



**Real Property Committee**  
1:30 p.m., Monday, June 7, 2021  
1207 Palm Boulevard, Isle of Palms, SC

**Public Comment:**

All citizens who wish to speak during the meeting must email their first and last name, address and topic to City Clerk, Nicole DeNeane at [nicoled@iop.net](mailto:nicoled@iop.net) no later than **3:00 p.m. the day before the meeting**. Citizens may also provide written public comment here:

<https://www.iop.net/public-comment-form>

**Agenda**

1. **Call to order** and acknowledgment that the press and the public have been duly notified of the meeting in accordance with the Freedom of Information Act.
2. **Approval of previous meeting's minutes** – May 5, 2021
3. **Citizens' Comments**
4. **Marina Tenants Comments**
5. **Old Business**
  - a. Update on marina dock rehabilitation project
  - b. Update on marina restaurant renovation by Marker116, LLC
  - c. Update and discussion on ADA compliant dual purpose beach boardwalk at 42<sup>nd</sup> Avenue beach access
  - d. Update on proposed public dock and greenspace at the IOP Marina
  - e. Discussion and consideration of noise agreement with Marker116 LLC
6. **New Business**
  - a. Discussion of changes to the zoning ordinance to permanently allow outdoor dining at restaurants
  - b. Consideration of allowing new marina restaurant tenants to operate a food truck at the IOP marina prior to opening the restaurant as a City-sanctioned activity
7. **Miscellaneous Business**

Next meeting date: 1:30 p.m., Monday, July 12, 2021
8. **Executive Session** – If needed.
9. **Adjournment**



## **REAL PROPERTY COMMITTEE**

**1:30pm, Tuesday, May 4, 2021**

**1207 Palm Boulevard, Isle of Palms, SC 29451**

**and broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>**

### **MINUTES**

#### **1. Call to order**

Present: Council members Moye, Popson, and Streetman

Staff Present: Administrator Fragoso, Asst. Administrator Hanna, Director Kerr

#### **2. Approval of previous meeting's minutes – April 5, 2021**

**MOTION: Council Member Moye made a motion to approve the minutes of the April 5, 2021 meeting and Council Member Popson seconded the motion. The motion passed unanimously.**

#### **3. Citizens' Comments -- none**

#### **4. Marina Tenant Comments**

Administrator Fragoso read an update on the status of the marina restaurant: "They are reporting that the interior demolition has been completed which has allowed the architects and the structural engineers to visually inspect framing and design of the roof securing and strapping system. The demo and removal of all electrical that was out of code has been completed as well as the kitchen hood that was also out of code. They have removed the ductwork that was old and unsafe. They have also completed the structural roof strapping that makes the rooftop bar area comply with code, and this has been inspected by City officials and passed. They have fixed and improved the slanted floor on the intercoastal side of the restaurant. The architectural plans have been submitted to the City Building Department for approval, and they have not yet been approved. The building inspector is going through those documents, and we expect they will be completed this week and we will be able to issue a construction permit."

She continued, "I did ask Director Kerr to review those plans in light of the presentation, and the conceptual design plans that they presented to City Council in February just to make sure that those architectural plans are consistent to the design concept that they presented."

The outside deck area had to be scaled back due to some encroachment in the critical area. The restaurant owners will be discussing the idea of offering food trucks during the summer with City staff later in the day. City code currently does not allow for that option, so it will need further review by City Council.

**5. Old business**

**A. Update on marina dock rehabilitation project**

Administrator Fragoso said Salmon's will begin demolition of Dock Area C the week of May 10. They will then remobilize the week of May 24 to begin the installation of the new dock in that area. Gangways and pilings are anticipated to arrive the week of May 24, with installation completed by June 7 followed by utility work. All the necessary paperwork for the new transformer has been filed with Dominion Energy. The design for the new fuel hut is expected by mid-May.

Administrator Fragoso said she has asked Kirby Marshall to work with Salmon's on three change orders, including the removal of the damaged piling from the floor of the waterway, work on the watersports dock, and the maintenance work needed on the dock adjacent to the restaurant.

She informed the Committee that the Builder's Risk Policy expires June 1. She has asked Salmon's for a quote to extend it one month. ATM thinks it could cost approximately \$15,000. A call is scheduled later in the week to discuss options and risks. The outcome will be brought before the Ways & Means Committee.

A revised work schedule has been requested.

**B. Update on proposed ADA-compliant dual-purpose beach boardwalk at 42<sup>nd</sup> Avenue**

Administrator Fragoso reported the bids for this project are expected on May 6 and will be brought before the Ways & Means Committee. Director Kerr stated that the RFP required that Mr. Boardwalk be used as the epay source as it was reported that the price of epay had not increased as lumber has. However, there has been a small increase in the price of epay. As builders are only giving lumber quotes that are good for three weeks, action on this project will need to be taken swiftly.

Director Kerr also said that they have reached out to OCRM for permission for the second turnaround spot along the path and they expect that will be granted. Materials for the second turnaround have not yet been purchased. He also said the boardwalk is not expected to float during a flooding event. The boardwalk materials will support vehicular traffic.

**C. Update the proposed public dock and greenspace at the IOP Marina**

Administrator Fragoso said there are no updates to this project as they are still awaiting the outcome of the eviction proceedings of the former tenant.

**D. Discussion and consideration of noise agreement with Marker116, LLC**

Administrator Fragoso expressed concern about some inconsistencies between Items C and D in the agreement. She would like to tighten the language such that if a noise incident is reported it will be dealt with immediately. Suggested changes to the language will be presented to the restaurant owners and to City Council for consideration.

**6. New Business**

**A. Discussion and consideration of proposals for marina parking lot improvement**

Administrator Fragoso said she has received 7 bid proposals for the improvements needed for the Marina parking lot. City Council agreed to make improvements up to \$50,000. However, the bids came in between \$84,000 and \$170,000. Director Kerr will be meeting with the lowest bidder to see if any changes can be made to the proposed amount without sacrificing the effectiveness of the improvements.

