



MEMORANDUM

To: Beaufort County Planning Commission
From: Anthony Criscitiello, Planning Director
Subject: Amendment to the Zoning & Development Standards Ordinance (ZDSO)
Date: October 27, 2012

STAFF REPORT:

A. BACKGROUND:

Case No.: ZTA 2011-14
Applicant: James C. Hudson, Sr.

B. SUMMARY OF REQUEST:

The text amendments proposed by the applicant are shown as underlined for additions and ~~struck through~~ for deletions.

Summary: Request 1

The applicant is requesting that *Solid Waste Gathering, Transfer, and Recycling Facility (CIVIL SUPPORT USES)* and Waste Transfer (AGRICULTURAL & INDUSTRIAL USES) shall require a Special Use Permit in the D2 Rural Zone on Daufuskie Island. These uses are not allowed in the County’s other Community Preservation (CP) Districts. Prior to the February 14th adoption of the Daufuskie Island Code (ZDSO Appendix S), Daufuskie Island was zoned as a CP District (with Interim CP Standards). See attached documentation provided by the applicant.

Permitted Uses	Specific Uses	
	D1	D2
CIVIL SUPPORT		
Solid Waste Gathering, Transfer, and Recycling Facility		+ <u>By Special Use Permit</u>
Other	By Special Use Permit – Historically Significant Buildings Only	By Special Use Permit
AGRICULTURAL & INDUSTRIAL		
Waste Transfer		+ <u>By Special Use Permit</u>
Other	By Special Use Permit – Historically Significant Buildings Only	By Special Use Permit

- A Use that is listed and demarcated with a + shall be permitted “By Right”.
- A Use that is listed, but is not demarcated with a + shall be prohibited, and shall not be eligible for consideration as a Special Use.
- A Use that is not listed (Other Use) shall be eligible for a Special Use Permit.

Summary: Request 2

The applicant is requesting to amend the text in the Daufuskie Island Code (ZDSO Appendix S) Sec. 3.8.1 (d) Non-conforming Uses to read “shall” apply rather than “may” apply. See attached documentation provided by the applicant.

3.8

USE

D1

D2

3.8.1 Non-Conforming Use

- a. A previously conforming Use that – as a result of this code – no longer conforms to the Use Standards for the underlying zoning district shall be permitted to continue as is.
- b. A previously conforming Use that has been abandoned for less than one (1) full year, and as a result of this code, no longer conforms to the Use Standards for the underlying zoning district shall be permitted to operate as:
 1. ...the most recent former use.
 2. ...a permitted use.
 3. ...a permitted Special Use.
- c. A previously conforming Use that has been abandoned for one (1) full year or longer, and as a result of this code, no longer conforms to the Use Standards for the underlying zoning district shall be permitted to operate as:
 1. ...a permitted use.
 2. ...a permitted Special Use.
- d. An existing non-conforming Use that wishes to continue operations, but fails to conform to the Use Standards of this Appendix, ~~may~~ shall apply for a Special Use permit in order to become conforming.

Summary: Request 3

The applicant is requesting to Amend **Table 1.1** (Sec. 1.0 PROCEDURES) and any other associated sections to ensure that the approval and permitting process under the Daufuskie Island Code (ZDSO Appendix S) is in compliance with state and federal laws. See attached documentation provided by the applicant (See Table 1.1 on the following page).

