Sumter City-County
Planning Department

DERON L. MCCORMICK
CITY MANAGER

HELEN M. ROODMAN
PLANNING DIRECTOR

GARY M. MIXON
COUNTY ADMINISTRATOR

MEMORANDUM

TO: Sumter City-County Zoning Board of Appeals

FROM: Jeff Derwort, Zoning Administrator

DATE: May 1, 2024

SUBJECT: **BOA-24-09, 495 Myrtle Beach Hwy (County)**

The purpose of this memorandum is to provide additional information pertaining to the above referenced special exception case, as requested by the Zoning Board of Appeals (BOA) at the April 10, 2024 meeting.

The following items are attached to this memorandum:

1. Detailed site layout plan showing the location of vehicle and vehicle parts storage, the location of vehicle fluid draining activities, the location of vehicle crushing/shredding activities, the location of the existing opaque fence/wall, and the location of other use related features.

2. Existing conditions topographic survey of the property.

3. Detailed site photos, as obtained from the website below, showing various site perspectives and building interiors. Photos show interior areas where vehicle fluid drainage activities will take place.

   https://www.remax.com/sc/sumter/home-details/495-myrtle-beach-hwy-sumter-sc-29153/9784466908371058975/M00000569/152679

4. Zoning determination letter dated April 25, 2024 regarding whether the BOA can reduce, eliminate, or otherwise modify any stated development standard or performance criteria for a special exception uses.

The above referenced items address much of the information requested by the BOA.

The applicant has informed staff that the requirement to construct a 7 ft. opaque wall/fence completely around the outdoor vehicle and vehicle parts storage area is not feasible for their business operations at this time. As referenced in the attached April 25, 2024 zoning determination letter, the BOA **cannot** reduce or eliminate an applicable *Article 5* standard pertaining to a special exception request unless 1) a separate, properly noticed variance request for the reduction or elimination is brought before the BOA or 2) flexibility for BOA discretion is written into the language of a specific standard. Further, the ability to apply for a variance is time limited due to a pending zoning ordinance amendment that, if approved, would specifically remove the BOA's authority to grant variances to *Article 5* standards unless flexibility for BOA discretion is written into the language of a specific standard.

Please note that any further delay in rendering final action on this request must be at the mutual agreement of both the BOA and the applicant.

