

# Sumter City-County Board of Zoning Appeals

November 12, 2025

**BOA-25-34, 330 Rast St. (City)**

The applicant (Backyard Bar N Grill/Philip Boyd) is appealing the Zoning Administrator's determination that a "drinking place" use on the property is subject to a use discontinuance pursuant to *Article 6.a.2.b.1: Nonconforming Uses of the Zoning Ordinance*; *Article 6.b.1: Proof of Legal Nonconformance and Continuance of Use*; *Article 6.b.2: Loss of Nonconforming Use Status*; and *Article 10.b.1: "Drinking Place" Definition* of the City of Sumter Zoning & Development Standards Ordinance. The property is located at 330 Rast St., is zoned General Commercial (GC), and is represented by TMS# 230-16-01-009.



Appeals - Variance - Special Exception

# Sumter City-County Zoning Board of Appeals

November 12, 2025

## BOA-25-34, 330 Rast St. (City)

### I. THE REQUEST

**Applicant(s):** Backyard Bar N Grill, LLC (DBA – Backyard Bar N Grill) / Philip Boyd

**Status of the Applicant:** Authorized Agent (Business Owner)

**Request:** The applicant is appealing the Zoning Official's determination that a "drinking place" use on the property is subject to a nonconforming use discontinuance, and thus reestablishment of this use on the property must be done so in full compliance with the City of Sumter Zoning & Development Standards Ordinance

**City Council Ward:** Ward 6

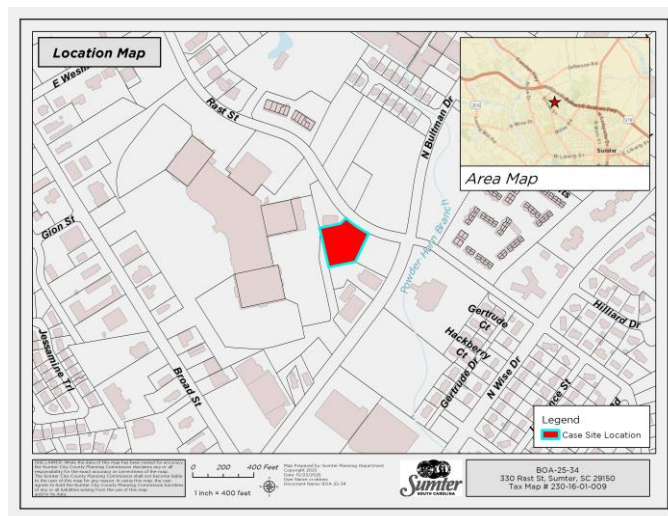
**Location:** 330 Rast St.

**Zoning:** General Commercial (GC)

**Tax Map Reference:** 230-16-01-009

### II. BACKGROUND

The applicant, hereby referred to as the "appellant", is appealing the zoning official's (Zoning Administrator) determination that a "drinking place" use on the property is subject to a nonconforming use discontinuance, and thus reestablishment of this use on the property must be done so in full compliance with the City of Sumter Zoning & Development Standards Ordinance (the "Zoning Ordinance"). See Exhibits 1, 2, & 3.



The property is located on the south side of Rast St., behind the Sumter Mall, and is shown in red on the location map on pg. 2 of this report. The property is located in the General Commercial (GC) zoning district.

According to available Business License records, a “drinking place” use on the property was first established on February 16, 2003. At the time this use was established, “drinking place” uses were permitted by-right in the GC zoning district.

On November 2, 2004, City Council adopted an amendment to the Zoning Ordinance under Case# OA-04-16 that made “drinking place” uses subject to special exception approval by the BOA in the GC district and subject to the following special design criteria:

1. The use shall not be within 300 ft. (measured in a straight line from structure to structure) of a residential use, church, school, or public playground on a separately plotted parcel.
2. A six-foot fence that is a visual screen will be installed to separate this use from residential use.

On June 14, 2021, a business license was issued for Backyard Bar N Grill to operate a “drinking place” use on the property. The license was approved without special exception approval from the BOA, as it was determined that a nonconforming use discontinuance pursuant to *Article 6* of the Zoning Ordinance had not occurred. Simply, there had been no disruption of a “drinking place” use operating from the property since the initial 2003 approval.

On November 2, 2021, City Council adopted an amendment to the Zoning Ordinance under Case# OA-21-06 that added a formal definition for “drinking place” to *Article 10: Definitions* of the Zoning Ordinance. Prior to adoption of this amendment, the definition for “bar” was used to cover all “drinking place” uses. The definition for “drinking place”, that is still in effect today, is as follows:

***Drinking Place:*** *A commercial establishment whose primary activity is the sale of alcoholic beverages to be consumed on the premises. Such establishments are properly licensed by the South Carolina Department of Revenue – Alcohol Beverage Licensing Commission. Drinking places include, but are not limited to, establishments referred to as bars, beer gardens, beer parlors, taverns, cabarets, cocktail lounges, saloons, tap rooms, and wine bars. Cigar Bars and Hookah Lounges with any on-premises consumption alcohol sales are included in this definition. Eating places, with on-premises consumption alcohol sales where the primary activity is the sale of food, are not included within this definition.*

On April 19, 2024, the South Carolina Administrative Law Court filed an order suspending the South Carolina Department of Revenue (DOR) on-premises beer/wine and liquor by the drink licenses held by the appellant<sup>1</sup>. See Exhibit 4.

On June 20, 2025, the South Carolina Administrative Law Court filed a final order and decision upholding its April 19, 2024 order with a retroactive 1-year suspension starting on April 19, 2024. Thus, with this order, the DOR on-premises alcohol consumption licenses came off of suspension on April 19, 2025. See Exhibit 5.

With the initial suspension of the DOR on-premises consumption permits, the business license for Backyard Bar N Grill did not receive an annual renewal from the City, and due to the time elapsed for the suspension, the Business License Department required submission of a new clearance form for inter-department city review.

On August 12, 2025, the appellant submitted a business license clearance form request. See Exhibit 6.

On August 18, 2025, the Zoning Administrator sent a formal written determination to the appellant. This determination stated, in summary, that the “drinking place” use on the property is subject to nonconforming use discontinuance pursuant to *Article 6.b.2.* of the Zoning Ordinance. As such, reestablishment of this use on the property must fully comply with the current Zoning Ordinance requirement, including the requirement to obtain special exception approval by the BOA. See section below for additional information on Zoning Administrator position.

On September 17, 2025, the appellant submitted an application to appeal the determination of the Zoning Administrator. The BOA has the explicit authority to hear such appeals pursuant to *Article 1.h.4.* of the Zoning Ordinance.

***1.h.4. Powers of the Board of Zoning Appeals:*** *It is the intention of this Ordinance that all questions arising in connection with the enforcement of this Ordinance shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Zoning Appeals only on appeal from the Zoning Administrator.*

*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...*

The appellant formally submitted the appeal and paid the requisite fee on September 17, 2025. This submission is considered compliant with the 30-day timeframe requirement for appeal of an administrative determination.

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<sup>1</sup> Previous filing by the South Carolina Department of Revenue to suspend appellant’s license was denied on November 28, 2023.



Below is a full list of exhibits pertaining to this case:

Exhibit #	Description
1	Appeal Application
2	Zoning Official Determination
3	Appellant Response to Determination
4	SC Admin. Law Court – Order Granting Motion to Suspend ABL Permit & License
5	SC Admin. Law Court – Final Order & Decision
6	Business License Clearance Form Application

### III. APPEAL

#### **Zoning Administrator Position**

The position of the Zoning Official is as follows:

1. Pursuant to *Article 6.a.2.b.1: Nonconforming Uses of the Zoning Ordinance*, a nonconforming use is subject to discontinuance when there has been a cessation of operations or business activity at a structure for a continuous period of not less than 6 months.
2. Pursuant to *Article 6.b.1: Proof of Legal Nonconformance and Continuance of Use* of the Zoning Ordinance, the property owner or permit applicant bears the full burden of proof that any nonconforming situation is a legally established one and has been in continuous operation. Evidence may include proof of business license, utility statement, business transaction receipts, tax returns, or other documents. The Zoning Administrator shall determine whether a situation is a nonconforming use as defined in *Article 6* of the Zoning Ordinance.
3. Pursuant to *Article 6.b.2: Loss of Nonconforming Use Status*, if a nonconforming use is subject to a discontinuance, then any subsequent use or operation must be in full compliance with applicable requirements of the Zoning Ordinance.
4. Use of the property as a “drinking place” became nonconforming with amendments to the Zoning Ordinance in 2004 requiring this use type to obtain special exception approval from the BOA and to adhere to certain special design criteria.
5. The nonconforming “drinking place” use of the property was discontinued for a period of 6 months or more with the suspension of applicable on-premise alcohol licenses issued by DOR. Having such permits is part of what constitutes a “drinking place” use in and of itself pursuant to the definition in *Article 10.b.1.* of the Zoning Ordinance.
6. Reestablishment of the “drinking place” use on the property must be done so in full conformance with current Zoning Ordinance requirements. This must include obtaining special exception approval by the BOA, complying with the “drinking place” special

design standards found in *Article 5.b.3.l.* of the Zoning Ordinance, and complying with any other applicable requirements of the Zoning Ordinance. The BOA reviews special exception requests pursuant to the requirements found in *Article 1.h.4.c.* of the Zoning Ordinance.

### **Appellant Position**

The appellant submitted the standard BOA application (Forms 1 & 2) for an appeal from action of a zoning official on September 17, 2025. The following positions were provided in the application:

1. The action of the Zoning Official was erroneous because – The August 18, 2025 determination that the nonconforming use was discontinued for a period of 6 months or more starting on 4/19/24 when the ABL was suspended was in error because such use as a “drinking place” was a legally established one and has been continuous operation.
2. Appellant is aggrieved by the action or decision in that – The Zoning Administrator determination prevents renewal of the business license.
3. Appellant contends that the correct interpretation of the Zoning Ordinance as applied to the property is – A “drinking place” use on the property is a permitted nonconformity and thus such use is not required to be in compliance with current Zoning Ordinance requirements.
4. Appellant requests the following relief – A reversal of the determination of the Zoning Administrator and recognition of the “drinking place: use as a lawful nonconformity (nonconforming use not subject to discontinuance).

Additionally, the appellant stated the following positions in an emailed response to the initial determination on August 19, 2024:

1. Appellant referred to emails with Business License Department concerning no action taken by Backyard Bar N Grill to surrender the license and 1 to emails from Business License Department stating the business license was on hold until DOR permitting issues are resolved.
2. Appellant stated that lights and all other utilities remain on and in business name through the entire process.
3. Appellant asserts that he was assured that once DOR issues were resolved, the business license renewal would be completed.
4. Appellant asserts that zoning information provided in the determination is not applicable in this instance, and is what is applied to a new business.

#### IV. BOARD INFORMATION

Per *Article 1, Section 1.h.4.a* of the Ordinance, the BOA must decide if there is an error in the order, requirement, decision, or determination of the Zoning Administrator pertaining to the position that reestablishment of a drinking place on the property at 330 Rast St. requires special exception approval by the BOA and must comply with all current requirements of the Zoning Ordinance.

The Board shall note that this is not a decision concerning the merits of this property as a suitable location for a “drinking place” use. Rather, this decision is about whether a “drinking place” use on the property is subject to a nonconforming use discontinuance pursuant to *Article 6.a.2.b.1*, *Article 6.a.2.b.1*, and *Article 6.b.2* of the Zoning Ordinance.

If the BOA makes the decision to affirm the Zoning Administrator’s determination, the appellant will need to apply for special exception approval to reestablish the “drinking place” use on the property and demonstrate that such use will be in full compliance with the Zoning Ordinance.

If the BOA makes the decision to reverse the Zoning Administrator’s determination, then the Zoning Administrator will sign the business license clearance form submitted by the appellant for zoning compliance. Such a decision by the BOA only applies to zoning compliance and does not have an impact on any other section of City Code applicable to approval of appellant’s business license clearance form or business license renewal.

#### IV. DRAFT MOTIONS FOR BOA-25-34

- A. I move that the Zoning Board of Appeals **Affirm** the Zoning Official’s determination that a “drinking place” use on the property is subject to a use discontinuance and thus reestablishment of such use must be done so in full compliance the City of Sumter Zoning & Development Standards Ordinance, subject to the findings of fact and conclusions developed by the BZA and so stated:
- B. I move that the Zoning Board of Appeals **Reverse** the Zoning Official’s determination, that a “drinking place” use on the property is subject to a use discontinuance and thus reestablishment of such use must be done so in full compliance the City of Sumter Zoning & Development Standards Ordinance, subject to the following findings of fact and conclusions:
- C. I move that the Zoning Board of Appeals enter an alternative motion for BOA-25-34.

#### V. BOARD OF APPEALS – November 12, 2025



## SUMTER CITY-COUNTY PLANNING COMMISSION

POST OFFICE BOX 1449  
SUMTER, SC 2915112 WEST LIBERTY STREET  
(803) 774-1660Notice of Appeal – Form 1  
Board of Zoning Appeals

BIA-25-34

Date Filed: September 17, 2025 ☒ City ☐ County

## INSTRUCTIONS

This form must be completed for a hearing on **appeal** from action of a zoning official, application for a **variance**, or application for **special exception**. Entries must be printed or typewritten. If the application is on behalf of the property owner(s), all owners must sign. If the applicant is not an owner, the owner(s) must sign the Designation of Agent.

An accurate, legible plot plan showing property dimensions and locations of structures and improvements must be attached to an application for variance or special exception.

