

# Exhibit D

## City of Charleston, SC

### Sec. 54-240. - Board of Architectural Review; powers and duties.

- a. In reviewing any application before it, the Board of Architectural Review may approve, deny or conditionally approve an application. If in the opinion of the Board, an application requires further study, action on an application may be deferred. In passing on an administrative appeal, the Board may affirm, modify or reverse the decision.
- b. In reviewing an application to demolish, or demolish in part, or remove, or alter the exterior architectural appearance of any existing structure, the Board of Architectural Review shall consider, among other things, the historic, architectural and aesthetic features of such structure, the nature and character of the surrounding area, the historic or culturally important use of such structure and the importance to the city.
- c. In reviewing an application for new construction in the Old and Historic District, Old City District or Historic Corridor District, the Board of Architectural Review shall consider, among other things, the general design, the character and appropriateness of design, the height, scale and mass of the structure, the arrangement, texture, materials and color of the structure in question, and the relation of such aspects, features and elements to similar aspects, features and elements of structures in the immediate surroundings. Notwithstanding anything in this Chapter to the contrary, in passing upon an application, the Board of Architectural Review is empowered to require the use of architectural techniques such as building façade and mass modulations or adjustments to the footprint of a structure on a site to achieve appropriate form and proportion of a structure in relation to its immediate surroundings, so long as such techniques do not unreasonably restrict the use of a site in light of its underlying zoning. The Board of Architectural Review shall not consider interior arrangement or interior design; nor shall it make requirements except for the purpose of preventing designs of developments which are not in harmony with the prevailing character of Charleston, or which are obviously incongruous with this character.
- d. Among other grounds for considering a design inappropriate and requiring denial or deferral and resubmission are the following effects: Arresting and spectacular effects, violent contrasts of materials or colors and intense or lurid colors, a multiplicity or incongruity of details resulting in a restless and disturbing appearance, the absence of unity, visual compatibility and coherence in composition, form and proportion not in consonance with the dignity and character of the present structure (in the case of repair, remodeling or enlargement of an existing structure) or with the prevailing character of the immediate surroundings (in the case of a new structure).
- e. In case of denial of an application, the Board of Architectural Review shall state the reasons therefore in a written statement to the applicant and make recommendations in regard to appropriateness of design.
- f. The Board of Architectural Review may refuse a permit or Certificate of Appropriateness for the erection, reconstruction, alteration, demolition, partial demolition, or removal of any structure within the Old and Historic District, which in the opinion of the Board of Architectural Review, would be detrimental to the interests of the Old and Historic District and against the historic character and public interest of the city.
- g. Upon receiving an application for the demolition or removal of a structure over fifty (50) years old and within the limits of the Old City District, the Board of Architectural Review, within forty-five (45) days after receipt of the application, shall either approve or deny such application, or find that the preservation and protection of historic places and the public interest will best be served by postponing the application for a designated period, which shall not exceed one hundred eighty (180) days from the receipt of the application, and notify the applicant of such postponement.
- h. In any case involving the demolition or partial demolition or removal of a structure, before granting approval or requiring a postponement, the Board of Architectural Review may call on the chief building official to provide it with a report on the state of repair and structural stability of the structure under consideration.

- i. In all applications involving the demolition or partial demolition or removal of a structure, provision shall be made for a public hearing as set forth in this article.
- j. Within the period of postponement of such demolition, partial demolition or removal of any structure, the Board of Architectural Review shall take steps to ascertain what the City Council can or may do to preserve such structure, including consultation with private civic groups, interested private citizens and other public boards or agencies and including investigation of the potential use of the power of eminent domain when the preservation of a given structure is clearly in the interest of the general welfare of the community and of certain historic and architectural significance. The Board of Architectural Review shall then make such recommendations thereabout to the City Council as the board may determine to submit.
- k. The Board of Architectural Review shall have the power to delay for a period of 180 days or deny outright the demolition, partial demolition or removal of a structure over 50 years old in the area bounded to the north by Mount Pleasant Street or the extensions thereof into the waters of the Ashley and Cooper Rivers, to the east by the waters of the Cooper River to the south by the Old City District and to the west by the waters of the Ashley River.
- l. The approval of an application by the Board of Zoning Appeals—Zoning or the Board of Zoning Appeals—Site Design pertaining to dimensional requirements of a proposed project shall not be binding on the Board of Architectural Review in its review, or of any power granted to it in this ordinance.