Administrator Fragoso said that ultimately it will be up to the tenant to decide how much over the \$50,000 they will be willing to pay. The matter will go before City Council. Improvements to the parking area need to be completed before the restaurant is opened.

**B. Discussion of changes to the zoning ordinance to permanently allow outdoor dining at restaurants**

Administrator Fragoso said that the outdoor sale of food and beverages is currently prohibited without a Special Exception granted by BOZA. Director Kerr said that BOZA has addressed these requests in the past on a case-by-case basis and the process seems to work well.

Council Member Moyer said he shares Council Member Buckhannon's desire to loosen the restrictions around outdoor dining. Director Kerr said City Council would need to change the code to allow for outdoor dining to occur outside of the permanent footprint of the building while still requiring BOZA approval. He indicated the parking space requirements would also need to be reviewed.

Committee members agreed that the public desires outdoor dining. Administrator Fragoso will discuss with Attorney Hinchey the definition of "event" and what changes could be brought before City Council for consideration with regards to outdoor dining.

**7. Miscellaneous Business**

The next meeting of the Real Property Committee will be held on Monday, June 7, 2021 at 1:30pm.

**8. Adjournment**

Council Member Moyer made a motion to adjourn and Council Member Popson seconded the motion. The meeting was adjourned at 2:21pm.

Respectfully submitted,

Nicole DeNeane  
City Clerk



# **Isle of Palms Marina**

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Project Update – May 18, 2021

# Current Progress

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# Current Progress

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# Current Progress

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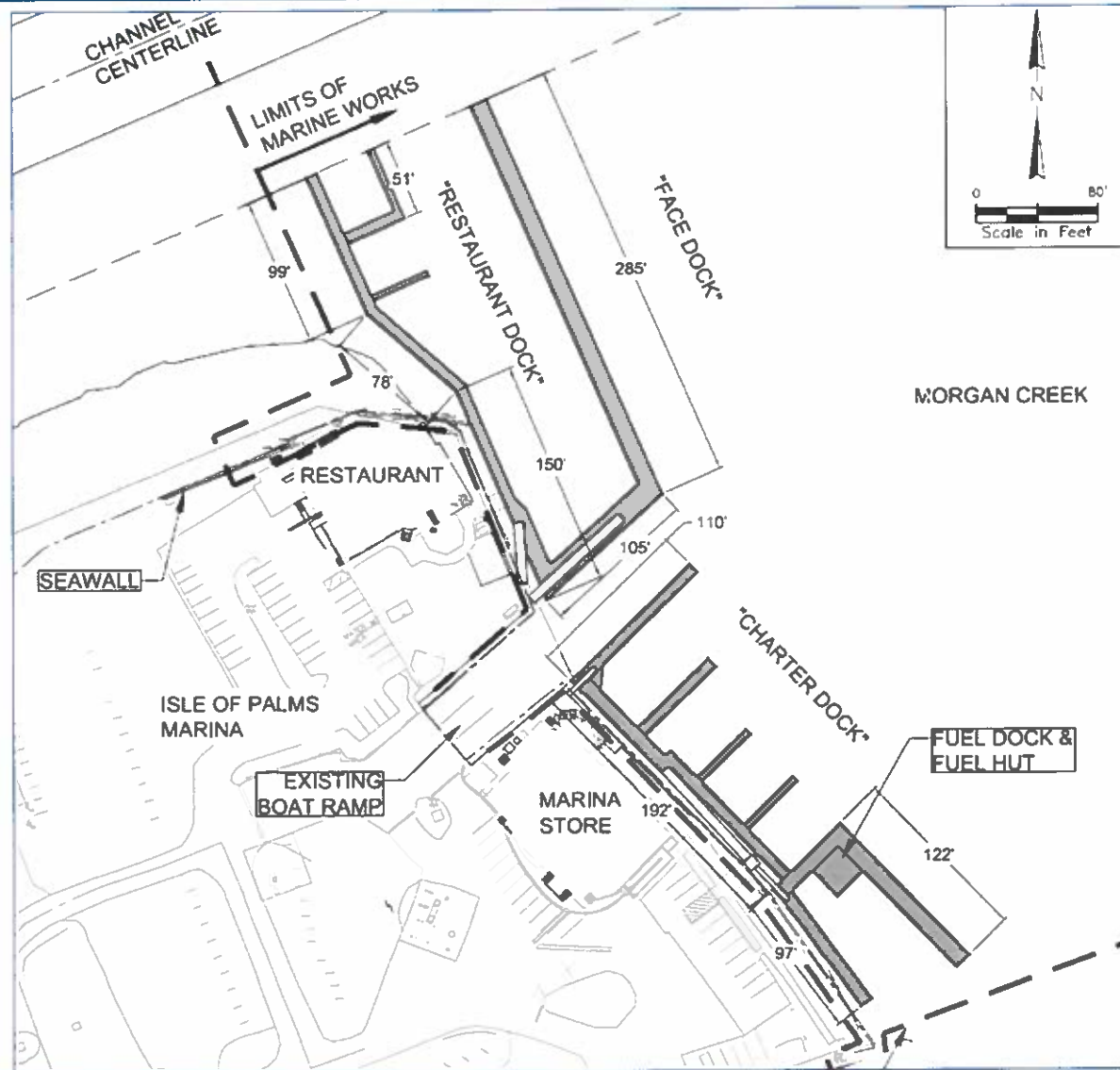


# Current Progress

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# Current Progress



# Schedule

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## ► Dock Area C – “Restaurant and Face Dock”

- Demolition and Disposal of “C” May 10 – 17, 2021
- Offsite Mobilization/Loadout “C” May 18 – 21, 2021
- Mobilization and Installation of “C” May 24 – June 4, 2021
- Utilities Installation “C” June 4 – June 28, 2021
- Installation of Platforms & Gangways “C” June 28 – July 2, 2021
- Final Work to Place “C” in service July 6 – 9, 2021

# Schedule

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## ► Dock Area B – “Charter Dock”