## THE APPLICANT HEREBY APPEALS (indicate one):

- ☒ From action of a zoning official as stated on attached Form 2  
☐ For a variance as stated on attached Form 3  
☐ For a special exception as stated on attached Form 4

APPLICANTS: [print] Backyard Bar N Grill / Philip BoydAddress: 330 Rast Street, SumterTelephone: 310-651-0105 [work] 310-651-0105 [home]Interest: Owner(s) Adjacent Owner(s); Other: licenseeE-mail address: Phillip Boyd <backyardgrillsumter@gmail.com>OWNER(S) [if other than Applicant(s)]: GAINEY INVESTMENTS LLCAddress: 2573 BROAD ST, SUMTER SC 29153

Telephone: \_\_\_\_\_ [work] \_\_\_\_\_ [home]

PROPERTY ADDRESS: 330 Rast Street, Sumter

Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Subdivision: \_\_\_\_\_

Tax Map # 230-16-01-009

Lot Dimensions: \_\_\_\_\_ Area: \_\_\_\_\_

Zoning District: \_\_\_\_\_

Is this tract or parcel restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the activity described in this permit? ☐ Yes ☒ No

## CERTIFICATION

I hereby certify that I have read this application and the information supplied herein is true and correct to the best of my knowledge. I agree to comply with all applicable City and/or County Ordinances and State Laws related to land development. I am the property owner, or have received the owner's written authorization to act as his/her agent regarding this matter. I understand that falsifying any information herein may result in nullification of this request and/or appropriate legal remedies.

James D. Gainey James D. Gainey 9/17/25  
 x \_\_\_\_\_  
 Property Owner or Authorized Agent Name, Signature and Date

## APPLICATION MUST:

- ♦ Be submitted at least 22 days prior to the next scheduled Board of Adjustment meeting
- ♦ Include site plan (if applicable)
- ♦ Include an application fee of: \$250.00 (City) or \$100.00 (County)
- ♦ Plat of the property that includes all structures both existing and proposed (if applicable)

## OFFICE USE:

Date Fee Paid

Received By

\$250.00

Amount Paid

Meeting Date

250.00

11/12/25

**Appeal from Action of Zoning Official – Form 2**  
**Board of Zoning Appeals**

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Date Filed: \_\_\_\_\_ Permit Application No. \_\_\_\_\_ Appeal No. \_\_\_\_\_

1. Applicant hereby appeals to the Board of Zoning Appeals from the action of the Zoning Official affecting the property described in the Notice of Appeal (Form 1) on the grounds that:

( ) granting ( ) denial of an application for a permit to \_\_\_\_\_ was erroneous and contrary to provisions of the zoning ordinance in Section \_\_\_\_\_; or other action or decision of the Zoning Official was erroneous as follows:

the August 18, 2025 determination of the Zoning Administrator that the nonconforming use was discontinued for a period of 6 months or more starting on 4/19/24 when the ABL was suspended was in error because such use as a "drinking place" was a legally established one and has been in continuous operation

2. Applicant is aggrieved by the action or decision in that:  
the Zoning Administrator determination prevents renewal of the business license

3. Applicant contends that the correct interpretation of the zoning ordinance as applied to the property is:  
a "drinking place" use on the property is a permitted nonconformity and thus such use is not required to be in compliance with current Zoning Ord requirements

4. Applicant requests the following relief:  
reverse the determination of the Zoning Administrator and recognize the use as a "drinking place" as a lawful nonconformity

**CERTIFICATION**

I hereby certify that I have read this application and the information supplied herein is true and correct to the best of my knowledge. I agree to comply with all applicable City and/or County Ordinances and State Laws related to land development. I am the property owner, or have received the owner's written authorization to act as his/her agent regarding this matter. I understand that falsifying any information herein may result in nullification of this request and/or appropriate legal remedies.

X James D. Gainey James D. Gainey 9/17/25  
Property Owner or Authorized Agent Name, Signature and Date



# Sumter City-County

## Planning Department

DERON L. MCCORMICK  
CITY MANAGER

HELEN M. ROODMAN  
PLANNING DIRECTOR

GARY M. MIXON  
COUNTY ADMINISTRATOR

August 18, 2025

Phillip Boyd  
Business Owner

*sent via email to: [backyardgrillsumter@gmail.com](mailto:backyardgrillsumter@gmail.com)*

**RE: Backyard Bar N Grill (330 Rast St.) – Business Discontinuance Status**

Dear Mr. Boyd,

The Planning Department was made aware of your recent business license clearance form request to reestablish a “drinking place” use on property located at 330 Rast St., Sumter, SC, and further identified as TMS# 230-16-01-009 (hereby referred to as “the property”). The property is located within the jurisdiction of the City of Sumter and is subject to the zoning and development regulations found in the *City of Sumter Zoning & Development Standards Ordinance* (herein referred to as the “Zoning Ordinance”) administered by the Sumter City-County Planning Department. The current zoning classification for the property is General Commercial (GC).

Pursuant to available business license records, a “drinking place” use under the applicable industrial classification codes in place at the time was originally established on the property in 2003. The original establishment of this use on the property predates the current zoning requirements pertaining to “drinking place” uses that were adopted by City Council in 2004. Current requirements for “drinking place” uses include the need to obtain special exception approval by the Sumter City-County Zoning Board of Appeals (BOA) and adherence to separation requirements from certain sensitive uses. As such, the use of the property as a “drinking place” became nonconforming subject to the requirements of *Article 6: Nonconforming Uses and Sites* of the Zoning Ordinance with the adoption of new “Drinking Place” zoning requirements in 2004.

On April 19, 2024, the South Carolina Administrative Law Court (Judge: S. Phillip Lenski) granted the South Carolina Department of Revenue’s motion for injunctive relief, thus suspending the on-premises beer and wine permit and liquor-by-the-drink license held by Backyard Bar N Grill, LLC, d/b/a/ Backyard Bar N Grill. This action suspended use of the property for a “drinking place” use as defined the Zoning Ordinance and began a period of discontinuance lasting 6 months or more.

Pursuant to *Article 6.a.2.b.1: Nonconforming Uses of the Zoning Ordinance*, a nonconforming use is subject to discontinuance when there has been a cessation of operations or business activity at a structure for a continuous period of not less than 6 months.

Pursuant to *Article 6.b.1: Proof of Legal Nonconformance and Continuance of Use* of the Zoning Ordinance, the property owner or permit applicant bears the full burden of proof that any nonconforming situation is a legally established one and has been in continuous operation. Evidence may include proof of business

license, utility statement, business transaction receipts, tax returns, or other documents. The Zoning Administrator shall determine whether a situation is a nonconforming use as defined in *Article 6* of the Zoning Ordinance.

Pursuant to *Article 6.b.2: Loss of Nonconforming Use Status*, if a nonconforming use is subject to a discontinuance, then any subsequent use or operation must be in full compliance with applicable requirements of the Zoning Ordinance.

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### Zoning Determination

Based on the information provided previously in the letter, the following zoning determinations are being made:

1. Use of the property as a “drinking place” became nonconforming with amendments to the Zoning Ordinance in 2004 requiring this use type to obtain special exception approval from the BOA and to adhere to separation requirements from certain uses.
2. The nonconforming “drinking place” use of the property was discontinued for a period of 6 months or more with the suspension of applicable on-premise alcohol permits, and licenses issued by the South Carolina Department of Revenue. Having such licenses is part of what constitutes the use itself pursuant to the definition in *Article 10.b.1.* of the Zoning Ordinance.
3. Reestablishment of the “drinking place” use on the property must be done so in full conformance with current Zoning Ordinance requirements. This must include obtaining special exception approval by the BOA, complying with the requirements the “drinking place” special design standards found in *Article 5.b.3.l.* of the Zoning Ordinance, and complying with any other applicable requirements of the Zoning Ordinance. The BOA reviews special exception requests pursuant to the requirements found in *Article 1.b.4.c.* of the Zoning Ordinance.

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Any person aggrieved by this **administrative decision** may appeal the decision to the Zoning Board of Appeals consistent with *Article 1.i.2* of the Zoning Ordinance. Appeals must be filed with the required \$250.00 fee within thirty (30) days of the mailing date of this letter.

Please contact me at (803) 774-1611 or via e-mail at [jderwort@sumtersc.gov](mailto:jderwort@sumtersc.gov) if you have any questions.

Sincerely,



Jeff Derwort, AICP  
Zoning Administrator/Planning Manager

CC: Danny Crowe, City Attorney  
Helen M. Roodman, Planning Director  
Sharon Felder, Business License Supervisor  
Carmen Silvester, Business License Assistant Manager  
Joe Lane, City of Sumter Police Department  
Gainey Investments (Dean Gainey), Property Owner

ENC: ALC Court Order (issued 4/19/24)  
Article 6 of Zoning Ordinance  
Article 3, Exhibit 3-5 of Zoning Ordinance (use table)  
Article 5.b.3.l of the Zoning Ordinance (drinking place specific design standards)  
Article 10.b.1. of the Zoning Ordinance (drinking place definition)  
Article 1.h.4.c of the Zoning Ordinance (BOA special exception criteria)  
Business License Clearance Form



**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,

Petitioner,

vs.

Backyard Bar N Grill, LLC, d/b/a  
Backyard Bar N Grill,

Respondent.

Docket No. 23-ALJ-17-0475-CC

**ORDER GRANTING DEPARTMENT'S  
MOTION TO SUSPEND PERMIT AND  
LICENSE**

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Motion for Expedited Hearing and/or Injunctive Relief filed with the court on March 22, 2024, by the South Carolina Department of Revenue (Department). In its motion, the Department seeks an order suspending the on-premises beer and wine permit and business liquor-by-the-drink license held by Backyard Bar N Grill, LLC, d/b/a Backyard Bar N Grill (Respondent) until a hearing on the merits can be rescheduled. The basis for the Department's motion was that the Sumter Police Department had alerted the Department to a shooting that occurred at the Respondent's location on March 10, 2024, that resulted in four (4) victims being wounded by gunfire and one (1) victim being struck by a motor vehicle that was attempting to flee the scene. Following those events, on or about April 1, 2024, it was reported in the news that the Respondent had closed for business. Thereafter, law enforcement informed the Department that the Respondent was advertising for an event on April 13, 2024, on its social media.

The Respondent initially opposed the Department's motion, and the court scheduled a hearing on the motion for April 22, 2024. However, by letter dated April 18, 2024, the Respondent notified the court that it was withdrawing its opposition to the Department's motion for a summary suspension of its permit and license pending a future hearing on the merits. Consequently, since it is now unopposed, the Department's motion is granted.

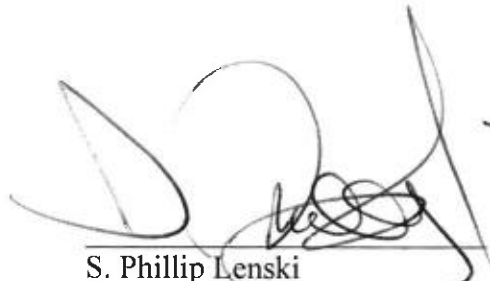
**ORDER**

**IT IS THEREFORE ORDERED** that the Department's Motion for Injunctive Relief is **GRANTED**, and the Respondent's on-premises beer and wine permit and liquor-by-the-drink license are hereby **SUSPENDED** until a hearing on the merits can be held.



**AND IT IS SO ORDERED.**

April 19, 2024  
Columbia, South Carolina

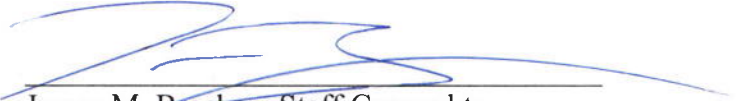


S. Phillip Lenski  
S.C. Administrative Law Judge

**CERTIFICATE OF SERVICE**

I, James M. Bracken, hereby certify that I have on this date served this Order Granting Department's Motion to Suspend Permit and License upon all parties to this case by depositing a copy hereof in the United States mail with postage paid, in the Interagency Mail Service, or by electronic mail to the address(es) provided by the parties and/or their attorneys.

April 19, 2024  
Columbia, South Carolina

  
James M. Bracken, Staff Counsel to  
The Honorable S. Phillip Lenski



## ***ARTICLE SIX***

### ***NONCONFORMING ZONING USES AND SITES***

#### **SECTION A: PURPOSE OF ARTICLE AND DEFINITIONS**

**6.a.1. Purpose:** The use of or improvements to real property may become nonconforming when standards established by this Ordinance change. Specifically, legal nonconforming zoning uses and legal nonconforming sites (structures and lots) were initially lawful and existed prior to the adoption of this Ordinance or prior to an amendment hereto but, due to the enactment of this Ordinance or such amendment, no longer conform to the requirements herein. To the extent that such nonconforming uses and nonconforming sites have been in continual use, they have been allowed to remain in use despite the noncompliance with this Ordinance.

The purpose of this Article is to allow the continued use and operation of these nonconforming uses and nonconforming sites pursuant to the requirements of this Article. The goal is not to encourage the persistence of nonconformities, but to ease the burden on property owners and eventually to ensure that all zoning uses, structures, and lots comply with the requirements of this Ordinance.

#### **6.a.2. Definitions**

- a. **Development Standards:** At any given time, the then-current development standards applicable to a property or structure pursuant to this Ordinance.
- b. **Discontinuance:** With respect to:
  - 1. Nonconforming Uses, the discontinuance or cessation of operations or business activity at a structure for a continuous period of not less than 6 months;
  - 2. Nonconforming Sites, the discontinuance or cessation of operations or business activity at a structure for a continuous period of not less than 18 months
- c. **Nonconforming Use:** Any use of property that is not a permitted use pursuant to the current zoning classification or otherwise is not in compliance with this Ordinance.
- d. **Nonconforming Site:** Any structure, building, house, shed, accessory dwelling, or improvement on real property, or any parcel, lot, or unimproved real property, that does not comply with Development Standards.
- e. **Project:** Any improvement, upfit, renovation, rehabilitation, restoration, removal, or addition to a structure or lot that occurs after a discontinuance and within twelve months following the resumption of operations or business activity at such structure or lot.