(Ord. No. 1998-148, § 1, 8-18-98; Ord. No. 1999-54, § 4, 4-27-99; Ord. No. 2012-385, § 2(Exh. B), 10-23-12; [Ord. No. 2017-084, § 1, 8-15-17](#) )

#### Sec. 54-245. - Appeals to Board of Architectural Review.

Appeals to the Board of Architectural Review may be taken by any person aggrieved or by any officer, department, Board or bureau of the city. Such appeal shall be taken within a reasonable time as provided by the rules of the Board by filing with the officer from whom the appeal is taken and with the Board of Architectural Review a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(Ord. No. 1999-54, § 2B, 4-27-99; Ord. No. 2012-385, § 2(Exh. B), 10-23-12; Ord. No. 2012-385, § 2(Exh. B), 10-23-12; [Ord. No. 2017-084, § 1, 8-15-17](#) )

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#### APPENDIX C - Rules and Regulations of the BOARD OF ZONING APPEALS—ZONING BOARD OF ZONING APPEALS—SITE DESIGN<sup>11</sup>

Footnotes:

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**Editor's note**— The Rules and Regulations of the Board of Zoning Appeals—Board of Zoning Appeals—Site Design were last amended at a regular public meeting on Aug, 6, 2008.

#### Article I. - Organization

##### Section 1. - Rules.

These rules of procedure are adopted pursuant to S.C. Code 6-29-790 for the City of Charleston Board of Zoning Appeals—Zoning and Board of Zoning Appeals—Site Design, which consist of seven members each, appointed by City Council.

## Section 2. - Office of the Boards.

The office of the Boards of Zoning Appeals shall be the Zoning Division office in the Department of Design, Development and Preservation, 3rd floor, 75 Calhoun Street, Charleston, South Carolina 29401.

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## Article III. - Appeal and Application Procedure

### Section 1. - Appeal or Application Requirements, Time Limits and Fees.

Appeals from administrative or Board decisions, applications for variances, and applications for special exceptions shall be filed on forms approved by the Board and available to applicants in the Zoning Division office. The Board may require additional information deemed necessary. The failure to submit adequate information may be grounds for dismissal. Meeting agendas are limited to no more than twenty-five (25) new applications and appeals. Each application or appeal shall require a fee as set by City Council.

### Section 2. - Time Limit for Appeal of an Administrative Decision.

An appeal from an administrative decision must be filed within ten (10) business days after actual notice of the decision by delivery of the approved appeal form and fee to the Zoning Division office.

### Section 3. - Time Limit and Procedure for Appeal for Reconsideration of a Board Decision to the Board.

An appeal for reconsideration of a decision of the Board must be filed within five (5) business days from the date of the Board's decision, order, requirement or determination by delivery of the approved appeal form and fee to the Zoning Division office. To grant the appeal for reconsideration, the Board must find that it misapprehended or misconceived the question or questions involved, or that it erred in its finding or disposition of the appeal, application or matter. If such appeal is granted by the Board, the decision shall be withdrawn and the matter heard and considered de novo, as if no hearing, consideration or determination had been previously made or heard.

### Section 4. - Agenda.

Appeals and applications shall be marked with the date of receipt and placed on the hearing agenda in the order in which received. Appeals and applications shall be heard in the order on the calendar unless otherwise set by the Board for good cause shown.

### Section 5. - Withdrawal of Appeal or Application.

Any appeal or application may be withdrawn by written notice delivered to the secretary prior to action by the Board. An appeal which is withdrawn, may not be refiled after the time limit for appeal has expired.