- |  |                      |
|--|----------------------|
| • Demolition and Disposal of Dock “B”                | July 6 – 13, 2021    |
| • Offsite Mobilization/Loadout Dock “B”              | July 14 – 16, 2021   |
| • Mobilization and Installation of Dock “B”          | July 19 – 30, 2021   |
| • Installation of Gangway Near Boat Ramp Dock “B”    | July 19 – 30, 2021   |
| • Utilities Installation Dock “B”                    | July 30 – 20, 2021   |
| • Construction of Timber Platform Docks “B” & “A”    | August 2 – 11, 2021  |
| • Installation of Gangway @ Timber Platform Dock “B” | August 12, 2021      |
| • Final Work to Place Dock “B” in Service            | August 16 – 20, 2021 |

# Schedule

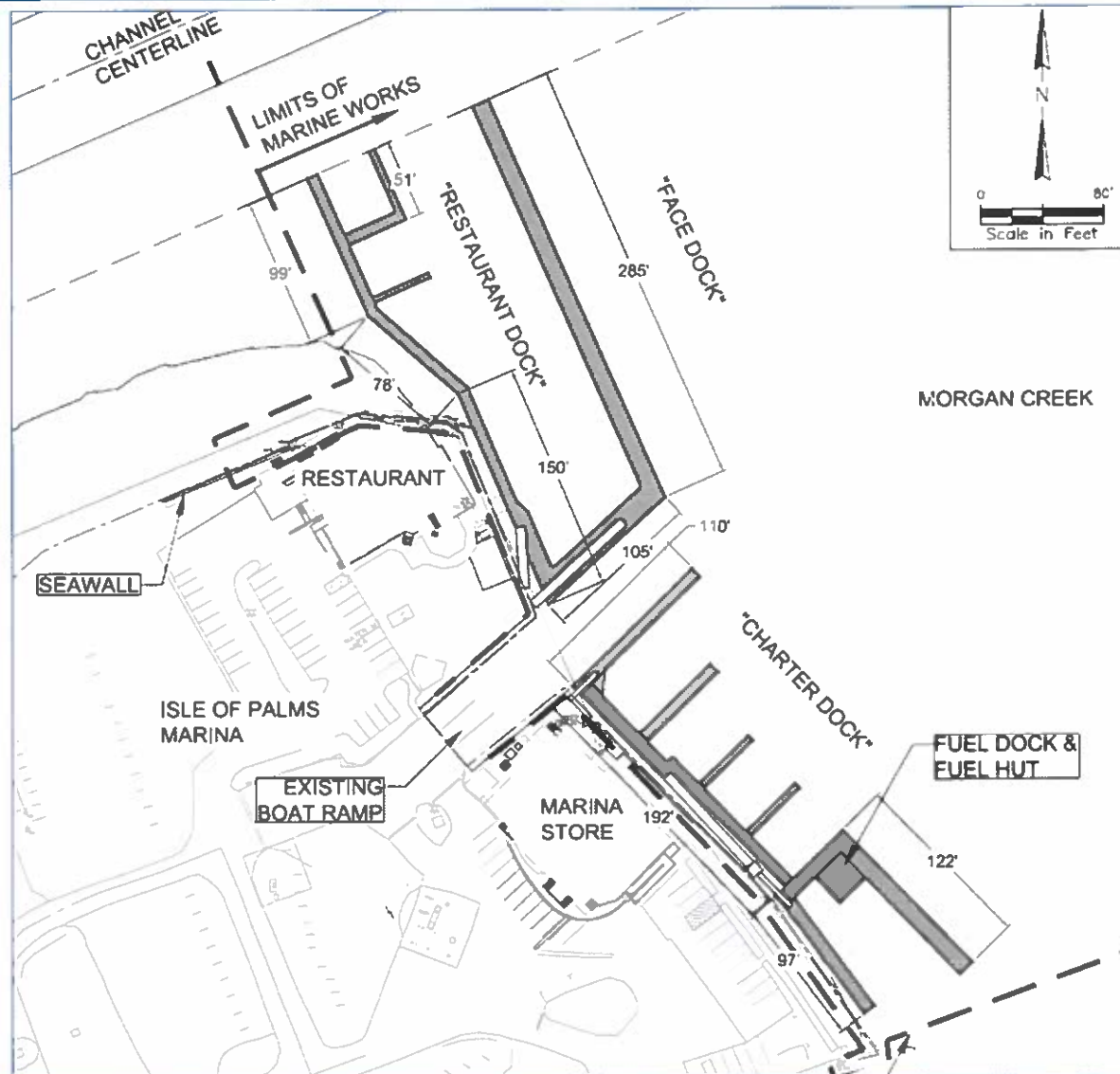
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## ► Dock Area A “Fuel Dock”

- |  |                                |
|--|--------------------------------|
| • Design Submittal Dock “A”                              | May 3 – June 11, 2021          |
| • Review of Dock “A” Design Submittal                    | June 14 – 18, 2021             |
| • Corrections & Revisions to Dock “A” Design Submittal   | June 21 – 25, 2021             |
| • <u>Final Design Submittal Dock “A”</u>                 | <u>June 28 – 30, 2021</u>      |
| • Material Procurement for Dock “A” Structure            | May 17, August 13, 2021        |
| • Fabrication of Dock “A” Components                     | August 16 – September 3, 2021  |
| • Delivery of Dock “A” Components                        | September 10, 2021             |
| • <u>Pre-assembly of Floats at Salmons Terminal</u>      | <u>September 13 – 22, 2021</u> |
| • Demolition and Disposal of Dock “A”                    | September 20 – 24, 2021        |
| • Mobilization to Install Dock “A”                       | September 27 – October 8, 2021 |
| • Installation of Gangway @ Timber Platform Dock “A”     | October 6 – 8, 2021            |
| • Construction of Fuel Hut on Site                       | September 13 – 30, 2021        |
| • Installation of Utilities & Fuel Services for Dock “A” | October 1 – November 12, 2021  |
| • <u>Final Work to Place Dock “A” in Service</u>         | <u>November 15-19, 2021</u>    |
| • All Work Completed                                     | November 19, 2021              |



# Isle of Palms Marina



STATE OF SOUTH CAROLINA     )  
   )  
COUNTY OF CHARLESTON     )                     NOISE CONTROL AGREEMENT

This Noise Control Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between The City of Isle of Palms, S.C., a South Carolina municipal corporation (“City”), and Marker116, LLC, a South Carolina limited liability company (“Tenant”).

