



**TO: All Board of Zoning Appeals Applicants**

Attached is the BZA application, along with additional information concerning The Board and hardship criteria.

Please note that all requested information on the form specific to your request must be **completed in full. Incomplete applications may not be considered by The Board.**

Form 1 – Complete for all requests. If the owner does not sign as the applicant; the owner must sign under Designation of Agent.

Form 2 – if requesting an Appeal from Action of the Zoning Administrator

Form 3 – if requesting Variance

Form 4 – if requesting Special Exception

A fee of **\$220.00** is required at the time of submission.

The submission and meeting dates are listed below:

**2<sup>nd</sup> Thursday of Month**

**6:00 p.m. Board of Zoning Appeals**

<b>Submittal Date</b>	<b>Meeting Date</b>
December 11, 2015	January 14, 2016
January 15, 2016	February 11, 2016
February 12, 2016	March 10, 2016
March 11, 2016	April 14, 2016
April 15, 2016	May 12, 2016
May 13, 2016	June 9, 2016
June 10, 2016	July 14, 2016
July 15, 2016	August 11, 2016
August 12, 2016	September 8, 2016
September 9, 2016	October 13, 2016
October 14, 2016	November 10, 2016
November 14, 2016	December 8, 2016

*Please do **not** submit requests for a meeting date that you will be unavailable, unless you have a representative attend for you. Any requests for deferment would need to be made before The Board on the scheduled meeting date.*

**Town of Sullivan's Island  
NOTICE OF APPEAL-FORM 1  
BOARD OF ZONING APPEALS**

Date Filed: \_\_\_\_\_ Permit Application No. \_\_\_\_\_ Appeal No. \_\_\_\_\_

This form must be completed on a hearing on appeal from action of a zoning official, application for a variance, or application for special exception. Entries must be printed or typewritten. If the application is on behalf of the property owner(s), all owners must sign. If the applicant is not an owner, the owner(s) must sign the Designation of Agent.

An accurate, legible plot plan showing property dimensions and locations of structures and improvements must be attached to an application for variance or special exception.

**THE APPLICANT HEREBY APPEALS [indicate one]:**

\_\_\_\_\_ From action of a zoning official as stated on attached Form 2

\_\_\_\_\_ For a variance as stated on attached Form 3

\_\_\_\_\_ For a special exception as stated on attached Form 4

**APPLICANT** [print] \_\_\_\_\_

**MAILING ADDRESS:** \_\_\_\_\_

Telephone \_\_\_\_\_ [work] \_\_\_\_\_ [home] \_\_\_\_\_

Interest: \_\_\_\_\_ Owner(s): \_\_\_\_\_ Adjacent Owner(s) Other \_\_\_\_\_

[Use reverse side if more space is needed]

**PROPERTY ADDRESS:** \_\_\_\_\_

Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision \_\_\_\_\_

Tax Map No. \_\_\_\_\_ Plat Book \_\_\_\_\_ Page \_\_\_\_\_

Lot Dimesions: \_\_\_\_\_ Area: \_\_\_\_\_

**DESIGNATION OF AGENT** [complete only if owner is not applicant]: I (we) hereby appoint the person named as Applicant as my (our) agent to represent me (us) in this application.

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

\_\_\_\_\_  
Owner Signature(s)

I (we) certify that the information in this application and the attached Form 2,3, or 4 is correct.

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

\_\_\_\_\_  
Applicant Signature(s)

**TOWN OF SULLIVAN'S ISLAND**  
**Appeal from Action of Zoning Official – Form 2**  
**Board of Zoning Appeals**

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Date Filed \_\_\_\_\_ Permit Application No. \_\_\_\_\_ Appeal No. \_\_\_\_\_

1. Applicant hereby appeals to the Board of Zoning Appeals from the action of the Zoning Official affecting the property described in the Notice of Appeal [Form 1] on the grounds that:

\_\_\_ granting \_\_\_ denial of an application for a permit to \_\_\_\_\_  
was erroneous and contrary to provisions of the zoning ordinance in Section; or other action or  
decision of the Zoning Official was erroneous as follows:

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2. Applicant is aggrieved by the action or decision in that:

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3. Applicant contends that the correct interpretation of the zoning ordinance as applied to the property is :

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4. Applicant requests the following relief:

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

\_\_\_\_\_  
Applicant's Signature

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**Town of Sullivan's Island  
Variance Application – Form 3  
Board of Zoning Appeals**

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Date Filed: \_\_\_\_\_ Permit No.: \_\_\_\_\_ Appeal No.: \_\_\_\_\_

1. Applicant hereby appeals to the Board of Zoning Appeals for a variance from the strict application to the property described in the Notice of Appeal [Form 1] of the following provisions of the Zoning Ordinance:

\_\_\_\_\_ so that a zoning permit may be issued to allow use of the property in a manner shown on the attached plot plan, described as follows: \_\_\_\_\_

\_\_\_\_\_ for which a permit has been denied by a zoning official on the grounds that the proposal would be in violation of the cited section(s) of the Zoning Ordinance.

2. The application of the ordinance will result in unnecessary hardship, and the standards for a variance set by State law and the ordinance are met by the following facts.

a. There are extraordinary and exceptional conditions pertaining to the particular piece of property as follows: \_\_\_\_\_  
\_\_\_\_\_

b. These conditions do not generally apply to other property in the vicinity as shown by: \_\_\_\_\_  
\_\_\_\_\_

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 as follows: \_\_\_\_\_  
\_\_\_\_\_

d. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The following documents are submitted in support of the application: \_\_\_\_\_  
\_\_\_\_\_ A plot plan must be submitted].

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

\_\_\_\_\_  
Applicant's Signature

**Town of Sullivan's Island  
Special Exception Application - Form 4  
Board of Zoning Appeals**

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Date Filed: \_\_\_\_\_ Permit No.: \_\_\_\_\_ Appeal No.: \_\_\_\_\_

1. Applicant hereby appeals to the Board of Zoning Appeals for a special exception for use of the property described in the Notice of Appeals [Form 1] as: \_\_\_\_\_

\_\_\_\_\_ which is permitted special exception under the district regulation in Section \_\_\_\_\_ of the Zoning Ordinance.

2. Applicant will meet the standards in Section \_\_\_\_\_ of the Zoning Ordinance which are applicable to the proposed special exception in the following manner: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Applicant suggests that the following conditions be imposed to meet the standards in the Zoning Ordinance: \_\_\_\_\_

\_\_\_\_\_

4. The following documents are submitted in support of this application: \_\_\_\_\_

\_\_\_\_\_

**[A plot plan must be submitted]**

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

\_\_\_\_\_  
Applicant's Signature

## Unnecessary Hardship

The following factors do not solely substantiate the justification of unnecessary hardships in a variance application.

- Personal circumstances of the property owner or his/her family
- Aesthetic considerations
- Self-created hardship
- Enhanced profitability
- Harmlessness of variance
- Approval of neighbors
- Financial hardship
- Change in zoning ordinance prior to permit issuance
- Similar conditions exist on other property
- Personal preference or convenience of the property owner

Please note that this list is illustrative and is not intended to be inclusive of all non-hardship factors.

## **Powers of the Board of Zoning Appeals**

The Comprehensive Planning Act lists the powers of the board of appeals. S.C. Code § 6-29-800. The powers and required findings of the board are explicit in many instances. It may be useful to include these sections of the law in the rules of procedure. The powers of the board are limited to three specific subject matter areas: determining appeals from administrative decisions of the zoning administrator, granting or denying applications for variances, and granting or denying applications for special exceptions.

A 2003 amendment to the Act listed as a fourth "power" for the BZA, the power to remand a matter to the zoning administrator if the record is insufficient for the board's review. S. C. Code § 6-29-800 (A)(4). This does not broaden the board's areas of subject matter authority but does allow the board, either upon the motion of a party or on its own motion, to obtain additional information to assist the board in its determinations. The new provisions on remand specify that the board must schedule a rehearing of the remanded matter for a time certain without further public notice within 60 days unless otherwise agreed to by the parties; however, those persons who expressed an interest in being informed of the rehearing date must be mailed a notice of the rehearing in advance.

Sample forms for appeals and applications to the board are provided in Appendix F.

### **Administrative Review**

The board has the exclusive power to hear and decide appeals where it is alleged the zoning administrator, in the enforcement of the zoning ordinance, erred in an order, requirement, decision or determination. In such cases, the board may reverse or affirm, wholly or in part, or may modify the order, requirements, decision or determination of the zoning administrator. The board has all the powers of the zoning administrator in such cases and may issue or direct the issuance of a permit. S. C. Code § 6-29-800 (A)(1) and (E).

