

# ***Sumter City-County Board of Zoning Appeals***

May 11, 2011

BOA-11-08, 1555 Hwy 521 S./1395 Mooneyhan Rd.  
(County)

Appeal of the Zoning Administrator's decision that amending PD-06-05 to include additional commercial uses constitutes a major change to the PD.



Appeal of the Zoning Administrator's Decision, Variance, Special Exception

# Sumter City-County Board of Appeals

May 11, 2011

## BOA-11-08, Tammy C. Hodge – 1555 Hwy. 521 S./ 1395 Mooneyhan Rd. (County)

### I. THE REQUEST

**Applicant:** Tammy C. Hodge

**Status of the Applicant:** Appellant

**Request:** Appeal of the Zoning Administrator's decision that amending PD-06-05 to include additional commercial uses constitutes a major change to the PD.

**Location:** 1395 Mooneyhan Rd.

**Present Use/Zoning:** Vacant Commercial Building/PD

**Tax Map Reference:** 252-00-04-009 & 252-00-04-015

**Adjacent Property Land Use and Zoning:** North – Residential/AC  
South – Residential/Agricultural (AC)  
East – Residential/AC  
West – Undeveloped/GR

### II. BACKGROUND

On July 6, 2006, Sumter County Council gave third and final reading to PD-06-05, attached as Exhibit 1. PD-06-05 rezoned 90.29 acres located near the intersection on Highway 521 and Mooneyhan Rd. from Agricultural Conservation (AC) to Planned Development (PD). The rezoning thusly permitted single family residential, a cabinet manufacturing facility in an existing structure, and AC uses on the remainder of the property.

On or about March 31, 2011, the applicant contacted Staff regarding the possibility of adding other uses to the PD and more specifically whether or not the use "ambulance service" could be added to the PD administratively. After review of the zoning ordinance and the approved PD ordinance, Staff informed the applicant that uses could be added to the PD via amendment and that this would require Planning Commission review, recommendation, and Council approval. Thus, Staff could not approve the addition as a minor change. The applicant requested a formal

determination on April 4, 2011. The formal determination was published on this same day and is attached to this report as Exhibit 2.

### III. APPEAL

On April 13, 2011, Ms. Tammy C. Hodge (“**Appellant**”) appealed the Zoning Administrator’s determination that uses could only be added via the major amendment process—Planning Commission review and County Council approval.

Appellant stated on the application form (Exhibit 3) that the additional uses constitute a minor change approvable by staff and that the decision was inconsistent with the zoning ordinance.

### IV. ZONING ADMINISTRATOR POSITION

Planning Staff understands Ms. Hodge wants to locate an ambulance service (SIC 4119) on the property subject to PD-06-05 and more specifically, in the existing structure originally approved for the cabinet manufacturing facility. Moreover, request asks that the uses be added administratively, as a minor change to the PD. It is our thoughtful opinion that any change in use, or the addition of uses, to this planned development constitutes a major change, and therefore must proceed to the Planning Commission for review and recommendation and then to Sumter County Council for three readings and a public hearing. This request cannot be approved by staff as a minor change.

Consider the following:

- 1) The language of PD 06-05 is explicit:

***II. The Planned Development zoning shall include the following permitted uses and no others, unless further reviewed and recommended by the Sumter City-County Planning Commission, and specifically approved by the Chairperson and County Council of Sumter, South Carolina.***

- *8 Residential Lots:*
  - *Single-family detached dwellings, excluding mobile homes and manufactured homes.*
  - *Residential accessory uses; home occupations excluding any Home Day Care Centers.*
- *Manufacturing:*
  - *Cabinet manufacturing facility and storage of related equipment and materials.*
- *Remainder of property:*
  - *All uses permitted in the AC zoning district as outlined in Exhibit I.*

(Note: Emphasis added)

Staff has no authority, under any circumstances, to directly contradict an approved ordinance adopted by County Council. This application process in 2006 included some measure of public concern, especially related to the proposed uses on site. To this end, it is our finding that County Council approved only those items above and only County Council may amend the uses approved in PD-06-05.

- 2) Although the Sumter County Zoning and Development Standards Ordinance (“**Zoning Ordinance**”) contains a procedure for minor changes to approved PDs, it is our opinion that this administrative action is not appropriate in this case. Section 3.q.10, **Changes in Approved Plans**, states that:

*“Minor changes in approved final plans and reports may be approved by Planning Staff only upon findings identical to those required for original approval....”*

First, the above provision addresses development requirements. It does not address uses. It allows staff to approve changes to “*final plans and reports.*” “*Final plans and reports*” speaks to the development standards part of the PD approval. The Zoning Ordinance does not expressly or impliedly permit changes to uses approved in a PD. Furthermore, Section 3.q.10. envisions a two-step analysis. The first step is a determination that a deviation in the final plans and reports from the original plans and reports approved by the relevant council (County Council in this case), is a minor change. According the very language of the next sentence in section 3.q.10., “*Major changes shall be subject to further amendatory action by the Planning Commission and City or County Council.*” The second step is a requirement for the staff to make findings that the final plans and reports, as changed, are identical with the findings made for original approval. The use of the word “*identical*” is important. The section does not use the words “*consistent with*” or “*similar to.*” The ordinance requirement that the findings concerning the changes be identical to the findings required for original approval strictly limits the ability of the staff to approve changes. In short, staff has little, if any, discretion in approving development changes to PDs. Staff has no discretion to approve new uses or change uses in approved PDs.