WHEREAS, on February 23, 2016, the City amended Section 9-2-5(a)(3) of the City’s Code of Ordinances to exempt City-owned property subject to a commercial lease and a noise control agreement or permit from the prohibition on amplifiers and loudspeakers being operated at outdoor public places owned or under the control of the City; and

WHEREAS, Tenant is currently operating under a commercial lease with the City dated November 12, 2020; and

WHEREAS, Tenant desires to provide live entertainment to its restaurant patrons on the outdoor public grounds immediately surrounding the Tenant’s Restaurant, including musicians who use amplifiers; and

WHEREAS, Tenant will install improvements to the property to significantly reduce the sound emanating from the amplifiers into the adjacent residential neighborhoods; and

WHEREAS, the City wishes to allow the use of amplified music at the Tenant’s Restaurant subject to certain conditions which will protect the residents in adjacent neighborhoods from unreasonably loud or disturbing noise.

THEREFORE, in consideration of the premises and the mutual covenants and conditions set forth in this Agreement, the parties hereto agree as follows:

1. The City hereby agrees and grants permission for Tenant to use, maintain or operate loudspeakers, amplifiers or other mechanical or electrical devices for increasing the volume of sound

upon the outdoor public grounds immediately surrounding the Tenant's restaurant, subject to the following conditions:

A. Tenant agrees to at all times comply with the provisions of the City's noise ordinance, as may be amended from time to time;

B. Tenant agrees to employ sufficient noise abatement measures to ensure that the amplified sound is not in violation of the City's noise ordinance and cannot be heard inside residences in the adjacent neighborhoods;

C. Tenant agrees to immediately lower amplified sound levels when it determines or is informed that sound levels are too high. Tenant will be on notice that sound levels are too high if any of the following situations occur:

**Deleted:** promptly

- i. Amplified music can be heard inside residences in adjacent neighborhoods;
- ii. Residents have made complaints to the Tenant or the City Police Department;
- iii. City Police Officers have notified Tenant of complaints.

D. Tenant will provide the City with the name and phone number of the manager who is responsible for noise compliance. If residents contact this person, he/she will immediately determine whether sound levels are too high, and if so, immediately lower sound levels as needed to comply with this Agreement and the City's noise ordinance. As used in this paragraph, "immediately" shall mean within thirty (30) minutes of the receipt of a noise complaint or being advised by the City of a noise complaint. The Tenant, after complying with the above requirements, shall, in addition, have thirty (30) days to provide the City with a written plan which will cure sound

**Deleted:** promptly

**Deleted:** The Tenant will have twenty-four (24) hours to respond to any noise complaints....

level problems by establishing [and assuring](#) lower levels, adding additional sound abating materials, and/or developing policies to ensure ongoing compliance with this Agreement.

2. In the event that Tenant violates any one of the conditions set forth herein, the City may, [in its sole discretion](#), immediately terminate this Agreement.

IN WITNESS WHEREOF, the parties hereto, by and through their undersigned agents, have executed this Agreement as of the date stated above.

WITNESS:

The City of Isle of Palms, S.C.

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

Marker116, LLC

By: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_



Ratification  
Number 2021-001

## A N O R D I N A N C E

TO AMEND CHAPTER 54 OF THE CODE OF THE CITY OF CHARLESTON (ZONING ORDINANCE) BY CHANGING PART 4 (ACCESSORY USES) OF ARTICLE 2 (LAND USE REGULATIONS) TO ADD A NEW SEC. 54-215 (OUTDOOR DINING SERVICES) TO AUTHORIZE THE USE OF NEW OR ADDITIONAL SPACE FOR OUTDOOR DINING SERVICES (AS AMENDED).

INCIDENT TO THE ADOPTION OF THIS ORDINANCE, CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT:

1. The food and beverage industry has played a vital role in the growth of Charleston, economically and in other respects. The food and beverage industry within the City has substantially contributed to the City becoming the number one tourist destination in the world.
2. The COVID-19 pandemic has had a devastating impact on the food and beverage industry in the City. Owners and employees of restaurants and similar establishments in the City were the first to close their doors—many voluntarily—at the beginning of the pandemic. Even after closing their doors to public gatherings, many food and beverage establishments have continued to serve the City and its residents by remaining open for take-out orders or setting up delivery services. The City recognizes the tremendous moral obligation owed to such owners and their employees, many of whom also reside in the City, for their significant sacrifice during these very difficult times.
3. Notwithstanding the unmistakably positive *economic* impact that the City's food and beverage industry has had on the City, such establishments also have a significant positive impact on the health and welfare of the City's residents. In fact, this time of unprecedented isolation emphasizes the important role of the City's food and beverage establishments in bringing people together, helping people celebrate life's blessings; sympathize in life's difficulties; reinforce relationships with existing friends and family; acquaint with old friends; and meet new ones. The City's food and beverage establishments create and solidify the social, business, political, religious, civic, and familial relationships reflected in the City's unique culture.
4. A full recovery of the City's food and beverage industry after the demise of the current pandemic is critical to the full recovery of the health, welfare, culture, and economy of the City and its residents.



5. The City should maximize outdoor dining opportunities by food and beverage establishments, while minimizing adverse impacts from, among other things, overcrowding, noise, and traffic on residential areas and on the public rights-of-way within the City.