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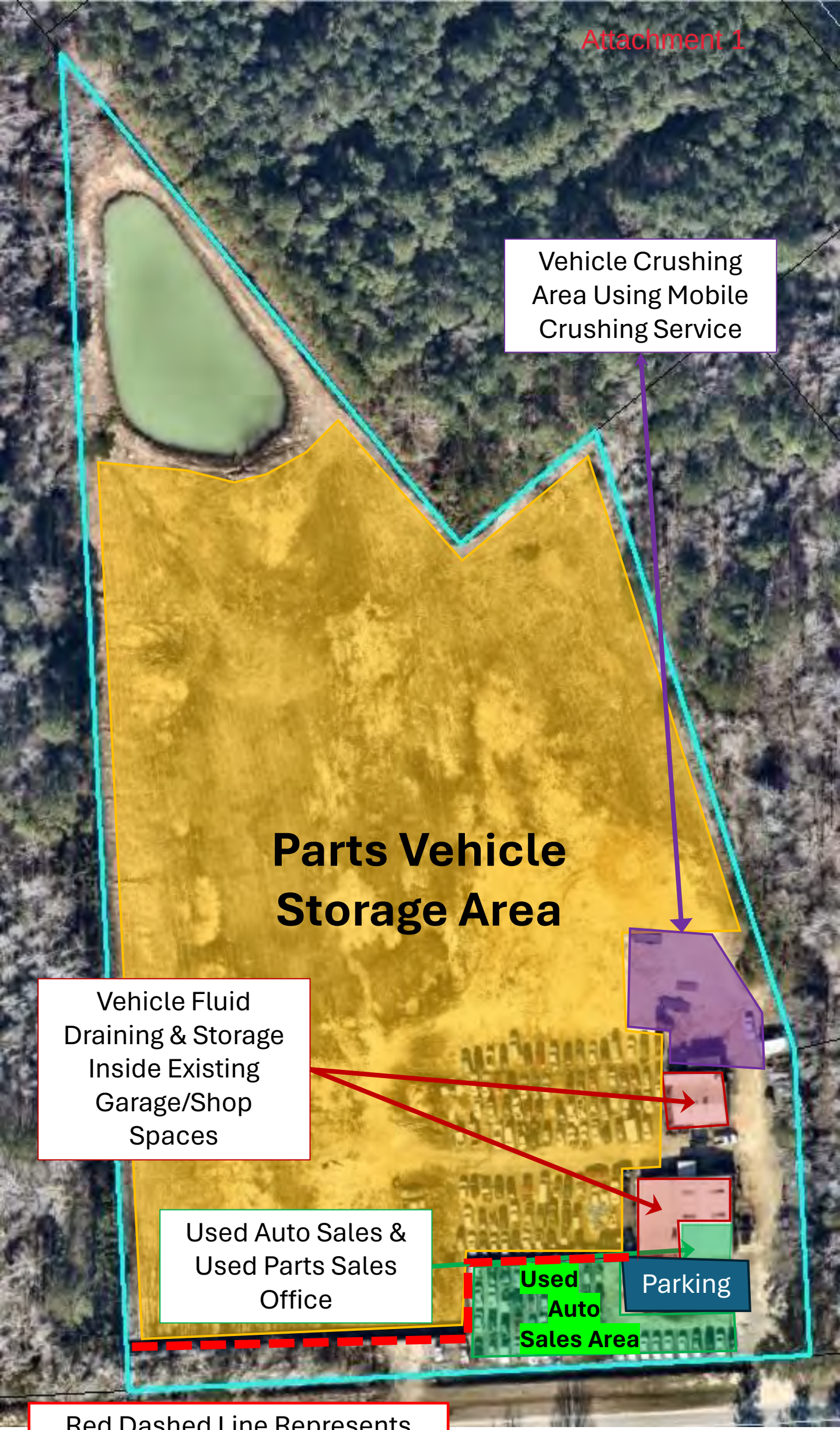
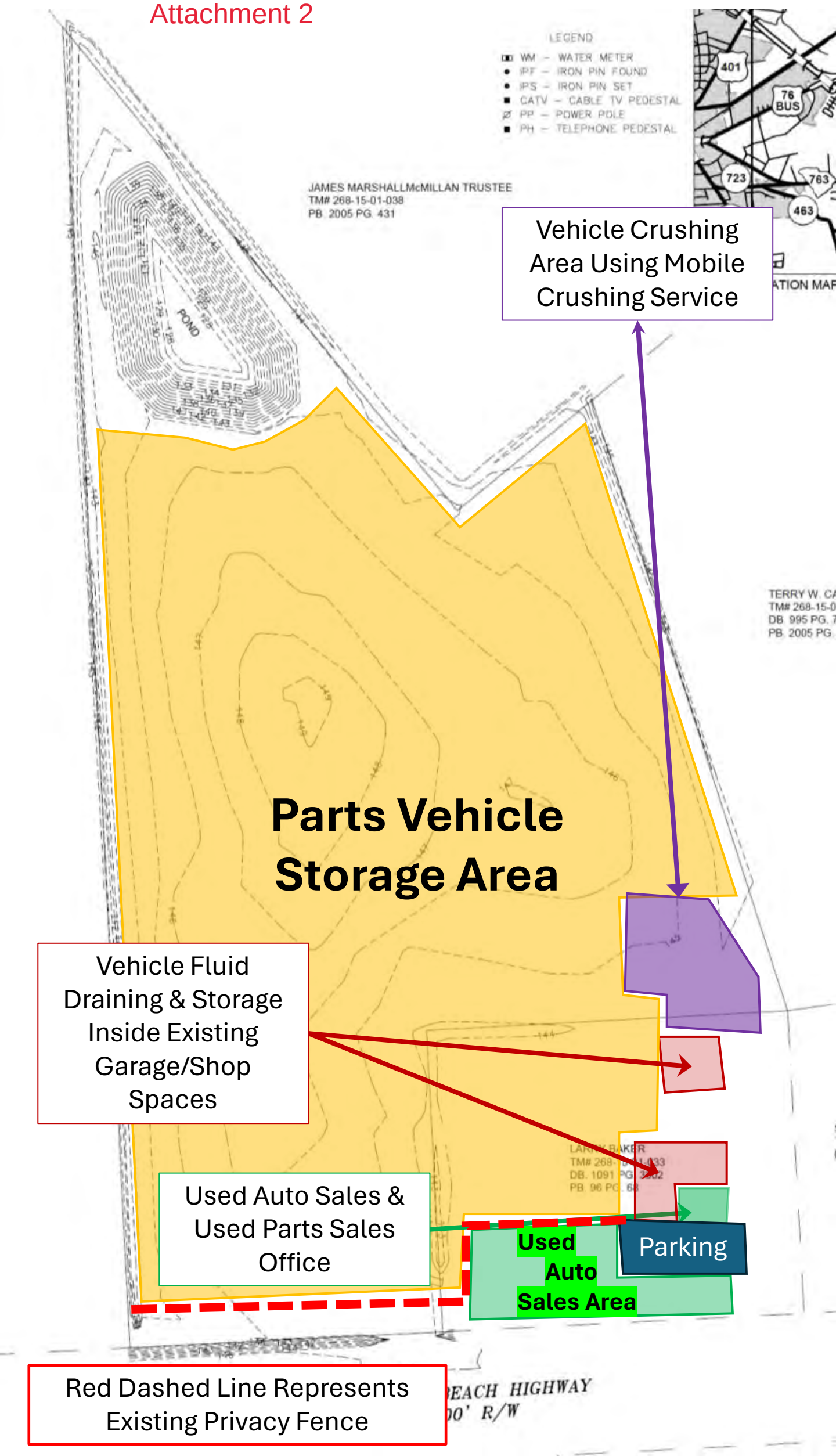
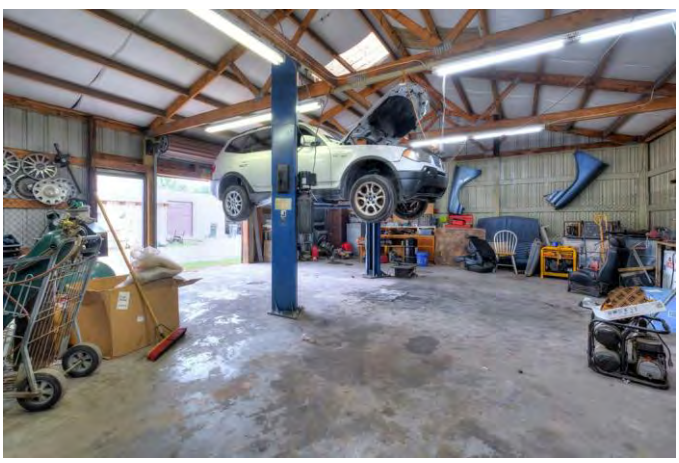
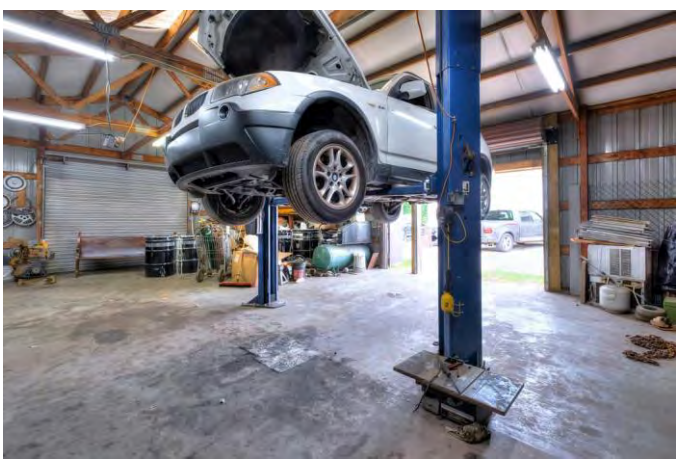
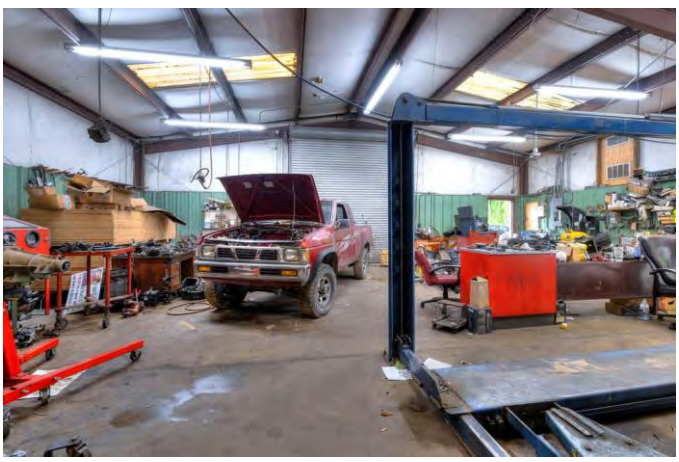
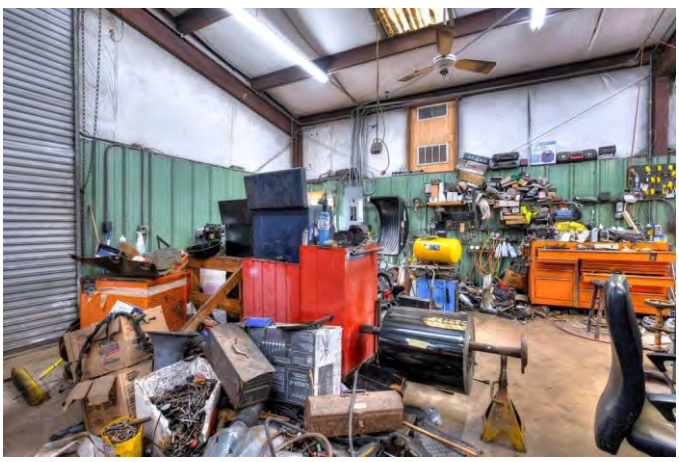

