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SUZANNE M. RAINEY CLERK TO COUNCIL

AGENDA NATURAL RESOURCES COMMITTEE Monday, December 9, 2013 1:00 p.m. **Executive Conference Room** Administration Building

Staff Support: Tony Criscitiello

Committee Members:

Brian Flewelling, Chairman Cynthia Bensch, Vice Chairman Gerald Dawson William McBride Jerry Stewart Tabor Vaux Laura Von Harten

- 1. CALL TO ORDER 1:00 P.M.
- 2. TEXT AMENDMENT TO THE BEAUFORT COUNTY ZONING AND DEVELOPMENT STANDARDS ORDINANCE/ZDSO, ARTICLE V. USE REGULATIONS, SEC. 106-1287. COMMERCIAL RETAIL, REGIONAL (ADDS STANDARDS TO ALLOW ADAPTIVE RE-USE OF LIGHT INDUSTRIAL PROPERTIES); APPLICANT: DAVID TEDDER (backup)
- 3. TEXT AMENDMENT TO THE BEAUFORT COUNTY ZONING AND DEVELOPMENT ORDINANCE/ZDSO, ARTICLE VII, SEC. STANDARDS 106-1912. DEPENDENT USES (ADDS STANDARDS TO ALLOW COMMERCIAL DOCKS FOR MARICULTURE USE); APPLICANT: FRANK ROBERTS (backup)
- 4. EXECUTIVE SESSION
 - A. Discussion of negotiations incident to proposed contractual arrangements and proposed purchase of property.
- **5 ADJOURNMENT**







MEMORANDUM

To: Beaufort County Planning Commission

From: Anthony Criscitiello, Planning Director

Subject: Proposed Amendment to the ZDSO

Date: December 5, 2013

Excerpt of PLANNING COMMISSION RECOMMENDATION from its December 2, 2013, draft meeting minutes:

Mr. Anthony Criscitiello, County Planning Director, briefed the Commissioners. He noted that this is a continuation of the November 7, 2013, meeting because the applicant asked for a postponement of the Commissioners' recommendation. The Marine Corps representatives, Mr. Tedder, and Mr. Criscitiello met to discuss the text amendments. Mr. Criscitiello noted that the staff recommendation stands as was presented at the October 7, 2013, Commission meeting to make the adaptive reuse of light industrial properties a special use, rather than an allowed use. The staff felt that the Zoning Board of Appeals (ZBOA) and the Development Review Team (DRT) should review the merits of such adaptive reuses on a case-by-case basis. The staff made the text amendment recommendation to keep the light industrial properties from morphing into commercial regional uses. The staff must consider the long-term implications and ramifications of such adaptive reuses, county-wide. The applicant's specific property in question is within the Airport Overlay District where noise abatement issues must be addressed.

Commission discussion included a clarification on the text amendment being compatible to the Air Installation Compatibility Use Zone (AICUZ).

Applicant's Comments: Mr. David Tedder, the applicant, acknowledged that this was a revisit from the October 7, 2013, Commission meeting. Mr. Tedder noted that the operator and owner of the Flea Market was sitting in the audience, Katherine Lowe. He proceeded that the (existing) original ordinance says if you have exterior sales, you are considered to be a commercial retail, regional use—which is the applicant's desire. Another existing standard states that you can only apply for outdoor sales four times a year, and that is not feasible for a flea market. The site had been unproductive for three years. The site is peculiarly situated for a flea market. He noted the three areas of light industrial in Beaufort County. The Zoning and Development Standards Ordinance (ZDSO) restricts to no more than 5% of retail sales in light industrial districts. Large industrial prospects have been not been attracted to these areas. He asked if the site has been "dark" (unused) for long periods of time, why not remove the retail sales restriction. If there is an area that is not in the AICUZ for adaptive reuses, why go before the ZBOA as a special use? He noted the various discussions with staff and the USMC representatives regarding limited and special uses standards. He stated why not have a limited use for up to 60% of retail space within an existing building; if a higher percentage is involved then the special use would apply. Mr. Tedder believes the use is compatible with the Comprehensive Plan. He suggested using berms or roofed outdoor sales to provide noise abatement. He believes USMC concerns are burdensome.

Mr. Tedder's client has been in operation for six months under a temporary permit and has not received any complaints—traffic, noise, etc. He noted his major recommendations are the 60% retail use in existing buildings as limited use, special use standards, traffic impact analysis (TIA) standards, differing standards if properties are within and outside of the Airport Overlay District, using the date of the text amendment adoption as the cut-off date for existing structures on light industrial properties, and limiting operational days to Friday through Sunday. He has given his changes to the USMC representative.

Commission discussion included a clarification of the staff recommendation regarding the AICUZ, a clarification of the applicant's text amendment regarding the 60% of retail sales in an existing building and the standards for special and limited uses, the outdoor sales being a special use, the text amendment being non-site specific, the proposed County ordinance being a form-based Code where the use of the building is not germane, the rebuild criteria if the building were burnt down, the use of the Institute of Transportation Engineers (ITE) manual rather than requiring a TIA if the estimated trips are within 10% of the figures in the manual. Mr. Criscitiello stated he would prefer input from the County Traffic Engineer regarding the need for a TIA for each adaptive reuse project.

Public Comment: Mr. Jason Mann, the U.S. Marine Corps Air Station Community Plans Liaison Officer, thanked the Commission for the opportunity to give his comments. The Airport Overlay District is hugely successful and lauded by the Department of Defense on partnering with the local community. The Air Station is pro-public safety and pro-health, not anti-flea market or antidevelopment. He noted that the F35B aircraft will be at the Air Station. There is also a training center on the base. There will be continual noise when the new aircraft and the training center come into effect. He explained that the existing Day-Night Average Sound Level (DNL) would increase greatly. Overhead noise will not be reduced by berms and setbacks that Mr. Tedder suggested. Outdoor activity will be affected severely by the anticipated overhead noise from the Air Station activities that may triple the current activity. Adoption of the proposed text amendment erodes the protection previously afforded the Air Station by the County. The Air Station, per the Department of Navy AICUZ guidance, is compelled to oppose open air flea markets/commercial outdoor sales in the Airport Overlay District due to potential public health and safety issues. Permitting such uses in the Airport Overlay District was triggered by a specific property owner. The potential impact of the text amendment County-wide is unknown. The County is setting itself up for conflict with the Air Station in the permitting process. The Air Station is trying to avoid a "death by a thousand cuts" where a series of decisions that slowly erode the protection that the County provided earlier are not consistent with that earlier intended protection to the Air Station. He noted anticipated operation activities would include massive increases in takeoffs/landings and higher noise volume.

Mr. Mann's response to Commission queries included: Mr. Tedder noted a reality show was filming at the flea market property; light industrial uses are compatible with the AICUZ; the grandfathered use of the neighboring drive-in theater could not be addressed; the statistics of decibel and safety problems in other communities; and a clarification on the AICUZ in relation to the specific property involved.

Mr. Tedder addressing Mr. Mann's concerns included: clarifying the overhead flights in relation to the property involved and the tower across from Air Station being 150 feet high; noting that the County animal shelter was across from applicant's site; noting that the Joint Land Use

Study (JLUS) limiting weekend flying; comparing the flying noise to rock concert noise; the unfair comparison of Beaufort to Oceana that was impacted by residential development; the disbelief that Beaufortonians would protest the flying noises since most people are former military or work with the military; we need to learn to live together; commercial regional businesses would not settle in the industrial park which is not near a major arterial road; he would be willing to limit hours/days of operation for the flea market; the existing County ordinance suggests the berms and setbacks for noise attenuation; and the outdoor activities such as day care on the military base that would also be affected by the jet noises.

Further Commission discussion included adjusting the verbiage for appropriateness County-wide and to cover the two concerns—the applicant and the Air Station; the varying venues for additional public discussion, such as Natural Resources Committee and full Council; the Airport Overlay District does have many allowed uses despite this proposed text amendment for adaptive reuse on light industrial properties.

Public Comment: Mr. Joe Barth, owner of the drive-in movie theater next door, said it seemed logical to have the flea market. He is concerned with the upcoming Air Station activities and how it will affect his business—whether he should stay at the location.

Motion with no second: Mr. Randolph Stewart made a motion, and no second was received, to recommend the following: a limited use for existing structures only as long as 60% is for retail use, each adaptive reuse project to be subject to staff/traffic engineering approval, require special use permitting for outdoor sales, require outdoor sales only Friday through Sunday from 7:00 a.m. through 8:00 p.m., and such adaptive reuses of existing buildings are to be effective as of the adopted date of the proposed ordinance.

Discussion included Mr. Criscitiello noting that the special use was for outdoor sales within the Airport Overlay District, that the standards in Mr. Stewart's motion were acceptable to Mr. Criscitiello, that outside the Airport Overlay District it would be limited use if 60% of the building were for retail use and special use if more than 60%, a clarification of the motion verbiage, and supporting special use only per the staff recommendation, **Mr. Stewart withdrawing his motion since there was no second to his motion**, noting that special use permits go with the land, that the applicant was operating under a temporary permit until Council made a decision on this text amendment, the Air Station's main concern being outdoor sales in the AICUZ, that the adaptive reuse function was to encourage using existing unoccupied light industrial buildings, concern with when limited and special use standards are used when the percentage of retail sales within an existing building occurs, and a clarification of the requested text amendments by the applicant and the staff.

Main Motion: Mr. Ronald Petit made a motion, and Mr. Ed Riley seconded the motion, to recommend approval to County Council of the Text Amendment to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Article V. Use Regulations, Section 106-1287. Commercial Retail, Regional that adds standards to allow adaptive re-use of light industrial properties, as recommended by the Planning staff. Further discussion included clarification of the motion. The motion was carried unanimously (FOR: Bihl, Chmelik, LeGree, Petit, Riley, and Stewart).

Excerpt of PLANNING COMMISSION RECOMMENDATION from its November 7, 2013, meeting minutes:

Commission Chairman Robert Semmler noted that the Commission received a letter from Mr. David Tedder asking that the Commission table their decision until their December 2013 meeting so he can continue working on the text amendments.

Mr. Anthony Criscitiello noted that Mr. Tedder and the Marine Corps Air Station representatives were going to meet with the Planning staff before the next meeting to discuss the text amendments as it affects a specific property, as well as other properties in the future.

Applicant's Comments: Mr. David Tedder apologized for not forwarding the letter in time to cancel the meeting.

Motion: Ms. Chmelik made a motion, and Mr. Riley seconded the motion, to table the Commission recommendation to County Council at the request of the agent/applicant on the Text Amendment to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Article V. Use regulations, Sec. 106-1287. Commercial Retail, Regional, that adds standards to allow adaptive re-use of sites, etc., until the December 2, 2013, Commission meeting. The motion was carried unanimously (FOR: Brown, Bihl, Chmelik, LeGree, Petit, Riley, Semmler, and Stewart).

Excerpt of PLANNING COMMISSION RECOMMENDATION from its October 7, 2013, meeting minutes:

Mr. Criscitiello noted that Mr. Jason Mann of the Marine Corps Air Station Beaufort was in the audience and may wish to address the Commission on this topic.

Mr. Criscitiello briefed the Commissioners. He noted that Mr. Tedder's request would allow the applicant to fully utilize the building and the grounds he currently occupies that had been vacant for two years. The staff recommended a special use because of the unknown County-wide impact of this text amendment and a desire to maintain the light industrial zoning rather than morphing into Commercial Regional that is contrary to the Comprehensive Plan. Staff is not opposed to the applicant's request. The owner should be applauded for refurbishing an existing building. Staff did add qualifications to Mr. Tedder's request so that the Development Review Team (DRT) could evaluate, on a case-by-case basis, the merits of each adaptive reuse project. He cautioned the property was in the Airport Overlay District and noise abatement must be considered.

Discussion included clarifying the adaptive reuse of the property, noise consideration near the Air Station Beaufort, giving kudos for the reuse of the property, affirming the County-wide affect of the text amendment as a special use, concerns regarding traffic impact and ingress-egress issues, requiring a traffic impact analysis (TIA), and setting a time limit to prevent loud noise during late night hours.

Applicant's Comments: Mr. David Tedder, the applicant's agent, is helping the family that has redeveloped the property already. A temporary permit was issued by the County. Flea market is mentioned in one area of the ZDSO; but, there are no good standards just for flea markets. An adaptive reuse with a limited standard seemed appropriate. Limited use standards allow for 10% of retail use in light industrial districts, but special use standards require additional review by the Zoning Board of Appeals. There are three light industrial sections north of the Broad River—the Commerce Park, the area on Shanklin Road, and near Yemassee. He also added a limitation of the adaptive reuse occurring with 1000 feet of an arterial road. The special use will require a Community Impact Analysis (CIA). He recommended limited use with a Traffic Impact Analysis (TIA) being required if there were a 10% increase in traffic trips per day, to allow

for flexibility. He questioned imposing the burden of a TIA if it were not necessary. Outdoor sales are prohibitive with only four permits per year per business—it would not work for a flea market. The property has a shared parking agreement with the drive-in theater next door, and is across from the Air Station and the Greenline business (at the southwest corner of Highway 21 and Parker Drive). Air Incompatibility Use Zone (AICUZ) requirements are not problematic. Mr. Tedder does not believe the Zoning Board of Appeal (ZBOA) review is required. If it is an allowable use, then the expansion should be an allowable use also. He noted the percentage he suggested for structural additions could be discussed with staff. Mr. Tedder asked that his recommended language regarding stormwater calculation be returned to the existing ZDSO language. He urged a limited use, not the staff recommended special use.

Discussion by Commissioners included clarifying a parking agreement with the drive-in theater, clarifying Mr. Tedder's proposal, clarifying Mr. Tedder's request to return to limited instead of special use, and noting that Mr. Tedder's proposed text removed the staff's ability to analyze each project on a case-by-case basis.

Public Comment: Mr. Jason Mann, the U.S. Marine Corps Air Station Beaufort community planner, asked that the Commission table a decision so that he can further analyze the text amendment since he had experienced sequestration furloughing and may experience the Federal government shut-down. He believed he would have adequate time to complete his review before the next Commission meeting on November 7. Mr. Criscitiello asked if Mr. Tedder would agree to next Commission meeting and Mr. Tedder did agree with tabling the Commission recommendation until their November 7, 2013, Commission meeting.

Further Commission discussion included recommending that the staff and the applicant meet to discuss limited versus special uses, agreeing with posting the Commission recommendation until the November meeting, noting that the text amendment impacted county-wide versus site specific, and discussing the appropriateness of limited versus special uses.

Motion: Mr. Stewart made a motion, and Mr. Petit seconded the motion, to postpone the Commission recommendation to County Council on the Text Amendment to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Article V. Use regulations, Sec. 106-1287. Commercial Retail, Regional, that adds standards to allow adaptive re-use of sites, etc., until the November 7, 2013, Commission meeting. The motion was carried unanimously (FOR: Brown, Bihl, Chmelik, LeGree, Petit, Riley, Stewart, and Thomas).

STAFF REPORT:

A. BACKGROUND:

Case No. ZTA 2013-07
Applicant: David Tedder

Proposed Text Change: Amendment to Sec. 106-1287 (Limited and Special Use Standards for

Regional Commercial Retail Uses) to allow regional retail uses in the Light

Industrial zoning district as an adaptive reuse

B. SUMMARY OF REQUEST:

The applicant is requesting an amendment to the Limited and Special Use Standards section of the ZDSO to allow regional commercial retail uses, including outdoor retail uses such as flea markets, to be administratively approved for properties within the Light Industrial (LI) district that are developed but have been vacant for at least two years. The applicant states that the proposed changes are necessary to avoid the creation or continuation of blight caused by vacant properties. Currently, the LI district restricts regional

commercial retail uses to no more than 5 percent of the floor area of an LI project, and requires that access to these uses be from a development's interior streets.