6. Such a policy serves a compelling government interest by substantially increasing the ability of the City's food and beverage establishments to remain open during the current pandemic and to fully recover after the pandemic subsides, preserving the important positive impact of such establishments on the health, welfare, culture, and economy of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. That Part 4 (Accessory Uses) of Article 2 (Land Use Regulations) of Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) is hereby amended by adding the following new Sec. 54-215 (Outdoor Dining Services) thereto:

**Sec. 54-215. – Outdoor Dining Services.** The following provisions apply to new or additional areas sought to be utilized for outdoor dining services:

A. Definitions.

(1) Expiration Date. "Expiration Date" means January 10, 2022 at 11:59:59 p.m.

(2) Outdoor Dining Services. "Outdoor dining services" means services covered by a temporary outdoor dining approval and/or a temporary sidewalk dining permit.

(3) Residential Area. "Residential Area" means any property within a residential zoning district.

(4) Restaurant. "Restaurant" means an operation that prepares, processes, packages, serves, or otherwise provides food for human consumption, either on or off the premises, regardless of whether there is a charge for the food; provided, however, the term "restaurant" shall not include grocery stores, pharmacies, convenience stores, gas stations, school cafeterias, independent living food service operations, licensed healthcare facilities, retail meat markets, fish/seafood markets, retail ice merchants, or mobile food establishments.

(5) Sidewalk Dining. "Sidewalk dining" means a portion of an immobile restaurant located on a designated public right-of-way immediately adjacent to the restaurant.

(6) Sidewalk Dining Elements. "Sidewalk dining elements" means any and all tables, chairs, tents, umbrellas, planters, heaters, and other objects associated with sidewalk dining.

(7) Temporary Outdoor Dining Approval. A temporary outdoor dining approval authorizes a restaurant to temporarily utilize new or expanded outdoor dining areas on private property.

(8) Temporary Sidewalk Dining Permit. A temporary sidewalk dining permit authorizes a restaurant to engage in sidewalk dining within a designated area on a public right-of-way.



B. Temporary Suspension of Regulations Governing Outdoor Dining Areas and Sidewalk Dining. The following regulations temporarily shall supersede and replace any conflicting provisions of the City's zoning ordinances or regulations governing outdoor dining services; provided, however, nothing herein supersedes or replaces conflicting provisions of the City's zoning ordinances or regulations with respect to new development, redevelopment, construction, or improvement of property.

C. Applications. Any restaurant desiring to offer outdoor dining services shall first apply to the Zoning Division on forms created for that purpose. All information required to show compliance with the standards for outdoor dining services under this Section shall be included with the application. The Zoning Administrator is hereby authorized and directed to generate standard application forms and adopt internal procedures for such purpose.

D. Special Exception. The location of outdoor dining services within 150 feet of a residential area is generally disfavored and shall not be granted except upon a special exception approved by the Board of Zoning Appeals-Zoning ("BZA-Z"). The BZA-Z may approve, approve with modifications, approve with conditions, or disapprove an application for outdoor dining services within 150 feet of a residential area after considering the application, the relevant supporting materials, any staff recommendation, and the evidence presented at the hearing. Prior to granting a special exception under this Section, the BZA-Z shall find as follows:

(1) *Compliance with Standards.* The proposed special exception complies with the specific standards applicable to the request set forth in this Sec. 54-215.

(2) *Compatibility.* The proposed special exception is appropriate for its location and compatible with the character of surrounding lands and the uses permitted in the zoning districts of surrounding lands, and will not reduce property values of surrounding lands.

(3) *Design does not have substantial adverse impact.* The design of the proposed special exception minimizes adverse effects, including visual impacts of the proposed use on adjacent lands; furthermore, the proposed special exception does not impose significant adverse impact on surrounding lands regarding traffic, service delivery, parking and loading, odors, noise, glare, vibration, and does not create a nuisance.

E. Conditional Use Permit. A conditional use permit issued by the Zoning Administrator shall be required for outdoor dining services which are not located within 150 feet of a residential area. The Zoning Administrator shall approve the application if the proposed outdoor dining services comply with the specific standards applicable to the request set forth in this Sec. 54-215.

F. Standards for Temporary Outdoor Dining Approval. Restaurants desiring temporary outdoor dining approval shall comply with the following standards:

(1) The restaurant shall be properly licensed by appropriate state and local agencies to perform any activities, sales, and services.

(2) The restaurant shall comply with all applicable laws relating to litter, noise, and other livability matters.

(3) No amplified music shall be permitted in outdoor dining areas approved under this Sec. 54-215. Nothing herein shall prohibit amplified music in outdoor dining areas approved for use prior to effective date of this ordinance, to the extent amplified music was previously permitted in such areas.

(4) Unless authorized as part of a sidewalk dining permit or sidewalk café, outdoor dining areas shall not encroach within any public rights-of-way.

(5) Outdoor dining areas shall not encroach into or interfere with required handicapped parking spaces.

(6) Outdoor dining areas shall not interfere with safe pedestrian and vehicular access or access required to be maintained under the Americans with Disabilities Act.

(7) Outdoor dining areas shall not encroach within or interfere with fire and other emergency access.

(8) Any sales and/or consumption of food and/or alcoholic beverages shall be in compliance with the provisions of any federal, state, and/or local laws and regulations governing same.

(9) Outdoor dining areas shall comply with all applicable occupancy requirements and other provisions of the fire code.

G. Temporary Sidewalk Dining Permit. The following procedures shall apply to temporary sidewalk dining permits:

(1) Layout. A layout sketch or site plan and a minimum of two (2) photographs showing all sidewalk dining elements, utilities, sidewalks, and appropriate measurements shall be included with an application for a temporary sidewalk dining permit.