Attachment 1
Vehicle Crushing Area Using Mobile Crushing Service
Parts Vehicle Storage Area
Vehicle Fluid Draining & Storage Inside Existing Garage/Shop Spaces
Used Auto Sales & Used Parts Sales Office
Used Auto Sales Area
Parking
Red Dashed Line Represents Existing Privacy Fence

Attachment 2

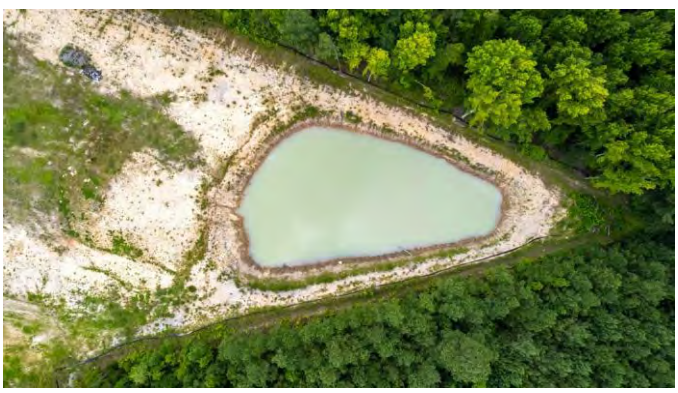


Attachment 3

Exterior photos of existing buildings on site as taken from online real estate listing.

Interior photos of existing garage/workshop/storage buildings on site as taken from online real estate listing.



Drone photos of existing site as taken from online real estate listing. Street level fence photographs taken by Planning Staff.

Above: Example of mobile vehicle crusher.
Below: Dimensions of average mobile vehicle crusher.

Attachment 4

Sumter City-County
Planning Department

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GARY M. MIXON
COUNTY ADMINISTRATOR

April 25, 2023

Johnathan W. Bryan
County Attorney
Sumter County
13 E. Canal St.
Sumter, SC 29150

(**sent via email only**: jbryan@sumtercountysc.gov **)**

RE: Zoning Opinion – Article 1.h.4.c.3. – Special Exceptions (Powers of the Zoning Board of Appeals)

Dear Mr. Bryan,

This letter serves as the official written determination of the Zoning Administrator regarding the question of whether the Sumter City-County Zoning Board of Appeals (BOA) has the authority to reduce, eliminate or otherwise modify any stated development standards or performance criteria for special exception uses outlined in *Article 5* of the Sumter County Zoning & Development Standards Ordinance (the "Zoning Ordinance").