The applicant is proposing the following text amendments, shown as strike-through for deletions and underlined for additions:

Article 5. Use Regulations Division 2. Limited and Special Use Standards

Sec. 106-1287. Commercial retail, regional

- (a) Limited/special standards for use in all applicable districts. Limited/special standards for regional commercial retail uses in all applicable districts are as follows:
 - (1) These uses may constitute no more than five percent of the total permitted floor area of the project in which they are located.
 - (2) The access to these uses shall be from the development's interior streets. The uses shall not have frontage on arterial or collector streets.
 - (b) Reports/studies required. All applications for this use shall include a community impact statement.
- (c) Limited standards for regional commercial retail uses within rural business districts. Limited standards for regional commercial retail uses within rural business districts are as follows:
 - (1) This use is limited to 3,500 square feet of floor area.
 - (2) Drive-through facilities are not permitted as part of this use.
 - (3) The following uses are not permitted as part of this use: vehicular sales, rental and service uses (NAICS 441); and hospitals and medical facilities (NAICS 621, 622, 623, 624).
- (d) Limited standards for adaptive re-use: regional commercial retail uses in the Light Industrial zoning district. Limited standards for regional commercial retail establishments utilizing developed site uses which have been unoccupied by an operating business for more than two years are as follows:
 - (1) It is the intent of this section to allow adaptive re-use of sites developed in conformity with allowable uses for the Light Industrial district, but which have become vacant and remained vacant for more than two years, thereby avoiding the creation or continuation of a blighted area.
 - (2) The permitted floor space size limitations of 106-1287(a)(1) shall not be applicable; existing structures can be fully utilized for all uses qualifying as commercial retail, regional, and may utilize the permitted access to the site, notwithstanding 106-1287(a)(2), provided that:
 - (i) Adequate parking is provided on-site or through shared parking, with on-site individual parking spaces delineated;
 - (ii) The site is located within 1,000 feet of an arterial road, and traffic impacts as measured by trips per day will not exceed by more than 10% the traffic impact of the former permitted use on the site;
 - (iii) The proposed use does not violate the Land Use Compatibility Recommendations of the United States Navy for the Accident Potential or Noise Zones, if the site is within such a zone;
 - (iv) Structural additions shall not increase the existing floor space by more than 15%; if more than a 15% increase is proposed, the application will be treated as a special use; and

- (v) Any increase over 5% in the total existing impervious surface on the site will require a resubmission of stormwater calculations and appropriate mitigation measures as determined by reference to the Beaufort County Storm Water Manual.
- (3) Retail uses having exterior sales (flea markets, farmers markets, etc.) which are within a site with fencing and buffers shall be allowed to operate year-round, without limitation as to the number of outdoor sales events, provided that:
 - (i) The outdoor sales area is located at least 50 feet from the public road servicing the site;
 - (ii) A permanent structure with a roof is provided for at least 50% of the spaces to be used for sales in the outdoor sales area;
 - (iii) There are clearly marked pedestrian paths of at least ten feet in width between the outdoor sales area and the existing structure within which interior retail sales will occur; and
 - (iv) Operating hours will not extend beyond 11:00 p.m.

C. ANALYSIS:

Other than the former 84 Lumber site on U.S. Hwy. 21 at Parker Drive, it is unclear how many other properties would be eligible to take advantage of the "adaptive reuse" provisions being proposed. In the case of the 84 Lumber property, which is zoned Light Industrial (LI), an existing 34,450 sq. ft. building plus another 33,600 sq. ft. of outdoor space under cover are being used as the site of Beaufort Liquidators, a discount outlet warehouse and retail store with a weekend outdoor flea market. This business was issued a zoning permit in January of this year to operate a wholesale business with accessory retail space (retail space limited to 10,000 sq. ft. within the main building). The proposed amendment would permit the expansion of retail space within the building, as well as permit the outdoor space to be used for a flea market.

Regional retail commercial uses are those uses due to their size and scale that will attract shoppers and visitors from a larger area of the county and outside the county. Typical uses include "big box" retail stores. The proposal to permit vacant light industrial buildings to be used for regional commercial retail, especially with some of the "conditions" proposed, does not appear to result in any obvious negative impacts. If the text amendment is approved, vacant buildings that have been unable to be used for light industrial purposes may be used for retail purposes, thus keeping them open and maintained.

It should be noted; however, that the Beaufort County Comprehensive Plan (2010) identifies the need to ensure a sufficient quantity of suitably located land zoned for non-retail commercial uses to promote the region's economic diversity. The Plan also notes that the region lacks suitable vacant industrial buildings that can be used. Without knowing exactly how many properties could take advantage of this adaptive reuse proposal, staff recommends that regional commercial retail uses in LI zones only be allowed as a Special Use instead of by right as proposed. This will allow staff and the Zoning Board of Appeals (ZBOA) to monitor the implementation of this provision to ensure that light industrial areas are not transitioning to regional commercial ones without due consideration of the Future Land Use Plan.

Allowing outdoor retail uses, which may include flea markets and vehicle sales, is also proposed by the applicant. The unincorporated county has a limited amount of property zoned Light Industrial (LI), most of which is located within the Airport Overlay District for MCAS-Beaufort (see attached map). The Overlay District outlines the Air Installation Compatible Use Zone (AICUZ) for MCAS-Beaufort, and is designed to minimize incompatible development within noise and accident potential zones.

The county adopted, via Resolution, a Joint Land Use Study (JLUS) for the AICUZ in 2004, in partnership with the City of Beaufort, Town of Port Royal, MCAS-Beaufort, and Lowcountry Council of Governments.

The goal of the JLUS was to encourage land uses within the AICUZ that are compatible with the operations of MCAS-Beaufort. Incompatible uses are those which:

- Are noise sensitive if located in a Noise Zone.
- Involve a high concentration of people if located in any Accident Potential Zone.
- Interfere with safe air operations.

The Department of the Navy's list of suggested compatible land uses for both noise and accident potential zones was adopted as Appendix D of the JLUS. Outdoor retail sales, such as flea markets, are not specifically listed; however, other retail uses are deemed generally compatible within noise zones provided "measures to achieve NLR [Noise Level Reduction] of 25, 30 or 35 must be incorporated into [the] design and construction of structures. However, measures to achieve an overall noise reduction do not necessarily solve noise difficulties outside the structure and additional evaluation is warranted" (see attached excerpt from JLUS).

Staff believes that outdoor retail sales as part of an adaptive reuse within the AICUZ should be evaluated through the Special Use process.

In addition to allowing regional commercial retail uses on developed light industrial sites that have been unoccupied for more than two years, the applicant proposes several additional standards:

1. The site must be located within 1,000 ft. of an arterial road.

The applicant has provided no rationale for this standard, nor submitted an analysis of how many properties could be eligible for the proposed adaptive reuse provision using this standard.

2. Traffic impacts from the new use will not exceed by more than 10% the traffic impact of the former permitted use.

A traffic impact analysis (TIA) would be required for the proposed use if undergoing the Special Use Permit process. Otherwise, no TIA is required for a Zoning (Change of Use) Permit.

3. The new use will not violate the U.S. Navy's recommendations for uses that are compatible with Accident Potential and Noise Zones if the site is within such a zone.

Appendix AI (Airport Overlay District/MCAS-Beaufort) already regulates uses and densities within APZs and Noise Zones based on the Department of the Navy's recommendations.

4. Structural additions shall not increase the floor space by more than 15% without approval of a Special Use Permit.

This provision may allow expansions that are in conflict with Appendix A1 (Airport Overlay District/MCAS-Beaufort), which prohibits the expansion of any structure that does not meet the prescribed noise level reduction requirements. This provision is also not necessary if the entire project were subject to a Special Use Permit.

5. An increase over 5% in impervious surface will require re-review of the stormwater management system for the site.

<u>All</u> increases in impervious surfaces for commercial projects are subject to review by the County Engineer for stormwater compliance.

6. Retail uses having exterior sales (e.g. flea markets) shall be allowed to operate year-round and must provide at least 50% of its spaces under a roofed structure.

Staff recommends that exterior sales only be permitted as part of a Special Use Permit.

D. STAFF RECOMMENDATION:

Section 106-493 of the ZDSO lists seven standards (below), any of which is cause for a Zoning Text Amendment.

Sec. 106-493. Standards for zoning text amendment.

A zoning ordinance text amendment may be approved if:

- 1. It would implement a new portion of the comprehensive plan or amendment. (N/A)
- 2. It would implement and better achieve the comprehensive plan's goals and objectives that have proved difficult to achieve under the ordinance's existing provisions. (N/A)
- 3. The ordinance's provisions were inconsistent or unreasonable in light of standards for similar uses. (N/A)
- 4. It is necessary to respond to state and/or federal legislation. (N/A)
- 5. It provides additional flexibility in meeting the ordinance's objectives without lowering the ordinance's general standards. (See above analysis)
- 6. It addresses a new use, changing conditions, and/or clarifies existing language. (N/A)
- 7. It clarifies the ordinance or makes adjustments to account for interpretation. (N/A)

After review of these standards, staff recommends a modification to the requested text amendment as follows (modifications to the applicant's proposed amendments are **bold and underlined** for additions and **bold and struck-through** for deletions):

Sec. 106-1287. Commercial retail, regional

- (d) <u>Limited Special Use standards for adaptive re-use: regional commercial retail uses in the Light Industrial zoning district.</u> <u>Limited Special Use standards for regional commercial retail establishments utilizing developed site uses which have been unoccupied by an operating business for more than two years are as follows:</u>
 - (1) It is the intent of this section to allow adaptive re-use of sites developed in conformity with allowable uses for the Light Industrial district, but which have become vacant and remained vacant for more than two years, thereby avoiding the creation or continuation of a blighted area.
 - (2) The permitted floor space size limitations of 106-1287(a)(1) shall not be applicable; existing structures can be fully utilized for all uses qualifying as commercial retail, regional, and may utilize the permitted access to the site, notwithstanding 106-1287(a)(2), provided that:
 - (i) Adequate parking is provided on-site or through shared parking, with on-site individual parking spaces delineated Parking shall meet the requirements of Article XIII, Division 5 (Parking and Loading Standards);
 - (ii) The site is located within 1,000 feet of an arterial road, and traffic impacts as measured by trips per day will not exceed by more than 10% the traffic impact of the former permitted use on the site as determined by a traffic impact analysis (TIA); and
 - (iii) The proposed use and any proposed structural addition shall does not violate the

 Land Use Compatibility Recommendations of the United States Navy for the

 Accident Potential or Noise Zones, conform with the Airport Overlay District

- for MCAS-Beaufort (Appendix A1) if the site is within such a zone that overlay district;
- (iv) Structural additions shall not increase the existing floor space by more than 15%; if more than a 15% increase is proposed, the application will be treated as a special use; and
- (v) Any increase over 5% in the total existing impervious surface on the site will require a resubmission of stormwater calculations and appropriate mitigation measures as determined by reference to the Beaufort County Storm Water Manual.
- (3) Retail uses having exterior sales (flea markets, farmers markets, vehicle sales, etc.) which are within a site with fencing and buffers shall be allowed to operate year-round, without limitation as to the number of outdoor sales events, provided that:
 - (i) The outdoor sales area is located at least 50 feet from the public road servicing the site;
 - (ii) A permanent structure with a roof is provided for at least 50% of the spaces to be used for sales in the outdoor sales area;
 - (iii) There are clearly marked pedestrian paths of at least ten feet in width between the outdoor sales area and the existing structure within which interior retail sales will occur;-and
 - (iv) Operating hours will not extend beyond 11:00 p.m.; and
 - (v) Such uses are permitted within the Airport Overlay District for MCAS-Beaufort, provided that, through the Special Use process, the Zoning Board of Appeals (ZBOA) determines that noise impacts within the airport Overlay District are not deleterious to the health and safety of people visiting or participating in said activities or events.

E. ATTACHMENTS:

- Excerpts from ZDSO General Use Table
- Zoning Map showing Light Industrial Zones and MCAS-Beaufort Overlay Zone
- Excerpts from Lowcountry Joint Land Use Study (2004)
- Copy of application for Zoning Text Amendment

ARTICLE V. USE REGULATIONS

EXCERPT FROM TABLE 106-1098. GENERAL USE TABLE

^{*[}Note: Neighborhood Commercial uses include grocery stores, variety stores, pharmacies, hardware stores, liquor stores, and garden centers.]

Priority Areas							Rura	l Areas	<u> </u>				
Land Use	U	S	CR	CS	RD	LI	IP	R	RR	RB	RC	Additional	Use Definition
		_										Standards	
												(See	
												Section)	
INDUSTRIAL	USI	ES				•			•				
Light industry	N	N	N	N	L	Y	Y	N	N	L	N	106-1359	Incubator development, light manufacturing, processing, assembly, or finishing operations in enclosed buildings, with limited exterior storage. The following uses shall be classified as light industry: 1. Any light industrial use not
													requiring more than 10 percent of its gross floor area for exterior storage
													2. Any light industrial use that does not exceed 200,000 sq. ft. of gross floor area
													3. Building, development and general contracting
													4. Special trade contractors
													5. Food products
													6.Textiles and apparel
													7. Fuel dealers
													8. Furniture and fixtures
													9. High tech industry
													10. Lumber and other building materials
													11. Printing and publishing
													12. Office and computing machines
													13. Electric and electronic equipment
													14. Instruments and related products
													15. Transportation services
													16. Wholesale trade, durable and nondurable, except farm products
													17. Recreational equipment rental
													18. Heavy truck, recreational vehicle and mobile home sales
													19. Heavy truck rental
													20. Trucking and warehousing
													21. Other allowable uses under light industrial in general use table 106-1098
			1							1		1	l .

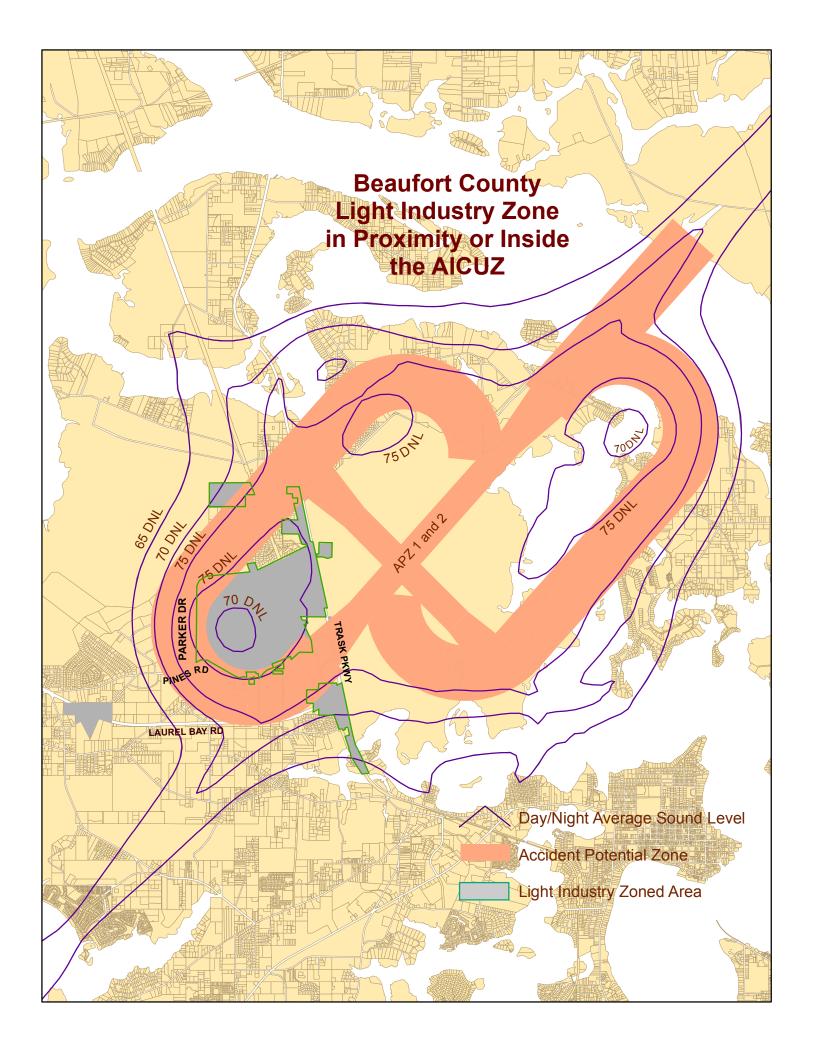


TABLE 2 - AIR INSTALLATIONS COMPATIBLE USE ZONES SUGGESTED LAND USE COMPATIBILITY IN NOISE ZONES (Continued)