When deciding an administrative appeal from a decision of the zoning administrator, the board is not bound by the conclusion or reasoning of the zoning administrator and may consider and apply the appropriate provisions of the zoning ordinance as dictated by the facts before it. *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 602 S.E.2d 76 (Ct.

App. 2004)(BZA not restricted on appeal to denial of billboard permit on sole basis offered by zoning administrator).

### **Variances**

The board has the power to hear and decide appeals (requests) for variances when strict application of the zoning ordinance would result in unnecessary hardship. S.C. Code § 6-29-800(A)(2).

A variance allows the board to modify an otherwise legitimate zoning restriction when, due to unusual conditions, the restriction may be more burdensome than was intended. The variance must not impair the public purpose. To obtain a variance 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. *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953); *Colbert v. Krawcheck*, 299 S.C. 299, 384 S.E.2d 710 (1989); *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999), certiorari denied, 528 U.S. 1020, 120 S.Ct. 528, 145 L.Ed 2d 409 (1999). An owner is not entitled to relief from a self-created or self-inflicted hardship. A claim of unnecessary hardship cannot be based on conditions created by the owner nor can one who purchases property after the enactment of a zoning regulation complain that the nonconforming use would work a hardship upon him. *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965); *Georgetown County Building Official v. Lewis*, 290 S.C. 513, 351 S.E.2d 584 (Ct. App. 1986); *Restaurant Row Associates v. Horry County*, *supra*.

When deciding whether to grant or deny a variance, the board has some discretion; however, the board is not free to make whatever determination appeals to its sense of justice. The board must apply the standards prescribed by the zoning ordinance and the 1994 Act. Courts will not uphold a decision of the board to grant or deny a variance based on errors of law, fraud or lack of supporting evidence, or a board action that is arbitrary, unreasonable, discriminatory or an abuse of discretion. *Hodge v. Pollock*, *supra*.

### **Standards for Granting Variances**

The board may grant a variance in an individual case of unnecessary hardship if the board makes and explains in writing all of the following findings. S.C. Code § 6-29-800 (A)(2).

1. **Extraordinary conditions.** There are extraordinary and exceptional conditions pertaining to the particular piece of property. Extraordinary conditions could exist due to size, shape, topography, drainage, street widening, beachfront setback lines or other conditions that make it difficult or impossible to make an economically feasible use of the property.
2. **Other property.** These conditions do not generally apply to other property in the vicinity. See *Bennett v. Sullivan's Island Board of Adjustment*, 313 S.C. 455, 438 S.E.2d 273 (Ct. App. 1993).

3. **Utilization.** 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.
4. **Detriment.** 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.

Other factors applicable to a variance also are prescribed by S.C. Code § 6-29-800(A)(2)(d).

1. **Profitability.** The fact that the property may be used more profitably, if a variance is granted, may not be considered as grounds for a variance. See *Groves v. Charleston*, 226 S.C. 459, 85 S.E.2d 708 (1955).
2. **Conditions.** In granting a variance, the board may attach conditions to it. These conditions may affect 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. **Use variance.** Generally, the board may not grant a variance that would allow the establishment of a use not otherwise permitted in a zoning district, physically extend a nonconforming use of land or change the zoning district boundaries shown on the official zoning map. However, the 1994 Act does allow use variances to be authorized by a local zoning ordinance. S.C. Code § 6-29-800 (A)(2)(d)(i). Nevertheless, granting use variances is not a good zoning practice and is not recommended. A use variance may be subject to attack as an unlawful delegation of legislative authority. Zoning is a legislative power in this state. Uses permitted in a zoning district are listed in zoning ordinance district regulations. In effect, granting a use variance amends the ordinance administratively for the benefit of one landowner.

The zoning ordinance also may provide other requirements for a variance. S.C. Code § 6-29-800(A)(2)(d)(i).

### **Special Exceptions**

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.

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. *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.

### **Appeals to Board**

Appeals to the board and appeals from decisions of the board must follow the prescribed procedures. Appeals from administrative actions and decisions of the zoning administrator are taken to the board of zoning appeals, then to circuit court and finally to the state appellate courts. An appeal from an administrative decision of the zoning administrator is never taken to the governing body. Except for appeals of board decisions on use variances (see S.C. Code § 6-29-800 (A)(2)(d)(i) which provides that the local governing body may overrule a BZA use variance decision), appeals from decisions of the BZA on variances or special exceptions also are taken to circuit court and finally to the state appellate courts. A checklist of times and steps in an appeal and sample forms are provided in Appendix F.