The key provision relating to this matter is outlined in *Article 1.h.4.c.3* and is outlined below:

> **Article 1.h.4.c.3:** In granting a special exception, the Sumter City-County Zoning Board of Appeals may impose such additional stipulations, conditions, or safeguards as, in its judgment, will enhance the siting of the special exception. At the conclusion of the review, the Sumter City-County Zoning Board of Appeals shall approve the application with specific modification or disapprove the application. If approved, the Sumter City-County Zoning Board of Appeals shall instruct the Zoning Administrator to issue such permits contingent on the specific modification imposed. If disapproved, the Sumter City-County Zoning Board of Appeals shall notify the applicant, in writing, of the action disapproving the application, with the reasons therefore.

This provision is clear on the ability of the BOA to impose <u>additional</u> stipulations, conditions, or safeguards pertaining to special exception requests. For reference, the definition of additional, as found in the Merriam Webster Dictionary[1], is <u>more than usual or expected</u>.

[1] https://www.merriam-webster.com/dictionary/additional

This definition accurately portrays the intended meaning of the word additional within *Article 1.h.4.c.3*. As such, when specific special design criteria as outlined in *Article 5* are applicable to a given special exception request, or when other general development standards are applicable to a given special exception request, then meeting those requirements is mandatory. The BOA, under their specific powers related to special exception uses[2], **does not** have the authority to reduce or eliminate these requirements[3]. The BOA only has the authority to add additional stipulations, conditions, or safeguards under these specific powers.

Only under their specific powers related to variances[4] does the BOA have the authority to provide relief from the requirements of the Zoning Ordinance, and only when it is so determined by the BOA that the strict application of the provisions of the Zoning Ordinance would result in unnecessary hardship. The BOA formally reviews such requests against the criteria provided in *Article 1.h.4.b.a. – 1.h.4.b.d.* and may not grant variances that will allow for either the establishment of a use not otherwise permitted in a zoning district, that result in physical expansion of a nonconforming use of land, or that change the zoning district boundaries shown on the Sumter County Official Zoning Map[5]. Further, the fact that a property may be utilized more profitably should a variance be granted, shall not be considered grounds for variance approval[6]. An official variance request on the requisite application forms provided by the Sumter City-County Planning Department must be submitted by a requestor and the public notification requirements outlined in *Article 1.i.5.* must be followed pertaining to the specific variance being sought.

All this to say, under the Zoning Ordinance in effect on the date of this letter, the BOA **does not** have the authority to reduce or eliminate specific requirements, standards, and/or provisions of the Zoning Ordinance pertaining to special exception uses **in the absence** of an accompanying variance request detailing the specific relief being sought and **in the absence** of a formal public notification process pertaining to the specific relief being requested (see footnote# 3).

Another important factor for consideration is that a Zoning Ordinance text amendment is currently in process that will, if approved, remove the authority of the BOA to grant variances to the special design criteria outlined in *Article 5.b.3*. The required public hearing for this proposed amendment will be duly advertised in a newspaper of local circulation on May 11, 2024. In accordance with past precedent, this will establish the basis for "Pending Ordinance Doctrine". As such, only a complete application for such a variance request received prior to May 11, 2024 may be considered by the BOA until Sumter County Council either formally denies the proposed text amendment or revises the Zoning Ordinance at a later date to again allow for such requests.

The full ***Sumter County Zoning & Development Standards Ordinance*** can be accessed via the link below:

https://www.sumtersc.gov/planning/ordinances

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[2] Article 1.h.4.c.
[3] Some specific provisions in Article 5.b.3 do allow for the BOA to apply reasonable alternatives for a specific standard. Such allowances are only applicable where so stated in a specific Article 5.b.3. provision.
[4] Article 1.h.4.b.
[5] Article 1.h.4.b.2
[6] Article 1.h.4.b.3

Any person aggrieved by this administrative determination may appeal the decision to the Zoning Board of Appeals consistent with *Article 1.i.2* of the Ordinance. Appeals must be filed with the required $100.00 fee within thirty (30) days of the date of this letter.

If you have any questions, please contact me at (803) 774-1611 or via e-mail at jderwort@sumtersc.gov.

Sincerely,

Jeff Derwort, AICP
Zoning Administrator/Planning Manager

CC: Helen M. Roodman, Planning Director
N. Leslie Alessandro, BOA Chairman
John R. Moorman, Bryan Law Firm

Sumter City-County Zoning Board Appeals

May 8, 2024

BOA-24-09 495 Myrtle Beach Hwy. (County)

The applicant (Brown Investments of Sumter, LLC – dba American Auto Sales) is requesting special exception approval in accordance with *Article 3, Exhibit 5: Permitted Uses in All Zoning Districts; Article 5.b.2: Enumeration of Certain Hazardous and/or Potentially Disruptive Land Development Activities*; and *Article 5.b.3.g: Used Vehicle Parts Merchant Wholesalers (NAICS 42314)* of the *Sumter County Zoning & Development Standards Ordinance* (the "Ordinance") in order to establish a Used Vehicle Parts Use With Outside Storage of Dismantled Vehicles and/or Parts on the property. The property is located at 495 Myrtle Beach Hwy., is zoned Light Industrial-Warehouse (LI-W), and is represented by TMS# 268-15-01-033.