## SECTION B: NONCONFORMING USES

**6.b.1. Proof of Legal Nonconformance and Continuance of Use:** A Nonconforming Use may continue to operate pursuant to this Article. The Property Owner or permit Applicant bears the full burden of proof that any non-conforming situation is a legally established one and has been in continuous operation. Evidence may include proof of business license, utility statements, business transition receipts, tax returns, or other documentation. The Zoning Administrator shall determine whether a situation is a Nonconforming Use as defined in this Article. A structural improvement qualifying as a Nonconforming Use may be increased in size by no more than 5% of the gross floor area, if the minimum lot areas, yard setbacks, and off-street parking requirements of this Ordinance are met.

**6.b.2. Loss of Nonconforming Use Status.** If a Nonconforming Use is subject to a Discontinuance, then any subsequent use or operation must be in full compliance with all applicable zoning requirements in this Ordinance.

**6.b.3. Accidental Destruction.** If a Nonconforming Use is discontinued due to fire or other natural causes, the Nonconforming Use may be reestablished within 6 months after the fire or other natural cause.

## SECTION C: NONCONFORMING SITES

**6.c.1. Proof of Legal Nonconformance and Continuance:** A Nonconforming Site may continue to operate pursuant to this article. The Property Owner or permit Applicant bears the full burden of proof that any Nonconforming Site is a legally established one and has continually operated. Evidence may include proof of business license, utility statements, business transition receipts, tax returns or other documentation. The Zoning Administrator shall determine whether a situation is a legally Nonconforming Site as defined in this Article.

**6.c.2. Loss of Legal Nonconforming Site Status:** If a Nonconforming Site is subject to a discontinuance then any subsequent reuse, inhabitation, operation, or activity must be in compliance with this Article.

**6.c.3. Loss of Legal Nonconforming Status (Manufactured Home Parks):** A nonconforming manufactured home park must be discontinued when 50% or more of the homes in the park become uninhabitable as determined by the Sumter Building Official or remain vacant for a period 6 months or longer. Resumption of the use of the property as a manufactured home park may be permitted if the use is permitted in the then-current zoning district and conforms to Development Standards for manufactured home parks.

**6.c.4. Projects at Nonconforming Sites.** The Property Owner or Applicant may not undertake a Project that will create new nonconformities with Development Standards unless approved by the Zoning Administrator. In addition, any Project at a Nonconforming Site must comply with the following requirements:

# Exhibit 3-5: Permitted Uses in All Zoning Districts

Key: P: Permitted Use – C: Conditional Use – S: Special Exception Use

\*Asterisk denotes conditions listed in "Notes" column applies only in the specified zoning district where asterisk is present

NAICS Code	NAICS Description	R-15	R-9	R-6	GR	RMF	PO	NC	LC	GC	CBD	LI-W	HI	AC	CP	Notes	NAICS Sector (2 Digit)
6216	Home Health Care Services						P		P	P	P	C					62 - Health Care and Social Assistance
6221	General Medical and Surgical Hospitals									P	P	C					62 - Health Care and Social Assistance
6222	Psychiatric and Substance Abuse Hospitals									P		C					62 - Health Care and Social Assistance
6223	Specialty (except Psychiatric and Substance Abuse) Hospitals								C	P	P	C					62 - Health Care and Social Assistance
6231	Nursing Care Facilities (Skilled Nursing Facilities)					P	P	P	P	P		C					62 - Health Care and Social Assistance
6232	Residential Intellectual and Developmental Disability, Mental Health, and Substance Abuse Facilities)						P	P	P	P							62 - Health Care and Social Assistance
6232	Group Homes as defined in Article 10.b.1.	P*	P*	P*	P*											*Subject to definition in Article 10.b.1. and supplemental review criteria in Article 4.p.1.	62 - Health Care and Social Assistance
6233	Continuing Care Retirement Communities and Assisted Living Facilities for the Elderly					P		C	P	P	C	C					62 - Health Care and Social Assistance
6239	Other Residential Care Facilities							P	P	P							62 - Health Care and Social Assistance
6241	Individual & Family Services		C				P	C	P	P		C					62 - Health Care and Social Assistance
6242	Community Food and Housing, and Emergency and Other Relief Services							C	P	P	C	P					62 - Health Care and Social Assistance
6243	Vocational Rehabilitation Services								P	P		C					62 - Health Care and Social Assistance
6244	Child Care Services		C	C	C	C	P	P	P	P	C	P	P	C			62 - Health Care and Social Assistance
7111	Performing Arts Companies						P	P	P	P	P	P					71 - Arts, Entertainment, and Recreation
711211	Sports Teams and Clubs								C	P		C					71 - Arts, Entertainment, and Recreation
711212	Racetracks									S		S				Ref. Article 5	71 - Arts, Entertainment, and Recreation
7113	Promoters of Performing Arts, Sports, and Similar Events								C	P		C					71 - Arts, Entertainment, and Recreation
7114	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures						P		P	P	P	C					71 - Arts, Entertainment, and Recreation
7115	Independent Artists, Writers, and Performers								P	P	P	C					71 - Arts, Entertainment, and Recreation
7121	Museums	C	C	C	C		P		P	P	P	C					71 - Arts, Entertainment, and Recreation
71213	Zoos and Botanical Gardens	C	C	C	C		P		P	P	P	C		P			71 - Arts, Entertainment, and Recreation
71311	Amusement and Theme Parks									P		P					71 - Arts, Entertainment, and Recreation
71312	Amusement Arcades									P	P	P					71 - Arts, Entertainment, and Recreation
7132	Gambling Industries (i.e. Bingo Parlors, Pool Halls)									S		S				Ref. Article 5	71 - Arts, Entertainment, and Recreation
7132	Card rooms (e.g., poker rooms)									C		C				Ref. Article 5	71 - Arts, Entertainment, and Recreation
7139	Other Amusement and Recreation Industries							S	S	S	S	S				Ref. Article 5	71 - Arts, Entertainment, and Recreation
71391	Golf Courses and Country Clubs	C	C	C	C					P	C	P		C			71 - Arts, Entertainment, and Recreation
71393	Marinas									P		P	P	P			71 - Arts, Entertainment, and Recreation
71394	Physical Fitness Facilities						C	C	P	P	P	P					71 - Arts, Entertainment, and Recreation
71395	Bowling Alleys									P	P	C					71 - Arts, Entertainment, and Recreation
71399	Shooting Ranges (Indoor)									S		S	S	S		Ref. Article 5	71 - Arts, Entertainment, and Recreation
71399	Shooting Ranges (Outdoor)											S	S	S		Ref. Article 5	71 - Arts, Entertainment, and Recreation
72111	Hotels (except Casino Hotels) and Motels								C	P	C	C					72 - Accommodation and Food Services
72111	Organization Hotels and Lodges			C	C	P					P	P	C				72 - Accommodation and Food Services
721191	Bed and Breakfast Inns	S	S	S	S		C	C	C	C						Ref. Article 5	72 - Accommodation and Food Services
7212	Recreational Vehicle Parks and Recreational Camps									C		C		C	C		72 - Accommodation and Food Services
7213	Rooming and Boarding Houses, Dormitories, and Workers' Camps									P		C					72 - Accommodation and Food Services
7223	Special Food Services						C*	C*	P*	P*	P*	P*	P*			*Excluding food trucks (see Article 5.c.6)	72 - Accommodation and Food Services
7224	Drinking Places (Alcoholic Beverages)							S	S	S	S	S				Ref. Article 5	72 - Accommodation and Food Services
7225	Restaurants and Other Eating Places						C	P	P	P	P	P	C				72 - Accommodation and Food Services
8111	Automotive Repair and Maintenance									C		C	P				81 - Other Services (except Public Administration)
811191	Automotive Oil Change and Lubrication Shops								C	P	C	C	P				81 - Other Services (except Public Administration)
811192	Car Washes							C	P	P		P					81 - Other Services (except Public Administration)

3. That no material shall be placed in open storage in such a manner that it is capable of being transported by wind, water, or other causes;
  4. That all paper, rags, cloth and other fibers, and activities involving the same materials, other than loading and unloading, shall be within fully enclosed buildings;
  5. All materials and activities not within fully enclosed buildings shall be enclosed by a structure approved by the Board of Appeals upon the recommendation of the Zoning Administrator.
- i. Video Poker (Video Games – Coin Operated Amusement Devices with payout) (NAICS 7132);
1. Principal Use:
    - a. 1 parking space per 50 sq. ft. Gross Floor Area (GRA)
  2. Accessory Use:
    - a. 5 or less machines
    - b. At least 2,000 sq. ft. of Gross Floor Area (GFA)
    - c. Less than 40% of gross income from machines
    - d. Located in zoning districts where the principal use is a permitted use or an allowed Conditional Use as defined by the district regulations.
  3. For all video games
    - a. Machines shall be at least 300 feet from a house of worship, a public or private elementary, middle or secondary school, a public or private kindergarten, a public playground or park, a public vocational or trade school or technical education center, or a public or private college or university.
- j. Tattoo Parlors (NAICS 81299);
1. The referenced use shall not be located within 500 feet of a residential use, church or religious institution, public or private school, public park or playground, or any other tattoo parlor.
- k. Recyclable Material Merchant Wholesalers (NAICS 423930);
1. This use shall not be within 1,500 feet of a residential use, church, school or public playground on a separately platted parcel.
  2. A 6 ft tall security fence shall enclose the entire use.
- l. Drinking Places/Bottle Clubs/Night Clubs (NAICS 7224);

1. This use shall not be within 300 feet (measured in a straight line from structure to structure) of residential use (except in the portion of the Central Business District outlined in blue on the Sumter Central Business & Historic Preservation Downtown Design Review District Map attached to this ordinance – see *Appendix D*), church, school, or public playground on a separately platted parcel.
  2. A six-foot high fence that is a visual screen will be installed to separate this use from residential uses, where such residential uses are directly adjacent to the property or site containing the use.
- m. Liquor Stores (NAICS 44532);
1. This use shall not be within 300 ft. (measured in a straight line from structure to structure) of a residential use, church, school or public playground on a separately platted parcel.
  2. A 6 foot high fence that is a visual screen will be installed to separate this use from residential uses.
- n. Bingo Parlor / Pool Hall (NAICS 7132);
1. This use shall not be within 150 ft. (measured in a straight line from structure to structure) of a church, school or public playground that is on a separately platted parcel under different ownership.
- o. Jails / Correctional Facilities (NAICS 561210 or 92214);
1. Site review must include an Environmental Impact Analysis and disclosure of emergency procedures.
  2. Use shall not be within 2,500 feet (measured in a straight line from structure to structure) of a residential use, church, school, or public playground that is on a separately platted parcel under different ownership.
  3. Access shall be from arterial roads only.
  4. Proper fencing and screening at the property line as well as internal security requirements.
- p. Bed and Breakfast Inns (NAICS 721191);
1. Shall be owner occupied with the owner-operator residing on premises.
  2. Limit exterior alterations to those necessary to assure safety of the structure or enhance compatibility of the bed and breakfast with the surrounding area.
  3. A maximum of 1 bed and breakfast inn shall be permitted on any one parcel.



3. Is open 15 to 24 hours a day.

**County Club:** Privately owned club with a membership quota and admittance by application, invitation or sponsorship, that offers both a variety of recreational sports and facilities for dining, overnight lodging and entertaining for members. Athletic offerings include, but are not limited to, golf, tennis, and swimming.

**Craft Beer Brewery:** See also “Brewery, Craft Beer”.

**Day Care Services:**

1. **Family Day Care Home:** A family day care home is one in which care is given by a family member during the day only for one and not more than twelve children, including the day care parents, own children.
2. **Child Care Services:** Child care services shall mean or include any home, center, agency, or place, however styled, when children not related to the operator are received for custodial care, apart from their parents whether for compensation, reward, or otherwise, during part or all of the day or night and upon any number of successive day or nights.

**Density:** The number of dwelling units per acre of land developed or used for residential purposes. Unless otherwise clearly stated, density requirements in this Ordinance are expressed in dwelling units per net acre; that is, per acre of land devoted to residential use and common open space exclusive of land utilized for streets, alleys, parks, playgrounds, school grounds, or other public uses.

**Developed Lot or Parcel:** A developed lot or parcel is one which contains \$50,000 in commercial, industrial or business improvements, according to records in the tax assessor’s office or receipt of a valid building permit in said amount.

**Digital Sign:** means an off-site sign or billboard that utilizes digital or light-emitting diodes (LEDs) or similar electronic methods to create a changeable image display area.

**Donation Bin:** A mobile structure that is located outside of the walls of an enclosed building and is used to receive materials including but not limited to clothing, office supplies, and other household goods donated by the public. Donation bins do not exceed 8 feet in length by 10 feet in width and 8 feet in height or 640 cubic feet.

**Drinking Place:** A commercial establishment whose primary activity is the sale of alcoholic beverages to be consumed on the premises. Such establishments are properly licensed by the South Carolina Department of Revenue – Alcohol Beverage Licensing Commission. Drinking places included, but not limited to, establishments referred to as bars, beer gardens, beer parlors, taverns, cabarets, cocktail lounges, saloons, tap rooms, and wine bars. Cigar Bars and Hookah Lounges with any on-premises consumption alcohol sales are included in this definition. Eating places, with on-premises consumption alcohol sales where the primary activity is the sale of food, are not included within this definition.

6. If mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, a property owner may appeal by filing a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The petition must be filed with the circuit court within thirty days of :
  - a. the report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or
  - b. the failure to approve the settlement by the local governing body.
7. The circuit court judge must approve the settlement if the settlement has a rational basis in accordance with the standards of this chapter. If the mediated settlement is not approved by the court, the judge must schedule a hearing for the parties to present evidence and must issue a written opinion containing findings of law and fact. A party may appeal from the decision:
  - a. in the same manner as provided by law for appeals from other judgments of the circuit court; or
  - b. by filing an appeal pursuant to subsection (6).