	Land Use		Sı	iggested L	and Use C	Compatibi	ility	
			Zone 1 or CNEL)	50/1050 (100 (100 (100 (100 (100 (100 (100	Zone 2 r CNEL)		Noise Zone 3 (DNL or CNEL)	
SLUCM NO	LAND USE NAME	< 55	55- 64	65 -69	70 -74	75-79 A	80 -84	85+
50	Trade (Continued)							
55	Retail trade automotive, marine craft, aircraft and accessories	Y	Y	Y	25	30	N	N
56	Retail trade - apparel and accessories	Y	Y	Y	25	30	N	N
57	Retail trade – furniture, home, furnishings and equipment	Ŷ	Y	Y	25	30	N	N
58	Retail trade – eating and drinking establishments	Y	Y	Y	25	30	N	N
59	Other retail trade	Ÿ	Y	Y	25	30	N	N
1,100				in in	2.00	WANGE III		HEST AND
60	Services		1	, , , , , ,				
61	Finance, insurance and real estate services	Y	Y	Y	25	30	N	N
62	Personal services	Y	Y	Y	25	30	N	N
62.4	Cemeteries	Y	Y	Y	Y 2	Y	YIII	Y 6,11
63	Business services	Y	Y	Y	25	30	N	N
63.7	Warehousing and storage	Y	Y	Y	Y 3	Y 1	Y4	N
64	Repair Services	Y	Y	Y	Y 2	Y 1	Y 4	N
65	Professional services	Ÿ	Y	Y	25	30	N	N
65.1	Hospitals, other medical fac.	Y	Y	25	30	N	N	И
65.16	Nursing Homes	Y	Y	N1	NT	N	N	N
66	Contract construction services	Y	Y	Y	25	30	N	N
67	Government Services	Y	Y 1	Υ¹	25	30	N	N
68	Educational services	Y	Y ¹	25	30	N	N	N
69	Miscellaneous	Y	Y	Y	25	30	N	N
						Province:		T V L
70	Cultural, entertainment and	recreati	- CUL-					
71	Cultural activities (& churches)	Y	Y ¹	25	30	N	N	N
71.2	Nature exhibits	Y	Y	Y¹	N	N	N	N
72	Public assembly	Y	Y	Y	N	N	N	N
72.1	Auditoriums, concert halls	Y	Y	25	30	N	N	N
72.11	Outdoor music shells, amphitheaters	Y	Y	N	N	N	N	N
72.2	Outdoor sports arenas, spectator sports	Y	Y	Y 7	Y 7	N	N	N
73	Amusements	Y	Y	Y	Y	N	N	N
74	Recreational activities (include golf courses, riding stables, water rec.)	Y	Y	Y	25	30	N	N
75	Resorts and group camps	Y	Y	Y 1	Y¹	N	N	N
76	Parks	Y	Y	Y	Y 1	N	N	N
79	Other cultural, entertainment and recreation	Y	Y,	Y	Y	N	N	N

25, 30, or 35

The numbers refer to Noise Level Reduction levels. Land Use and related structures generally compatible however.

measures to achieve NLR of 25, 30 or 35 must be incorporated into design and construction of structures. However, measures to achieve an overall noise reduction do

not necessarily solve noise difficulties outside the structure and additional evaluation is warranted. Also, see notes indicated by superscripts where they appear with one of these numbers.

DNL Day-Night Average Sound Level.

CNEL Community Noise Equivalent Level (Normally within a very small decibel difference of

DNL)

Ldn Mathematical symbol for DNL.

NOTES FOR TABLE 2 - SUGGESTED LAND USE COMPATIBILITY IN NOISE ZONES

a) Although local conditions regarding the need for housing may require residential use in these Zones, residential use is discouraged in

DNL 65-69 and strongly discouraged in DNL 70-74. The absence of viable alternative development options should be determined and an evaluation should be conducted locally prior to local approvals indicating that a demonstrated community need for the residential use would not be met if development were prohibited in these Zones.

- b) Where the community determines that these uses must be allowed, measures to achieve and out-door to indoor Noise Level Reduction (NLR) of at least 25 dB in DNL 65-69 and NLR of 30 dB in DNL 70-74 should be incorporated into building codes and be in individual approvals; for transient housing a NLR of at least 35 dB should be incorporated in DNL 75-79.
- c) Normal permanent construction can be expected to provide a NLR of 20 dB, thus the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation, upgraded Sound Transmission Class (STC) ratings in windows and doors and closed windows year round. Additional consideration should be given to modifying NLR levels based on peak noise levels or vibrations.
- d) NLR criteria will not eliminate outdoor noise problems. However, building location and site planning, design and use of berms and barriers can help mitigate outdoor noise exposure NLR particularly from ground level sources. Measures that reduce noise at a site should be used wherever practical in preference to measures that only protect interior spaces.

BEAUFORT COUNTY, SOUTH CAROLINA <u>PROPOSED ZONING AND DEVELOPMENT STANDARDS ORDINANCE (ZDSO)</u> <u>ZONING MAP / TEXT AMENDMENT / PUD MASTER PLAN CHANGE APPLICATION</u>

TO: Beaufort County Council

	undersigned hereby respectfully requests that the Beaufort County Zoning/DevelopmentStandards Ordinance SO) be amended as described below:
1.	This is a request for a change in the (check as appropriate): () PUD Master Plan Change () Zoning Map Designation/Rezoning () Zoning & Development Standards Ordinance Text
2.	Give exact information to locate the property for which you propose a change: Tax District Number:, Tax Map Number:, Parcel Number(s): Size of subject property: Square Feet / Acres (circle one) Location:
3.	How is this property presently zoned? (Checkas appropriate) () Urban/U () Community Preservation/CP () Light Industrial/LI () Suburban/S () Commercial Regional/CR () Industrial Park/IP () Rural/R () Commercial Suburban/CS () Transitional Overlay/TO () Rural Residential/RR () Research & Development/RD () Resource Conservation/RC () Planned Unit Development/PUD
4.	What new zoning do you propose for this property? (Under Item 10 explain the reason(s) for your rezoning request.)
5.	Do you own all of the property proposed for thiszoning change? () Yes () No Only property owners or their authorized representative/agentcan sign this application. If there are multiple owners, each property owner must sign an individual application and all applications must be submitted simultaneously. If a business entity is the owner, the authorized representative/agent of the business must attach: 1- a copy of the power of attorney that gives him the authority to sign for the business, and 2- a copy of the articles of incorporation that lists the names of all the owners of the business.
6.	If this request involves a proposed change in the Zoning/Development Standards Ordinance text, the section(s) affected are: 106-1287, Commercial Kethil, Key 1079 (Under Item 10 explain the proposed text change and reasons for the change.)
7.	Is this property subject to an Overlay District? Check those which may apply: () AOD - Airport Overlay District () MD - Military Overlay District () COD - Corridor Overlay District () RQ - River Quality Overlay District () CPOD - Cultural Protection Overlay District
8.	The following sections of the Beaufort County ZDSO (see attached sheets) should be addressed by the applicant and attached to this application form: a. Section 106-492, Standards for zoning map amendments. b. Section 106-493, Standards for zoning text amendments.
	TTA 101
Rev.	4/11 FILE NO: // Initiated by: STARF/OWNER

Beaufort County, SC, I Page 2 of 2	Proposed Zoning/Development S	tandards Ordinance Map/Text	t Amendment Application
9. Explanation (cont	inue on separate sheet if need	ed): 588 A	tached
		-	
	he undersigned that while the		ally reviewed and considered, the
		1	£ 1120 R
Sig	mature of Owner Applicant	- Myo.	St 21,2013 Date
Printed DAVITO	TEDDEK	Telephone Number:	13-521-4222
Address: POB	1282, BEA	Sort SC	29901-1282
Email: dqua	e tedder 1	mostra con	n
Agent (Name/Address	:/Phone/email):		
FOR MAP AMEND AFFECTED PROPER	MENT REQUESTS, THE P	LANNING OFFICE WIL 106-402(D) OF THE BEA	L POST A NOTICE ON THE AUFORT COUNTY ZDSO.
APPLICATIONS FOR BY THE BEAUFORT AREA WHERE YOU APPLICATION PROC	COMPLETENESS. THE CO COUNTY PLANNING COL UR PROPERTY IS LOCAT	MPLETED APPLICATION MISSION SUBCOMMIT ED. MEETING SCHED ETE APPLICATIONS MU	ORK DAYS TO REVIEW ALL NS WILL BE REVIEWED FIRST TEE RESPONSIBLE FOR THE ULES ARE LISTED ON THE IST BE SUBMITTED BY NOON BEETING DATE
PLANNED UNIT DEV TO THE PLANNING	/ELOPMENT (PUD) APPLIC DEPARTMENT, CONSUL	ANTS ARE REQUIRED T	O SUBMIT MULTIPLE COPIES AFF PLANNER FOR DETAILS.
CONTACT THE PLA	NNING DEPARTMENT AT	(843) 255-2140 FOR EXA	ACT APPLICATION FEES.
FOR PLANNING DEPA	ARTMENT USE ONLY:		
Date Application Receiv	ed:	Date Posting Notice Issued:	NA
	CEIVED	Application Fee Amount Re	
112	SEIVED	Receipt No. for Application	Fee: 21807/
AUG	3 0 2013		
DI	ANNING VISION	2TA 07	
Rev. 4/11		ENO: 2015 // Initiat	ed by: STAFF OWNER (Circle One)
*			(Sircle Ode)

ITEM 9 EXPLANATION

Item 6. Proposed Text Change and reasons for change

Attached is Section 106-1287, Commercial Retail, regional, with the requested changes showing as a redline. The requested changes stem from an analysis of the restrictions of this section's practical application over the last ten year's or more, and a desire to remove or alter some those restrictions which may unreasonably inhibit the ability to adapt and reuse structures located in the Limited Industrial zone. There are structures built during what is now recognized as an overly ambitious building period now laying empty and decaying because there is no demand for those uses after the effects of the recession. The likelihood of a fresh need for those uses is unlikely in the foreseeable future. The present restrictions on commercial retail uses and outdoor sales seems misplaced, especially since the County has itself undertaken unsuccessful efforts to incentivize and attract suitable industrial, manufacturing and distribution businesses to the areas involved, and the time is ripe to re-examine the limitations on industrial uses at the area zoned Light Industrial The following is an explanation of each requested change.

- 1. Subsection 106-1287(d). Adds in standards to allow adaptive re-use of sites which have been constructed, but the site has been unused for a period in excess of two years. This subsection merely sets the pre-condition which removes the prohibitions on commercial retail activities on the proposed site,
- 2. Subsection 106-1287(d)(1) (i) through (v). These are the specific Limited standards to be applied at the proposed site. Parking requirements and required maximum proximity to an arterial road and limitations on traffic loading increases are included, as well as requiring the proposed use be compatible with the Navy's Accident Potential or Noise Zones requirements. There is a limitation on increasing the size to more than 15%; beyond that, a Special Use process would be implicated. That inclusion would allow citizen board review of impacts on neighbors that were not contemplated when the original use was permitted, and provide an opportunity to require a Community Impact Study. If there is an increase in impervious surface by more than 5%, a new storm water analysis and appropriate mitigation measures undertaken as part of the permitting.
- 3. Subsection 106-1287 (d) (2). This subsection addresses a particular type of business particularly suited to reuse lumber yards and other material supply sites that have closed up. With large fenced areas, sheds for covering building materials, and large maneuvering areas that were designed for truck movements on-site, outdoor flea markets and farmers markets are ideally suited to use these sites productively. In order to address pedestrian safety concerns, pedestrian pathways must be marked, and the outdoor sales area physically set back from unfenced public roadways.

Sec. 106-1287. Commercial retail, regional.

- (a) Limited/special standards for use in all applicable districts. Limited/special standards for regional commercial retail uses in all applicable districts are as follows:
 - (1) These uses may constitute no more than five percent of the total permitted floor area of the project in which they are located.
 - (2) The access to these uses shall be from the development's interior streets. The uses shall not have frontage on arterial or collector streets.
- (b) Reports/studies required. All applications for this use shall include a community impact statement.
- (c) Limited standards for regional commercial retail uses within rural business districts. Limited standards for regional commercial retail uses within rural business districts are as follows:
 - (1) This use is limited to 3,500 square feet of floor area.
 - (2) Drive-through facilities are not permitted as part of this use.
 - (3) The following uses are not permitted as part of this use: Vehicular sales, rental and service uses (NAICS 441); and hospitals and medical facilities (NAICS 621, 622, 623, 624).
- (d) Limited standards for adaptive re-use; regional commercial retail uses in the Light Industrial zoning district. Limited standards for regional commercial retail establishments utilizing developed site uses which have been unoccupied by an operating business for more than two years are as follows:
 - (1) It is the intent of this section to allow the adaptive re-use of sites developed in conformity with allowable uses for the Limited Industrial district, but which have become vacant and remained vacant for more than two years, thereby avoiding the creation or continuation of a blighted area.
 - a. The permitted floor space size limitations of 106-1287(a)(1) shall not be applicable; existing structures can be fully utilized for all uses qualifying as commercial retail, regional, and may utilize the existing permitted access to the site, notwithstanding 106-1287 (a)(2), provided that:
 - 1. adequate parking is provided on-site or through shared parking, with on-site individual parking spaces delineated;
 - 2. the site is located within 1,000 feet of an arterial road, and traffic impacts as measured by trips per day will not exceed by more than 10% the traffic impact of the former permitted use on the site;

- 3. the proposed use does not violate the Land Use Compatibility Recommendations of the United States Navy for the Accident Potential or Noise Zones, if the site is within such a zone:
- 4. Any structural additions shall not increase the existing floor space by more than 15%; if more than a 15% increase is proposed, the application will be treated as a special use; and
- 5. Any increase over 5% in the total existing impervious surface on the site will require a resubmission of stormwater calculations and appropriate mitigation measures as determined by reference to the Beaufort County Storm Water Manual.
- b. Retail Uses having exterior sales (flea markets, farmers markets, etc.) which are within a site with fencing and buffers shall be allowed to operate year-round, without limitation as to the number of outdoor sales events, provided that:
 - 1. the outdoor sales area is located at least 50 feet from the public road servicing the site;
 - 2. a permanent structure with a roof is provided for at least 50% of the spaces to be used for sales in the outdoor sales area;
 - 3. there are clearly marked pedestrian paths of at least ten feet in width between the outdoor sales area and the existing structure within which interior retail sales will occur; and
 - 4. operating hours will not extend beyond 11:00 p.m.

(Ord. No. 99-12, § 1 (03.229), 4-26-1999; Ord. No. 2005/40, 11-28-2005)

LAW OFFICE OF DAVID L. TEDDER, P.A.

604-A Bladen Street, Beaufort, SC 29902 (Mailing Address: P.O. Box 1282, Beaufort, SC 29901) Telephone: 843-521-4222; Fax: 843-521-0082

October 9, 2013

By e-mail only to jason.m.mann1@usmc.mil

Mr. Jason M. Mann Director, Community Plans and Liason Office Marine Corps Air Station Beaufort Beaufort, SC 29906

Re: Proposed wholesale/retail store at former 84 Lumber site with flea market

Dear Jason:

We appreciate the timing situation you have been placed with regard to the federal government shutdown, and hope that my reading of the news is correct and that most employees are back at work and will be able to receive their pay by the next pay-day. I am supplying this information in the hope that doing so will make it easier to present the issue raised at Monday evening's Planning Commission meeting to whomever the decision-maker will be. I will also make myself available to discuss personally if the need arises. I believe there are two questions for MCAS; first is what concerns there may be where there is an otherwise allowable use under the Airport Overlay District for MCAS (Appendix A-1 and its AICUZ Suggested Land Use Compatibility Tables that has outdoor activities which are noted to warrant additional evaluation (see Key to Table 2 and Note 1(d) to Table 2), and what procedure to incorporate the concerns and mitigation suggestions from MCAS into the County permitting. The second is the concern, if any, as to the specific use that is the genesis of this text amendment, being the present operations of the retail liquidation business with its flea market on the site sometimes known as the old 84 Lumber site adjacent to the drive-in on Highway 21.