Table 1.1

Approvals and Permitting Process

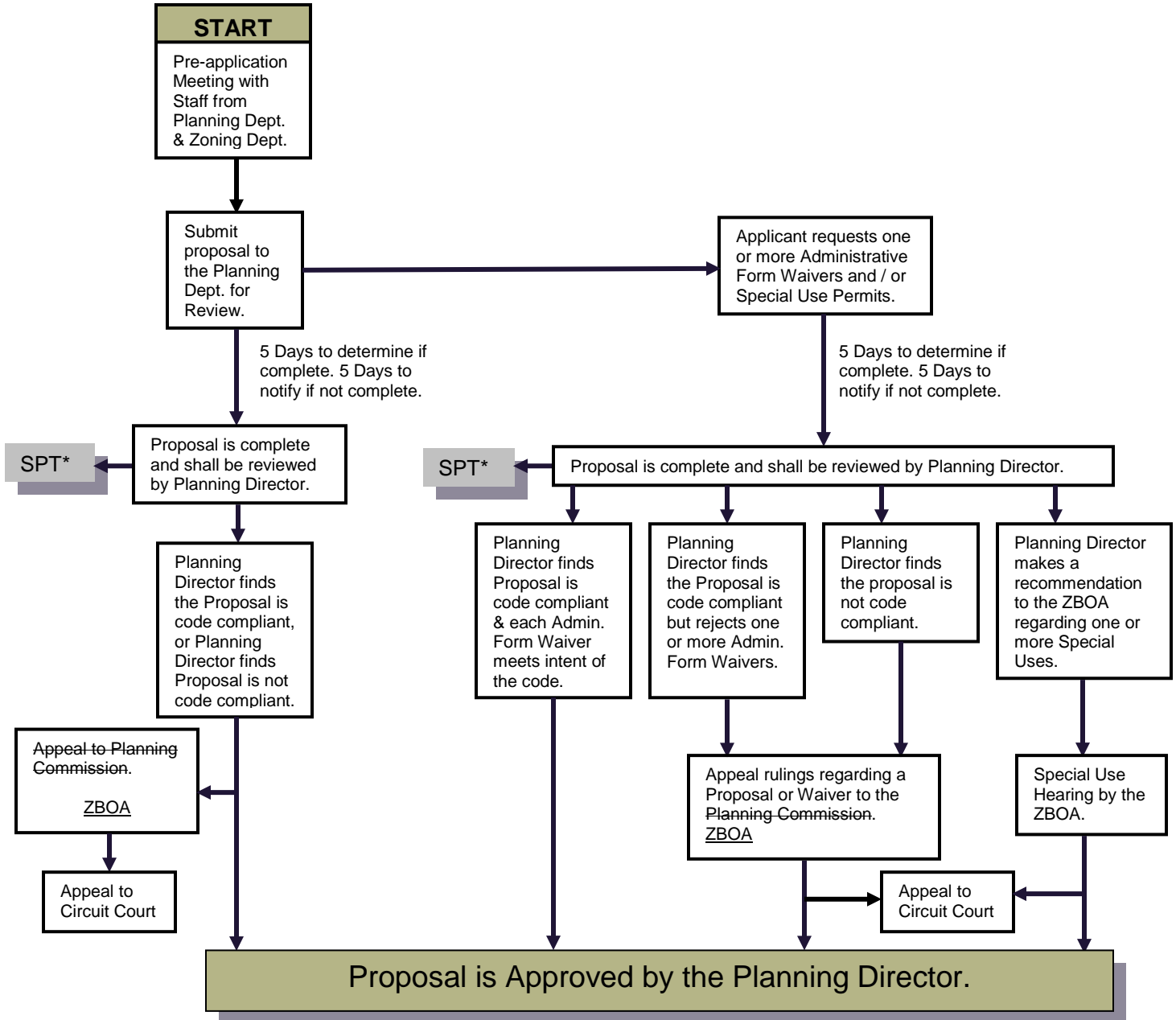


Diagram 1.1 is a general summary of the approvals and permitting process for this Appendix. However, there are additional areas where the procedures of this Appendix differ from those of the ZDSO. These are spelled out in the text, but not necessarily reflected in this Diagram.

* The Planning Director may call a meeting of the SPT in order to seek local input on a Proposal, Administrative Form Waiver, or Special Use Permit.

C. ANALYSIS and RECOMMENDATION:

Section 106-493 of the ZDSO lists 7 standards (below), any of which is cause for a Zoning Text Amendment. Analysis will address all those applicable to **text change requests 1-3**.

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.
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.
3. The ordinance's provisions were inconsistent or unreasonable in light of standards for similar uses.
4. It is necessary to respond to state and/or federal legislation.
5. It provides additional flexibility in meeting the ordinance's objectives without lowering the ordinance's general standards.
6. It addresses a new use, changing conditions, and/or clarifies existing language.
7. It clarifies the ordinance or makes adjustments to account for interpretation.

Request 1

Amend Table 3.8 to indicate that *Solid Waste Gathering, Transfer, and Recycling Facility (CIVIL SUPPORT USES)* and Waste Transfer (AGRICULTURAL & INDUSTRIAL USES) shall require a Special Use Permit in the D2 Rural Zone on Daufuskie Island.