Appeals - Variance - Special Exception

Sumter City-County

Zoning Board of Appeals

May 8, 2024

BOA-24-09, 495 Myrtle Beach Hwy. (County)

I. THE REQUEST

Applicant: Brown Investments of Sumter, LLC (DBA American Auto Sales)

Status of the Applicant: Property Owner

Request: The applicant is requesting Special Exception use approval in order to establish a used motor vehicle parts business (NAICS 42314) on the property.

County Council District: District 7

Location: 495 Myrtle Beach Hwy.

Present Use/Zoning: Automotive Sales/Used Automotive Parts / Light Industrial-Warehouse (LI-W)

Tax Map Reference: 268-15-01-033

II. BACKGROUND

The applicant is requesting special exception use approval in order to establish a used motor vehicle parts business on a +/- 8.48-acre parcel located at 495 Myrtle Beach Hwy., further identified as TMS# 268-15-01-033. The proposed use will include outside storage of dismantled vehicles and/or parts.

The property is located on the north side of Myrtle Beach Hwy, +/- 500 ft. west of the intersection of the US Hwy 378/76 Bypass and Myrtle Beach Hwy. The property is shown in red on the map to the right.

On March 12, 2024, Sumter County Council approved a zoning ordinance text amendment (*OA-23-05*) that made "Used Motor Vehicle Parts Merchant" uses under NAICS[1] Code 42314 (NAICS 42314) a special exception use in the Light Industrial-Warehouse (LI-W) district, as described in *Article 3, Exhibit 5* of the *Sumter County Zoning & Development Standards Ordinance* (the "Ordinance"). As part of this ordinance amendment, Sumter County Council also adopted special design criteria now codified in *Article 5.b.3.g* of the Ordinance. Prior to the approval of *OA-23-05*, uses under NAICS 42314 were not permitted in the LI-W district.[2]

Special exception uses are reviewed by the Zoning Board of Appeals (BOA) after a required public hearing. The BOA reviews county requests for "Used Moto Vehicle Parts Merchant" uses in the LI-W district against the general special exception criteria outlined in *Article 1.h.4.c* of the Ordinance and the use specific criteria outlined in *Article 5.b.3.g* of the Ordinance.

The property <u>previously</u> consisted of two separate tax parcels, a 7-acre portion formerly identified as TMS# 268-15-01-041 and a 1.5-acre portion identified as TMS# 268-15-01-033. These two tax parcels were combined in October 2022, when both parcels came under common ownership.

Above: Tax Parcel Combination Graphic

The applicant legally operates both a used automobile sales business and a used motor vehicle part merchant business on the 1.5-acre portion of the property <u>only</u>. The sale of used motor vehicle parts with on-site dismantling and storage of automobiles under NAICS 42314 is considered a legal non-conforming use of the 1.5-acre portion of the property since this use was

[1] North American Industrial Classification System (2022 Edition)
[2] In 2018, Sumter County Council approved a zoning ordinance amendment (OA-18-07) that prohibited used motor vehicle parts uses from being established in the LI-W district. Prior to OA-18-07, such uses were "by-right" permitted uses in the LI-W district.

properly approved in 2017 when such uses were permitted "by-right" in the LI-W district.[3] If approved, the requested Special Exception would allow the used motor vehicle parts use to be established on the remaining 7 acres. Staff notes that the BOA may consider reasonable approval conditions that impact compliant operations on the 1.5-acre portion in considering special exception approval for the remaining property acreage.

The applicant has taken steps to establish a used motor vehicle parts business on the property since at least late 2019. This includes land clearing and tree removal, grading, stormwater pond construction, screening wall construction, and at times placement/storage of inoperable motor vehicles on the 7-acre portion of the property. These actions resulted in lengthy enforcement actions against the applicant to correct documented violations. Enforcement actions have been ongoing since 2020. Approval of this request, and documented compliance by the applicant with any conditions attached to such approval, would render the ongoing enforcement action moot.