As introductory background, my client, Club Returns, Inc., is a minority owned small business that has purchased the former 84 Lumber site in Burton across Highway 21 from MCAS Beaufort, and has been operating under a temporary permit from Beaufort County. This permit allows the re-use of the warehouse/retail space formerly used by 84 Lumber as its retail showroom and storage/distribution area for Club Return's business, which is the operation of an excess stock distributor and retailer. Generally, large retailers who have over-ordered, or otherwise have surplus stock, sell tractor-trailer loads to my client, who receives the delivery on-site, breaks the cargo up into pallets of materials that are further shipped and distributed to other liquidators elsewhere, or are offered for wholesale or retail sale on-site. From time to time, auctions are held of some of the pallets of items, which generally are purchased by resellers who will ether sell their newly acquired goods on-site as a flea market vendor, and/or take them to other sites elsewhere to be sold at other flea markets across the South. This activity is being undertaken in conjunction with a "reality" type television series which has contracted with my client to film on-site. As noted, the excess stock may be sold to vendors who can rent flea market stalls, both inside and outside. The activities outside are taking place under the covered storage areas built for the storage and distribution of the building materials (sometimes known as "T-sheds"). This activity has been in place and fully operational for the last four months. We are unaware of any problems or complaints arising from this operation, and most importantly, no complaints regarding noise from MCAS from the patrons.

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Re: County Text Amendment, adaptive re-

County Text Amendment, adaptive re-use in LI Zone Retail Sales and Flea Market on Highway 21

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As noted in the application I filed for a text amendment to the Beaufort County Zoning and Development Standards Ordinance (ZDSO), the zoning district for this property is Light Industrial (LI), with the MCAS Airport Overlay (Appendix A-1 of the ZDSO). This property is in Noise Zone 2, 70-74 dnl. The text amendment is necessary to continue this business due to two limitations under the ordinance that arise as a function of the classification of the business as a commercial regional retail operation, which both imposes some size limitations on retail operations in the LI district, and restricts operation of exterior sales in general. That section is attached to my application to the County, with the requested changes and limitations to provide for the adaptive re-use of this site. It is my understanding and recollection of matters during the adoption of the use restrictions in 2000 that the retail use limitation was included in order to preserve areas for industrial/manufacturing in the County, not as a base protection measure against incompatible uses. It is the Joint Land Use Study and the AICUZ appendix that specifically addresses those concerns.

While this adaptive re-use provision could apply to any other site that met the criteria of being an existing built site which has been vacant for more than two years within 1,000 feet of an arterial road and in a Light industrial District, in reality it is very limited in scope. While there was some question raised at the Planning Commission by County staff as to its potential applicability, it is clear that the only area this could possibly occur which is anywhere near MCAS is in the area across from MCAS that extends from Highway 21 westward 1,000 feet between the already owned by MCAS property at Shanklin Road northward to the end of the LI District at the Clarendon Farms property, where its entrance gate is located, approximately 1,000 feet or so South of Clarendon Road. Any existing building to be re-used must be in conformity with the building requirements of the Airport Overlay District for MCAS in any event under the proposed amendment.

Classification of the business is important in applying the use restrictions and conditions under Appendix A-1 of the ZDSO, which uses the Suggested Land Use Compatibility Tables promulgated as part of the Joint Land Use Study Plan of 2004 to determine compatibility of the use to the noise zone involved and what mitigation, if any, is suggested. The Land Use Names in that Table seem to be roughly comparable to categories of the North American Industrial Classification System (NAICS) categories, although the SCLUM Numbering is different. The buildings and storage/pick-up yard on this site were constructed after the adoption of the Airport Overlay in 2004, and it is our understanding were therefore built in compliance with the standards for noise reduction under the Suggested land Use Compatibility Tables. It was permitted through Beaufort County and its staff review.

Under the NAICS manual, retailing a general line of merchandise on an auction basis is classified under Section 453998, "All other Miscellaneous Store Retailers" (Page 450 of the NAICS manual, note at bottom of page), which notes this industry includes establishments primarily engaged in retailing a general line of new and used merchandise on an auction basis. I believe the NAICS classification for the under canopy flea market would be Section 453310 (page 450 of the manual), according to the NAICS index (flea market, used merchandise, permanent, page 1093 of the manual). The title to the 453 industrial classification area is Miscellaneous Store Retailers. Thus, both uses seem to be Miscellaneous Store Retailer. As a receiver of bulk goods for repackaging and shipment elsewhere, it could also be classified as a warehousing and storage distribution center, Section 493110 (page 492 of the manual).

Under the Suggested Land Use Compatibility Table, Section 50 contains the "Trade" categories. All of the listed uses are a "Yes" in Noise Zone 2, with some indicating Noise Level Reduction (NLR)

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Retail Sales and Flea Market on Highway 21
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measures suggested. Under Section 60, Services, again, all of the listed uses save nursing homes (65.16) and hospitals (65.1) are a "Yes." Warehousing and storage (63.7) is specifically a "Yes", with the notation that NLR should be utilized in the buildings in noise sensitive areas. It therefore appears there is not any problem with the use of the building as a commercial retail center, up to and including as a shopping center. We believe it to be inappropriate to classify the activities on this property under Section 70, Cultural, Entertainment and Recreational, although we would note that eight of the 11 listed uses are deemed compatible.

To the point raised by Tony Criscitiello and in the staff report concerning the "noise difficulties outside the structure" and additional evaluation, we would submit that in this instance, with outdoor sales under the canopies, there is no additional noise problem that was not present as an outdoor building supply center. 84 Lumber operated for years without problem or complaint, and the present operations have been ongoing for months without complaint. The owner is well aware of the location within a noise zone, and the patrons and vendors have not been bothered at all. Just as a reminder, the Navy is extremely conservative in establishing noise levels. It is generally recognized that 70 db is the level of normal conversation:

Normal conversation (3-5') 60-70dB Telephone dial tone 80dB City Traffic (inside car) 85dB

We would hope that whoever reviews this matter recognize and acknowledge there were 1) years of outdoor sales within this noise zone as purchasers at 84 Lumber picked up building materials out in the storage yard, 2) the owner is presently operating this business without problem or concern, 3) the present building includes the NLR required under the AICUZ standards, 4) no expansion of the building can occur without it being constructed with NLR provisions being considered, and 5) sufficient protections are in place already for the protection of the base through Appendix A-1of the ZDSO. On the site specific level, we would submit there are no additional measures that are necessary under Note I(d) regarding building location and site planning, design and use of berms or barriers to mitigate noise exposure, especially since this is an adaptive re-use of existing buildings and the operation of the business has not caused any concern s to surface that would indicate these are needed.

Insofar as there may be some other site that could apply for a commercial regional use with outdoor sales, and the procedure to be used to incorporate MCAS concerns and suggestions, we would note many of the uses allowed under the Suggested Land Use Compatibility Tables have outdoor aspects to them; vehicle sales particularly come to mind. The present ordinance does not require submission as a Special Use where these other types of allowable uses have outdoor aspects, and to my knowledge, this issue has not been a concern for the nearly ten years the Airport Overlay has been in effect.

I see no particular need for the Zoning Board of Appeals to be tasked with evaluating noise difficulties outside that may arise from any particular use or application; it would seem that Beaufort's DRT could examine the matter, with input from MCAS, and through usage of recognized decibel exposure standards (For example, see the attached chart based on National Institute of Occupational Health and Center for Disease Control standards), common sense and judgment, reach a collaborative solution and decision with the applicant as to whether the proposed outdoor activity presented an opportunity for a risk of harm to the health and safety of occupiers of the property. We would submit that should staff and the applicant be in disagreement, that is the point at which the matter should go to the

Letter to Jason Mann Director, Community Plans and Liason Office

County Text Amendment, adaptive re-use in LI Zone

Retail Sales and Flea Market on Highway 21

October 8, 2013

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Zoning Board of Appeals for determination. To that end, perhaps an insertion in the ordinance that for any adaptive re-use of a property subject to the overlay which includes exterior sales, an advisory opinion is to be obtained from MCAS (similar to the procedure for a variance, see Section 8 of Appendix A-1) regarding compatibility and recommended noise reduction measures to prevent prolonged exposure beyond that recommended by recognized governmental standards, and in the event of a dispute with the DRT conditions, appeal would be to the ZBOA.

I have probably given too much information, but I would rather you have too much than not enough. Again, if there is some use in having a meeting to discuss, I will make myself available.

Best Wishes,

David L. Tedder

cc: Tony Criscitiello, Planning Director (By e-mail only)

Katherine and Jeff Lowe, Club Returns, Inc. (By e-mail only)

ALPHABETIC INDEX

332323	Flagpoles, metal, manufacturing	325199	Flavoring materials (i.e., basic
321999	Flagpoles, wood, manufacturing		synthetic chemicals such as
314999	Flags, textile (e.g., banners, bunting,	1	coumarin) manufacturing
	emblems, pennants), made from	311930	Flavoring pastes, powders, and
	purchased fabrics		syrups for soft drink
212311	Flagstone mining or quarrying		manufacturing
327991	Flagstones cutting	111120	Flaxseed farming, field and seed
331314	Flakes, aluminum, made from		production
	purchased aluminum	311225	Flaxseed oil made from purchased
331221	Flakes made from purchased iron or		oils
	steel	311223	Flaxseed oil made in crushing mills
331111	Flakes, iron or steel, made in steel	531190	Flea market space (except under
	mills		roof) rental or leasing
332995	Flame throwers manufacturing	531120	Flea market space, under roof,
332919	Flanges and flange unions, pipe,		rental or leasing
332717	metal, manufacturing	454390	Flea markets, temporary location,
325998	Flares manufacturing		direct selling
335110	Flash bulbs, photographic,	453310	Flea markets, used merchandise,
222110	manufacturing		permanent
335129	Flashlights manufacturing	325320	Flea powders or sprays
421610	Flashlights wholesaling		manufacturing
313249	Flat (i.e., warp) fabrics knitting	334112	Flexible (i.e., floppy) magnetic disk
327211	Flat glass (e.g., float, plate)		drives manufacturing
	manufacturing	332999	Flexible metal hose and tubing manufacturing
421390	Flat glass wholesaling	322221	Flexible packaging sheet materials
334119	Flat panel displays (i.e., complete		(except foil-paper laminates) made
	units), computer peripheral		by coating or laminating purchased
	equipment, manufacturing	Į.	paper
332612	Flat springs (except clock, watch),	322225	Flexible packaging sheet materials
	light gauge, manufacturing		made by laminating purchased foil
332611	Flat springs, heavy gauge,	334412	Flexible wiring boards, bare,
	manufacturing	100000000000000000000000000000000000000	manufacturing ·
336212	Flatbed trailers, commercial,	323122	Flexographic plate preparation
	manufacturing		services
421220	Flatware (except plated, precious)	323112	Flexographic printing (except
	wholesaling	ì	books, manifold business forms,
332211	Flatware, nonprecious and precious		printing grey goods)
	plated metal, manufacturing	333293	Flexographic printing presses
421940	Flatware, precious and plated,		manufacturing
	wholesaling	334511	Flight and navigation sensors,
311942	Flavor extracts (except coffee)		transmitters, and displays
	manufacturing		manufacturing
311511	Flavored milk drinks manufacturing	611519	Flight attendant schools
311930	Flavoring concentrates (except	334511	Flight recorders (i.e., black boxes)
	coffee based) manufacturing	51157417735.54135-604	manufacturing
422490	Flavoring extracts (except for	333319	Flight simulation machinery
	fountain use) wholesaling	l.	manufacturing

Retailing used curios and novelties—are classified in Industry 453310, Used Merchandise Stores.

4533 Used Merchandise Stores CAN

45331 Used Merchandise Stores^{CAN} See industry description for 453310 below.

453310 Used Merchandise Stores CAN

This industry comprises establishments primarily engaged in retailing used merchandise, antiques, and secondhand goods (except motor vehicles, such as automobiles, RVs, motorcycles, and boats; motor vehicle parts; tires; and mobile homes).

Illustrative Examples:

Antique shops Used book stores Used clothing stores Used household-type appliance stores Used merchandise thrift shops Used sporting goods stores

Cross-References. Establishments primarily engaged in-

- Retailing used merchandise via electronic home shopping, mail-order, or direct sale—are classified in Subsector 454, Nonstore Retailers;
- Operating pawnshops—are classified in U.S. Industry 522298, All Other Nondepository Credit Intermediation;
- Retailing used automobiles—are classified in Industry 441120, Used Car Dealers;
- Retailing used automobile parts (except tires and tubes)—are classified in Industry 441310, Automotive Parts and Accessories Stores;
- · Retailing used tires—are classified in Industry 441320, Tire Dealers;
- Retailing used mobile homes—are classified in Industry 453930, Manufactured (Mobile)
 Home Dealers;
- Retailing used motorcycles—are classified in U.S. Industry 441221, Motorcycle Dealers;
- Retailing used recreational vehicles—are classified in Industry 441210, Recreation Vehicle Dealers;
- · Retailing used boats-are classified in U.S. Industry 441222, Boat Dealers;
- Retailing used aircraft, snowmobiles, and utility trailers—are classified in U.S. Industry 441229, All Other Motor Vehicle Dealers; and
- Retailing a general line of used merchandise on an auction basis (not for others)—are classified in U.S. Industry 453998, All Other Miscellaneous Store Retailers (except Tobacco Stores).

US—United States industry only. CAN—United States and Canadian industries are comparable. When neither US nor CAN appears, Canadian, Mexican, and United States industries are comparable.

http://www.ntis.gov/naics

- Retailing manufactured homes (i.e., mobile homes)—are classified in Industry 45393, Manufactured (Mobile) Home Dealers;
- Retailing new books—are classified in Industry 45121, Book Stores and News Dealers;
- Retailing new jewelry (except costume jewelry)—are classified in Industry 44831, Jewelry Stores;
- Retailing new costume jewelry—are classified in Industry 44815, Clothing Accessories Stores; and
- Retailing used merchandise (except automobiles, RVs, mobile homes, motorcycles, boats, motor vehicle parts, and tires)—are classified in Industry 453310, Used Merchandise Stores.

453991 Tobacco Stores^{US}

This U.S. industry comprises establishments primarily engaged in retailing cigarettes, cigars, tobacco, pipes, and other smokers' supplies.

Illustrative Examples:

Cigar stores
Cigarette stands (i.e., permanent)

Smokers' supply stores Tobacco stores

Cross-References.

Establishments primarily engaged in retailing tobacco products and supplies via electronic home shopping, mail-order, or direct sale are classified in Subsector 454, Nonstore Retailers.

453998 All Other Miscellaneous Store Retailers (except Tobacco Stores) US

This U.S. industry comprises establishments primarily engaged in retailing specialized lines of merchandise (except motor vehicle and parts dealers; furniture and home furnishings stores; electronic and appliance stores; building material and garden equipment and supplies dealers; food and beverage stores; health and personal care stores; gasoline stations; clothing and clothing accessories stores; sporting goods, hobby, book and music stores; general merchandise stores; florists; office supplies, stationery and gift stores; used merchandise stores; pet and pet supplies stores; art dealers; manufactured home (i.e., mobile homes) dealers; and tobacco stores). This industry also includes establishments primarily engaged in retailing a general line of new and used merchandise on an auction basis.

Illustrative Examples:

Art supply stores
Candle shops
Cemetery memorial (e.g., headstones, markers, vaults) dealers
Collectors' items (e.g., autograph, coin, card, stamp) shops
Fireworks shops (permanent location)

Flower shops, artificial or dried General merchandise auction houses Home security equipment stores Hot tub stores Swimming pool supply stores Trophy (e.g., awards and plaques) shops

US—United States industry only, CAN—United States and Canadian industries are comparable. When neither US nor CAN appears, Canadian, Mexican, and United States industries are comparable.



Decibel Exposure Time Guidelines

How loud is too loud?

Exposure Time Guidelines

Accepted standards for recommended permissible exposure time for continuous time weighted average noise, according to NIOSH and CDC, 2002. For every 3 dBAs over 85dBA, the permissible exposure time before possible damage can occur is cut in half.