## **SECTION H: BOARD OF ZONING APPEALS: ESTABLISHMENT AND PURPOSE**

**1.h.1.** A Board of Zoning Appeals is hereby established pursuant to South Carolina Code of Laws, Section 6-29-780.

**1.h.2.** These rules of procedure are adopted pursuant to S.C. Code 6-29-790 for the Sumter City-County Board of Zoning Appeals which consists of nine (9) members appointed by the Sumter City and County Councils.

**1.h.3.** The members of the Board of Zoning Appeals, upon appointment, shall serve four (4) year terms, or until successors are appointed, whichever is later. Upon a vacancy created by a resignation of any member, the vacancy should be filled for the unexpired term in the manner as are original appointments.

**1.h.4. Powers of the Board of Zoning Appeals:** It is the intention of this Ordinance that all questions arising in connection with the enforcement of this Ordinance shall be presented first to the Zoning Administrator and that such question shall be presented to the Board of Zoning Appeals only on appeal from the Zoning Administrator.

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.

**b. Variances:**

1. To hear and decide appeals for variances from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes and explains all of the following:
  - a. There are extraordinary and exceptional conditions pertaining to the particular piece of property.
  - b. These conditions do not generally apply to other property in the vicinity.
  - c. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.
  - d. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.
2. The Board may not grant a variance the effect of which would be to:
  - a. Allow the establishment of a use not otherwise permitted in a zoning district;
  - b. Extend physically a nonconforming use of land;

- c. Change zoning district boundaries shown on the Sumter City-County Official Zoning Map.
3. The fact that property may be utilized more profitably, should a variance be granted, shall not be considered grounds for a variance.
4. In granting a variance, the Board may attach to it such conditions regarding location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to promote the public health, safety, or general welfare.

**c. Special Exception:**

1. Special exceptions are subject to the terms and conditions for the use set forth for such uses in the Zoning Ordinance.
2. 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.
  - b. That the special exception will be in substantial harmony with the area in which it is located.
  - c. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
3. In granting a special exception, the Board of Zoning 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 Board of Zoning Appeals shall approve the application with specific modification, or disapprove the application. If approved, the Board of Zoning Appeals shall instruct the Zoning Administrator to issue such permits contingent on the specific modification imposed. If disapproved, the Board of Zoning Appeals shall notify the applicant, in writing, of the action disapproving the application, with the reasons therefore.

## **SECTION I: ZONING BOARD OF APPEALS: RULES OF PROCEDURE**

**1.i.1. Officers:** The officers of the Board shall be a chairman and vice-chairman elected for one year terms at the first meeting of the Board in each calendar year. The Planning Director or his/her designee shall serve as secretary to the Sumter City-County Zoning Board of Appeals.



## COMMERCIAL BUSINESS CLEARANCE FORM

12 W. LIBERTY ST., P.O. BOX 1449, SUMTER, SC 29151

PHONE: 803-774-1601; FAX: 803-774-1688

EMAIL: businesslicense@sumtersc.gov

### APPLICATION FEE IS \$50.00

A 3.4% + \$0.30 surcharge applies for all credit card transactions.

Checks can be made payable to the City of Sumter.

Clearance forms are required for all businesses located in the City or County of Sumter, SC.

Any new business, change of location or change of ownership for an existing business should complete this form and return it to the business license office. In the event of a change of location or ownership of a business, notification must be given within 10 days and the same procedure shall be followed.

### Name of business (As it will appear on your Federal & SC State Tax Returns):

Backyard Bar N Grill

### Physical Address of Business (No P.O. Boxes):

Street 330 Rast St City Sumter State SC Zip Code 29150

### Mailing Address

Street 330 Rast St City Sumter State SC Zip Code 29151

Phone Number of Business: 310-651-0105 Business Website: \_\_\_\_\_

### Business Owner Information:

Name: Phillip Boyd Phone Number: 310-651-0105

Address (street, city, state, zip code): 655 adger lane, Sumter SC 29154

Email Address: backyardgrillsumter@gmail.com

### Property Owner Information:

Name: Gainey Investment (Dawn Gainey) Phone Number: (803) 469-2000

Address (street, city, state, zip code): 2573 Broad St Sumter SC 29150

Email Address: \_\_\_\_\_

Type of Business – Please provide a detailed description of ALL proposed activities in which the business will engage.

(Bar N Grill) Alcohol Beverage, Live Music & Entertainment

### OFFICE USE ONLY

NAICS Code: 722410

Date Rec'd: 8/12/25

Time Rec'd: 10:12

Zoning: \_\_\_\_\_

Parcel No.: \_\_\_\_\_

CF Handled by (Business license):

CPuckett

## Exhibit 3

**Jeff Derwort**

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**From:** Phillip Boyd <backyardgrillsumter@gmail.com>  
**Sent:** Tuesday, August 19, 2025 11:30 PM  
**To:** Jeff Derwort  
**Cc:** Kathy Schillaci; Joe McCulloch  
**Subject:** Re: Backyard Bar N Grill (330 Rast St) - Zoning Determination

Jeff,

Please see the email from the City of Sumter where I never surrender the Business License and attempted to pay for the business license, the RENEWAL was placed on hold until the issue with DOR was resolved. The lights and all other utilities remained on and in business name through the entire process. I was assured once the issues with DOR was complete , my business license Renewal would be completed. Based upon what you sent me this is for new bussines not for bussines that already established prior to rezoning. See attached email from the business license manager.



Sent from my iPhone

On Aug 18, 2025, at 2:41 PM, Jeff Derwort <[jderwort@sumtersc.gov](mailto:jderwort@sumtersc.gov)> wrote:

Please see below highlighted correction.

-Jeff

**Jeff Derwort, AICP**  
Planning Manager/Zoning Administrator  
Sumter City-County Planning Department

## Exhibit 4

### STATE OF SOUTH CAROLINA ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue,

Petitioner,

vs.

Backyard Bar N Grill, LLC, d/b/a  
Backyard Bar N Grill,

Respondent.

Docket No. 23-ALJ-17-0475-CC

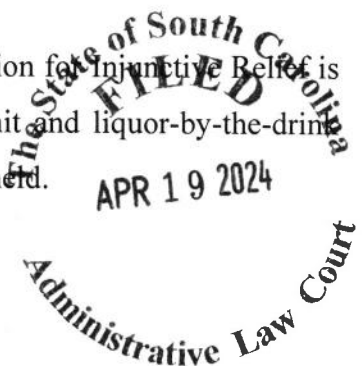
#### **ORDER GRANTING DEPARTMENT'S MOTION TO SUSPEND PERMIT AND LICENSE**

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a Notice of Motion for Expedited Hearing and/or Injunctive Relief filed with the court on March 22, 2024, by the South Carolina Department of Revenue (Department). In its motion, the Department seeks an order suspending the on-premises beer and wine permit and business liquor-by-the-drink license held by Backyard Bar N Grill, LLC, d/b/a Backyard Bar N Grill (Respondent) until a hearing on the merits can be rescheduled. The basis for the Department's motion was that the Sumter Police Department had alerted the Department to a shooting that occurred at the Respondent's location on March 10, 2024, that resulted in four (4) victims being wounded by gunfire and one (1) victim being struck by a motor vehicle that was attempting to flee the scene. Following those events, on or about April 1, 2024, it was reported in the news that the Respondent had closed for business. Thereafter, law enforcement informed the Department that the Respondent was advertising for an event on April 13, 2024, on its social media.

The Respondent initially opposed the Department's motion, and the court scheduled a hearing on the motion for April 22, 2024. However, by letter dated April 18, 2024, the Respondent notified the court that it was withdrawing its opposition to the Department's motion for a summary suspension of its permit and license pending a future hearing on the merits. Consequently, since it is now unopposed, the Department's motion is granted.

#### **ORDER**

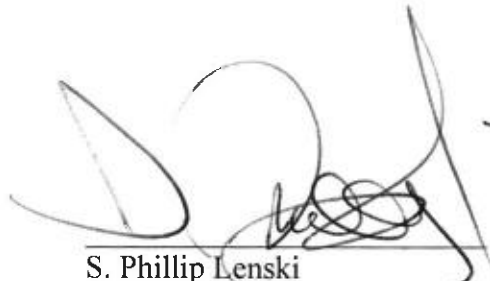
**IT IS THEREFORE ORDERED** that the Department's Motion for Injunctive Relief is **GRANTED**, and the Respondent's on-premises beer and wine permit and liquor-by-the-drink license are hereby **SUSPENDED** until a hearing on the merits can be held.





**AND IT IS SO ORDERED.**

April 19, 2024  
Columbia, South Carolina

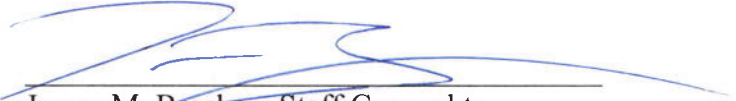


S. Phillip Lenski  
S.C. Administrative Law Judge

**CERTIFICATE OF SERVICE**

I, James M. Bracken, hereby certify that I have on this date served this Order Granting Department's Motion to Suspend Permit and License upon all parties to this case by depositing a copy hereof in the United States mail with postage paid, in the Interagency Mail Service, or by electronic mail to the address(es) provided by the parties and/or their attorneys.

April 19, 2024  
Columbia, South Carolina

  
James M. Bracken, Staff Counsel to  
The Honorable S. Phillip Lenski



## Exhibit 5

### STATE OF SOUTH CAROLINA ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue,  
  
Petitioner,  
  
vs.  
  
Backyard Bar N Grill, LLC, d/b/a Backyard  
Bar N Grill,  
  
Respondent.

Docket No. 23-ALJ-17-0475-CC

#### FINAL ORDER AND DECISION

**APPEARANCES:** For the Department: Patrick A. McCabe, Esq.  
For the Respondent: Joseph M. McCulloch, Jr., Esq.

#### STATEMENT OF THE CASE

This case is before the Administrative Law Court (ALC or court) pursuant to a request for a contested case hearing filed on December 4, 2023, by Backyard Bar N Grill, LLC, d/b/a Backyard Bar N Grill (Respondent or Backyard). The Respondent contests the South Carolina Department of Revenue's (Department) decision to revoke its on-premises beer and wine permit and business liquor-by-the-drink license for violating Sections 61-4-580 and 61-6-1820 of the South Carolina Code.<sup>1</sup> Specifically, the Department contends that the Respondent's location at 330 Rast Street, Sumter, South Carolina (licensed premises) is no longer suitable for licensure because the Respondent: (1) knowingly permitted acts that constitute a public nuisance on the licensed premises, and (2) failed to maintain a reputation for peace and good order in the community.

A hearing in this matter was held on March 3, 2025, at the ALC in Columbia, South Carolina. After careful consideration of the evidence presented, the applicable law, and the concerns raised by the Sumter Police Department (SPD), the court finds that the events that occurred at the licensed premises are troubling and raise questions about the suitability of the location for licensure. However, in light of the security measures already imposed and the lack of

<sup>1</sup> See S.C. Code Ann. § 61-4-580(A)(5) (2022) (stating that no permittee or licensee may knowingly "permit any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State"); See S.C. Code Ann. § 61-6-1820(2) (2022) (requiring that licensee be "of good moral character or, if a corporation or association, has a reputation for peace and good order in its community, and its principals are of good moral character").



evidence demonstrating the Respondent's knowledge or awareness, the court does not find that revocation is warranted for the Respondent's first violation. Consequently, the court finds that the appropriate penalty is a one-year suspension, retroactive to April 19, 2024,<sup>2</sup> a \$10,000 fine, and additional conditions and restrictions, as set forth herein.

### **ISSUES<sup>3</sup>**

1. Did the Respondent knowingly permit acts that constitute a public nuisance?
2. Has the Respondent failed to maintain a reputation for peace and good order in the community?
3. Is revocation the appropriate penalty for those alleged violations?

### **FINDINGS OF FACT**

Having carefully considered all testimony, exhibits, and arguments presented in this matter, and considering the credibility and accuracy of the evidence, the court makes the following findings of fact by a preponderance of the evidence:

1. The Respondent holds an on-premises beer and wine permit and business liquor-by-the-drink license for its location at 330 Rast Street, Sumter, South Carolina. It was first issued its permit and license in 2021, which were renewed on or about August of 2023.
2. On November 6, 2023, the Department issued a Final Determination revoking the Respondent's license and permit for three (3) incidents involving the Respondent: 1) a July 1, 2023, shooting in the parking lot of the establishment; 2) a September 9, 2023, shooting in the area of the Respondent's location; and 3) an October 21, 2023, fight and stabbing that occurred inside the establishment. In light of these incidents, the Department found, among other things, that the Respondent failed to maintain a reputation for peace and good order in the community, and had permitted acts that constituted a public nuisance. The

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<sup>2</sup> As explained below, on March 22, 2024, the Department moved for an expedited hearing and/or injunctive relief with this court, seeking an order summarily suspending the Respondent's permit and license pending a hearing on the merits. The Respondent initially opposed the Department's motion, however, by letter dated April 18, 2024, the Respondent notified the court that it wished to withdraw its opposition to the Department's motion until a hearing on the merits could be held. On April 19, 2024, the court granted the unopposed motion and the Respondent's license and permit were suspended. Thus, the Respondent's license and permit have been suspended since April 19, 2024.

<sup>3</sup> Although the Department's determination references several other alleged violations—including that the location is not suitable and that the licensee had knowingly permitted acts that constituted an immediate threat to public health, safety, and welfare—its arguments at the hearing on the merits focused only upon two: (1) that the Respondent knowingly permitted acts constituting a public nuisance and failed to maintain a reputation for peace and good order in the community; and (2) that revocation is the appropriate penalty for those violations.