(2) Effect. The following terms and conditions shall apply to any temporary sidewalk dining permit issued by the City under this Ordinance:

a. The permit is for a permissive use only and the issuing of the permit shall not operate to create or vest any property rights in the permittee.

b. The City shall have free and complete access to the public right-of-way (the "ROW") in which sidewalk dining has been permitted for maintenance and repair of the ROW, and the permittee shall hold harmless the City for any damage that may be done by the City during maintenance and repair of the ROW.

c. The permittee shall maintain the sidewalk easement area in a good and safe condition as long as the temporary sidewalk dining permit remains in effect. Permittee understands and acknowledges



that, should the permittee, its agents, employees, vendors, or patrons, damage and/or disturb the ROW and/or the sidewalk dining area, the permittee shall be solely responsible for repairing the destroyed/disturbed ROW and the sidewalk dining area to the City's satisfaction.

d. Permittee shall maintain a general liability insurance policy with combined single liability limits for personal injury or death and property damage in the amount of the liability limits set forth in the South Carolina Tort Claims Act, naming the City as an additional insured. The permittee agrees to provide proof of such policy to the City upon request.

e. If alcoholic beverages will be served within the sidewalk dining area, the permittee shall maintain liquor liability insurance for the area under the same terms and conditions as those applying to general liability insurance.

f. Permittee shall indemnify, defend, and hold harmless the City against any and all claims or suits for damages or injury arising from permittee's or the permittee's agents', employees', vendors', and/or patrons' use of the ROW or the sidewalk dining area or from any activity, work, or act done, permitted, or suffered by permittee in or about the sidewalk dining area, and shall further indemnify, defend, and hold harmless the City against and from any and all claims or suits arising from any breach or default of any performance of any obligation of permittee under this Section or the sidewalk dining permit, and against and from all costs, attorneys' fees, expenses, and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification.

g. Permittee shall not assign the sidewalk dining permit without the prior approval of the City.

h. Any unlawful encroachments existing in the ROW shall be subject to removal and the permittee shall be responsible for labor and costs associated with such removal. Any encroachments existing in the public ROW shall be removed upon twenty-four (24) hours' notice given by the department of public service when such removal is necessary to repair or improve the ROW. If it is necessary to remove any encroachments, including but not limited to sidewalk dining elements, the permittee shall be responsible for labor and costs associated with removal and reinstallation.

i. In the event that the City police, fire, public service or traffic and transportation departments determine that the location of an encroachment, including but not limited to sidewalk dining elements, constitutes an immediate physical danger to life, safety or health, the encroachment may be removed immediately without prior notice. If the City removes an encroachment, a notice of removal shall be sent to the permittee as soon as practicable under the circumstances. Any abandoned encroachment shall be subject to removal. For purposes hereof, 'abandoned' shall mean the vacating of the premises by the permittee for a period of seven (7) consecutive days or more. Any costs incurred to the City in restoring the public ROW to the condition that existed prior to the use of the sidewalk dining area shall be the responsibility of the permittee.

(3) Inspection. The Zoning Administrator shall perform or cause to be performed a site inspection of the area to be utilized for sidewalk dining to verify compliance with the requirements set forth herein prior to issuing a temporary sidewalk dining permit. The City of Charleston's Fire Department, Fire Marshal, Police Department, Building Inspections Division, Livability Code



Enforcement Officers, and zoning officers shall be authorized to inspect and determine whether applicants and permittees comply with and continue to comply with the rules and regulations governing sidewalk dining set forth herein, as may be amended.

(4) Decision. The Zoning Administrator is hereby authorized, after any necessary consultation with other City departments, to issue a temporary sidewalk dining permit if the application meets all standards set forth in Sec. 54-215.

(5) Posting. The temporary sidewalk dining permit shall be posted on the premises so as to be visible from the public right-of-way during all times that sidewalk dining is being conducted within the public right-of-way.

H. Design and Layout. The following standards shall govern the design and layout for sidewalk dining:

(1) The width of the sidewalk dining area shall not exceed the width of the frontage of the restaurant's property.

(2) Permittees shall maintain a clear pedestrian path of at least six feet (6') at all times; provided, however, in areas of higher pedestrian traffic or activity, or in conditions that suggest the need for additional clearance, the Zoning Administrator may require a clear pedestrian path greater than six feet (6'). Any such clearance area must be free of all obstructions such as trees, parking meters, utility poles, fire hydrants, and similar encroachments in order to allow for adequate pedestrian movement. All services and patron activity provided within the designated public right-of-way shall occur within the designated area and shall not encroach within the minimum clearances for pedestrian passage at any time.

(3) Sidewalk dining and sidewalk dining elements shall not interfere with any utilities or other facilities such as utility poles, fire hydrants, signs, parking meters, mailboxes, and/or benches within the sidewalk or within the public right-of-way.

(4) Sidewalk dining and sidewalk dining elements shall not interfere with or obstruct any required clearance for maneuvering around entrances or exits.

(6) Sidewalk dining and sidewalk dining elements shall not interfere with or obstruct any areas required for accessibility for disabled persons, whether patrons or employees.

(7) Sidewalk dining and sidewalk dining elements shall not interfere with or obstruct required ingress and/or egress for adjacent buildings set forth in the building code or otherwise.

(8) Sidewalk dining and sidewalk dining elements may not violate the vision clearance requirements set forth in Sec. 54-351. Vision clearance will also be required when sidewalk dining or sidewalk dining elements are located adjacent to an alley or driveway; provided, however, the Zoning Administrator is authorized to impose additional requirements when unusual circumstances exist or when public safety may be jeopardized.



(9) Signs advertising the sale of food, beverages, goods, or services within sidewalk dining areas shall be prohibited. This prohibition includes but is not limited to sandwich boards, banners, pamphlets, podiums, or any other advertisements. Nothing herein shall prohibit the posting of any signage required by the City.

(10) No amplified music, whether live or recorded, shall be permitted within sidewalk dining areas. No speakers, microphones, televisions or other audio or video devices shall be permitted within sidewalk dining areas.

(11) No vending machines, carts, or objects for the sale of goods shall be permitted within sidewalk dining areas.

I. Standards for Sidewalk Dining. Restaurants obtaining a temporary sidewalk dining permit shall comply with the following operational standards:

(1) The standards for temporary outdoor dining approval in Section 54-215.F.

(2) Sidewalk dining is prohibited between 12:00 a.m. and 7:00 a.m., unless the permitted hours are more restrictive under the existing zoning applicable to the property, use, or activity, in which case the more restrictive hours shall control.