Above: Applicant Submitted Site Plan

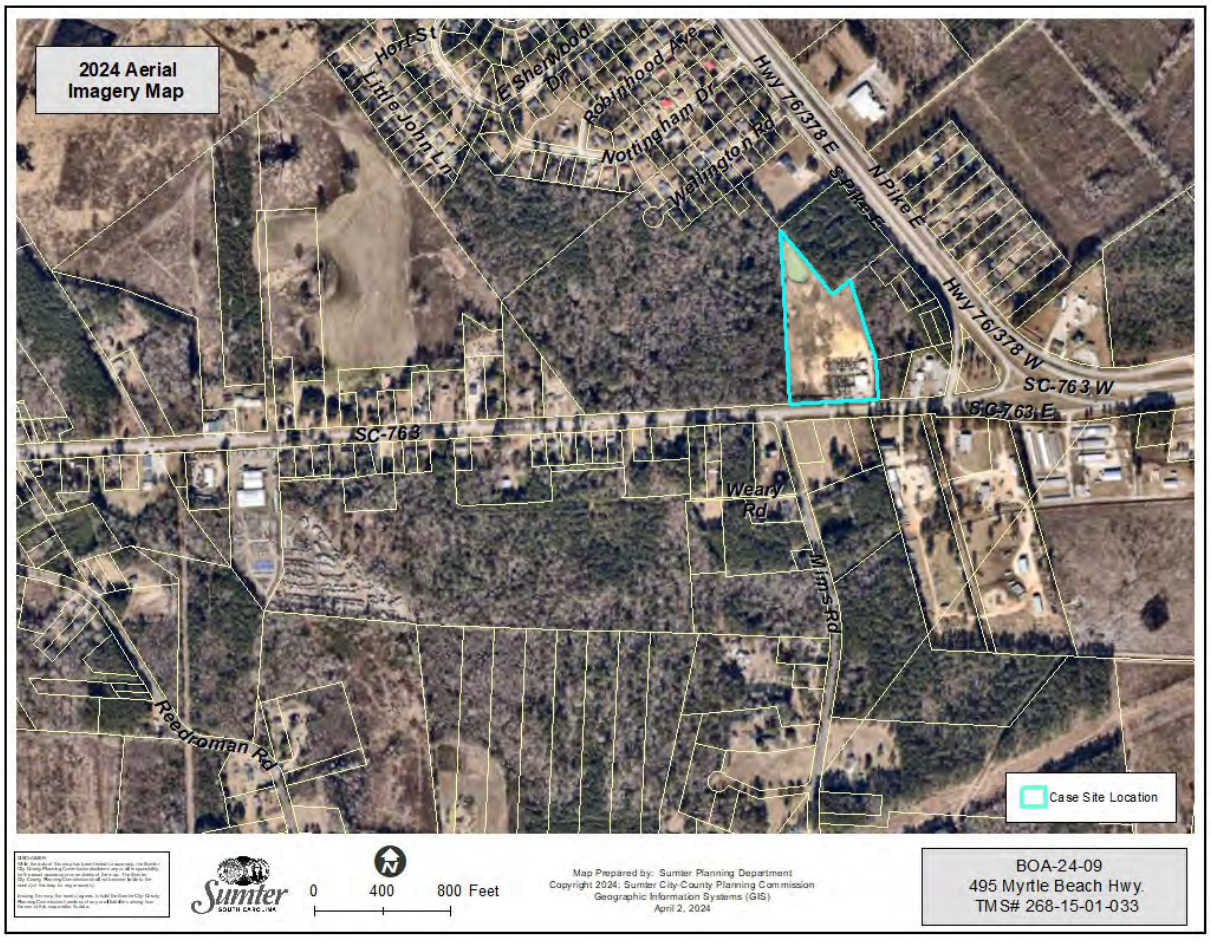
[3] See footnote 2.

Multiple documents are provided as exhibits to this report, with references made to these exhibits made throughout. See below table outlining all exhibits:

Exhibit Table	
Exhibit 1	Staff Recommended Conditions of Approval
Exhibit 2	Applicant Site Plan
Exhibit 3	500 ft. Buffer Map
Exhibit 4	DHEC Correspondence
Exhibit 5	Site Photos
Exhibit 6	*Article 5.b.3.g*

III. LAND USE, ZONING, AND CONDITIONS

The Myrtle Beach Hwy. corridor, particularly in the general vicinity of the property, contains a mixture of light industrial, residential, commercial, and institutional uses. There are multiple uses that have an outdoor storage component along the Myrtle Beach Hwy. corridor, including another use involving the sale of used motor vehicle parts.

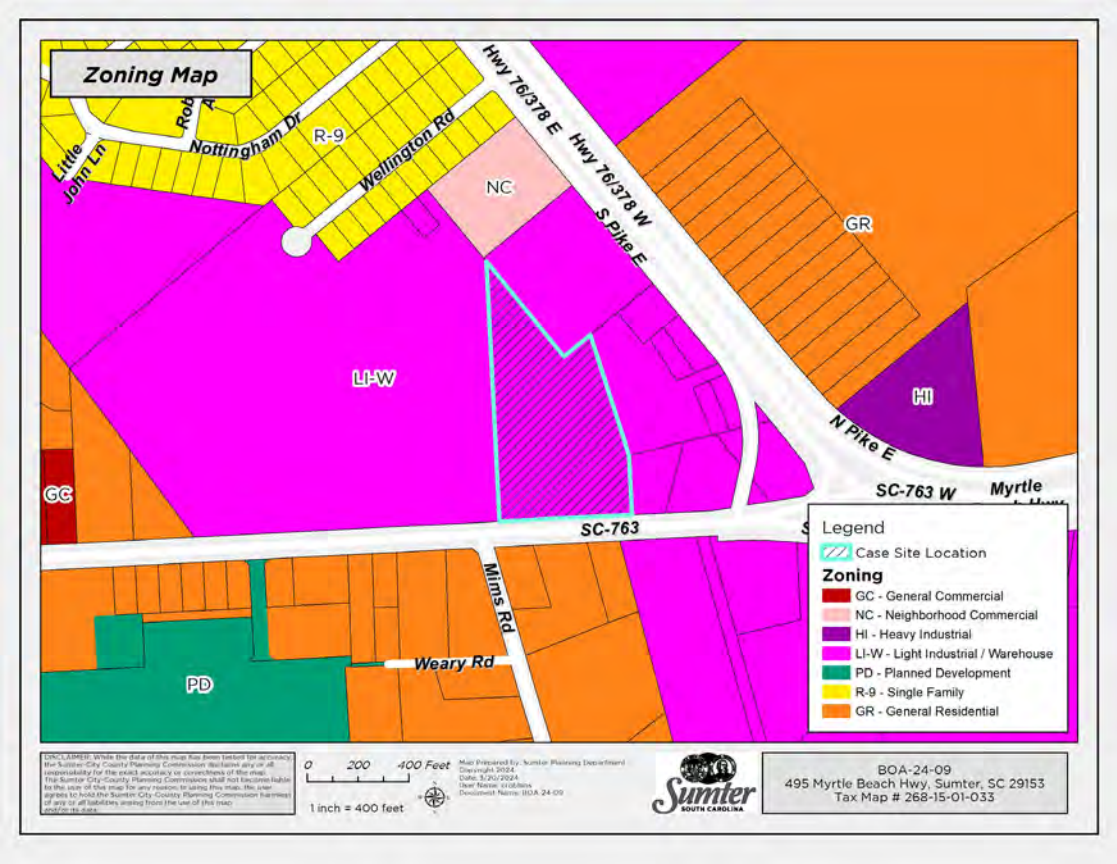


Above: 2024 Aerial Imagery Map

The property is immediately adjacent to undeveloped property to the east and west. The northern corner of the property touches another property that contains an existing religious organization use, with all other land to the north being undeveloped. Adjacent land on the south side of Myrtle Beach Hwy. is primarily residential.