### **Time Limits for Appeals**

- 1. Appeal to Board.** The time for an appeal to the board of zoning appeals from an administrative action or decision of the zoning administrator may be set by ordinance or rules of the board. If no time is set, S.C. Code § 6-29-800(B) provides that an appeal must be filed within 30 days from the date the appealing party received actual notice of the action appealed. The "actual notice" provision can cause confusion. It is recommended that the zoning ordinance or rules of the board start the time for appeal from the date the decision becomes a matter of public record by denial or issuance of a permit, or the filing of a written decision in the office of the zoning administrator. See sample rules in Appendix D.
- 2. Appeal to Circuit Court.** An appeal petition to circuit court from a decision of the board must be filed with the clerk of court within 30 days after the decision of the board is mailed. S.C. Code § 6-29-820(A). Failure to file an appeal petition within the prescribed time deprives the court of jurisdiction to hear the matter. *Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 372 S.E.2d 584 (1988), overruled in part on other grounds by *Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E. 2d 392 (1995); *Sadisco of Greenville, Inc. v. Greenville County Board of Zoning Appeals*, 340 S.C. 57, 530 S.E.2d 383 (2000); *Vulcan Materials Company v. Greenville County Board of Zoning Appeals*, 342 S.C. 480, 536 S.E. 2d 892 (Ct. App. 2000).

A 2003 amendment to the Comprehensive Planning Act allows an alternative appeal procedure for a property owner whose land is the subject of a BZA decision. Such a property owner can file either an appeal petition or a notice of appeal accompanied by

a request for pre-litigation mediation (S.C. Code § 6-29-820(B)). Any notice of appeal and request for pre-litigation mediation must be filed within 30 days after the decision of the board is postmarked. This mediation procedure is discussed further below.

- 3. Appeal to State Appellate Courts.** A decision of the circuit court may be appealed to the state appellate courts in the manner provided by the South Carolina Appellate Court Rules. S.C. Code § 6-29-850. Rule 203, South Carolina Appellate Court Rules, requires service of a notice of appeal on all respondents within 30 days after receipt of written notice of entry of the circuit court order or judgment. The notice of appeal is filed with the clerk of the circuit court and with the clerk of the state Court of Appeals unless the order or judgment involves, as the principal issue, a challenge to the constitutionality of a county or municipal ordinance. In that event, the notice of appeal is filed with the clerk of the circuit court and with the clerk of the state Supreme Court. Rule 204 of the Appellate Court Rules allows either appellate court to transfer an appeal filed in the wrong court and allows the state Supreme Court, in its discretion and on motion of any party to the case, to obtain jurisdiction by certification of an appealed case involving an issue of significant public interest or a legal principle of major importance. The state Supreme Court also has the discretion, on motion of any party or on its own motion, to issue a writ of certiorari to review a final decision of the state Court of Appeals. Rule 226, South Carolina Appellate Court Rules.

### **Procedure for Appeals to Board**

- 1. Notice of appeal.** Any person aggrieved by a zoning officer's action (or any officer, department, board or bureau of the local government) may appeal to the board of zoning appeals by filing with the zoning officer and with the board a notice of appeal specifying the grounds for the appeal. The applicant and parties to the permitting process are parties in interest and are entitled to notice of the appeal. Citizens and residents who are not parties to the permitting process are not entitled to notice. *Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 372 S.E.2d 584 (1988), overruled in part on other grounds by *Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E. 2d 392 (1995); *Spanish Wells v. Board of Adjustment of Town of Hilton Head Island*, 295 S.C. 67, 367 S.E.2d 160 (1988). The zoning administrator should provide a form for the appeal notice that requires all of the necessary information for the appeal. A sample form is provided in Appendix F. The officer from whose action the appeal is taken must immediately send the board all papers constituting the record upon which the action was taken. S.C. Code § 6-29-800(B).
- 2. Stay of proceedings.** Filing an appeal to the board stays all legal proceedings to enforce the appealed action unless the officer appealed certifies to the board that a stay would cause imminent peril to life and property. In such cases, the board or a court of record, on notice to the officer and for due cause shown, may grant a restraining order to stay the enforcement of the appealed action. S.C. Code § 6-29-800(B).
- 3. Time and notice of hearing.** The board must set a reasonable time for hearing an appeal or other matters referred to the board. It must give at least 15 days' public