Based on the foregoing analysis, we believe it legally impossible to generate identical findings when new and distinct uses are proposed. A primary basis of this PD approval was a combination of concept plan (i.e., layout) and uses. The original approval included specific uses and specific conditions related to those uses. Section 3.q.5 of the ordinance states that “*a listing of proposed uses... shall be adopted as part of the regulations applying to that district.*” The section goes on, “*Thereafter, the uses permitted in the district shall be restricted to those listed, approved and adopted.*” So, the addition of new uses directly alters the approved PD. Adding a new use requires a renewal of the public review process. The original process of listing the proposed uses, holding a public hearing, and the adoption of uses, perhaps with conditions, inevitably means that the staff cannot, on its own discretion, allow new uses without going through the review process. Staff cannot substitute its own perspective in the place of a duly elected County Council on a matter related to uses in a PD zoning.

Our brief review of the minor changes approved by Planning Staff finds no incidence where Staff approved a new use as a minor change to a PD ordinance. As mentioned above, Section 3.p.10 of the Zoning Ordinance provides, “major changes shall be subject to further amendatory

action by the Planning Commission and...County Council.” Staff approval of additional uses, will in our mind, circumvent the legal, legislative, public due process.

## V. ADMINISTRATION

The Board of Zoning Appeals shall have the following powers and duties:

- a. **Appeals from administrative interpretation:** To hear and decide appeals where it is alleged there is an error in an order, requirement, decision, or determination made by an administrative official of the Sumter City-County Planning Commission in the enforcement of the Zoning Ordinance.
  1. An appeal shall be taken within thirty (30) days from the date of the decision rendered by the Zoning Administrator by filing with his or her office a written notice of appeal specifying the grounds thereof.
  2. Appeals shall be submitted on application forms obtained from the Zoning Administrator.
  3. All papers constituting the record upon which the appeal action was taken shall forthwith be transmitted to the Board of Zoning Appeals.
  4. An application fee to be utilized for the incidental costs of administration and advertisement shall accompany appeal applications.
  5. Any communication purporting to be an application for an appeal shall be regarded as mere notice to seek relief until it is made in the form required.

## ROLE OF THE BOARD OF APPEALS

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

In its decision on an administrative appeal from a decision of the Zoning Administrator, the Board is not bound by the conclusion or reasoning of the Zoning Administrator and may consider and apply the appropriate provisions of the Zoning Ordinance as dictated by the facts before it.

*Please note however that in this case, the Board may not compel Staff approval. If the Board finds for the Appellant, Staff will be asked to review the request to add uses as a minor change. That decision by Staff will be wholly separate.*

**IV. DRAFT MOTIONS for BOA-11-05**

- A. I move that the Zoning Board of Appeals deny BOA-11-08, subject to the findings of fact and conclusions of law set forth in Exhibit 4: (Note: A vote to deny **UPHOLDS** the Zoning Administrator's decision).
- B. I move that the Zoning Board of Appeals approve BOA-11-08 subject to the following findings of fact and conclusions: (Note: A vote to approve **OVERTURNS** the Zoning Administrator decision).
- C. I move that the Zoning Board of Appeals enter an alternative motion for BOA-11-08.

**VI. ZONING BOARD OF APPEALS – MAY 11, 2011**

The Sumter City-County Board of Appeals at its meeting on Wednesday, May 11, 2011, voted to uphold the Zoning Administrator's decision and deny this request. The board also requested that a recommendation be sent to Sumter County Council that they approve the Planning Commission's findings on PD-06-05 (Rev. 1).

**ATTACHMENTS**

- Exhibit 1-PD Ordinance 06-05 (County Council Ordinance #06-608)
- Exhibit 2-Zoning Determination Letter dated April 4, 2011
- Exhibit 3-Appellant Application
- Exhibit 4-Finding of Facts and Conclusions of Law (Order on Appeal)

**Exhibit 4**  
**Order on Appeal**  
**Sumter Board of Appeals**

**BOA-11-08, Tammy C. Hodge**  
**Appeal from the Interpretation of the Zoning Administrator**  
**May 11, 2011**

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Date Filed: May 11, 2011

Permit Case No. BOA-11-08

The Sumter Board of Appeals held a public hearing on Wednesday, May 11, 2011 to consider the appeal of Tammy C. Hodge, of an appeal of the interpretation of the Zoning Administrator as set forth on the Form 2. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions:

**Facts:**

- The subject property, tax map 252-00-04-009 & tax map 252-00-04-015 is governed by PD 06-05 (County Council Ordinance # 06-608)
- PD 06-05 lists several permitted uses including 8 residential lots; a cabinet manufacturing facility; and other AC uses.
- PD 06-05 states *“The Planned Development zoning shall include the following permitted uses and no others, unless further reviewed and recommended by the Sumter City-County Planning Commission, and specifically approved by the Chairperson and County Council of Sumter, South Carolina.”*

**Conclusions:**

- Zoning Administrator correctly opined that the request constitutes a major change pursuant to Section 3.p.10.
- The direction of the PD Ordinance was unequivocal, requiring that any use changes must be reviewed by the Planning Commission and approved by County Council.
- Section 3.p.10 of the Zoning Ordinance does not permit Staff to administratively add uses to approved PD's.
- Zoning Administrator's conclusion and determination was fair and reasonable.

THE BOARD, THEREFORE, ORDERS that the appeal is  **DENIED** –  **GRANTED**

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

\_\_\_\_\_  
Chairman

Date mailed to parties in interest: \_\_\_\_\_

\_\_\_\_\_  
Secretary

**Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.**