The property is currently within the LI-W district and is adjacent to LI-W zoning to the east and west, adjacent to LI-W zoning and Neighborhood Commercial (NC) zoning to the north, and adjacent to General Residential (GR) zoning to south.

The intent of the LI-W is to accommodate wholesaling, distribution, storage, processing and light manufacturing in an environment suite to such uses and operations while promoting land use compatibility both within and beyond the boundaries of such districts.



Above: Zoning Map

IV. SPECIAL EXCEPTION REVIEW CRITERIA

"Used Motor Vehicle Parts Merchant" uses under NAICS 42314, as described in *Article 3, Exhibit 5* of the *Sumter County Zoning & Development Standards Ordinance* require special exception review by the BOA. Requests for this use classification are evaluated by the BOA against the criteria outlined in *Article 1.h.4.c.*, and *Article 5.b.3.g* of the Ordinance.

Article 1.h.4.c: Special Exceptions

Permits for Special Exceptions shall be evaluated by the Board of Zoning Appeals on the basis of the following criteria:

a. That the Special Exception complies with all applicable development standards contained elsewhere in this Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements;

Staff Review: A full review of the special design criteria outlined in *Article 5.b.3.g* of the Ordinance is provided elsewhere in this report. Outside of *Article 5.b.c.3* items, the proposal is in substantial compliance with Ordinance requirements.

b. That the special exception will be in substantial harmony with the area in which it is located;

Staff Review: The Myrtle Beach Hwy. corridor, particularly in the general vicinity of the property, contains a mixture of light industrial, residential, commercial, and institutional uses. There are multiple uses that have an outdoor storage component along the Myrtle Beach Hwy. corridor, including another use involving the sale of used motor vehicle parts.

Provided all proposed conditions of approval are satisfied, staff finds that the proposed use is capable of being carried out in substantial harmony with the area is which it is located.

See Exhibit 1(Proposed Conditions of Approval)

c. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.

Staff Review: Land immediately adjacent to the property on the north side of Myrtle Beach Hwy. is primarily undeveloped. Land adjacent to the property on the south side of Myrtle Beach Hwy. is primarily used for residential purposes. Special design criteria for this use type were adopted by Sumter County Council in large part to mitigate impacts to surrounding property.

Provided all proposed conditions of approval are satisfied, staff finds that the proposed use is capable of being carried out in manner that will not discourage or negate the use of surrounding property for use(s) permitted by right.

See Exhibit 1(Proposed Conditions of Approval

Article 5.b.3.g. Used Motor Vehicle Parts Merchant Wholesalers (NAICS 42314) in the LI-W District.

1. Areas designated for draining and storage of vehicle fluids shall not be located closer than 500 ft. to a residential use; church; public/private school; historic structure, site, or district on the National Register of Historic Places; or public park/playground. This stated separation distance shall be measured in a straight line from structure to structure or in a straight line from designated activity area to designated activity area, whichever is more applicable.

   Staff Review: A specific area designated for automobile fluid draining and fluid storage activities has not been identified by the applicant on the site plan submitted in support of this request. The applicant has significant space on the property outside of the required 500 ft. buffer area to conduct automobile crushing and/or shredding activities.

   Staff notes that an existing building located to the rear of the main building may be currently used to carry out automobile fluid draining and fluid storage activities. This building is within the 1.5-acre area of the property where the requested use is considered to be non-conforming not subject to discontinuance. Staff finds that it is reasonable to allow for automobile crushing and/or shredding operations within the enclosed space of this building if that is the desire of the applicant.

   An approval condition requiring identification of the areas designated for the crushing and/or shredding of vehicles is proposed.

   See Exhibit 1(Proposed Conditions of Approval) & Exhibit 3 (500 ft. Buffer Map)

2. Areas designated for the crushing and/or shredding of vehicles shall not be located closer than 500 ft. to a residential use; church; public/private school; historic structure, site, or district on the National Register of Historic Places; or public park/playground. This stated separation distance shall be measured in a straight line from structure to structure or in a straight line from designated activity area to designated activity area, whichever is more applicable.

   Staff Review: A specific area designated for automobile crushing and/or shredding activities has not been identified by the applicant on the site plan submitted in support of this request. The applicant has significant space on the property outside of the required 500 ft. buffer area to conduct automobile crushing and/or shredding activities.

   Staff notes that an existing building located to the rear of the main building may be currently used to carry out crushing and/or shredding activities. This building is within the 1.5-acre area of the property where the requested use is considered to be non-conforming not subject to discontinuance. Staff finds that it is reasonable to allow

continued operations for automobile crushing and/or shredding within the enclosed space of this building if that is the desire of the applicant.

An approval condition requiring the identification of the areas designated for the crushing and/or shredding of vehicles is proposed.

See Exhibit 1(Proposed Conditions of Approval) & Exhibit 3 (500 ft. Buffer Map)

3. Automobile crushing and/or shredding shall occur between the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday only.