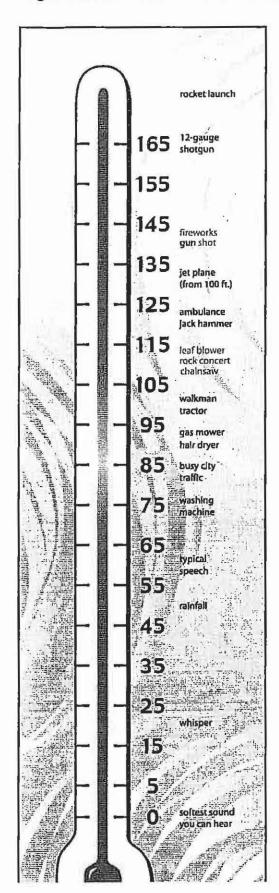
Continuous dB	Permissible Exposure Time						
85 dB	8 Hours	1					
88 dB	4 hours	1					
91 dB	2 hours						
94 dB	1 hour						
97 dB	30 minutes						
100 dB	3 15 minutes						
103 dB	7.5 minutes	Section 1					
106 dB	3.75 minutes (< 4 min)	The state of the s					
109 dB	1.875 minutes (< 2 min)	in El Dinton					
112 dB	.9375 min (~ 1 min)	(Marchaelle)					
黉 115 dB	.46875 min (~ 30 sec)	4					

The Noise Navigator®: a database of over 1700 noise sources.

Developed by Elliott Berger, MS, Senior Scientist with 3M Occupational Health and Environmental Safety Division.

- Noise Navigator Spreadsheet http://www.e-a-r.com/pdf/hearingcons/Noise_Nav.xls see the tabs at the bottom of the page to find sound levels for settings occupational, non-occupational, military, aircraft, etc.
- E.A.R. Hearing Conservation FAQs http://www.e-a-r.com/hearingconservation/faq_main.cfm (Visit this link for a list of interesting articles and graphics.)

(See item 2 on this list of interesting articles and graphics.)



http://www.dangerousdecibels.org/education/information-center/decibel-exposure-time-guideli... 10/9/2013



UNITED STATES MARINE CORPS

MARINE CORPS AIR STATION BEAUFORT, SOUTH CAROLINA 29904-5001

> 11000 Memo 13/01 04 Nov 2013

MEMORANDUM

From: Community Plans & Liaison Officer, Marine Corps Air Station

Beaufort

To: Planning Director, Beaufort County, South Carolina

Subj: ZONING TEXT AMENDMENT 2013-07

Ref: (1) Beaufort County Planning Director e-mail of 23 Oct 2013

(2) Beaufort County Staff Report for Zoning Text Amendment 2013-07

(3) Beaufort County Zoning and Development Standards
Ordinance

(4) David Tedder ltr of 09 Oct 2013

- 1. This memorandum is to provide Air Station input requested at the 07 Oct 2013 Planning Board Meeting and by the Beaufort County County Planning Director (ref 1).
- 2. The Air Station appreciates the County Planning Board's willingness to allow the Air Station time to review this important matter.
- 3. The first area of concern has to do with the nature of the proposed text amendment.
- a. Permitting regional commercial uses in the Light Industrial Zoning District inherently allows for increased risk of incompatible development and negative impacts on public health and safety. Should such negative impacts come about, they could lead to curtailment of Air Station operations in the long term. Per the County's staff report (ref 2), there are significant amounts of land zoned Light Industrial in high noise zones and Accident Potential Zones (APZ) that currently fall under the Beaufort County Airport Overlay District (AOD).
- b. The Beaufort County Zoning and Development Standards Ordinance (ZDSO) states that the intent of the AOD is to "promote the health, safety and general welfare of the inhabitants of the county by preventing the creation,

Subj: ZONING TEXT AMENDMENT 2013-07

establishment or maintenance of hazards to aircraft, preventing the destruction or impairment of the utility of the airports in the county and the public investment therein and protecting the lives and properties of owners or occupants of lands in the vicinity of airports as well as the users of airports; and to aid and implement the overriding federal interest in the safe operation of airports and the security of land surrounding airports" (ref 3). The proposed text amendment (with county staff recommendations to make it a Special Use Permit process) would allow for a wide variety of commercial uses that the current AOD has treated as incompatible to date. allow many such uses at a time when the Air Station's operational tempo is set to increase significantly from what the community has grown accustomed to in recent years. With the increased operations comes the increased potential for negative effects on businesses that develop under the proposed text amendment, public safety and welfare, and thus, increased risk to the Air Station's operations.

- 4. The second area of concern is the impact that projects approved under the proposed text amendment may have on individual residents, the business community, and Air Station operations.
- a. The proposed text amendment applies to the whole County, but it is worded (per Mr. Tedder's letter (ref 4)) so that it will be applicable almost exclusively in the vicinity of the Air Station. The letter also expresses that the fact that the text amendment is limited in scope because of its limited objective. That objective is a flea market at the old 84 Lumber site with an outdoor sales component.
- b. The proposed use of a flea market with an outdoor sales component could be reasonably coded as 55, 56, 57, or 59 (all retail trade codes) per the Department of the Navy's Suggested Land Use Compatibility Manual (SLUCM). This manual should be consulted for compatibility guidance under the proposed text amendment. The manual would call for each of those uses to provide noise reduction of all structures at the old 84 Lumber site. The SLCUM provides additional guidance on the retail trade codes requiring noise reduction, stating "measures to achieve an overall noise reduction do not necessarily solve noise difficulties outside the structure and additional

Subj: ZONING TEXT AMENDMENT 2013-07

evaluation is warranted." Due to the nature of outside sales under shelters or in booths, such noise reduction cannot be achieved for those "structures" where business is conducted, and therefore the proposed use (flea market with outdoor sales) driving the amendment would not be permitted by the language in the proposed amendment.

- c. The Air Station is concerned about the potential health effects from prolonged and repeated exposure to high noise levels people could suffer in their place of work (vendors in outdoor sales area) should a use such with outdoor sales locate in a high noise zone.
- d. This is precisely the type of use that the Air Station is concerned about moving into the AICUZ because of the high potential for negative health impacts on people who work and shop there and have the strong possibility of triggering complaints curtailing our operations, and thus our long term viability in the community. While the petitioner states that there have been no noise complaints with flea markets attendees to date, this does not preclude possible complaints and legal actions from future vendors and shoppers. Such uses are not allowed under current regulations.
- 5. Additionally, at the last meeting some of the following topics were discussed.
- a. The previous use on that site (a lumber yard) would be coded 52 (Retail trade building materials, hardware and farm equipment), or 51 (Wholesale trade) under the SLUCM. These have a less stringent noise reduction requirement than the retail trade uses listed above, and therefore, a flea market with outdoor sales would constitute a change in use that would trigger the need for noise attenuation, which cannot be achieved outdoors.
- b. There was some discussion about the fact that the SLUCM allows for outdoor recreational uses in high noise areas, and also calls for noise reduction. The director of the Department of the Navy's Air Installation Compatible Land Use Zone (AICUZ) center of excellence has stated that the noise reduction levels at such uses were intended to apply to structures such as pro shops at golf courses, not the golf courses themselves since such noise reduction was impossible to achieve.

Subj: ZONING TEXT AMENDMENT 2013-07

- c. The applicant contended that Air Station noise would not bother the flea market operators and customers because they know they are located next to an active Air Station. The Air Station is not against any land owner making the highest and best use of their property, but our overriding concerns are public health, safety, and mission accomplishment. The Air Station is on the verge of an historic increase of flight operations that is significantly higher than what the community is accustomed to, wants no part in decreasing public health and safety, nor to negatively impact a local business that may suffer financially due to the effect of high noise in the future.
- 6. These are some serious and substantive concerns that we hope will be addressed in the review process and resolved in such a way to prevent any increased risk to public health, safety, or the Air Station's operations.

J. M. MANN

LAW OFFICES OF

David L. Tedder, P.A.

604-A Bladen St. • Beaufort, South Carolina 29902 Mailing Address: P.O. Box 1282 • Beaufort, SC 29901-1282

Telephone (843) 521-4222 David L. Tedder, Esq. dave@tedderlawoffice.com

Fax Number (843) 521-0082

November 7, 2013

BY E-MAIL ONLY

Mr. Anthony "Tony" Criscitiello
Beaufort County Planning Director
and
Mr. Robert Semmler
Beaufort County Planning Commission Chairman
P.O. Drawer 1228
Beaufort, SC 29901
c/o tonyc@bcgov.net

Re:

Agenda Item Number 8, November 7, 2013

TEXT AMENDMENT TO THE BEAUFORT COUNTY ZONING AND DEVELOPMENT STANDARDS ORDINANCE/ZDSO, ARTICLE V. USE REGULATIONS, SEC. 106-1287. COMMERCIAL RETAIL, REGIONAL (ADDS STANDARDS TO ALLOW ADAPTIVE REUSE OF SITES, ETC.); APPLICANT: DAVID TEDDER

Gentlemen:

After receiving the November 4th letter from the USMC on Monday, I made an appointment to speak with Tony Criscitiello, County Planning Director, and Jason Mann, Director, MCAS Community Plans and Liason Office on Thursday morning. Also attending that meeting was David Wunder, Marine Corps Associate Legal Counsel, Eastern Area Counsel Office, Environmental Law. We spent a good hour discussing the concerns contained within the November 4th letter.

It was the consensus of the discussion group that everyone's interests would be best served by removing this matter from this evening's Planning Commission meeting, so that additional discussions and potential modifications to the proposed text amendment could be explored which might mitigate the concerns expressed in the letter.

Accordingly, with the consent of the landowner, I would appreciate the Commission tabling this matter for another month to allow us an opportunity to continue working on the text

Letter to Anthony Criscitiello and Robert Semmler

RE: Removing Agenda Item 8

November Planning Commission Meeting

November 7, 2013

Page Two

amendment. I would also ask the Planning Director to request that Council Chairman Sommerville and Councilman Flewelling, Chair of the Natural Resources Committee, be advised of these matters and request their participation in our discussions, if they are so inclined.

With best wishes, I am

Sincerely yours,

David L. Tedder

cc: Jeff and Katherine Lowe (by e-mail only)

Jason Mann (by e-mail only)

Rainey, Sue

Subject: Attachments: FW: Text amendment, adaptive re-use of buildings in limited industrial zone Club Returns 106-1287 Commercial Retail with outdoor sales (Dec 5 CLEAN ORD ONLY(2)).doc; Club Returns 106-1287 Commercial Retail with outdoor sales (Dec 5 Final Redline with explanation).doc

From: Dave L. Tedder [mailto:dave@tedderlawoffice.com]

Sent: Thursday, December 05, 2013 5:32 PM **To:** Flewelling, Brian; Paul Sommerville

Cc: Criscitiello, Anthony

Subject: Text amendment, adaptive re-use of buildings in limited industrial zone

David L. Tedder, P.A.

604-A Bladen St., Beaufort, South Carolina 29902

Mailing Address: P.O. Box 1282, Beaufort, SC 29901-1282

David L. Tedder, Esq.

Telephone: (843) 521-4222

Fax: (843) 521-0082

email: dave@tedderlawoffice.com

Dear Brian and Paul:

Here isa copy of what will be going out in the Council package tomorrow for Natural Resources on Monday (that package will have a lot of other back up material that has a good likelihood of causing some confusion). Tony Criscitiello has looked this material over earlier today. I spoke briefly with Gerald Dawson Tuesday evening at the Legislative Delegation meeting to give him a heads up, and sent him a copy earlier today with my phone numbers. I have not yet heard from him, but I know how busy it gets between Thanksgiving and Christmas. We appeared before the Planning Commission Monday night. I think Tony C. would be happy to speak to you about this matter if you give him a call if you have questions. One of the attachments is a version showing the changes to the existing ordinance as a redline, and has a cover explanation; the other is just the ordinance in its final clean form if all of the amendments and adjustments are made.

Tony and I are trying to make the proposed text amendment as recommended by Planning Commission better and incorporate some items agreed on with the MCAS folks as making it a more acceptable to them after receiving their comments in November, and meeting with them at Tony's office a about ten days ago, but which were left out as the Commission struggled with formulating a motion. I wanted to give you a heads up, as well as ask your considering assisting me in getting those provisions added back in, which Tony agrees would be better than the staff version from October that did not have the benefit of those discussions.

I have to drive to Columbia this evening, but you are welcome to call me on my cell phone, 521-6373. I will be available all weekend and on Monday as well.

David L. Tedder, Esq., AICP David L. Tedder, P.A. dave@tedderlawoffice.com PO Box 1282 Beaufort, SC 29901-1282 (843) 521-4222 (843) 521-0082 (fax) CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by a lawyer or law firm employee. It may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your computer system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may be attached to this communication. Thank you for your cooperation.

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EXPLANATION

Proposed Text Change and reasons for change

Attached is Section 106-1287, Commercial Retail, Regional, with additional changes to the last submission to the Planning Commission by the applicant showing as a redline to the current ZDSO. A clean version is also attached for your convenience. The initial requested changes stem from an analysis of the restrictions of this section's practical application over the last ten years or more, and a desire to remove or alter some those restrictions which may unreasonably inhibit the ability to adapt and reuse structures located in the Limited Industrial zone which are vacant and unused for a significant period. There are structures built during what is now recognized as an overly ambitious building period now laying empty and decaying because there is no demand for those uses after the effects of the recession. The likelihood of a fresh need for those uses is unlikely in the foreseeable future. The present restrictions on commercial retail uses, as well as outdoor sales in the Limited Industrial zone seems misplaced, especially since the County has itself been unsuccessful in its efforts to incentivize and attract suitable industrial, manufacturing and distribution businesses to the areas involved, and the time is ripe to re-examine the limitations on non-industrial uses in the area zoned Limited Industrial

The most significant restriction in these areas is that in the commercial retail, regional category, which is a Limited Use under the present ZDSO, no more than 5% of the structure can be used for retail sales. In a modest sized building likely to be found in a limited industrial area, such as a 20,000 s.f. distribution warehouse, only 1,000 could be used as retail. Even a convenience store is larger than that, and makes no logical sense when one considers this is an adaptive re-use of a building that has been vacant for at least two years. A second restriction is that any retail use that incorporated outdoor sales is automatically considered commercial retail, regional, irrespective of any other factor which might indicate another use category would be appropriate.

Separate from these two issues is what additional standards apply if the use is in an Airport Overlay District, which in the immediate proposal, includes the JLUS recommendations for suggested compatible uses found in Table 2 of Appendix A-1 of the ZDSO. Appendix A-1 allows for buildings in each of the noise zones, and there are noise attenuation requirements attendant to each particular use. There is a different consideration if the structure is in an Accident Potential Zone, where congregation of people becomes a more significant concern in the event of a crash. In this instance, the site is across Highway 21 from the County Animal Shelter, adjacent to the Drive-In, and across the street from Greenline Industries. The Noise Zone is a 70 to 74 dnl area (Noise Zone B). The prior use was as an 84 Lumber and Building Supply, with exterior sales area. The proposed use is to use the building structure as a wholesale—retail site, whereby truckloads of materials are obtained, brought into the warehouse, broken down in to items to be sold at retail on-site, and items to be re-packaged and sent to other liquidation store sites are auctioned off on-site. The interior use as a wholesale and retail sales site appears in the JLUS as part of SLUCM Sector 50, Trade, and is denoted as a compatible

use, with noise reduction measures to be incorporated into building codes and design and construction of buildings. Additionally, the exterior sales area used for lumber storage is converted into flea market stalls for vendors, who either resell the items purchased at the liquidation auctions, or bring in their own product.

As noted in the cover letters included in the package, this business has been operating under a temporary permit for approximately six months, has already filmed the pilot for a reality show on cable TV, and is poised to film up to 52 episodes once sufficient permitting is obtained. Additionally, since the initial applicant submission and staff report of October 31, while completing the Planning Commission process, representatives of MCAS met with the Planning Director and the owner's representative to discuss modifications to address concerns of MCAS. County staff had initially proposed some modifications to the text submitted by the applicant, and as a result of these later discussions, additional requirements for the exterior sales component of this particular type of use were agreed upon by the applicant, including a requirement that exterior sales in the Airport Overlay be processed as a Special Use permit through the Zoning Board of Adjustments, and a limitation on the days of the week exterior sales would occur, being limited to Friday, Saturday and Sunday. To address concerns that since this is a general text amendment and could affect other areas of the Country zoned Limited Industrial in the future, the applicant suggested and is agreeable to having the additional limitation that adaptive re-use of a site in the Limited Industrial Zone be further constrained to being applicable only to those sites in existence at the time of the adoption of this text amendment.