Department, therefore, determined that the Respondent was no longer suitable for licensure and that revocation was the appropriate penalty for the violations.

3. On November 7, 2023, the Department filed a motion for an emergency suspension of the Respondent's permit and license due to the above incidents.
4. On November 28, 2023, Chief Judge Ralph King Anderson, III, issued an order denying the Department's motion for an emergency suspension. At the hearing on the motion, Captain Joe Lane of the SPD testified about the above incidents and another incident for which the SPD has been forced to respond, which the court summarized as follows:
  - a. On July 1, 2023, officers responded to shots being fired at the location resulting in a car being struck. However, no arrest was made following this incident.
  - b. On August 17, 2023, officers were patrolling the area near the business when they conducted a traffic stop. During the stop, the driver stated that he was chasing an individual who had just struck him with a vehicle in the parking lot of Backyard. The driver stated to the officers that there was an altercation outside the business that he was trying to break apart when a vehicle began driving recklessly, making "donuts in the parking lot" and then struck him. After the investigation, this incident was administratively closed.
  - c. On September 9, 2023, officers responded to shots being fired at the Respondent's location and found that multiple vehicles in the parking lot had been damaged by bullets. Also, officers were informed that a male victim had arrived at the emergency room with a gunshot wound to his upper chest. The victim asserted that he was leaving the parking lot of Backyard when a car began shooting at him from the roadway outside of Backyard's parking area.
  - d. On October 21, 2023, law enforcement responded to a fight at the Respondent's location in which a person was stabbed in the upper chest inside the location. In order to quell the ensuing unrest resulting from the stabbing, Respondent's security staff deployed pepper spray. The officers reported approximately 400 patrons at the location during the incident.<sup>4</sup>

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<sup>4</sup> While the hearing before Judge Anderson was only a hearing for an emergency suspension and not the final adjudication of the merits of revocation, the Department did not present any evidence of testimony on any of those four prior incidents from 2023 at the merits hearing. The only incident discussed at the hearing was an incident that occurred later, on March 10, 2024, as discussed below.

*See S.C. Dep't of Rev. v. Backyard Bar N Grill, d/b/a Backyard Bar N Grill*, Docket No. 23-ALJ-17-0439-IJ at \*1-2 (S.C. Admin. Law Ct. Nov. 28, 2023).

5. In denying the Department's motion for an emergency suspension, the court found that: 1) testimony did not reflect that the incidents at Backyard have caused a drain on law enforcement resources; 2) there was no connection established between the incidents and the sale of alcohol; 3) there was no evidence that the individuals involved in the July 1<sup>st</sup>, August 17<sup>th</sup>, or September 9<sup>th</sup> incidents were patrons of the establishment. *Id.* at \*2-3. Nevertheless, the court restricted the Respondent's hours of operation upon finding that "the means by which this location is being operated is creating potential risks of harm to the public" and that the "location appears to attract individuals who are prone to violence and that attraction appears to be correlated with [the] Respondent's hours of operation."<sup>5</sup> *Id.* The Respondent then continued operating under the restricted hours of operation pending a hearing on the merits.
6. Thereafter, on March 10, 2024, there was a shooting at the Respondent's location that resulted in four victims being wounded by gunfire and one victim being struck by a motor vehicle that was attempting to flee the scene (hereinafter referred to as the "March 10<sup>th</sup> incident"). The evidence presented at the hearing reflects that, following a brief musical performance around 5:30 p.m. at Backyard, a physical altercation broke out inside the inside Backyard. The fight prompted the Gorilla Squad, a group of individuals who are not on the Respondent's staff but serve as an informal security force, to intervene, break up the fight, and evict patrons from the location into the parking lot.
7. The situation remained volatile as patrons entered the parking lot. Security video footage reflects a disorganized scene as one hundred or more patrons exit the building

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<sup>5</sup> At the onset of the hearing in this matter, counsel for the Respondent argued that *res judicata* applied to the factual findings that were made in Judge Anderson's November 28, 2023, order. This court declined to hold that *res judicata* applied to Judge Anderson's order because it was not a final judgment on the merits and there are additional and distinct administrative violations—tantamount to causes of action in the administrative context—alleged in this case, as well as new factual allegations. *See Owenby v. Owens Corning Fiberglas*, 313 S.C. 181, 183, 437 S.E.2d 130, 131 (Ct. App. 1993) ("The doctrine of *res judicata* prevents the relitigation of issues previously decided between the same parties. The doctrine requires three essential elements: (1) the judgment must be final, valid and on the merits; (2) the parties in the subsequent action must be identical to those in the first; and (3) the second action must involve matter properly included in the first action.") (citation omitted); *S.C. Pub. Int. Found. v. Greenville Cnty.*, 401 S.C. 377, 386, 737 S.E.2d 502, 507 (Ct. App. 2013) ("Res judicata's fundamental purpose is to ensure that no one should be twice sued for the same cause of action.") (citation omitted). Nevertheless, this court found Judge Anderson's findings of fact and conclusions of law persuasive, and indicated that it would not look favorably upon any evidence or testimony presented that is inconsistent with what the same party or witness offered at the prior hearing before Judge Anderson.

simultaneously. The footage captures dozens of people milling about the building's entrance and throughout the parking lot as several vehicles hastily push through the crowd to exit. Also visible are at least four or five armed security guards wearing tactical gear and visible labels or badges.<sup>6</sup> Several smaller skirmishes are observed during this mass exodus. Pepper spray was deployed against several people, and two individuals were detained and placed in handcuffs. Several patrons are observed walking around with what appear to be beer or liquor bottles, and trash litters the parking lot. At one point, one of the security guards retrieves a rifle from a patron's white sedan parked near the entrance to the licensed premises. Shortly thereafter, a woman who had exited the premises during the exodus and who was standing adjacent the same white sedan, brandishes a handgun and indiscriminately fires several shots into the crowded parking lot. The crowd reacts and begins to rapidly disperse. Vehicles are seen frantically trying to exit the parking lot, and there are several more bursts of what seems to be gunfire are heard. The red-haired woman then gets into the rear of the white sedan, which flees the scene. At the rear of the parking lot, a passenger falls from a red SUV as it accelerates away. A burgundy sedan is seen driving through the same area and bouncing over an object—ostensibly the fallen passenger—before fleeing the scene. SPD body camera footage shows a bloodied hit-and-run victim on the ground receiving aid from emergency services personnel, surrounded by bystanders.

8. In response, on March 22, 2024, the Department filed a motion for expedited hearing or, alternatively, an order summarily suspending the Respondent's permit and license pending a hearing on the merits. The Respondent voluntarily ceased serving beer, wine, and liquor on or about March 31, 2024. By letter dated April 18, 2024, the Respondent notified the court that it was withdrawing its opposition to the Department's motion pending a hearing on the merits. On April 19, 2024, the court granted the unopposed motion and the Respondent's license and permit were suspended pending a hearing on the merits.
9. At the hearing, current SPD Captain William Lyons, who was present in the aftermath of the March 10<sup>th</sup> incident but did not participate in the investigation, testified for the

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<sup>6</sup> These security guards were employed by the Respondent through Cerberus Security & Protection, LLC (Cerberus). With the exception of two individuals who were certified through the South Carolina Law Enforcement Division (SLED), they are not law enforcement officers or SLED certified security officers.

Department.<sup>7</sup> Captain Lyons testified to his understanding of the events of the March 10<sup>th</sup> incident. With respect to the initial fight that occurred inside the location, Captain Lyons opined that the better course of action would have been to detain the troublemakers inside rather than push everyone outside, which he believed contributed to the parking lot disturbance. Additionally, he testified that, after the red-haired woman fired into the crowd, there was a volley of gunfire fired in the direction of the location, which resulted in one of the building's glass front doors being shot out. There was then a third round of gunfire coming from one of the vehicles involved in the hit-and-run of the fallen passenger. In addition to the rounds fired by the red-haired woman, SPD recovered 9mm pistol shell casings and .223 rifle shell casings from the parking lot.<sup>8</sup> He testified that an additional person seen brandishing a gun following the initial shooting was a member of the Gorilla Squad. Captain Lyons testified that, shortly after the shooting occurred, there was a report from a hospital of a person with a gunshot wound in the elbow and another person shot in the lower extremities. Thirteen individuals were criminally charged as a result of the March 10<sup>th</sup> incident, including: all six security guards from Cerberus, who were charged with obstruction of justice or weapons related offenses<sup>9</sup>; one person charged with leaving the scene of an accident with bodily injury; the woman with red hair that was charged with attempted murder; one individual charged with breach of peace of a high and aggravated nature; and weapons charges for several individuals identified in the video footage and determined to be felons, one of whom was a staff member at the Respondent. Captain Lyons testified that he did not believe that the Respondent had adequate security for the number of patrons<sup>10</sup> when the shooting occurred and he does not believe the location is operated in a safe manner. He further testified that the Respondent did not have a good

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<sup>7</sup> During Captain Lyon's testimony, the Department sought to introduce several 911 calls stemming from the March 10<sup>th</sup> incident, which the Respondent objected to on the grounds that they were not disclosed until the Friday before the hearing, when they were received by the Department, and due to concerns about their authenticity. Rather than allowing the calls into evidence, the court accepted that there was at least one 911 call that alleged that a shooting originated at the location and spread out from there, and two 911 calls from nearby business owners—as far as a half mile away from the licensed premises—that alleged that their operations were disrupted by crowds originating from the licensed premises who were behaving in a disorderly fashion, and that one of those businesses had to close early.

<sup>8</sup> Captain Lyons testified that the red-haired woman used a revolver, which does not expel rounds.

<sup>9</sup> Captain Lyons testified to his understanding that one of the Respondent's security guards later had his charges dismissed.

<sup>10</sup> While he testified that there is no strict rule governing the number of security guards or law enforcement officers required for a specific event, he noted that for high school football games, the SPD will typically have 18-22 officers present, or up to 26 for a rivalry game.



reputation in the community, as it has a history of troublesome incidents that have created issues for other businesses and patrons. Captain Lyons opined that allowing the Respondent to sell alcohol is problematic. However, Captain Lyons conceded that, without any indicators suggesting that an altercation was about to occur, an owner such as the Respondent would not know to intervene. To that end, he acknowledged that while the red-haired woman was near the interior altercation nothing in the exterior security footage suggested she would retrieve a firearm and begin shooting. Captain Lyons also testified to a sixteen percent overall increase in crime in Sumter in 2023 and the Department stipulated that Sumter had an overall high crime rate. However, Captain Lyons testified that he believed the crime rate had decreased slightly in 2024. Captain Lyons also clarified that, while the SPD reached out to the Department to initiate an action against the Respondent, they did not protest the Respondent's license and permit renewal in August of 2023, stating that the location was not experiencing the issues previously discussed at the hearing before Judge Anderson at that time.

10. Lieutenant William Hubble of the SPD also testified for the Department. Lt. Hubble was the shift supervisor on duty during the March 10<sup>th</sup> incident and was one of 20-25 officers that responded to Backyard following a call of a fight in progress, which then became a report of gunfire. He testified that when he arrived at the location the Respondent's paid security was present but they were not employing any crowd control measures. He testified that because of this, the location was very chaotic, and he was concerned that evidence might disappear or be destroyed, or that another dispute might ensue. Furthermore, Lieutenant Hubble testified that the traffic and crowd size led to a delay in law enforcement and EMS arriving on the scene. He testified that, to his knowledge, no one in the SPD spoke to the Respondent's owner, Mr. Phillip Boyd, II, on the day of the March 10<sup>th</sup> incident. Lieutenant Hubble also testified that he was incorrectly informed the interior cameras were not functional that day. He opined that the Respondent does not have a reputation for peace and good order in the community due to a history of calls for service of a violent nature at the location. However, he conceded that Sumter has a lot of violent crime, including shootings, which leads to a chaotic scene. He further conceded that one of the Respondent's private security officers had assisted law enforcement by getting people milling about to back up.

11. SLED Special Agent Boyd Tyler testified for the Department. Special Agent Taylor reviewed the bodycam footage, security footage, and reports dating back to December of 2021 to determine if Backyard was a nuisance location. He opened an investigation, which resulted in the issuance of an administrative violation on March 15, 2024, for permitting an act that tends to create a public nuisance. However, Special Agent Taylor conceded that he never visited the licensed premises as part of his investigation nor did he attempt to contact Mr. Boyd. He spoke to only one employee during his investigation, and he did not record that person's name, nor could he remember it.
12. Dean Gainey, the owner and landlord of the licensed premises, testified in support of Backyard. Mr. Gainey has lived in Sumter his whole life, working as a general contractor and real estate broker in charge. He also owns numerous buildings and properties around Sumter. Mr. Gainey built the licensed premises in 1997 to be a night club, which he operated as such largely without incident until 2004. He described the surrounding area as being mostly commercial and retail with a few older residential properties nearby. He noted that the licensed premises is situated on a street with only one point of ingress and egress into the parking lot, and that there are no direct driveways between the parking lot and the nearby Sumter mall parking lot. Mr. Gainey testified that, in 2022, he was contacted by a representative for the City of Sumter asking if he would attend a meeting at the SPD in reference to the licensed premises. Following the meeting, he spoke to Mr. Boyd and expressed concerns regarding the number of calls to the licensed premises. Mr. Gainey testified that, following their meeting, Mr. Boyd installed security cameras and lights, and hired additional security personnel and bouncers to address his concerns and maintain compliance with his lease. He further testified that, up until the March 10<sup>th</sup> incident, Mr. Boyd was responsive and receptive to his concerns and requests regarding the licensed premises. Mr. Gainey testified that Mr. Boyd has been a good tenant, he has never had any complaints from neighbors about the Respondent, and his current intention is to keep renting to Mr. Boyd. He further testified that, aside from the March 10<sup>th</sup> incident, Backyard is a very respected establishment, he has not received any negative feedback on the location apart from the one call from the city, and he has friends that regularly have lunch at the location.