notice of the hearing by publication in a general circulation newspaper and must give due notice to parties in interest. Notice to parties should be given by mail. S. C. Code § 6-29-800(D). See Notice Form in Appendix G. The zoning ordinance may require other forms of notice to persons whose property interests might be affected by the variance or other action. In cases involving variances or special exceptions, conspicuous notice must be posted on or adjacent to the property affected, with at least one such notice visible from each public street that abuts the property. S.C. Code § 6-29-790.

4. **Conduct of hearing.** Any party may appear at the hearing in person, by agent or by attorney. S. C. Code § 6-29-800(D). The board may subpoena witnesses. S.C. Code § 6-29-800(E) and § 6-29-790. The chairperson (or, in his or her absence, the acting chairperson) may administer oaths. S. C. Code § 6-29-790. The board may certify contempt to the circuit court. S.C. Code § 6-29-800(E). Board hearings must comply with the Freedom of Information Act and with the further procedural requirements of S. C. Code § 6-29-790. The rules of the board should set out the hearing procedure. Sample rules are provided in Appendix D. At the start of the hearing, the chairperson should explain the procedure to be followed in presenting and examining witnesses, receiving evidence, the role of attorneys and how the board will make and serve a decision. The concept of procedural due process is “flexible” and does not require a trial-type hearing in every case. *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346 (2008).
5. **Rehearing.** The board may provide in its rules of procedure for a rehearing when there is justification by reason of newly discovered evidence, fraud, surprise, mistake, inadvertence, or change in conditions. *Bennett v. City of Clemson*, 293 S.C. 64, 358 S.E.2d 707 (1987). The board also must schedule a rehearing if it orders a remand to the zoning administrator for the purpose of obtaining a record sufficient for its review. See S.C. Code § 6-29-800(A)(4).
6. **Board decisions.** The board must decide the appeal or matter “within a reasonable time.” Section 6-29-800(D). The board has the same powers as the zoning official and may affirm or reverse (wholly or in part) or modify his actions and may issue or direct issuance of a permit. Absentee ballots are not authorized. A member must be present to vote. *Bennett v. City of Clemson, supra*.

All final decisions of the board must be in writing, delivered to parties in interest by certified mail and permanently filed in the office of the board as public records. **All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board.** S.C. Code § 6-29-800(F). This is a critical requirement because the board’s findings of fact are binding on the circuit court on appeal. A form should be used for the decision which contains a checklist or reminder regarding the necessity for written findings and conclusions. A sample form is provided in Appendix F.

A letter sent by the zoning administrator, findings of fact and conclusions prepared by the zoning administrator, and a virtually indecipherable transcript of board hearings

were held to be insufficient to constitute the final decision of the board in *Massey v. City of Greenville Board of Zoning Adjustments*, 341 S.C. 193, 532 S.E.2d 885 (Ct. App. 2000). In *Massey*, the court ruled: "Written findings of fact and conclusions of law should be promulgated and either signed by the Board or ratified on the record by the Board before written notice of the Board's decision is given to the applicant." 341 S.C. at 201, 532 S.E. 2d at 889. See also *Vulcan Materials Company v. Greenville County Board of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000) in which the appeals court held that a document signed by the chairman and secretary with no evidence of assent by the other board members was not a final decision. However, the transcript was sufficient to be treated as the board's final decision because it contained findings of fact and conclusions of law separately stated.

In *Austin v. Board of Zoning Appeals, Town of Hilton Head Island*, 362 S.C. 29, 606 S.E. 2d 209 (Ct.App. 2004), the appeals court held that a letter from the zoning officer and a hearing transcript which clearly laid out the evidence were sufficient for the court's review given the case's narrow factual issue. The court cautioned local governments, "Our decision today, however, should not be interpreted as an indication that state and municipal agencies need not follow the mandate of section 6-29-800 and other statutory provisions requiring fully formed written decisions . . . While an exhaustive written decision may not be required when a narrow issue may be addressed succinctly by the Board, further detail will surely be required in more complicated cases. Indeed, thorough written findings and determinations eliminate potential confusion and ensure the will of the Board is accurately transmitted to the affected parties and reviewing courts." 362 S.C. at 35, 606 S.E. 2d at 212.