At the Planning Commission, the applicant presented a modification that distinguished between areas that were in the Airport Overlay, and those that were not. The applicant also included a distinction between use of a building (separate and apart from exterior sales) which provided for removal of the 5% retail space restriction in an adaptive re-use, and allowed that to be processed as a Limited Use with additional standards. An increase in retail space above 60% would require a Special Use permit. If the building site was in the Airport Overlay, compliance with the suggested JLUS standards of Appendix A-1 would still apply (these standards do not prohibit retail sales, merely noise attenuation measures dependant on the Noise Zone it is situated as noted above). Planning staff was not opposed to that modification.

Exterior Sales would be processed as a Special Use through the Zoning Board of Appeals. Standards include those base standards required under the additional limited use standards, as well as addressing the JLUS suggested measures that are found in the package of materials submitted. These note state that measures to achieve an overall noise reduction do not necessarily solve noise difficulties outside the structure and additional evaluation is warranted. Item 1(d) of those JLUS suggested standards notes that building location and site planning, design and use of berms and barriers can help mitigate outdoor noise exposure. The suggested revisions to the Special Use standards for exterior sales submitted by the applicant incorporate these ideas, and included a requirement for large buffers and roofed structures outside.

At the Planning Commission meeting December 2d, it appeared the Planning Commission was embracing the restrictions on days of operation, as well as hours of operation, and preferred the staff recommendation as to the language triggering the need for a Traffic Impact Analysis. However, during their discussion and formulation of a motion, there was confusion as to whether adaptive re-use outside of the Airport Overlay with a retail expansion of 60% of the structure size or less would be processed as a Limited or Special Use, and eventually, the motion was to adopt the October 31st staff recommendations, which passed unanimously. Unfortunately, that staff recommendation did not include any of the modifications which were discussed in meetings with the representatives of MCAS and the applicant, and which quite frankly, provide more protection to the MCAS mission than the staff submission.

The following is re-write of the two applicant submissions to the Planning Commission which incorporates the additional modifications discussed with the MCAS representatives, and at Planning Commission, and distinguishes between areas outside the Airport Overlay, as well as adaptive reuse of space for retail up to 60% of the structure being a Limited Use. There is also an explanation of each requested change.

SPECIFIC SECTIONS

- 1. Subsection 106-1287(d). Adds in standards to allow adaptive re-use of sites which have been constructed, but the site has been unused for a period in excess of two years. This subsection merely sets the pre-condition which removes the prohibitions on commercial retail activities on the proposed site, and indicates there may be either Limited or Special Use standards.
- Subsection 106-1287(d)(2) (i) through (v). These are the specific Limited or Special Use standards to be applied at the proposed site. Parking requirements and required maximum proximity to an arterial road and limitations on traffic loading increases are included, with an initial determination of whether a new Traffic Impact Analysis being based on whether there is in increase in traffic from one use to the other. The proposed use is to be compatible with the Navy's Accident Potential or Noise Zones requirements if it lies within the AICUZ areas. If there is an increase in impervious surface, a new storm water analysis and appropriate mitigation measures undertaken as part of the permitting. There is a limitation on increasing the size to more than 5%; beyond that, a Special Use process would be implicated. This allows for additional space which might be necessary to adapt the building to a commercial use. On a 20,000 s.f. building, that would be 1,000 s.f.. Processing as either a Limited Use Review or Special Use is also dependant on whether the commercial retail, regional use utilizes more than 60% of the structure for retail sales. More than that requires a Special Use process. This would allow citizen board review of impacts on neighbors that were not contemplated when the original use was permitted, and provide an opportunity to require a Community Impact Study.

3. Subsection 106-1287 (d) (3). This subsection addresses retail uses with outdoor sales areas, a particular type of business particularly suited to reuse lumber yards and other material supply sites that have closed up, where those uses are located outside of the MCAS Beaufort Airport Overlay. 106-1287 (d) (4) addresses this use within the Overlay District. With large fenced areas, sheds for covering building materials, and large maneuvering areas that were designed for truck movements on-site, outdoor flea markets and farmers markets are ideally suited to use these sites productively. In order to address pedestrian safety concerns, pedestrian pathways must be marked, and the outdoor sales area physically set back from unfenced public roadways. In order to address concerns about outdoor noise intrusion raised by MCAS where these uses are proposed in the Airport Overlay District for MCAS-Beaufort, additional standards have been imposed in subsection 106-1287 (d) (4) (1) regarding roofing of a larger percentage of the outdoor sales area than earlier proposed, as well as increased buffers.

RE-WORDED SECTION 106-1287

Sec. 106-1287. Commercial retail, regional.

(a)

Limited/special standards for use in all applicable districts. Limited/special standards for regional commercial retail uses in all applicable districts are as follows:

(1)

These uses may constitute no more than five percent of the total permitted floor area of the project in which they are located.

(2)

The access to these uses shall be from the development's interior streets. The uses shall not have frontage on arterial or collector streets.

(b)

Reports/studies required. All applications for this use shall include a community impact statement.

(c)

Limited standards for regional commercial retail uses within rural business districts. Limited standards for regional commercial retail uses within rural business districts are as follows:

(1)

This use is limited to 3,500 square feet of floor area.

(2)

Drive-through facilities are not permitted as part of this use.

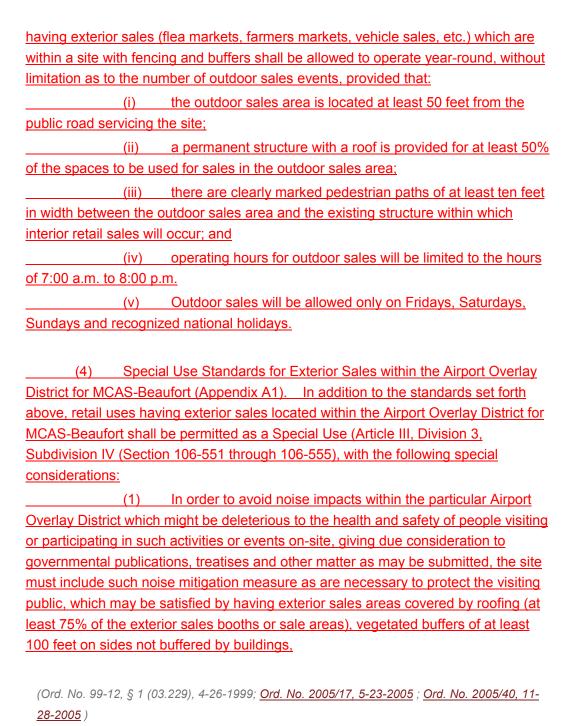
(3)

The following uses are not permitted as part of this use: Vehicular sales, rental and service uses (NAICS 441); and hospitals and medical facilities (NAICS 621, 622, 623, 624).

(d)

Limited standards for adaptive re-use; regional commercial retail uses in the Light Industrial zoning district. Limited and Special Use standards for regional commercial retail establishments utilizing developed site uses which have been unoccupied by an operating business for more than two years, and are in existence as of the date of this ordinance amendment, are as follows:

(1) It is the intent of this section to allow the adaptive re-use of sites
developed in conformity with allowable uses for the Limited Industrial district, but
which have become vacant and remained vacant for more than two years, thereby
avoiding the creation or continuation of a blighted area.
(2) The permitted floor space size limitations of 106-1287(a)(1) shall not
be applicable; existing structures can utilize up to sixty percent (60%) as a Limited
Use for all uses qualifying as commercial retail, regional, and may utilize the existing
permitted access to the site, notwithstanding 106-1287 (a)(2), provided that the
following Limited Use Standards are met; utilization of more than sixty per cent (60%
of the structure shall be processed as a Special Use (Article III, Division 3,
Subdivision IV (Section 106-551 through 106-555), meeting the standards below as
well as any special conditions determined to be required under the Zoning Board of
Appeals standards of review:
(i) adequate parking meeting the standards of Article XIII,
Division 5 (Section 106-2891 through 106-2896) (Parking and Loading Standards) is
provided on-site or through shared parking as allowed by Article XIII, with on-site
individual parking spaces delineated;
(ii) the site is located within 1,000 feet of an arterial road, and
traffic impacts as measured by trips per day will not exceed by more than 10% the
traffic impact of the former permitted use on the site, as determined by reference to
the ITE Manual, latest edition, with trips per day in excess of 10% requiring a Traffic
Impact Analysis (TIA);
mpact maryolo (Tirt),
(iii) the consequence of the con
(iii) the proposed use and any structural addition shall conform
with the Airport Overlay District for MCAS-Beaufort (Appendix A1) ,if the site is within
that overlay zone;
(iv) Any structural additions shall not increase the existing floor
space by more than 5%; if more than a 5% increase is proposed, the application will
be treated as a Special Use; and
(v) Any increase in the total existing impervious surface on the
site not contemplated in the original storm water submission will require a
resubmission of stormwater calculations and appropriate mitigation measures as
determined by reference to the Beaufort County Storm Water Manual.
(3) Limited Use Standards for Retail Uses having Exterior Sales Not
Within the Airport Overlay District for MCAS-Beaufort (Appendix A1). Retail Uses



RE-WORDED SECTION 106-1287

(CLEAN)

Sec. 106-1287. Commercial retail, regional.

(a)

Limited/special standards for use in all applicable districts. Limited/special standards for regional commercial retail uses in all applicable districts are as follows:

(1)

These uses may constitute no more than five percent of the total permitted floor area of the project in which they are located.

(2)

The access to these uses shall be from the development's interior streets. The uses shall not have frontage on arterial or collector streets.

(b)

Reports/studies required. All applications for this use shall include a community impact statement.

(c)

Limited standards for regional commercial retail uses within rural business districts. Limited standards for regional commercial retail uses within rural business districts are as follows:

(1)

This use is limited to 3,500 square feet of floor area.

(2)

Drive-through facilities are not permitted as part of this use.

(3)

The following uses are not permitted as part of this use: Vehicular sales, rental and service uses (NAICS 441); and hospitals and medical facilities (NAICS 621, 622, 623, 624).

(d)

Limited standards for adaptive re-use; regional commercial retail uses in the Light Industrial zoning district. Limited and Special Use standards for regional commercial retail establishments utilizing developed site uses which have been unoccupied by an operating business for more than two years, and are in existence as of the date of this ordinance amendment, are as follows:

- (1) It is the intent of this section to allow the adaptive re-use of sites developed in conformity with allowable uses for the Limited Industrial district, but which have become vacant and remained vacant for more than two years, thereby avoiding the creation or continuation of a blighted area.
- (2) The permitted floor space size limitations of 106-1287(a)(1) shall not be applicable; existing structures can utilize up to sixty percent (60%) as a Limited Use for all uses qualifying as commercial retail, regional, and may utilize the existing permitted access to the site, notwithstanding 106-1287 (a)(2), provided that the following Limited Use Standards are met; utilization of more than sixty per cent (60% of the structure shall be processed as a Special Use (Article III, Division 3, Subdivision IV (Section 106-551 through 106-555), meeting the standards below as well as any special conditions determined to be required under the Zoning Board of Appeals standards of review:
- (i) adequate parking meeting the standards of Article XIII, Division 5 (Section 106-2891 through 106-2896) (Parking and Loading Standards) is provided on-site or through shared parking as allowed by Article XIII, with on-site individual parking spaces delineated;
- (ii) the site is located within 1,000 feet of an arterial road, and traffic impacts as measured by trips per day will not exceed by more than 10% the traffic impact of the former permitted use on the site, as determined by reference to the ITE Manual, latest edition, with trips per day in excess of 10% requiring a Traffic Impact Analysis (TIA);
- (iii) the proposed use and any structural addition shall conform with the Airport Overlay District for MCAS-Beaufort (Appendix A1) ,if the site is within that overlay zone;
- (iv) Any structural additions shall not increase the existing floor space by more than 5%; if more than a 5% increase is proposed, the application will be treated as a Special Use; and
- (v) Any increase in the total existing impervious surface on the site not contemplated in the original storm water submission will require a resubmission of stormwater calculations and appropriate mitigation measures as determined by reference to the Beaufort County Storm Water Manual.
- (3) Limited Use Standards for Retail Uses having Exterior Sales Not Within the Airport Overlay District for MCAS-Beaufort (Appendix A1). Retail Uses

having exterior sales (flea markets, farmers markets, vehicle sales, etc.) which are within a site with fencing and buffers shall be allowed to operate year-round, without limitation as to the number of outdoor sales events, provided that:

- (i) the outdoor sales area is located at least 50 feet from the public road servicing the site;
- (ii) a permanent structure with a roof is provided for at least 50% of the spaces to be used for sales in the outdoor sales area;
- (iii) there are clearly marked pedestrian paths of at least ten feet in width between the outdoor sales area and the existing structure within which interior retail sales will occur; and
- (iv) operating hours for outdoor sales will be limited to the hours of 7:00 a.m. to 8:00 p.m.
- (v) Outdoor sales will be allowed only on Fridays, Saturdays, Sundays and recognized national holidays.
- (4) Special Use Standards for Exterior Sales within the Airport Overlay District for MCAS-Beaufort (Appendix A1). In addition to the standards set forth above, retail uses having exterior sales located within the Airport Overlay District for MCAS-Beaufort shall be permitted as a Special Use (Article III, Division 3, Subdivision IV (Section 106-551 through 106-555), with the following special considerations:
- (1) In order to avoid noise impacts within the particular Airport Overlay District which might be deleterious to the health and safety of people visiting or participating in such activities or events on-site, giving due consideration to governmental publications, treatises and other matter as may be submitted, the site must include such noise mitigation measure as are necessary to protect the visiting public, which may be satisfied by having exterior sales areas covered by roofing (at least 75% of the exterior sales booths or sale areas), vegetated buffers of at least 100 feet on sides not buffered by buildings,

(Ord. No. 99-12, § 1 (03.229), 4-26-1999; <u>Ord. No. 2005/17, 5-23-2005</u>; <u>Ord. No. 2005/40, 11-28-2005</u>)



MEMORANDUM

To: Beaufort County Planning Commission

From: Anthony Criscitiello, Planning Director

Subject: Amendment to the ZDSO

Date: December 5, 2013

Excerpt of PLANNING COMMISSION RECOMMENDATION from its December 2, 2013, draft meeting minutes:

Mr. Anthony Criscitiello briefed the Commission. The text amendment is consistent with the Comprehensive Plan. Mariculture is considered a rural use in the existing ordinance. We are broadening the application for commercial mariculture uses in the Fishing Village Overlay District and areas that are abutting to small tidal creeks.

Applicant's Comments: Mr. Frank Roberts, the applicant, is the owner and operator of Lady's Island Oyster Farm. He noted that he grows his own oysters in racks in the Coosaw River and his market is the single oyster market. 99% of his product goes to Charleston. He introduces the seeds to the environment, rather than taking wild oysters. He explained his process that begins in the Coosaw River and his processing area is on Trask Parkway. Food and Drug Administration (FDA) have time and temperature restrictions to move the oysters to a controlled temperature environment. Being able to process the oysters at the dock will allow them to meet the FDA requirements and bring a superior product to market quicker. His is the first oyster mariculture operation in Beaufort County. His uses a small boat, his operation is small, and he does not affect the environment. It takes him 15 minutes to move the seeds from the grow-out area to the processing area. His goal is not to warehouse on the land, but to process and ship to the markets as quickly as possible.

Commission discussion included a clarification of his existing operation, the text amendment would allow him to use a dock that will reduce his processing time from the grow out area to the processing area, giving kudos to the operator for his business, stating that the County Council give provide incentives to his type of business, and wondering if abutting property owners had comments. None were present.

Public Comment: None were received.