13. Finally, Mr. Phillip Boyd, II, the owner of Backyard, testified. Mr. Boyd is a single father of four children and a twenty-year retired veteran of the Air Force, where he worked in security forces and air-based defense. In addition to Backyard, he also owns a furniture store, as well as a vape shop and convenience store, which holds an ABL permit. Mr. Boyd has been the owner and operator of Backyard since the summer of 2021. After taking over the location, he upgraded the kitchen to focus more on day-time food service. Following a fire in November of 2022, he renovated the building, which he paid for out of pocket, and reopened in June of 2023. The location now opens at 11am every day and closes at midnight on weekdays and 1:00am on weekends, with continuous on- and off-premises food service during business hours. Mr. Boyd testified that the food served at Backyard is very popular in the community. Backyard can accommodate roughly 150 people for sit-down meal service and cleared \$100,000 in DoorDash food sales alone in 2023. The establishment also offers live entertainment, including bands, rappers, steppers, and comedy shows. It employs roughly 55 people, as well as six or seven contractors. Mr. Boyd characterized the area as commercial, with the Sumter mall adjacent to his property and a small strip mall and office building proximate to the licensed premises. He testified that he has never received any complaints from any of those neighbors. The building occupancy limit is 345 people and has 82 designated parking spaces in its parking lot. Staff are instructed to ensure patrons leave the parking lot as quickly as possible. The Backyard received its first ABL permit in 2021, which was renewed in August of 2023. It received no objection or protest, including from the SPD, either time. He has incurred roughly \$122,000 in expenses since voluntarily withdrawing his opposition to the temporary suspension pending the hearing.<sup>11</sup>

14. With respect to security, Mr. Boyd testified that he utilized his military security background in analyzing and implementing security procedures at the licensed premises, including when training his security personnel.<sup>12</sup> He confirmed that the facility has four interior and four exterior security cameras, and cooperates with law enforcement when requested,

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<sup>11</sup> This figure includes non-alcohol related expenses, including rent, utilities, and employee salaries. However, the Respondent has been unable to continue operating as a restaurant selling food pending a hearing on the merits, despite Mr. Boyd's desire to do so, because the City of Sumter placed a hold on his business license renewal application until a decision was made on the Respondent's ABL permit and license.

<sup>12</sup> Mr. Boyd acknowledged that the members of the Gorilla Squad do not receive training.

including providing access to the recordings. He stated that, on the day of the March 10<sup>th</sup> incident, the interior cameras were operational and recording, but the viewing screens were not functioning, leading to the subsequent confusion with what SPD officers were told.<sup>13</sup> Mr. Boyd testified that he uses a “threat based security analysis” depending on the circumstances and needs of the establishment at any given time. To that end, he utilizes a screener throughout the day with security increasing as the night goes on. After 9:00 p.m., everyone entering is searched for weapons using a metal detector and/or a pat-down search. Backyard also does not permit gang colors to be displayed at the location. Mr. Boyd testified that his interior bouncers and security staff are unarmed because everyone else inside is, or should be, unarmed. The contingency plan that he had with his security was to get the individuals outside of the location and off the property. Mr. Boyd testified that he had employed Cerberus on and off for a year up until the March 10<sup>th</sup> incident. He testified that he was under the impression that all of Cerberus’ security guards were fully licensed and certified through SLED. He further testified that he was provided with a certification from the Cerberus owner evincing that they were SLED certified, and that SLED had conducted a compliance check on the company within a year prior to the March 10<sup>th</sup> incident. Mr. Boyd terminated his relationship with Cerberus after the March 10<sup>th</sup> incident. Nevertheless, Mr. Boyd testified that the security personnel provided first aid to the hit and run victim on March 10<sup>th</sup>, worked to control the crowd in the parking lot, and cooperated and worked with the SPD when they arrived on scene. Mr. Boyd testified that he has not employed any security personnel since he voluntarily stopped serving alcoholic beverages at Backyard on March 31<sup>st</sup>. He testified that he had reached out to the SPD after the March 10<sup>th</sup> incident to inquire about hiring off-duty officers to provide security but was told they could not provide him with that service.

15. As to the March 10<sup>th</sup> incident,<sup>14</sup> Mr. Boyd testified that he had ten unarmed security staff members on the inside that day and three armed security guards. He testified that there

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<sup>13</sup> Capt. Lyon’s testimony conflicted with this statement, in that he testified that his investigators recovered all the footage available to them, which did not include interior footage.

<sup>14</sup> Mr. Boyd initially testified that he was on premises on March 10<sup>th</sup>, but left for Atlanta shortly after paying the performer, and that he was gone before the shooting occurred. But he later testified that he could not remember if he was there when the fight occurred. He acknowledged remembering that he was in the office when two firearms—including a rifle—were taken into the office by his staff to be locked up. He testified that he thought the weapons were confiscated prior to the shootings, though he could not recall the exact time, and that he left shortly thereafter. He noted that he would not have heard the gunfire from the office at the back of the building and that there was no

were no disturbances prior to the fight that broke out after the performance, and that he had no knowledge of what was about to happen or any way to prevent it. Despite the incident, Mr. Boyd testified that he could not think of any reason why the licensed premises would not be suitable for licensure and does not believe his business is a public nuisance.

16. Following the March 10<sup>th</sup> incident, he reviewed the events to see what could have done differently to prevent another occurrence. He contacted an independent security company to do a parking lot security assessment. As a result, he has a pending contract for a solar powered mobile camera and monitoring device that he intends to install in the parking lot if he is permitted to continue serving alcohol. He also plans to utilize more monitors in the parking lot. Additionally, Mr. Boyd has spoken with a new security company about using their security services. All of this company's personnel are SLED certified and verified.

### **CONCLUSIONS OF LAW**

Based upon the above findings of fact, the court concludes the following as a matter of law:

1. Section 1-23-600 of the South Carolina Code grants jurisdiction to this court to hear contested cases under the Administrative Procedures Act. S.C. Code Ann. § 1-23-600 (2005 & Supp. 2024). Specifically, Section 61-2-260 grants the ALC the authority to hold contested case hearings in matters governing alcoholic beverages, beer, and wine. S.C. Code Ann. § 61-2-260 (2022). In making these determinations, it is important to recognize that there is no right to a permit or license issued by this state for the sale of liquor, or beer and wine; rather, they are privileges to be used and enjoyed only so long as the holder complies with the restrictions and conditions governing them. *See Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 26 S.E.2d 22, 25-26 (1943).
2. Unless otherwise required by law, the standard of proof in an administrative proceeding, such as this, is by a preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2024); *Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (citation omitted). A 'preponderance of the evidence' is evidence which convinces as to its truth. *Frazier v. Frazier*, 228 S.C. 149, 168, 89 S.E.2d 225, 235

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chaos at the licensed premises when he was there. The court finds it curious that Boyd could not remember if he was on premises during the shooting. Multiple shots were fired, there was chaos in the parking lot and much screaming could be heard from numerous individuals. It is difficult for this court to believe that anyone on the premises could have been oblivious to the goings-on.

(1955).

3. In this state, the Department is charged with the responsibility of administering and enforcing the laws governing the sale of alcoholic beverages, beer, and wine. *See* S.C. Code Ann. § 61-2-20 (2022).
4. To that end, no permittee or licensee “may knowingly . . . permit any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State.” *See* S.C. Code Ann. § 61-4-580(A)(5) (2022). A violation is grounds for suspension or revocation of the holder’s permit. S.C. Code Ann. § 61-4-580(B) (2022).
5. “Knowingly” means “[i]n such a manner that the actor engaged in prohibited conduct with the knowledge that the social harm that the law was designed to prevent was practically certain to result; deliberately.” *Knowingly*, BLACK’S LAW DICTIONARY (12<sup>th</sup> ed. 2024). In this context, a violation is committed “knowingly” not only where there is actual knowledge of a fact, but also where a person has such information, or the circumstances are such, as would lead a prudent person to form a belief as to the fact, and if followed by inquiry would have disclosed its character. *See Feldman v. S.C. Tax Comm’n*, 203 S.C. 49, 26 S.E.2d 22, 25 (1943) (citation omitted); *State v. Thompkins*, 263 S.C. 472, 484-85, 211 S.E.2d 549, 554 (1975) (citation omitted); *Daley v. Ward*, 303 S.C. 81, 86, 399 S.E.2d 13, 15 (Ct. App. 1990) (citation omitted). “One may be found to knowingly violate the statute when it appears that he shuts his eyes to avoid knowing what would otherwise be obvious.” *Thompkins*, 263 S.C. at 484, 211 S.E.2d at 554.
6. A public nuisance is defined as “[a]n unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property.” *Public Nuisance*, BLACK’S LAW DICTIONARY (12<sup>th</sup> ed. 2024); *see also State v. Turner*, 198 S.C. 487, 18 S.E.2d 372, 375 (1942) (“A public nuisance exists wherever acts or conditions are subversive of public order, decency, or morals, or constitute an obstruction of public rights. Such nuisances always arise out of unlawful acts.”) (citation omitted). “[T]he test of a public nuisance is not the number of persons annoyed, but the possibility of annoyance to the public by invasion of its rights, the fact that it is in a public place and annoying to all who come within its sphere.” *Belton v. Wateree Power Co.*, 123 S.C. 291, 115 S.E. 587, 590 (1922) (citation omitted).

7. Additionally, among the criteria for licensure is that “[t]he applicant . . . has a reputation for peace and good order in its community.” S.C. Code Ann. § 61-6-1820(2) (2022). The Department may suspend or revoke a license upon finding that the applicant no longer meets that criterion. *See* S.C. Code Ann. § 61-6-1830(1) (2022).
8. Where the General Assembly authorizes a range of alternatives for an administratively imposed penalty, the court has the discretion to impose an appropriate penalty within the statutory limits based on the facts presented. *See S.C. Dep’t of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 278–80, 731 S.E.2d 330, 336-37 (Ct. App. 2012) (quoting *Walker v. S.C. Alcoholic Beverage Control Comm’n*, 305 S.C. 209, 210-11, 407 S.E.2d 633, 634-35 (1991)); *S.C. Dep’t of Rev. v. Meenaxi, Inc.*, 417 S.C. 639, 663-64, 790 S.E.2d 792, 805 (Ct. App. 2016); *cf. Media Gen. Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 152, 694 S.E.2d 525, 532 (2010) (holding that, despite a long standing administrative practice of using one type of apportionment method, the ALC did not err in ordering the Department to depart from this practice and use a different apportionment method, as “the legislature [] placed no explicit limitation on the alternative methods that may be used . . . .”). “In imposing a penalty, including revocation or suspension of a liquor license or permit or other disciplinary action for a violation of the law, the [court] may consider the previous record of the licensee, the needs of the public, the circumstances surrounding the violation, and the nature of the violation.” 48 C.J.S. *Intoxicating Liquors* § 354 (December 2024 Update). “Whether the penalty is excessive in relation to the conduct should be considered.” *Id.* Moreover, in assessing a penalty, the court should give effect to the major purpose of a civil penalty, which is deterrence. *Meenaxi, Inc.*, 417 S.C. at 662, 790 S.E.2d at 804 (citation omitted). Thus, the court is compelled to consider relevant evidence presented to show both mitigating and aggravating circumstances when considering the appropriate penalty for a violation.

### **OPINION**

Applying the law to the facts of this case, the court is compelled to conclude that the Respondent knowingly permitted acts constituting a public nuisance on the licensed premises and failed to maintain a reputation for peace and good order in the community (See S.C. Code Ann. §§ 61-4-580(A)(5) and 61-6-1820(2) (2022)).

While this court does not find that the Respondent had actual knowledge of the events of March 10, 2024, it is undeniable that the Respondent was in possession of ample evidence that some individuals patronizing Backyard were prone to engaging in reckless and even lawless behavior. Given the disturbances occurring prior to the March 10, 2024 incident, including reckless driving in the parking lot, gunfire, and a stabbing on the premises, the Respondent was on notice that the business was attracting some dangerous patrons who were placing both other patrons as well as the public's safety at risk. And while the Respondent did undertake certain measures to address the disturbing behavior, to wit: (1) employing interior security and utilizing non-staff individuals known as the Gorilla Squad to serve as bouncers; (2) employing armed exterior security to monitor the parking area; and (3) deploying security cameras on the interior and exterior of the building, these measures were insufficient to address the threat posed by certain patrons. The fact that violent, disruptive behavior continued after a prior hearing before this court demonstrates the insufficiency of the Respondent's actions to curb the misconduct. In the prior hearing, this court rejected the Department's efforts to suspend the Respondent's alcoholic beverage license and permit, but the Respondent was warned that the location was attracting violent patrons and ordered it to restrict its hours of operation and expedite the exodus of all patrons from its parking lots. Despite this, the violent behavior continued, resulting in a March 10, 2024 brawl inside the location, followed by a chaotic scene involving an exchange of gunfire, two people wounded by gunfire, and a third injured by a vehicle recklessly exiting the Respondent's parking lot. "One who knowingly suffers or permits such conduct commits a public nuisance." *State v Turner*, 198 S.C. 487, 18 S.E. 2d 372, 375 (1942) (citing *Jung Brewing Co. v. Commonwealth*, 123 Ky. 507, 96 S.W. 595, 124 Am.St.Rep. 376.).

The Respondent's failure to take adequate measures to curb the disturbances at Backyard also sullied the premises' reputation for peace and good order. While there was testimony that Backyard serves excellent food and is patronized by many in the community for that reason, all law enforcement officers testifying opined that Backyard's reputation for peace and good order was poor. It is impossible not to find that Backyard's reputation as a peaceful and safe location suffered greatly after the fights, reckless driving, shootings, and stabbings that occurred on or around the premises.