3. The ordinance's provisions were inconsistent or unreasonable in light of standards for similar uses.

Having recognized the unique circumstances that sometimes accompany support services on an island, Beaufort County Planning staff initiated a text amendment in July 2000 to permit *Waste Transfer Stations* as a Special Use in the Daufuskie Island CP District only. The text amendment was adopted by Beaufort County on August 28, 2000. When the Daufuskie Island Code passed on February 14, 2011 it was the intent of staff that the Special Use designation carry forth for similar uses. The fact that this did not take place was an oversight.

Recommendation: Staff recommends approval of Request 1.

Request 2

Amend the text in the Daufuskie Island Code (ZDSO Appendix S) Sec. 3.8.1 (d) Non-conforming Uses to read "shall" apply rather than "may" apply.

The applicant's request would force all non-conforming uses in the D1 Natural and D2 Rural zoning districts to obtain a Special Use Permit as a means of conforming to the current zoning. This provides no relief for those uses that were made non-conforming by the February 14th passing of the Daufuskie Island Code. Chapter two of the South

Carolina Local Government Comprehensive Planning Enabling Act of 1994 states, “S.C. Code Sec. 6-29-730 authorizes zoning regulations which provide that uses which are lawful at the time of adoption or amendment of zoning regulations may be continued although they are non-conforming. The zoning ordinance may contain regulations for continuing, restoring, reconstructing, extending, or substituting nonconformities.”

Additionally, such stringent requirements could force the County to issue Special Use Permits to Uses that may not be in the best interest (or long term vision) of the community. **ZDSO Sec. 106-9. Nonconformities reinforce this notion.** “*The purpose of regulating nonconformities is to gradually increase the degree of compatibility and functionality within zoning districts. All nonconforming uses, buildings and structures, lots and signs shall be encouraged to become conforming, while attempting to minimize disruption of surrounding, established, conforming situations. Over time, this chapter will lead to greater conformity and functionality within zoning districts as nonconformities are abandoned, damaged, or converted to conforming status. It is recognized that this is a slow and gradual process, and not one that is intended to be unduly disruptive to a property owner or a community. Rules and procedures are intended to balance the desire to eventually eliminate the nonconformity against the degree of the problem and the landowner's rights.*”

Recommendation: Staff recommends denial of Request 2.

Request 3

Amend **Table 1.1** (Sec. 1.0 PROCEDURES) and any other associated sections to ensure that the approval and permitting process under the Daufuskie Island Code (ZDSO Appendix S) is in compliance with state and federal laws. While this is a broad request, the applicant appears to be concerned with two primary issues: I. Appeals of the Development Review Process and II. Interpretation of the Code.

- I. The Daufuskie Island Code (ZDSO Appendix S) empowers the Planning Commission as the body responsible for hearing appeals regarding the Development Review Process. This includes an appeal regarding an “Administrative Form Waiver,” a type of administrative modulation that is part of the Development Review Process and common in Form Based Codes. This system is identical to the structure currently used for appeals of the Development Review Team (DRT).

Furthermore, Chapter five of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 addresses the Land Development Regulation process, as well as Appeals. “*If the planning staff is designated as the approving authority, a party may appeal a staff action to the Planning Commission. The Planning Commission must act on the appeal within 60 days. The Planning Commission’s action is final. A party may appeal the decision to circuit court within thirty days of actual notice of the decision.*”

II. The applicant questions the legality of a code in which the person or department that authors the ordinance is also the person or department that enforces (and in some cases interprets) the document. This process was endorsed by the citizens of Daufuskie Island as a way to ensure that the professionals responsible for codifying the Island’s unique character and long term vision are also responsible for implementing and enforcing it. Approval is directly related to the Purpose and Intent Section of the document, whether it is the result of existing standards, or the interpretation of an otherwise “grey” area. Additionally, specific checks and balances were established to further ensure that the decision of the “Director / Department” is indicative of the community’s vision.

Recommendation: Staff recommends deferral of Request 3. The Daufuskie Island Code (ZDSO Appendix S) was reviewed by County attorneys prior to its February 14, 2011 approval. While staff strongly supports the structure of the existing document, the applicant has raised multiple legal issues...some of which are beyond the scope of a typical text amendment. Therefore, we believe the best course of action is to forward Request 3 to the County’s legal staff for a detailed assessment. In the meantime, it is staff’s intent to forward the recommendations concerning requests 1 and 2 to the Planning Commission.

D. ATTACHMENTS:

- Copy of application for Zoning Text Amendment
- Applicant’s Comments and Rationale for each request