Motion: Mr. Petit made a motion, and Mr. Stewart seconded the motion, to recommend approval to County Council to the Text Amendment to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Article VII, Sec. 106-1912. Water dependent uses to add standards to allow commercial docks for mariculture use, as recommended by

the Planning staff. The motion was carried unanimously (FOR: Bihl, Chmelik, LeGree, Petit, Riley, and Stewart).

STAFF REPORT:

A. BACKGROUND:

Case No. ZTA 2013-10

Applicant: Frank Roberts

Proposed Text Change: Amendment to allow Commercial Docks on Small Tidal Creeks

for Mariculture Uses

B. SUMMARY OF REQUEST:

The applicant owns the Lady's Island Oyster Farm and would like to utilize a property on Trask Parkway to process and ship raw oysters to market. While this use is permitted under the property's zoning, it requires a commercial dock to unload the oysters. The property is adjacent to a small tidal creek. The ZDSO currently prohibits commercial docks on small tidal creeks, except within Commercial Fishing Village Overlay Districts. In order ensure that harvested oysters are placed under refrigeration as soon as possible, and to facilitate access to major markets via major thoroughfares, the applicant is requesting that commercial docks associated with mariculture enterprises be allowed in small tidal creeks outside of commercial fishing villages.

The applicant is proposing the following text amendment, shown as strike through for deletions and <u>underlined</u> for additions:

Sec. 106-1912. Water dependant uses

- (b) *Docks, piers, and wharfs.*
 - (1) Tidal creeks and shallows are the most sensitive, ecologically, and are, therefore, being regulated.
 - (2) Small tidal creeks and shallows, which fall within the county, are defined as those bodies of water, [being tidally influenced] as per the Beaufort County official small tidal creek delineation map. Private docks and community docks in small tidal creeks may be allowed on both existing lots of record, and new subdivisions under the following criteria:
 - h. The use of docks shall be limited to private, non-commercial uses, unless allowed for it is associated with an upland property productively in use as an on-going mariculture enterprise, and in possession of a current mariculture

permit issued by the state of South Carolina for the purpose of growing mollusk shellfish. Also, the use of docks on small tidal creeks dedicated to commercial fishing or shrimping is permitted as part of a Commercial Fishing Village Overlay District.

(Note: The remainder of Sec. 106-1912 is unaffected.)

C. ANALYSIS:

The seafood industry has strong cultural and economic ties to Beaufort County. Today, however; the industry is in decline, even though the demand for fresh, local seafood is still high. There are many factors related to this decline, including fuel costs and foreign competition. From a land use standpoint, rising land values have put a premium on waterfront property and made it very expensive to purchase new land for waterfront access for new seafood businesses. At the same time, increased residential development on waterfront properties has created the potential for conflicts between property owners and those harvesting and processing shellfish.

In 2000, the County established the Commercial Fishing Village Overlay District (CFVO) to provide for the maintenance and enhancement of the commercial seafood industry in those areas of the county that have traditionally been working waterfronts (see attached map). These areas; however, do not necessarily meet the needs of shellfish growers, which include being near to major thoroughfares for easy access to markets, and the need to process and refrigerate the shellfish close to where they are cultivated and harvested.

The County's small tidal creek regulations were also adopted in 2000, and prohibit commercial docks, except in CFVO districts. This regulation is intended to protect these fragile waterways from negative impacts associated with commercial watercraft (fuel emissions, and turbidity and erosion from boat wakes, for example). A copy of the Official Beaufort County Small Tidal Creeks and Shallows map is attached. Unlike the commercial fishing or shrimping industries, shellfish harvesting typically requires much smaller boats. Opening up small tidal creeks to commercial docks associated with an ongoing mariculture enterprise could greatly increase the opportunity for this type of industry to thrive in Beaufort County without negatively impacting these creeks.

The Cultural Resources Chapter of the Beaufort County Comprehensive Plan (2010) contains the following recommendation:

<u>Recommendation 6-5</u> – Beaufort County should protect and enhance the local seafood industry by proactively working to preserve existing working waterfronts and allowing for the expansion of commercial fishing operations where appropriate.

The applicant's request to allow commercial docks in small tidal creeks for mariculture activities (growing mollusk shellfish) would allow for the expansion of the seafood industry in the County. The proposal to limit these docks to those upland properties with approval to conduct mariculture activities will regulate where these docks can be located. Mariculture (the cultivation of shellfish

in seawater) is included under the definition of "Agriculture" in the General Use Table of the ZDSO. It is permitted in all of the County's rural zoning districts, in the rural community preservation areas (e.g. May River, Dale, Seabrook/Stewart Point, Corners), and as a special use in the Resource Conservation District.

D. STAFF RECOMMENDATION:

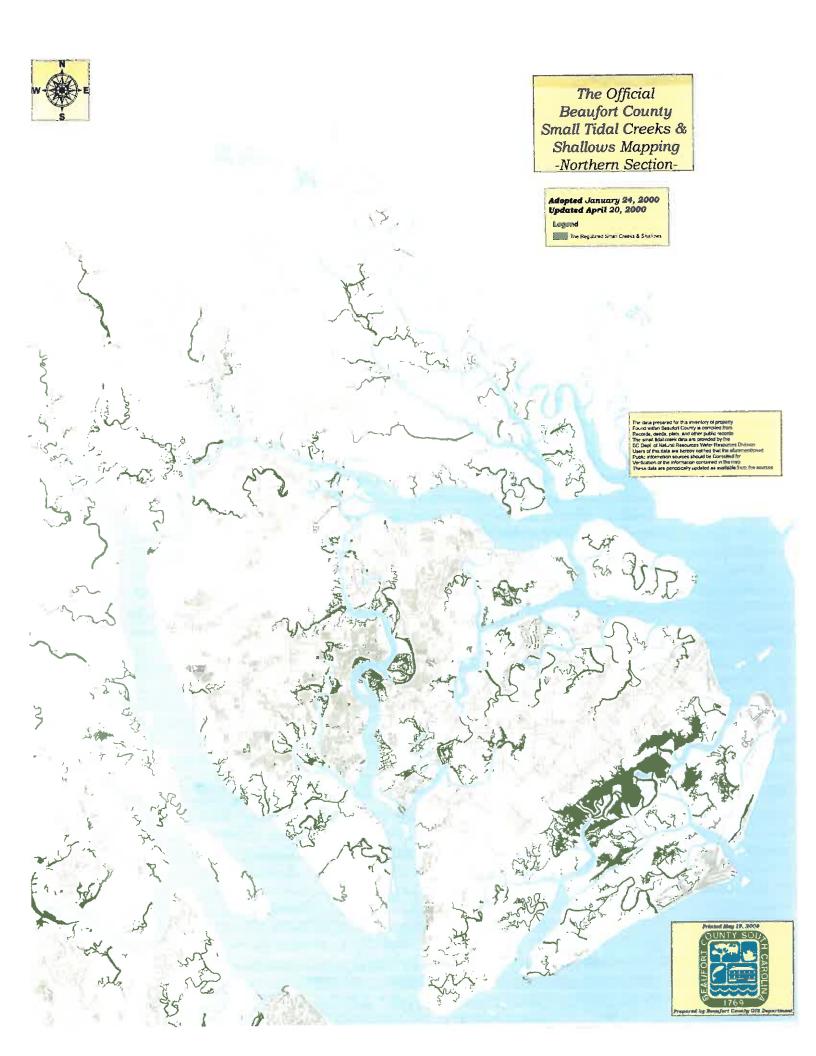
Section 106-493 of the ZDSO lists seven standards (shown below), any of which is cause for a Zoning Text Amendment:

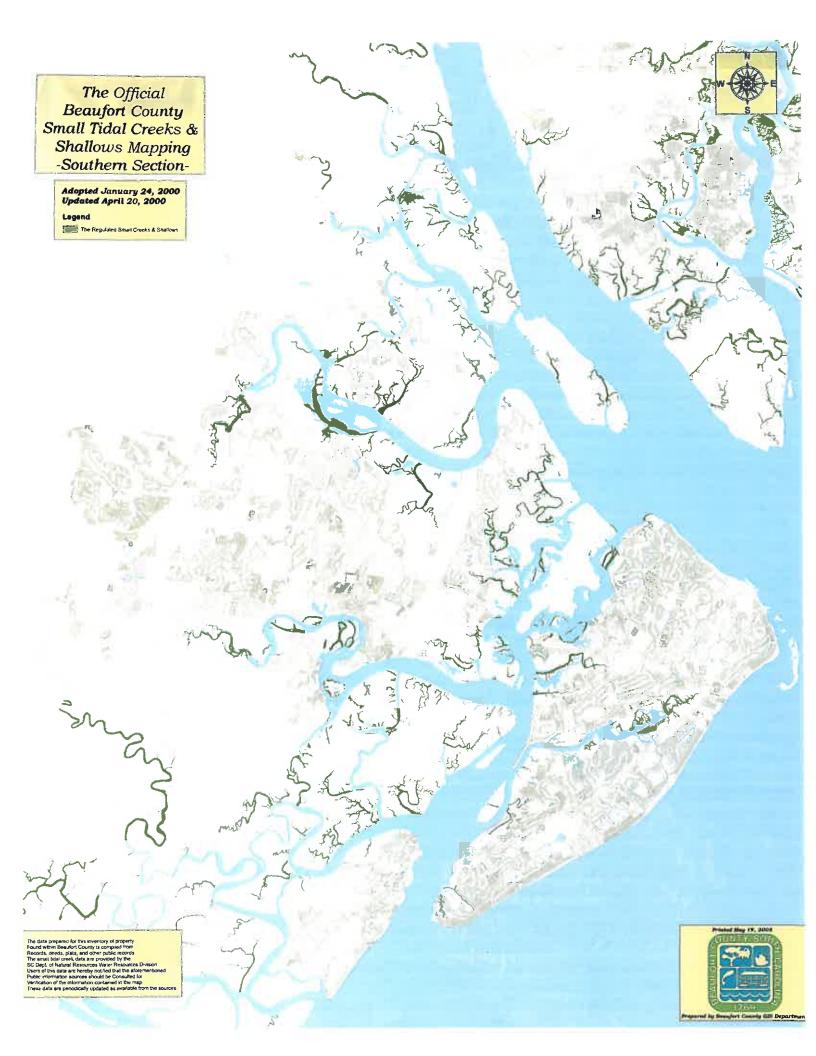
- 1. It would implement a new portion of the comprehensive plan or amendment. (N/A)
- 2. It would implement and better achieve the comprehensive plan's goals and objectives that have proved difficult to achieve under the ordinance's existing provisions. (See above analysis)
- 3. The ordinance's provisions were inconsistent or unreasonable in light of standards for similar uses. (N/A)
- 4. It is necessary to respond to state and/or federal legislation. (N/A)
- 5. It provides additional flexibility in meeting the ordinance's objectives without lowering the ordinance's general standards. (See above analysis)
- 6. It addresses a new use, changing conditions, and/or clarifies existing language. (N/A)
- 7. It clarifies the ordinance or makes adjustments to account for interpretation. (N/A)

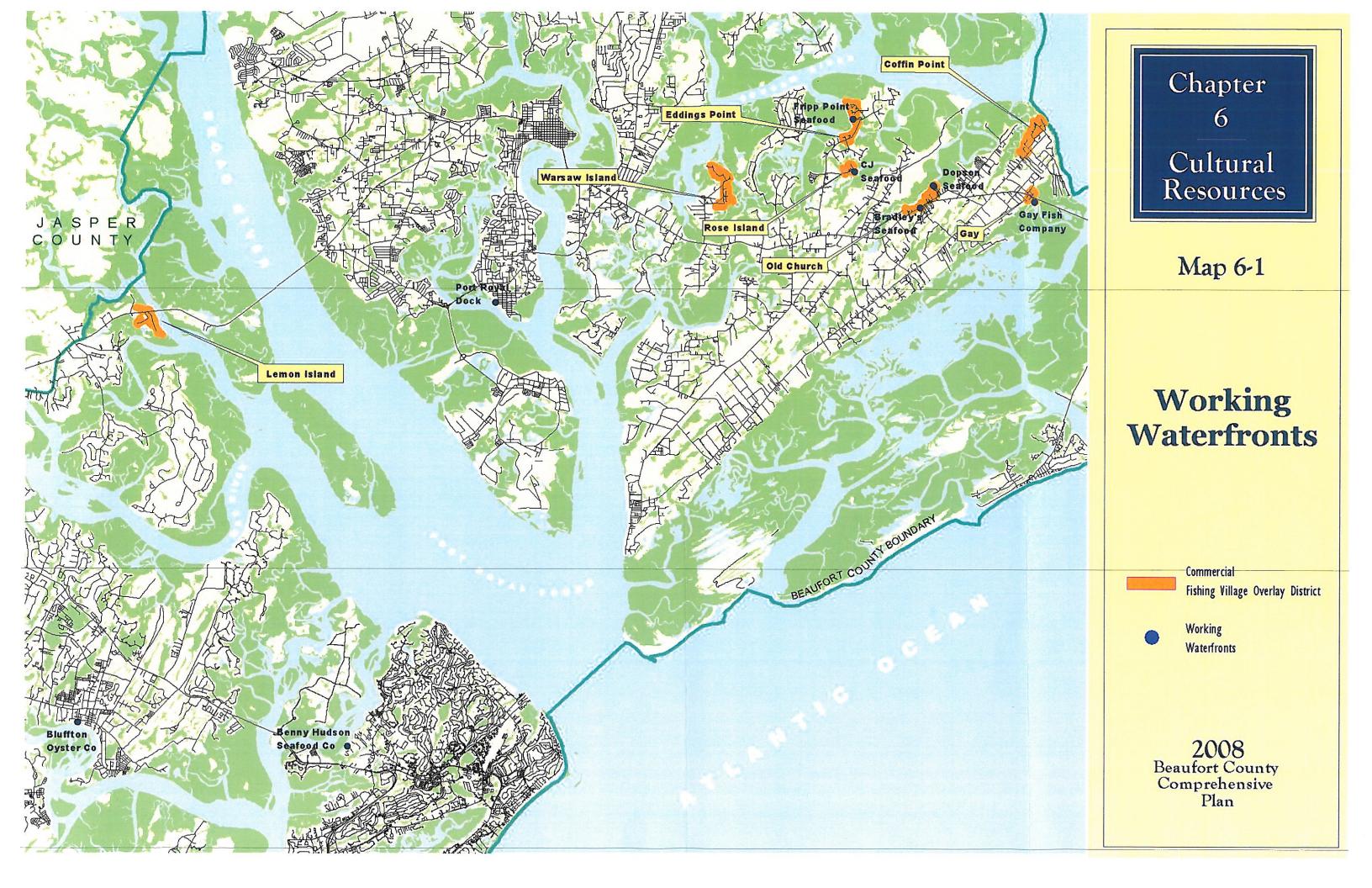
After review of these standards, staff recommends <u>Approval</u> of the requested amendment to Section 106-1912 (Water Dependent Uses) of the ZDSO to allow commercial docks on Small Tidal Creeks for mariculture uses.