Although the court finds that the Respondent knowingly permitted acts constituting a public nuisance on the licensed premises and failed to maintain a reputation for peace and good order in the community, revoking Respondent's liquor license and beer and wine permit is inappropriate. First, this is the location's first offense. Second, there was no evidence offered showing that the Respondent knew in advance the events of March 10, 2024 would occur. Rather, on that date, the Respondent was employing enhanced security measures at the location, and it is clear that the Respondent was making a significant effort to address the threat. When the fight ensued inside Backyard, the Respondent's bouncers separated the parties and evicted the participants. Unfortunately, they also evicted the rest of the patrons, causing an unmanageable situation in the parking lot for the armed security detail. This resulted in a chaotic event in the parking lot, where patrons were injured by gunfire and one was struck by a vehicle. While the court acknowledges the disturbing nature of this event, it is also cognizant that the Respondent had taken relatively strong – albeit inadequate – measures to try to prevent reckless and violent behavior from occurring at the establishment. Therefore, the court finds that suspension of the Respondent's alcoholic beverage license and permit is more appropriate.

#### **ORDER**

Based upon the foregoing findings of fact and conclusions of law, the court finds that the Respondent committed a violation of S.C. Code Ann. § 61-4-580(A)(5) by knowingly permitting a public nuisance and of S.C. Code Ann. § 61-6-1820(2) for failing to maintain a reputation for peace and good order in the community, and that the appropriate penalty for said violations is a one-year suspension of its permit and license, retroactive to April 19, 2024, a \$7,500 fine, and additional conditions and restrictions as set forth below.

**IT IS THEREFORE ORDERED** that the Respondent's on-premises beer and wine permit and business liquor-by-the-drink license for its licensed premises at 330 Rast Street, Sumter, South Carolina is hereby **SUSPENDED** for a period of one (1) year, retroactive to April 19, 2024.


**IT IS FURTHER ORDERED** that the Respondent shall remit an administrative fine in the amount of Seven Thousand Five Hundred Dollars (\$7,500) to the Department prior to resuming the sale of liquor, beer, or wine.

**IT IS FURTHER ORDERED** that, as conditions for ongoing licensure, the Respondent shall:

- 1) Have at least eight (8) SLED certified security personnel on premises (stationed both inside and outside) after 5:00 p.m., whenever liquor, beer, or wine are being sold, and must have at least twelve (12) SLED certified security personnel on premises (stationed both inside and outside) for special events. Those security personnel stationed on the outside of Backyard shall be licensed to carry weapons and shall be armed while performing their duties;
- 2) Not allow more than 300 patrons into its facility at any time, including special events;
- 3) Not allow loitering or littering in its parking lot area, which must be monitored and patrolled by security personnel stationed on the exterior of the building after 5:00 p.m., whenever liquor, beer, or wine are being sold;
- 4) Employ a professional security contractor to conduct a security assessment of the location, then shall implement the security measures recommended;
- 5) Close by 12:00 a.m. on weekdays and 1:00 a.m. on Fridays and Saturdays, and ensure all patrons have exited the building and the parking areas within thirty (30) minutes thereafter<sup>15</sup>;
- 6) At no time employ or permit any untrained, non-staff individuals serve as bouncers or other security personnel at the location. This condition in no way abrogates or excuses the Respondent's obligation to employ and deploy adequate security personnel to ensure the safety of its patrons and the adjacent community at all times the location is selling liquor, beer or wine;
- 7) Ensure that both its interior and exterior security cameras are operational at all times, and permit the Sumter Police Department and other law enforcement agencies access to the stream and/or recordings upon request.

**AND IT IS SO ORDERED.**

June 30, 2025  
Columbia, South Carolina

  
\_\_\_\_\_  
S. Phillip Lenski  
Administrative Law Judge

---

<sup>15</sup> The requirements to close by 1:00 a.m. and have patrons removed from the parking lot within thirty (30) minutes thereafter was originally imposed by Judge Anderson, which this court now adopts and makes permanent.

**CERTIFICATE OF SERVICE**

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



---

Erika S. Easler  
Judicial Law Clerk

June 30, 2025  
Columbia, South Carolina





## COMMERCIAL BUSINESS CLEARANCE FORM

12 W. LIBERTY ST., P.O. BOX 1449, SUMTER, SC 29151  
 PHONE: 803-774-1601; FAX: 803-774-1688  
 EMAIL: businesslicense@sumtersc.gov

## APPLICATION FEE IS \$50.00

A 3.4% + \$0.30 surcharge applies for all credit card transactions.  
 Checks can be made payable to the City of Sumter.

Clearance forms are required for all businesses located in the City or County of Sumter, SC.  
 Any new business, change of location or change of ownership for an existing business should complete this form and return it to the business license office. In the event of a change of location or ownership of a business, notification must be given within 10 days and the same procedure shall be followed.

## OFFICE USE ONLY

NAICS Code: 722410

Date Rec'd: 8/12/25

Time Rec'd: 10:12

Zoning: \_\_\_\_\_

Parcel No.: \_\_\_\_\_

CF Handled by (Business license):

CPuckett

## Name of business (As it will appear on your Federal &amp; SC State Tax Returns):

Backyard Bar N Grill

## Physical Address of Business (No P.O. Boxes):

Street 330 Rast St City Sumter State SC Zip Code 29150

## Mailing Address

Street 330 Rast St City Sumter State SC Zip Code 29150

Phone Number of Business: 310-651-0105

Business Website: \_\_\_\_\_

## Business Owner Information:

Name: Phillip Boyd Phone Number: 310-651-0105

Address (street, city, state, zip code): 655 adger lane, Sumter SC 29154

Email Address: backyardgrillsumter@gmail.com

## Property Owner Information:

Name: Graine Investment (Dean Graine) Phone Number: (803) 469-2000

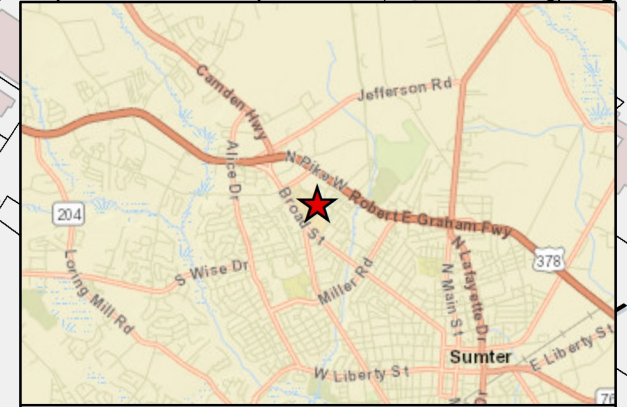
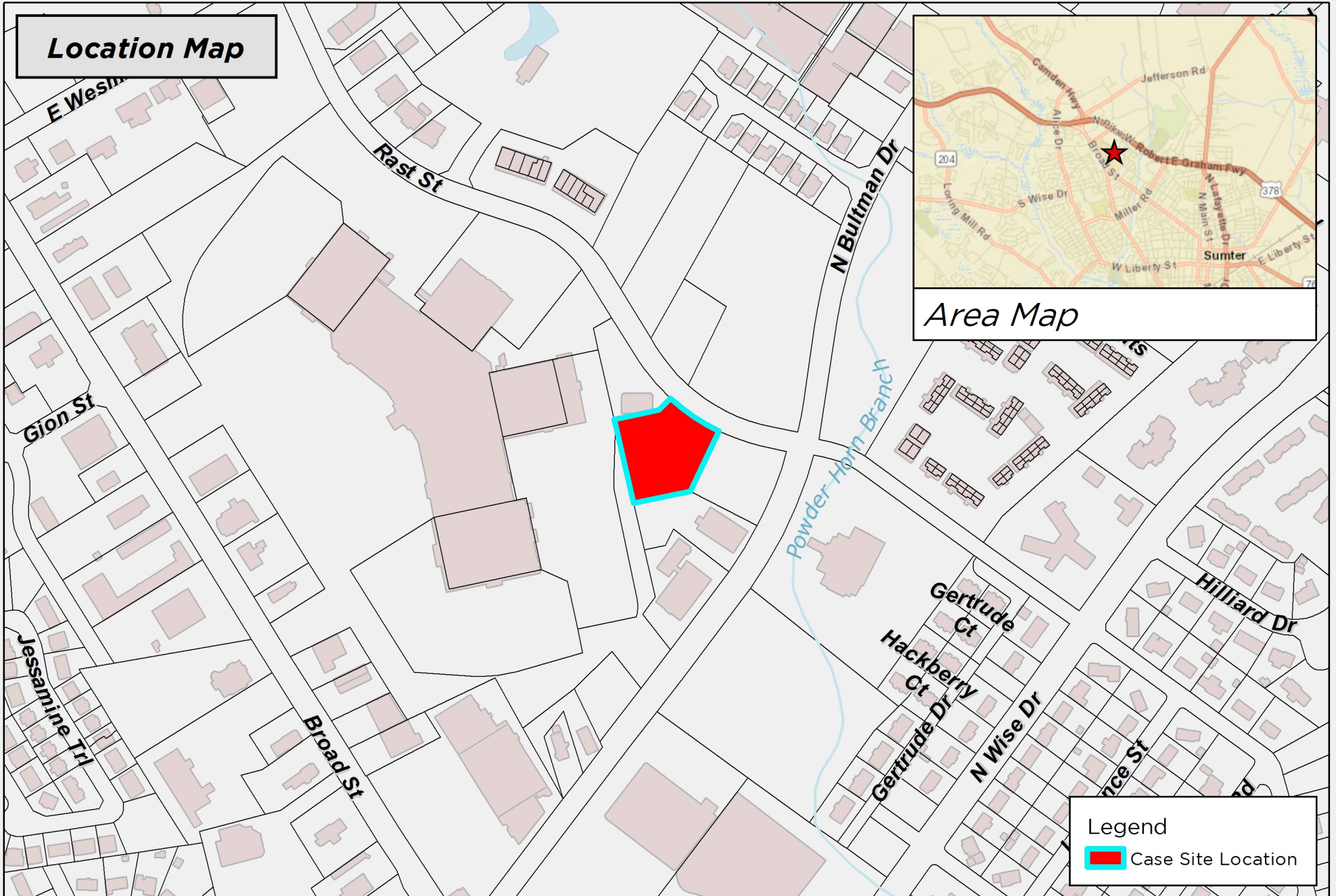
Address (street, city, state, zip code): 2573 Broad St Sumter SC 29150

Email Address: \_\_\_\_\_

Type of Business – Please provide a detailed description of ALL proposed activities in which the business will engage.

(Bar N Grill) Alcohol Beverage, Live Music & Entertainment

## Location Map

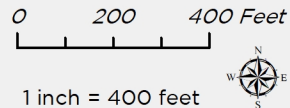


## Area Map

### Legend

 Case Site Location

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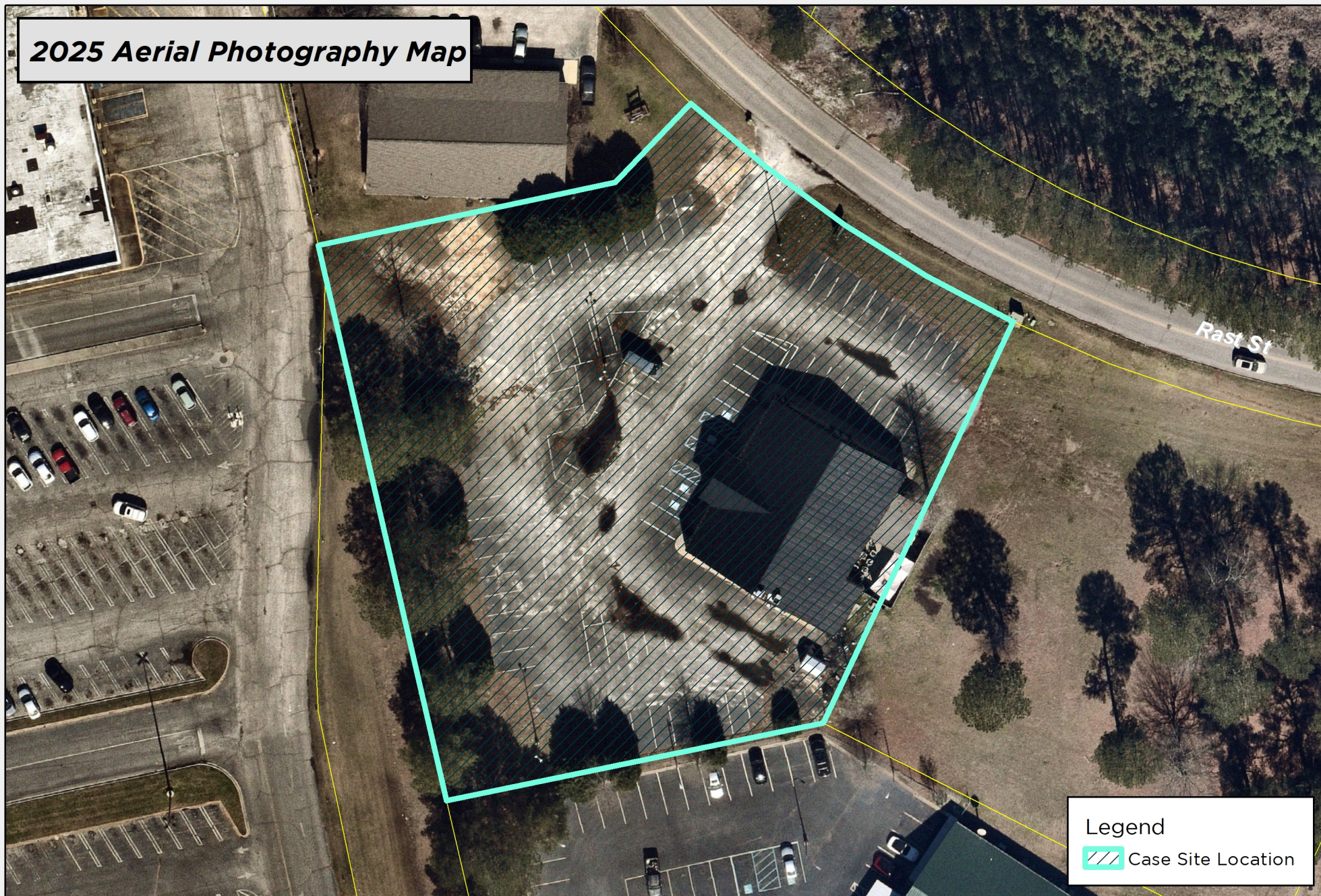
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Copyright 2025  
Date: 10/23/2025  
User Name: crobbins  
Document Name: BOA-25-34