(3) Any and all sidewalk dining elements shall be removed from the public right-of-way except during the restaurant's daily operations. The storage of sidewalk dining elements within the public right-of-way at any time is prohibited. The leaving of sidewalk dining elements in public rights-of-way at any time before or during daily operations is also prohibited.

(4) If alcoholic beverages are served within the designated public right-of-way, the permittee must have a valid license under all applicable laws for such sales. Alcoholic beverages supplied by the customer or by any other person other than the permittee shall not be allowed within the designated public right-of-way. No alcoholic beverages may be stored or mixed within the designated public right-of-way.

(5) The permittee must require patrons dining within the designated public-right-of-way to wear shoes and shirts at all times.

(6) All employees must comply with applicable requirements and standards for a retail food establishment.

(7) The permittee must comply with all federal, state, and local laws, rules, and regulations applicable to the operation of sidewalk dining within the City.

J. Administrative Suspension. Any temporary outdoor dining approval and/or sidewalk dining permit is subject to suspension, modification, or amendment at any time based on a determination that additional conditions or limitations shall be required to protect against adverse impacts to the public health, safety, or welfare associated with new or expanded area.

K. Modification. City Council may suspend, modify, or amend the provisions governing outdoor dining services at any time, in which case all restaurants shall comply with any such modifications or amendments, whether or not they previously received an approval or permit hereunder. In this respect, an approval for outdoor dining services is considered an activity, not a use. All approvals and permits governed by this Section shall automatically expire on the Expiration Date, unless such approval or permit is otherwise suspended, modified, amended, or extended in accordance with this Section or a subsequent ordinance adopted by City Council.

L. Appeal. Any decision of the Zoning Administrator under this Ordinance may be appealed to the BZA-Z, in accordance with the standards governing appeals from administrative officers under state law and the City's Zoning Ordinance.

M. Compliance. Permittees are responsible for ensuring that the procedures and standards set forth in this Section are followed or otherwise cease services. Pursuant to section 45-3-30 of the South Carolina Code, the City may deny or revoke any license granted to conduct any such business when, in the judgment of the City, the business is not complying with this Ordinance and shall be subject to the penalties set forth in Section 1-16 of the City Code. Pursuant to section 45-3-20 of the South Carolina Code, the City of Charleston Fire Department, Office of the Fire Marshal, Police Department, Building Inspections Division, and their designees, Livability Code Enforcement Officers, and Zoning Officers are hereby authorized to inspect and determine whether businesses are in compliance with this Section. Any person who shall refuse to allow such inspection or who shall obstruct any officer whose duty it is to make such inspection shall be subject to the penalties set forth in section 45-3-20.

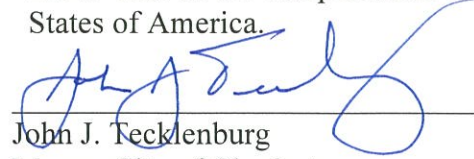
N. Previously Approved Outdoor Dining Services. Outdoor dining services permitted or approved under an emergency ordinance may continue in effect until the Expiration Date, subject to the following terms and conditions: (1) the outdoor dining service was permitted or approved prior to December 1, 2020; (2) the permit or approval for the outdoor dining service remains in effect, under its terms or through an extension thereof, on January 12, 2021; (3) any physical expansion of an outdoor dining service shall follow the procedures set forth in this Section with respect to such expanded area only; and (4) the permit or approval may be suspended, modified, amended, or extended in accordance with this Section or a subsequent ordinance adopted by City Council. The Zoning Administrator is hereby authorized to provide written confirmation of the continued effectiveness of any such permit or approval complying with the above-referenced terms and conditions. No additional conditional use permit or special exception permit shall be required under these circumstances.



Section 2. This Ordinance shall become effective upon enactment and shall expire on January 10, 2022 at 11:59:59p.m., unless otherwise modified, amended, extended, or rescinded by a subsequent Ordinance adopted by City Council.

Ratified in City Council this 12<sup>th</sup> day of January in the Year of Our Lord, 2021, and in the 245th Year of the Independence of the United States of America.

By:

  
John J. Tecklenburg  
Mayor, City of Charleston

ATTEST:

  
Jennifer Cook  
Clerk of Council

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## Sec. 5-4-38. Table of permitted uses in commercial districts.

- (1) *General application.* Uses permitted in the LC, GC-1, GC-2 and GC-3 districts shall be only as set forth in Table B-1, and as modified, limited or restricted by special provisions, exceptions and conditions contained in this section and chapter.
  - (a) Symbols used in Table B-1 are as follows:
    - "x" means the indicated use is permitted.
    - "e" means the indicated use is permitted as a special exception if granted by the Board of Zoning Appeals pursuant to section 5-4-5.
    - "c" means the indicated use is permitted as a conditional use.
  - (b) Any use not specifically allowed in Table B-1 is expressly prohibited.
  - (c) A Code section reference following the use category in Table B-1 means that the use is allowed if it meets the requirements of such section.
  - (d) The Zoning Administrator may use the Standard Industrial Classification Manual (SIC) or similar reference to make interpretations regarding uses allowed in Table B-1.
- (2) *Adult uses.* Adult uses are expressly prohibited within the City, except as a special exception in the GC-2 district subject to section 5-4-5, and the following conditions: The property on which the adult use is located must be at least one thousand feet (1,000') from property on which a school, church, or park is located, or from any property which is zoned residential.
- (3) *Drive-through service windows.* Drive-through service windows are permitted only in GC-1 and GC-3 districts as a special exception subject to section 5-4-5 upon a finding by the Board of Zoning Appeals that the facility provides adequate space for the stacking of vehicles based upon the number of drive-through vehicles projected during the peak fifteen (15) minute period, the service time involved in processing customers' orders, and the window time necessary to complete the transaction. Drive-through service window facilities, or uses thereof, existing on June 22, 1993, and located in the GC-1 district, shall not be altered or enlarged without approval of a special exception subject to section 5-4-5 and the criteria stated in this subsection.
- (4) *Hours of operation.* Within the LC district, any use which conducts regular business operations between the hours of 8:00 p.m. and 7:00 a.m. is permitted only as a special exception pursuant to section 5-4-5.
- (5) *Outdoor sale or rental of personal property, including food and beverage; public events.*
  - (a) Outdoor sale of food or beverage, in whole or in part, in the GC-2 district more than two hundred feet (200') seaward of the right-of-way of Ocean Boulevard is strictly prohibited. Outdoor sale of food or beverage, in whole or in part, in the GC-2 district within two hundred feet (200') seaward of the right-of-way of Ocean Boulevard is permitted only by special exception pursuant to section 5-4-5. Outdoor sale of food or beverage, in whole or in part, in the GC-3 district is permitted only by special exception pursuant to section 5-4-5. Outdoor sale or rental of other tangible personal property, in whole or in part, in the GC-2 and GC-3 districts is strictly prohibited. All activity associated with outdoor sale of food or beverage in the GC-2 and GC-3 districts must occur within the footprint of a permitted permanent structure. Any use of a mobile or temporary unit, including, but not limited to, food trucks, vehicles, trailers, and carts, is prohibited, except as provided in section 5-4-38(5)(c) and 5-4-38(5)(d).
  - (b) Outdoor sale or rental of tangible personal property, in whole or in part, in the LC or GC-1 district is permitted only by special exception pursuant to section 5-4-5; provided, however, that outdoor sale or rental of any tangible personal property, including food and beverage, in whole or in part in the LC or GC-1 district within one hundred sixty feet of the OCRM baseline established along the beach of the