### **Appeal to Circuit Court**

- 1. Petition/ Notice of Appeal and Request for Pre-litigation Mediation.** A person with a "substantial interest" in any decision of the BZA (or an officer or agent of the appropriate governing authority) may appeal a board decision to the circuit court in the county by filing with the clerk of court a written petition setting forth "plainly, fully, and distinctly" why the decision is contrary to law. The appeal petition must be filed within 30 days after the decision of the board is mailed. Although the statutes do not require service of the petition on the board, it is advisable to do so. The clerk of court is required to give immediate notice of the appeal to the board secretary. Filing an appeal does not automatically stay or supersede the board decision, but the circuit judge may grant an order of supersedeas upon such terms and conditions as may seem reasonable and proper. S.C. Code § 6-29-820, § 6-29-830.

A 2003 amendment to the Comprehensive Planning Act allows an alternative appeal procedure for a property owner whose land is the subject of a BZA decision. Pursuant to S.C. Code § 6-29-820(B), such a property owner can file either an appeal petition or a notice of appeal accompanied by a request for pre-litigation mediation. Any notice of appeal and request for pre-litigation mediation must be filed within 30 days after the decision of the board is postmarked.

**2. Pre-litigation Mediation.** Mediation is a negotiation session, facilitated by a neutral third-party mediator, in which the parties can arrive at a voluntary, mutually agreeable resolution of their dispute. S.C. Code § 6-29-825 provides for mediation of a property owner's appeal prior to court hearing. The mediation is mandatory if the property owner properly and timely files a request for mediation under S.C. Code § 6-29-820(B). The mediation is to be conducted in accord with the South Carolina Circuit Court Alternative Dispute Resolution Rules and S.C. Code § 6-29-825. A person who is not the owner of the property at issue may petition to intervene as a party in the mediation. This motion must be granted if the person has a "substantial interest" in the board's decision. S. C. Code § 6-29-825(A).

All property owners or representatives and intervenors must be notified and have the opportunity to attend the mediation. The governmental entity must be represented at the mediation by at least one person. S.C. Code § 6-29-825(B).

The mediation may result either in an impasse (as determined by the mediator) or a mediation settlement agreement (reduced to writing by the mediator within five working days of a successful mediation). The settlement agreement does not become effective until approved by the local legislative governing body (the municipal or county council) in public session and by the circuit court judge. S.C. Code § 6-29-825 (C) and (D).

Any land use or other change agreed to in mediation which affects existing law is effective only as to the subject real property and sets no precedent as to other property. S.C. Code § 6-29-825 (E).

If the mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, the property owner has the option to pursue an appeal of the BZA decision by filing a petition for appeal as provided in S.C. Code § 6-29-820(A). The petition must be filed with the circuit court within 30 days of the report of impasse filed by the mediator or the council's failure to approve. S.C. Code § 6-29-825 (F).

The circuit court judge must approve the mediated settlement if it has a rational basis in accord with the standards of the Comprehensive Planning Act. If the court does not approve the settlement, it must schedule an evidentiary hearing and must issue a written opinion containing findings of law and fact. A party may appeal from that decision to the appellate courts or may pursue a petition for appeal. S.C. Code § 6-29-825(F). S.C. Code § 6-29-825(G).

[Identical mediation procedures are prescribed for an appeal from a decision of a board of architectural review (S.C. Code § 6-29-900 and S.C. Code § 6-29-915,) and for an appeal from a decision of the planning commission involving compliance of plans under land development regulations (S.C. Code § 6-29-1150 and S.C. Code § 6-29-1155.)]

3. **Transcript.** Within 30 days after notice from the clerk of court of the filing of an appeal with a petition, the board secretary must file with the clerk of court a certified copy of the board proceedings, including a transcript (if any) of the evidence heard by the board, and the board decision including its findings of fact and conclusions. S.C. Code § 6-29-830(A). Although there is no requirement that the certified record be served on parties in interest, it is common practice for the attorney for the board to file a return to the petition and serve it with a copy of the certified record on counsel for the appealing party.