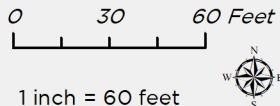
BOA-25-34  
330 Rast St, Sumter, SC 29150  
Tax Map # 230-16-01-009



# 2025 Aerial Photography Map




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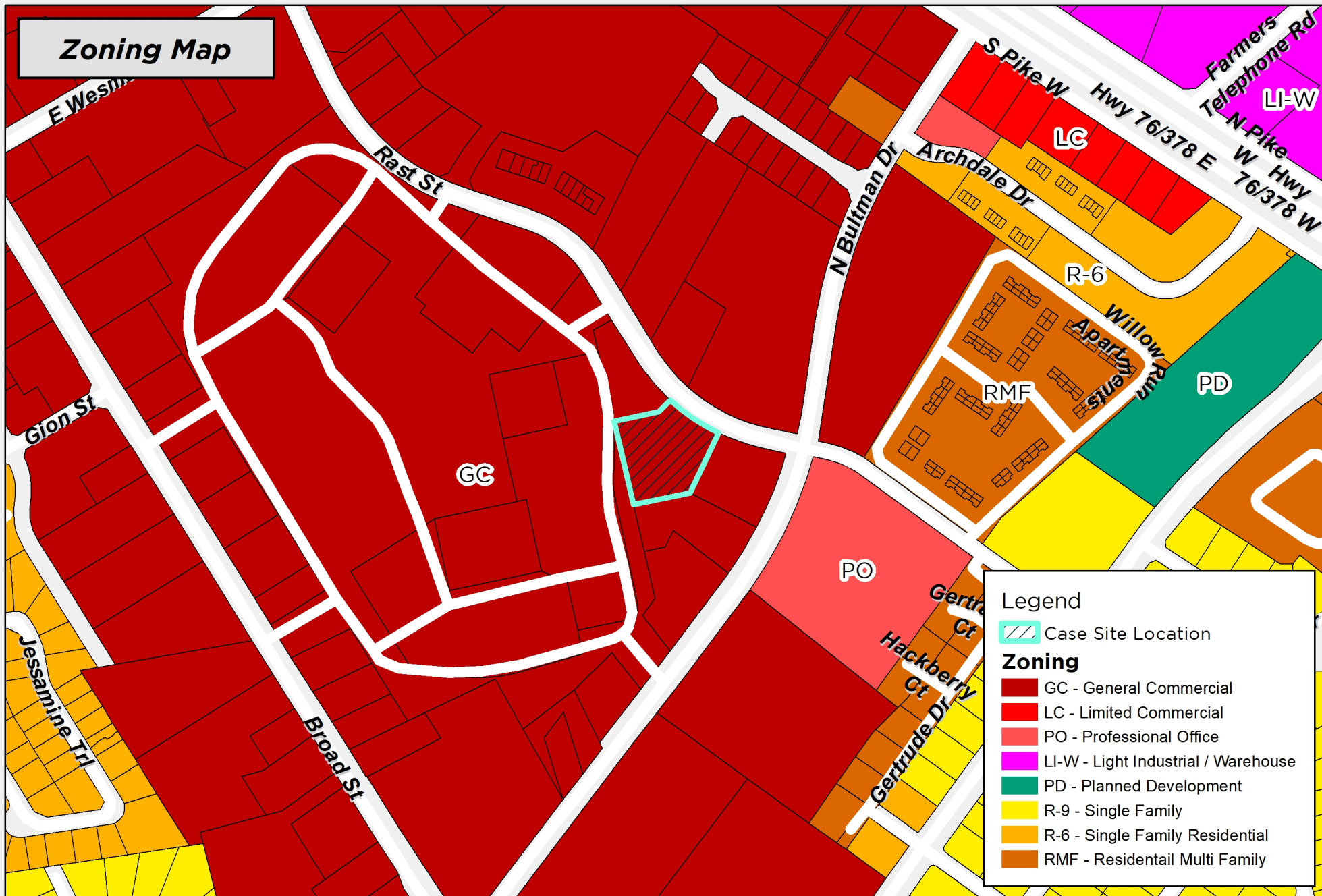
## Legend

 Case Site Location

BOA-25-34  
330 Rast St, Sumter, SC 29150  
Tax Map # 230-16-01-009



# Zoning Map



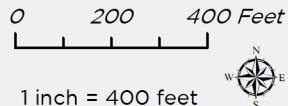
## Legend

Case Site Location

## Zoning

- GC - General Commercial
- LC - Limited Commercial
- PO - Professional Office
- LI-W - Light Industrial / Warehouse
- PD - Planned Development
- R-9 - Single Family
- R-6 - Single Family Residential
- RMF - Residential Multi Family

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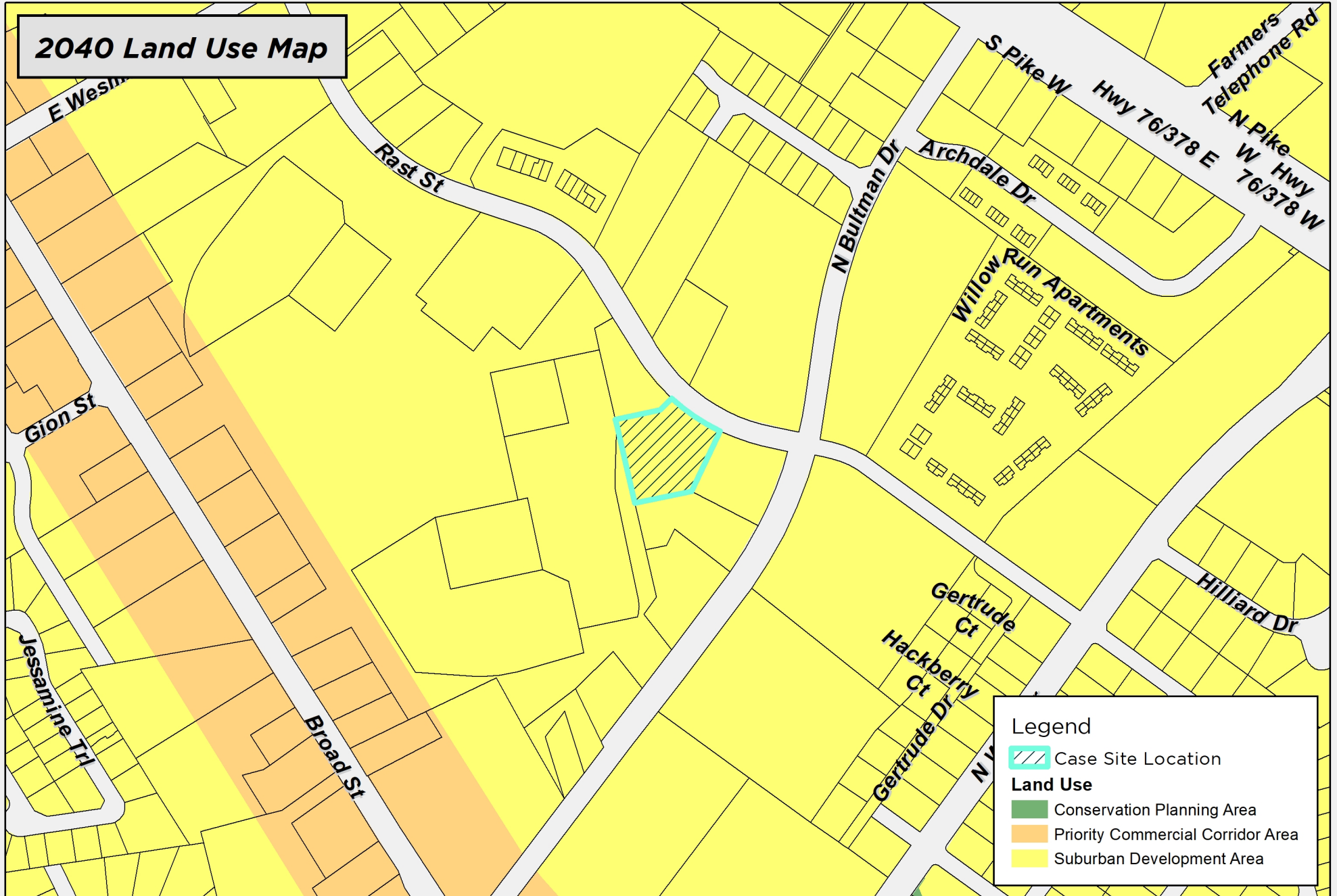


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330 Rast St, Sumter, SC 29150  
Tax Map # 230-16-01-009

# 2040 Land Use Map



**Legend**

Case Site Location

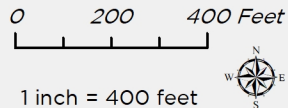
**Land Use**

Conservation Planning Area

Priority Commercial Corridor Area

Suburban Development Area

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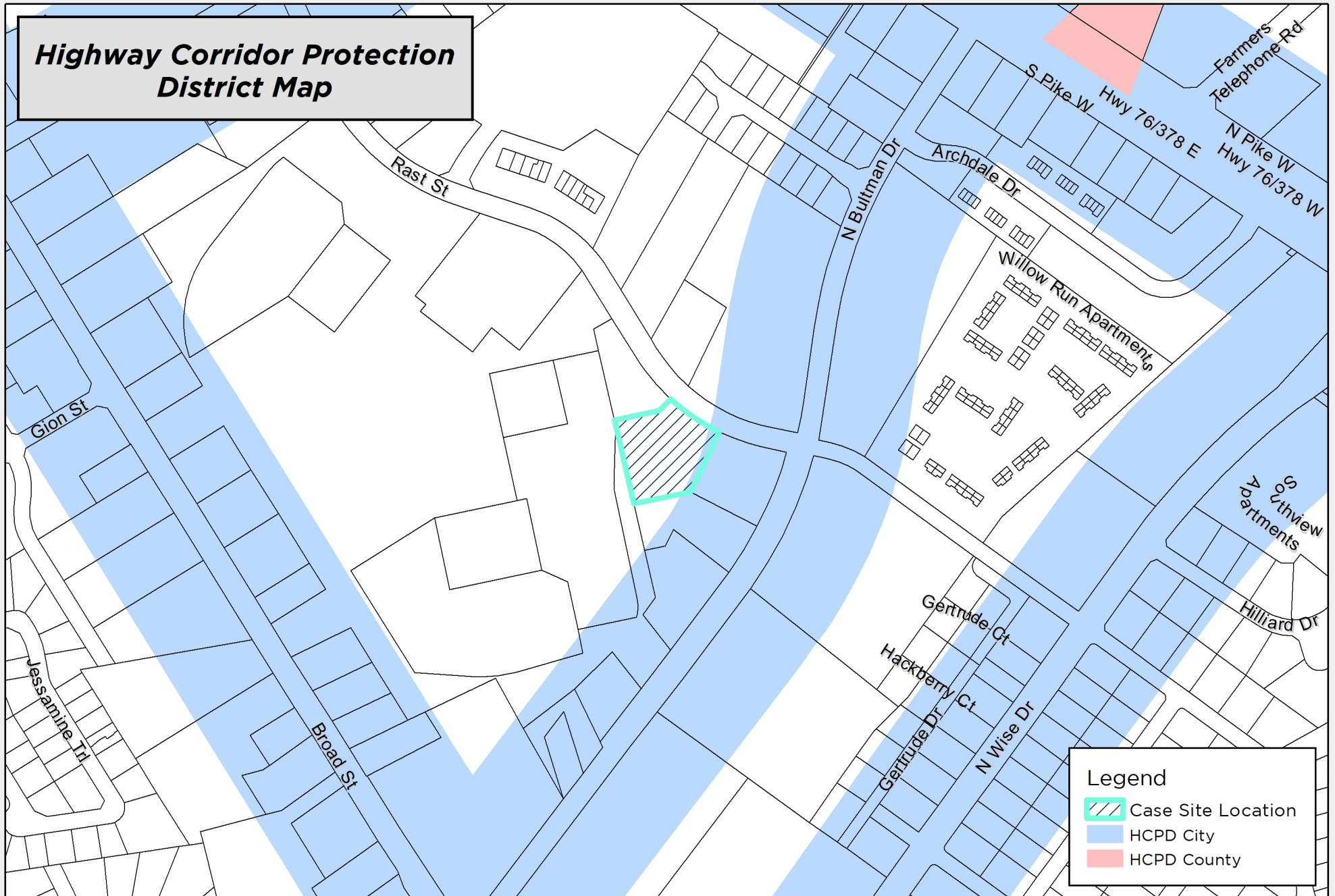
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

BOA-25-34  
330 Rast St, Sumter, SC 29150  
Tax Map # 230-16-01-009



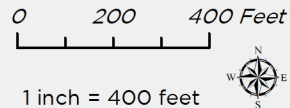
# Highway Corridor Protection District Map



## Legend

-  Case Site Location
-  HCPD City
-  HCPD County

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