it should be so stated. The planning commission shall act on the appeal within 60 days of receiving the appeal.

(b) An appeal from a decision of the planning commission may be taken to circuit court within 30 days after actual notice of the decision.

Important dates (PC)

(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.

Important dates (PC)

(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(C)(1).

(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.

Recent Case

DONMAR Sand Mines, LLC.

vs.

Berkeley County and Berkeley County Board of Zoning Appeals (BZA)

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

DONMAR SAND MINES, LLC,

Appellant,

vs.

BERKELEY COUNTY and BERKELEY COUNTY BOARD OF ZONING APPEALS,

Respondent.

Case No. 2018-CP-08-485

PETITION FOR APPEAL

FILED 2018 MAR 16 PM 1:10 MARY P. BROWN CLERK OF COURT BERKELEY COUNTY, SC

DONMAR Sand Mines, LLC (hereinafter "Appellant") hereby appeals the decision of the Berkeley County Board of Zoning Appeals mailed to the Appellant on February 14, 2018. The written decision is attached hereto as **Exhibit A**. This Petition for Appeal is filed pursuant to S.C. Code Ann. Section 6-29-820(A), as amended. The grounds of this appeal are: (1) the decision was without a factual basis or proper finding of facts relating to the criteria for a Special Exception for mine sites that exceed 5 acres in size and/or 20 feet in depth; (2) the decision is arbitrary and capricious because it was made without proper factual or legal findings; (3) there is no indication that the Board consulted with or relied upon recommendations or findings of Berkeley County planning staff in rendering its decision; and (4) the decision lacked findings of fact as required by the law of South Carolina and simply restates the ordinance criteria without providing any factual basis for each determination. In the absence of specific factual filings, Appellant cannot be more specific as to other potential grounds for exception and reserves the right to supplement these grounds.

WHEREFORE, Appellant, prays that the Court reverse and void the Order of the BZA and award costs as authorized by S.C. Code Ann. § 6-29-840(A).

Questions?

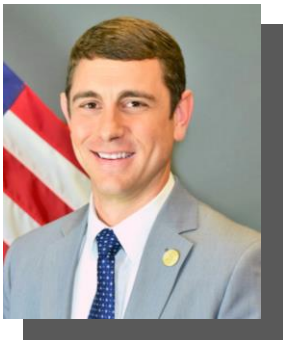
BERKELEY COUNTY PLANNING AND ZONING CONTINUING EDUCATION SERIES

Berkeley County Assembly Room Located at 1003 Hwy 52, Moncks Corner, SC

February 25, 2020 @ 4:00 – 5:30 PM

CONDUCTING EFFECTIVE PUBLIC MEETINGS IN A SOCIALLY AND POLITICALLY DYNAMIC CLIMATE

Hosted by John O Williams, J.D., Berkeley County Attorney



John O. Williams II was born and raised in Berkeley County. He graduated from Clemson University with a degree in Civil Engineering and the University of South Carolina with a Juris Doctor degree. After law school, he clerked for the Honorable R. Markley Dennis, Jr. of the South Carolina Circuit Court. He later served as an Assistant Solicitor with the Ninth Circuit Solicitor's Office and then spent several years in private practice. John joined the County as the County Attorney in 2015.

Sponsor:	**BERKELEY COUNTY GOVERNMENT**
Activity Title:	*Conducting Effective Public Meetings in a Socially and Politically Dynamic Climate*
Date of Attendance:	2.25.2020; 4:00 – 5:30 pm
Location:	Berkeley County Administration Building; 1003 Highway 52, Moncks Corner, SC, 29461
Total CE credit hours	1.5 (based on a 60-minute hour)

TO BE COMPLETED BY ATTENDING OFFICIAL OR EMPLOYEE

By signing below, I certify that I attended the activity described above and am entitled to claim: **1.5 CE Credit Hours**; I am also certifying that I attended the session with faculty and/or a professional planner as a discussant in person.

PRINTED NAME OF ATTENDEE:	
SIGNATURE OF ATTENDEE:	Date:
How valuable did you find this session?	Not at all ☆ Slightly ☆ Moderately ☆ Very ☆ Extremely ☆ Comments:
Affiliation, please check:	❒ BZA ❒Planning Commission ❒Council ❒ Other: _____ ❒ARB/DRB or Similar Board ❒ Public Sector Employee; Position: _____
Attested By: Alison Simmons, AICP, Planning and Zoning Director	Signature_____; Date:_____