E. ATTACHMENTS:

- Maps showing Small Tidal Creeks and Commercial Fishing Village Overlay Districts
- Copy of application for Zoning Text Amendment







BEAUFORT COUNTY, SOUTH CAROLINA PROPOSED ZONING AND DEVELOPMENT STANDARDS ORDINANCE (ZDSO) ZONING MAP / TEXT AMENDMENT / PUD MASTER PLAN CHANGE APPLICATION

TO: Beaufort County Council

	undersigned hereby respectfully requests that the Beaufort County Zoning/Development Standards Ordinance (SO) be amended as described below:
1.	This is a request for a change in the (check as appropriate): () PUD Master Plan Change

1.	This is a request for a change in the (check as appropriate): () PUD Master Plan Change () Zoning Map Designation/Rezoning () Zoning & Development Standards Ordinance Text
2.	Give exact information to locate the property for which you propose a change: Tax District Number:, Tax Map Number:, Parcel Number(s):, Parcel Number(s):
3.	How is this property presently zoned? (Check as appropriate) () Urban/U (Community Preservation/CP () Light Industrial/LI () Suburban/S () Commercial Regional/CR () Industrial Park/IP () Rural/R () Commercial Suburban/CS () Rural Residential/RR () Rural Business/RB () Research & Development/RD () Resource Conservation/RC () Planned Unit Development/PUD
4.	What new zoning do you propose for this property? A (Under Item 10 explain the reason(s) for your rezoning request.)
5.	Do you own all of the property proposed for this zoning change? When () No Only property owners or their authorized representative/agent can sign this application. If there are multiple owners, each property owner must sign an individual application and all applications must be submitted simultaneously. If a business entity is the owner, the authorized representative/agent of the business must attach: 1- a copy of the power of attorney that gives him the authority to sign for the business, and 2- a copy of the articles of incorporation that lists the names of all the owners of the business.
6.	If this request involves a proposed change in the Zoning/Development Standards Ordinance text, the section(s) affected are: 106-1912 water Dependent uses (B Ch) (Under Item 9 explain the proposed text change and reasons for the change.)
7.	Is this property subject to an Overlay District? Check those which may apply: () AOD - Airport Overlay District () MD - Military Overlay District () COD - Corridor Overlay District () RQ - River Quality Overlay District () CPOD - Cultural Protection Overlay District
8.	 The following sections of the Beaufort County ZDSO (see attached sheets) should be addressed by the applicant and attached to this application form: a. Section 106-492, Standards for zoning map amendments. b. Section 106-493, Standards for zoning text amendments. c. Sections 106-2441 and 106-2442, General and Special Considerations for Planned Unit Developments (PUDs) d. Section 106-2450, Traffic Impact Analysis (for PUDs)
	214 10

FILE NO: 2013 // Initiated by: STAFF / OWNER (Circle One)

Rev. 4/11

Page 2 of 2		elopment Standards Ordinance Map/Text Amendment Application
Explanation (c	ontinue on separate she	eet if needed): See Attachment If J
It is understood	by the undersigned th	nat while this application will be carefully reviewed and considered, the
burden of proof	for the proposed am	endment rests with the owner.
1/1		10hu/13
	Signature of Owner	Telephone (Date
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Fmail:	Ladgious	ter a embargmail. Com
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Agent (NamerA	addiess/1 none.emany	
	TO THE PROPERTY.	ESTS, THE PLANNING OFFICE WILL POST A NOTICE ON THE INED IN SEC. 106-402(D) OF THE BEAUFORT COUNTY ZDSO.
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LIDON RECEI	PT OF APPLICATIO	NS, THE STAFF HAS THREE (3) WORK DAYS TO REVIEW ALL
APPLICATION	NS FOR COMPLETEN UFORT COUNTY PL	ANNING COMMISSION SUBCOMMITTEE RESPONSIBLE FOR THI
AREA WHER	N PROCESS (ATTAC)	HED). COMPLETE APPLICATIONS MUST BE SUBMITTED BY NOO!
FOUR (4) WI	NON-PUD APPLICA	ATIONS TO THE APPLICABLE SUBCOMMITTEE MEETING DATE
		- PROPERTY AND RECUIRED TO SUBMIT FIFTEEN (13
COPIES TO I	HE SPRINKING DEL	AKTIMENT 0 =
		ARTMENT AT (843) 255-2140 FOR EXACT <u>APPLICATION FEES</u> .
FOR PLANNI	NG DEPARTMENT US	E ONLY:
Date Application	on Received: ed stamp below)	Application Fee Amount Received: \$250
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	PLANNING DIVISION	FILE NO: 2012 // Initiated by: STAFF / OWNER
Rev. 4/11		(Circle One)

Attachment (1) October 8, 2013

Text Amendment

The proposed text amendment is to address the emerging mariculture businesses regarding the use of private docks within Beaufort County. The current county codes do not address this issue. Lady's Island Oyster Farm is currently located at 2151 Trask Parkway. This location is currently zoned to allow farm/mariculture. This location is favorable for farming/mariculture do to its historical and current farming operations. This location is also well suited for mariculture operations which allows for the harvest of shellfish from state certified leases and processing said shellfish within the stated time limit prescribed by the U. S. F.D.A. This location is next to a major thoroughfare which allows us to deliver our "whole in shell oysters" in a cost effective manner while keeping the company's carbon footprint as low as possible. The use of a private dock at this location also puts us within a short travel time, using small boats equipped with ultra-low emission engines which are used to maintain and harvest oysters.

The reasons described above for acquiring 2151 Trask Parkway are the cornerstone of a successful mariculture operation. Being in close proximity to the oyster leases and the customer base are what allow us to deliver a superior product. The current Commercial Fishing Villages text does not address mariculture or its relationship with the upland activities necessary to deliver a fresh and safe product in an efficient manner.

The current county code section 106-1912- Water Dependent Uses (b) (h) states "the use of docks shall be limited to private, noncommercial uses, unless allowed for as part of a Commercial Fishing Village Overlay District".

I propose adding the text below to 106-1912-Water Dependent Uses (b) (h);

The use of docks on small tidal creeks shall be limited to private, noncommercial uses, unless it is associated with an upland property productively in use as an on-going mariculture enterprise, and in possession of a current mariculture permit issued by the state of South Carolina for the purpose of growing mollusk shellfish. Also, the use of docks on small tidal creeks dedicated to commercial fishing or shrimping is permitted as part of a Commercial Fishing Village Overlay District.



Anthony Criscitiello, Planning Director Beaufort County Council Planning Department 100 Ribaut Rd, Room 115 Beaufort SC 29901-1228

October 21, 2013

Dear Mr. Criscitiello,

As requested, please find attached a document describing the South Carolina shellfish mariculture industry. This document is provided as an educational resource for you and your staff. It provides an overview of growing methods, the product and markets, and regulations governing the industry. It closes with remarks on how shellfish mariculture is considered in Beaufort County's plans and regulations. I have also included a list of resources you may find useful.

Please do not hesitate to contact me should you have any further questions. I am always happy to help.

Kind regards,

Julie Davis, MSc.

Living Marine Resources Extension Specialist

SC Sea Grant Consortium

Ph. 843-255-6060 ext 112

julie.davis@scseagrant.org

Overview of the Shellfish Mariculture Industry in South Carolina

What is Shellfish Mariculture?

Shellfish mariculture (or shellfish farming) is the cultivation of shellfish in saltwater and typically refers to the cultivation of bivalve molluscan shellfish (i.e. oysters, clams, mussels, scallops). Shellfish farming is one of many entrepreneurial opportunities for citizens of rural coastal communities. Shellfish farming is practiced throughout the US and Canada and is a significant contributor to the economy in many areas including Virginia, Washington State, and the northeastern US. Shellfish farming is a good option for people already involved in the seafood industry because it keeps independent watermen at work doing what they love, which is being on the water.

Shellfish Growing Methods

Shellfish farming methods are tailored to the local environment. Different methods are used in different areas and must be tailored to local hydrodynamics, predators, permitting needs, substrate, and logistical needs. Shellfish may be farmed on extensive bottom leases or more intensively using cages. Methods differ depending on what species of shellfish you are growing. Clams can be spread on the bottom and protected by a net covering or, if you're employing more intensive methods, clams can be contained within soft mesh bags which are staked to the bottom. Farm-raised clams take approximately two years to reach harvest size. When growing oysters on a bottom lease, a farmer typically spreads a cultch material (old shell or other hard substrate) over the soft bottom in order to provide a place for baby oysters to settle. Without the cultch material the baby oysters would suffocate in the mud and die. Frequent planting of cultch material and selective harvesting of a bottom lease can be a very productive way to farm oysters. If a farmer is looking to produce a premium single oyster he/she may grow oyster using more intensive methods. These methods involve producing or procuring single-set oyster seed (baby oysters 2-10mm long) from an approved hatchery. These oysters have been settled on a single grain of sand which allows them to grow in a more uniform shape for their whole life as long as they are not crowded. These seed are placed in mesh bags which are then placed in a cage (typically made of plastic coated wire mesh). Cages can vary in design but are typically raised off the sea bottom to allow the oysters to feed more efficiently. The mesh bags ensure the oyster seed are protected from predators such as rays and crabs. Farm-raised oysters generally take 1-1.5 years to reach harvest size.

The main keys to success in raising shellfish is to ensure the shellfish do not become too crowded at any point between planting and harvest and that they do not become overgrown with other animals (i.e. boring sponge, barnacles, etc.). The farmer must take great care to routinely reduce the density of animals in the bags to avoid misshapen or stunted clams or oysters. Routine maintenance is required to keep overgrowth in-check. All maintenance is accomplished

by hand or by using very simple mechanized tools (i.e. tumblers and sorters). Shellfish growers never use fertilizers, drugs, antibiotics, or chemicals on their animals.

Shellfish Mariculture and the Environment

Shellfish mariculture provides numerous ecosystem services, which means it is good for the environment. Bivalve molluscan shellfish, such as clams, oysters, and mussels, are filter feeders that eat microscopic plants (phytoplankton) that grow in the water, this helps keep our coastal waters clean and mitigate the impacts of increased coastal development. An individual oyster may filter as much as 50 gallons of water per day. Oyster cages, much like oyster reefs, provide nursery habitat for numerous estuarine species. Clams bury into the sediment and help aerate submerged soils when burrowing. On culture grounds, shellfish growers help keep our oyster populations healthy by spreading shell material on the bottom which ensures future generations of oysters have a place to settle and grow.

The Product and The Market for Farm-Raised Shellfish

The majority of oysters and clams grown on culture leases, and typically all shellfish grown on mariculture leases, are destined for high-value markets. This is due, in part, to the higher cost associated with cultivating the product and secondly, with the premium attributes of the product that can only be achieved in a culture environment (i.e. shape, uniformity, consistency). Farm-raised oysters, for instance, are a single oyster destined for the premium half-shell market. They are delivered to the restaurant whole, in the shell, and shucked when the customer orders them. The same applies for clams. Processing of these shellfish prior to delivery typically only involves a quick rinse with a hose before they are bagged and loaded on the truck. These shellfish, because they are delivered to the restaurants alive, are very time sensitive. Because of this the farmer relies on rapid turnover and efficient access to major markets. High turnover allows even a small refrigeration unit to adequately service a farm harvesting a large number of oysters or clams. This is ideal because the on-land footprint may be kept small.

Beaufort County's extensive marshes and lack of freshwater input from large rivers allows shellfish grown here to maintain a wonderful flavor and allows growers to reliably provide a consistent high-value product to restaurants throughout the state. In recent years, market demand for locally produced high-value shellfish has increased creating opportunities not previously available for South Carolina growers. For example, the premium half-shell market for oysters currently seeks oysters that are branded based on the place where they're grown. Chefs and consumers want to be able to taste clean, crisp Beaufort County ocean water when they eat an oyster from here; just like they can taste Wellfleet, MA or Deep Bay, BC when eating a 'Wellfleet' or 'Fanny Bay' oyster. This branding has allowed oysters to jump to a new price point, thereby making specialty farming possible. This branding approach may also ensure the market remains stable for a number of years.

Regulations Pertaining to the Shellfish Industry in South Carolina

In South Carolina, shellfish culture and mariculture is regulated by several agencies that work very hard ensure the practices used by growers are sustainable and that public health is protected upon harvest. Initial permitting involves obtaining a permit to lease the sea bottom or water surface from the Department of Natural Resources (DNR) and having all structures to be placed on the lease approved by SC Department of Health and Environmental Control's (DHEC) Office of Coastal Resource Management (OCRM) and the US Army Corps of Engineers. Following initial permitting, the DNR is responsible for renewing permits for culture and mariculture leases and for annual licensing of harvesters using these areas. DHEC is responsible for opening and closing grounds and inspecting certified shellfish facilities. The Food and Drug Administration (FDA) also conducts inspections of shellfish facilities to ensure compliance with sanitation regulations.

Shellfish are cultivated on grounds leased from the state. Grounds are leased for five years and are renewable contingent upon compliance with all obligations as detailed in the Marine Resources Act, Article 9. Grounds are leased at a rate of five dollars per acre per year. These grounds fall into two categories, culture lease and mariculture lease, depending on the growing methods used:

- 1) On a **Shellfish Culture** lease, the leaseholder may harvest oysters and clams from the permitted area. These leases are extensive and well-managed through a reporting system of harvest and planting to the Department of Natural Resources. 'Each Shellfish Culture permitee must plant fifty bushels of shell, seed oysters, seed clams, or other approved cultch, or equivalent as determined by the department, annually for each acre of bottoms in his permit. All cultch planting must be done between May 1 and August 31, inclusive, except permitees may replant green oyster shell from current operations if the shell is replanted within three days after gathering. Seed oysters and seed clams may be planted at any time of the year. All planting must be done only after notice to and with the approval of the department' (Marine Resources Act, Section 50-5-940 (A))
- 2) On a Shellfish Mariculture lease, shellfish (clams and oysters) are grown in cages or bags from seed to harvest. There are no replanting requirements for shellfish mariculture permits.

Any 'person and entities granted Shellfish Culture Permits and Shellfish Mariculture Permits must submit a swom statement stating the permittee has a wholesale seafood dealer's license, a molluscan shellfish license, and a shellfish facility certified by the South Carolina Department of Health and Environmental Control or that all shellfish harvested for sale shall be handled through a licensed wholesale seafood dealer having a molluscan shellfish license and a department of Health and Environmental Control approved facility' (Marine Resources Act, Article 9, Section 50-5-910 (C)).

Since cultured bivalve molluscan shellfish are sold alive and whole to the consumer they are subject to strict state and federal regulations for handling in order to manage risks associated with consuming raw shellfish. Farmers must get their product to refrigeration immediately after

harvest to avoid bacteria multiplying to unsafe levels. The bacteria of greatest concern to shellfish harvesters are *Vibrio sp. Vibrio* are bacteria that naturally occur in seawater, however, when temperatures rise the bacteria can multiply to unsafe levels and pose a risk to human health, mostly for those who already have a medical condition. At 80°F *Vibrio* levels can double every hour that is why it is important for shellfish to be placed under temperature control (under 45°F) as quickly as possible. The rules that govern this are commonly referred to as time/temperature regulations. Growers employ a variety of harvest practices to protect human health such as providing shade on deck, harvesting shellfish before the tide goes out completely, and holding shellfish submerged until harvest. The SC DHEC and FDA are responsible for enforcing all rules related to shellfish and public health. The 'National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish' provides guidance for the control of molluscan shellfish for all US states and clearly emphasizes the importance of quickly getting product to refrigeration. In addition to issues of time/temperature regulation, it outlines guidance on avoiding cross-contamination with other seafood products.

These state and federal regulations require the farmer to have quick access to refrigeration from his/her at-sea culture or mariculture lease. Lengthy voyages with shellfish in the boat not only reduce the amount of time available for the harvester to work but also pose a risk to human health. Even one person getting sick from a clam or oyster from an area can shut down harvesting in the area for some time and may forever tarnish the reputation of the area's shellfish.

Shellfish Mariculture and Beaufort County

Beaufort County Zoning Code currently defines mariculture as agriculture (according to the definition of 'agricultural real property') and demonstrates, along with the Comprehensive Plan for the County, a commitment to maintaining and encouraging sustainable agricultural development. Shellfish mariculture is widely accepted as one of the most sustainable agricultural practices in the world. By nature of being a water-based business that provides a live product to the end-consumer, shellfish growers have slightly different needs than land-based farmers, namely the need to land and distribute product in a very time efficient manner.

The Beaufort County Dock Ordinance allows docks located on small tidal creeks to be used for commercial purposes as long as they are located within a Commercial Fishing Village (CFV) Overlay District. These areas were created to support areas historically used for commercial fishing and do not necessarily align with current or future industry needs. It has become increasingly difficult for fishermen to rely on traditional fisheries for their livelihood; alternative means of meeting the world's seafood needs are required. Preferred alternatives, which could include shellfish farming, would allow watermen to remain employed on the water and Beaufort County to maintain its cultural identity which is so strongly linked to the seafood industry.

Res	our	ces	

National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, available at:

SC Marine Resources Act, available at:

SC Department of Health and Environmental Control, Shellfish Regulations, available at:

East Coast Shellfish Growers Association Website, available at:

Book:

Shumway, S, eds. 2011. Shellfish aquaculture and the environment. Wiley-Blackwell.