Staff Review: The applicant has been made aware of this requirement and the above hours of operation for automobile crushing and/or shredding activities are listed in the recommended conditions of approval.

See Exhibit 1(Proposed Conditions of Approval)

4. The use of permanently installed automobile crushing and/or shredding machinery is not permitted.

Staff Review: The applicant has been made aware of this requirement and it is listed in the recommended conditions of approval.

See Exhibit 1(Proposed Conditions of Approval)

5. The stacking of automobiles on top of one another for any purpose is not permitted.

Staff Review: The applicant has been made aware of this requirement and it is listed in the recommended conditions of approval.

See Exhibit 1(Proposed Conditions of Approval)

6. All vehicle storage areas, vehicle parts storage areas, vehicle crushing/shredding areas, vehicle fluid drainage/storage areas, and any other primary activities associated with this use shall be either located within a fully enclosed building(s) or shall be screened by an opaque wall or fence that is at least 7 ft. in height and is primarily uniform in exterior appearance throughout all sections. The exterior facing color of such a fence or wall shall be a muted "earth tone" hue of gray, khaki, brown, beige, olive, or other similar color. Such fences or walls must be reviewed and approved by the Zoning Board of Appeals. This provision is not applicable to customer parking areas, business signage, and other customary public facing business features.

Staff Review: The applicant has installed a wall with a beige exterior along Myrtle Beach Hwy. frontage. This specific item requires that all storage areas, vehicle parts storage area, vehicle crushing/shredding area, vehicle fluid drainage/storage area, and

other primary activities associated be screened by an opaque wall or fence that is at least 7 ft. in height and primarily uniform in exterior appearance.

Staff finds that the wall, where established, is substantially complaint. However, no such wall or fence has been provided along the remaining areas of adjacent property. While such adjacent property is primarily undeveloped at this time, this criterium requires all areas to be screened. The site plan submitted by the applicant only indicates that the existing wall along Myrtle Beach Hwy. frontage will be established. This alone does not meet his above criterium. As such, a proposed condition of approval has been added to require the installation of a wall or fence (as specified above) around all required areas of the site.

See Exhibit 1(Proposed Conditions of Approval), Exhibit 2 (Applicant Site Plan), & Exhibit 3 (Site Photos)

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7. Landscape buffering consisting of 2 canopy trees, 1 understory tree, and 15 shrubs per 100 linear feet shall be installed on the outside of the opaque wall or fence along the entire extent of the opaque wall or fence. Alternate combinations of plantings may be considered by the Zoning Board of Appeals.

Staff Review: No landscaping plan has been submitted by the applicant. Land immediately adjacent to the property on the northside of Myrtle Beach Hwy. is primarily undeveloped. Staff notes that alternate combinations of plantings maybe considered by the BOA. As such, staff recommends that if the BOA considers an alternate landscaping configuration, then at a minimum the planting requirements must be met along the Myrtle Beach Hwy. facing section of the wall. A proposed condition of approval has been added requiring compliance with this item.

See Exhibit 1(Proposed Conditions of Approval) & Exhibit 2 (Applicant Site Plan)

8. A National Pollutant Discharge Elimination System (NPDES) Industrial Stormwater Permit shall be issued and in effect prior to the issuance of a Sumter County Business License.

Staff Review: The applicant has submitted an application to the South Carolina Department of Health & Environmental Control (SCDHEC) for NPDES Industrial Stormwater Permit approval. Such permits are reviewed by SCDHEC and are outside of the scope of the Sumter County MS4 general permit.

Per SCDHEC correspondence supplied by the applicant, if SCDHEC has not completed review within 17 days of a complete application submission, the applicant is authorized to discharge stormwater until official DHEC review is complete. The applicant submitted the application in September 2023. SCDHEC officials have authorized stormwater discharge related to this use pending completion of official DHEC review.

Staff finds that this item is temporarily satisfied. A proposed condition of approval requiring submission of the approved permit, or submission of the results of the official review, has been added.

See Exhibit 1(Proposed Conditions of Approval) & Exhibit 4 (DHEC Correspondence)

V. STAFF RECOMMENDATION

Additional information and plan details are required to determine whether the project will meet all applicable special exception criteria as highlighted in this report. Staff has developed recommended conditions that are outlined in Exhibit 1 of this report to address deficiencies.

If the BOA makes the findings necessary to approve this request, ***then*** it is recommended that such approval be made contingent upon compliance with said approval conditions.

The BOA may defer this request to the May 8, 2024 BOA meeting, if deemed necessary. Any additional deferral must be mutually agreed upon by the applicant and the BOA.

VI. DRAFT MOTIONS FOR BOA-24-09

1. I move the Zoning Board of Appeals **approve** BOA-24-09, subject to the findings of fact, conclusions, and conditions developed by the BZA and so stated:

2. I move the Zoning Board of Appeals **deny** BOA-24-09, subject to the following findings of fact and conclusions:

3. I move the Zoning Board of Appeals enter an alternative motion for BOA-24-09.

NOTE: STATE DEFINITIVE REASONING FOR ANY MOTION MADE

VII. BOARD OF APPEALS – April 10, 2024

The Sumter City-County Board of Appeals at its meeting on Wednesday, April 10, 2024, deferred action on this request until the next Board of Appeals meeting on Wednesday, May 8, 2024. The Board has asked that the applicant provide additional information to include a detailed site and landscaping plans. The meeting will begin at 3:00 p.m. and will be held in City Council Chambers located on the Fourth Floor of the Sumter Opera House (21 North Main Street, Sumter, South Carolina).

VIII. BOARD OF APPEALS – MAY 8, 2024