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Atlantic Ocean is strictly prohibited. All activity associated with outdoor sales or rentals in the LC and GC-1 districts must occur within the footprint of a permitted permanent structure. Any use of a mobile or temporary unit, including, but not limited to, food trucks, vehicles, trailers, and carts, is prohibited, except as provided in section 5-4-38(5)(c) and 5-4-38(5)(d).

- (c) No sale or rental of property, in whole or in part, or any public event shall be conducted on beaches, public streets or public property without a permit for use of public property issued by the City Council.
- (d) Notwithstanding any other provision contained in this chapter to the contrary, outdoor sale or rental of tangible personal property, in whole or in part, in the LC or GC-1 district by vendors approved in advance by City Council shall be temporarily permitted during City-hosted, -sponsored or -sanctioned special events. Such vendors shall submit a written application for a special events permit on a form prescribed and dispensed by the Zoning Administrator upon such terms as indicated on the temporary permit.



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## **Sec. 5-4-5. Appeals, variances and special exceptions.**

### **(a) Appeals.**

1. Pursuant to S.C. Code 1976, § 6-29-780, the City Board of Zoning Appeals is hereby established. Provisions relating to organization, composition and functions of the Board are set forth in title 1, chapter 9, article B. Appeals to the Board of Zoning Appeals may be taken from any order or decision of the Zoning Administrator by any person aggrieved or by any officer, department, or board of the City. Unless otherwise provided by rules of the Board, an appeal must be made by written application setting forth the grounds of appeal and filed with the Zoning Administrator within thirty (30) days from the date of the order or decision appealed from. The Zoning Administrator shall promptly forward to the Board all documents constituting the record upon which the action appealed from was taken. The Board shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give at least fifteen (15) days' public notice thereof in a newspaper of general circulation in the community and also due notice to the parties in interest, and decide the same within a reasonable period of time. At the hearing, any party may appear in person or by agent or attorney. The Board shall adopt rules of procedure for the conduct of hearings. All final decisions and orders of the Board shall be in writing and 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 in interest by certified mail.
2. 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 such 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.

### **(b) Variances.** Pursuant to S.C. Code 1976, § 6-29-800, upon written application filed with the Zoning Administrator, the Board may authorize in specific cases a variance from the terms of the ordinances contained in this chapter when strict application of the provisions of the ordinance would result in unnecessary hardship. Filing fees set by resolution of City Council from time to time must be paid by the applicant at the time of filing of an application for a variance. Such application shall contain information addressing each of the statutory requirements for variances stated in S.C. Code 1976, § 6-29-800, as amended, all of which must be met. A variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing the following findings:

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property;
- (2) Such conditions do not generally apply to other property in the vicinity;
- (3) Because with these conditions, the application of the ordinance or resolution of the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;
- (4) The authorization of a variance will not be of substantial detriment to an adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

The Board may not grant a variance which has the effect of allowing the establishment of a use not otherwise permitted in a zoning district, to physically extend a nonconforming use, 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 were granted shall not be considered as a ground for a variance. A claim of unnecessary hardship cannot be based on conditions created by the applicant. A claim of unnecessary hardship cannot be based on financial hardship of the applicant.

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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.

(c) *Special exceptions.*

1. Upon written application filed with the Zoning Administrator, the Board may grant as a special exception any use specified as a special exception in the zoning district regulations. In addition to the conditions generally required by the applicable zoning district regulations, the Board shall apply the following standards in deciding special exception applications:
  - (1) Adequate provision shall be made for setbacks, fences, buffer or planting strips to protect adjacent properties from adverse impact of the proposed use, such as noise, vibration, dust, glare, odor, traffic congestion and similar factors.
  - (2) Vehicular traffic and pedestrian movement on adjacent roads must not be hindered or endangered.
  - (3) Off-street parking and loading areas and the entrances and exits for the use must be adequate in terms of location, number, design and construction to serve the use without adverse impact on adjacent properties.
  - (4) The proposed use must not adversely affect the property values, the general character or the general welfare of the surrounding vicinity.
2. In granting a special exception, the Board may attach to it such conditions regarding the location, size, character, or other features of the proposed use as the Board may consider advisable in order to promote public health, safety, or general welfare. No special exception use may be altered or enlarged without the prior approval of the Board.

(Code 1994, § 5-4-5; Ord. No. 2009-02, § 1, 5-19-2009)