4 **Standard of review.** The findings of fact by the board are treated in the same manner as findings of fact by a jury. The court may not take additional evidence. The court can determine only whether the board's decision is correct as a matter of law. S.C. Code § 6-29-840(A); *Austin v. Board of Zoning Appeals, Town of Hilton Head Island*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004). The decision of the board must be allowed to stand unless there is "no evidence" which reasonably supports the findings. *Austin v. Board of Zoning Appeals, Town of Hilton Head Island, supra*. However, a decision of a zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board abused its discretion. *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999), certiorari denied, 528 U.S. 1020, 120 S.Ct. 528, 145 L.Ed. 2d 409 (1999).

If the record is insufficient for review, the circuit judge may remand to the board for rehearing. S.C. Code §6-29-840(A). Lack of a good record is a frequent problem in zoning appeals. See *Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 418 S.E.2d 319 (Ct. App. 1992), in which the court allowed the applicant to supply missing portions of the transcript by affidavit.

5. **Mode of Trial.** S. C. Code § 6-29-840(B) deals with the mode of trial for an appeal from a board decision. The judge determines the appeal without a jury when the appeal involves no issues for which there is an established right to a jury or when the parties consent. However, the subsection also provides that a property owner is not precluded from asserting a pre-existing right to a jury trial for any issue beyond the subject matter jurisdiction of the BZA, such as a determination of the amount of damages due for an unconstitutional taking. In *Cobb v. South Carolina Department of Transportation*, 365 S.C. 360, 618 S.E. 2d 299 (2005), the court determined that, in an inverse condemnation case, a property owner and the government have a right to elect a jury trial on the issue of compensation.

### **Exhaustion of Administrative Remedies**

The courts ordinarily dismiss suits challenging zoning actions as premature when the party has failed to exhaust available administrative remedies by appeal to the board of zoning appeals. A party may not go directly to court when administrative procedures and remedies are available. *Dunbar v. City of Spartanburg*, 226 S.C. 360, 85 S.E.2d 281 (1954). A claim that the zoning ordinance was unconstitutional was dismissed for failure to exhaust administrative remedies in *Stanton v. Town of Pawley's Island*, 309 S.C. 126, 420 S.E.2d 502 (1992).

Constitutional "taking" claims frequently arise when application of zoning regulations results in denial of use of property. A taking claim is premature when there was no application for a variance or exception pursuant to administrative procedures provided by the zoning ordinance. *Moore v. Sumter County Council*, 300 S.C. 270, 387 S.E.2d 455 (1990); *Williamson Planning Commission v. Hamilton Bank*, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985).

PATRICK M. O'NEIL  
MAYOR

# TOWN OF SULLIVAN'S ISLAND

ANDY BENKE  
TOWN ADMINISTRATOR

TOWN COUNCIL  
CHAUNCEY CLARK, MAYOR PRO TEM  
SARAH CHURCH  
MARK HOWARD  
RITA LANGLEY  
SUSAN MIDDGAUGH  
BACHMAN SMITH, IV



JASON BLANTON  
DEPUTY ADMINISTRATOR/COMPTROLLER

LAWRENCE A. DODDS  
TOWN ATTORNEY

GREG GRESS  
WATER AND SEWER MANAGER

JOE HENDERSON  
ZONING ADMINISTRATOR

DANIEL S. HOWARD  
CHIEF OF POLICE

ELLEN MILLER  
TOWN CLERK

RANDY ROBINSON  
BUILDING OFFICIAL

M. ANTHONY STITH  
FIRE CHIEF

## BOARD OF ZONING APPEALS

IN ACCORDANCE WITH **ZONING ORDINANCE SECTION 21-175**,

I \_\_\_\_\_ HAVE SUBMITTED A COMPLETED BOARD OF ZONING  
APPEALS APPLICATION, FOR THE MEETING DATE OF \_\_\_\_\_, WHICH WILL BE HELD AT  
SULLIVAN'S ISLAND TOWN HALL LOCATED AT **2050-B MIDDLE STREET, SULLIVAN'S ISLAND, SOUTH CAROLINA.**

ADDITIONALLY, I UNDERSTAND THAT THE BOARD MAY POSTPONE OR PROCEED TO DISPOSE OF A MATTER ON THE  
RECORD BEFORE IT IN THE ABSENCE OF AN APPEARANCE ON BEHALF OF AN APPLICANT.

\_\_\_\_\_  
APPLICANT SIGNATURE

\_\_\_\_\_  
DATE