### Section 6. - Deferrals.

Parties filing appeals or applications may, after the application has been advertised as part of a meeting's agenda, request that the application be deferred, except in the case of an appeal for reconsideration of a Board decision, which may not be deferred after the application has been advertised as part of an agenda. A request for deferral must be in writing, signed by the applicant or agent, and must identify the

meeting date when the application should be heard. Without an extraordinary and compelling reason only one (1) such deferral will be permitted.

Section 7. - Notice.

Public notice of a hearing of the Board shall be published in a local newspaper at least fifteen (15) days prior to the hearing. The notice shall contain a description of each matter to be heard and identify the property affected. Notice shall also be posted on or adjacent to the property affected at least five (5) days prior to the hearing. Such notice shall contain a description of the request, the identity of the property affected, the date, time and place of the hearing, and a phone number to call for more information.

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[https://www.postandcourier.com/business/historic-charleston-files-appeal-with-circuit-court-over-downtown-hotel/article\\_57061490-7016-11e9-8a45-5375b49a9b6c.html](https://www.postandcourier.com/business/historic-charleston-files-appeal-with-circuit-court-over-downtown-hotel/article_57061490-7016-11e9-8a45-5375b49a9b6c.html)

# Historic Charleston files appeal with Circuit Court over downtown hotel approval

BY EMILY WILLIAMS EWILLIAMS@POSTANDCOURIER.COM

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The Historic Charleston Foundation filed an appeal with the Circuit Court over the Charleston Board of Zoning Appeals' approval of a 252-room hotel at 431 Meeting Street. File/Wade Spees/Staff.

FILE/WADE SPEES/STAFF

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Historic Charleston Foundation is taking a city zoning board decision to court, continuing a now months-long debate over whether a 252-room lodging should be allowed on a part of the peninsula already home to several large hotels.

Owned by the Charleston School of Law and initially intended to be a permanent home for the school, the property at 431 Meeting St. has become a focal point of local officials' debate about downtown hotel development.

Mayor John Tecklenburg has pointed to the project several times as a call to action to address hotel growth. Historic Charleston already challenged the approval, unsuccessfully, at a Board of Zoning Appeals meeting last month. Board members voted down the appeal, 4-to-1.

In a **new appeal** filed in state court Friday, Historic Charleston asked the court to review the zoning board's findings and to direct the board to hold another hearing of its original appeal.

The filing focuses on two arguments. The first involves what's called the "pending ordinance doctrine," which allows a voting body to deny an application if it violates a new rule that's in the process of being adopted.

Proposed changes to the city's accommodations rules — which would, if adopted, impact the approval of projects like the one planned for 431 Meeting Street — were brought to City Council last August. It was deferred then, and another version of the proposal was deferred last month.

But with changes to the city's hotel rules still under consideration by City Council, the zoning board should have taken that into account before approving such a large hotel development, according to Winslow Hastie, president of Historic Charleston.

In an email update sent out Friday, Hastie called the approval "premature."

The second argument described in the appeal is that the Board of Zoning Appeals did not fully consider some sections of the ordinance when making its decision.

"It really brought to bear a lot of the issues we have with the special exceptions process," Hastie said of the approval.

Hastie is also a member of Charleston's newly formed hotel task force, which Tecklenbug assembled last week with a goal of bringing new recommendations to City Council by its May 28 meeting.

At the group's first session Friday, Hastie voiced Historic Charleston's concern over large hotel projects like the one approved for 431 Meeting.

As the ordinance is written now, hotels in a certain section of the upper King Street corridor can be permitted to build an unlimited number of rooms, if the property qualifies as "full service."

The chair of the Board of Zoning Appeals, Leonard Krawcheck, also participated in the first meeting of the task force, acting in an advisory capacity. Krawcheck spoke about the board's role in reviewing hotels and shared some of the concerns he and other board members have about the body becoming a "rubber stamp" for downtown hotel projects.

Hastie said his group believes the approval process has become a "broken exercise," and that the board has more authority to turn down hotels than it says it does.

"We don't agree with how the existing ordinance is being interpreted," he said.

Hotels are among many types of developments the seven-member zoning appeals board reviews.

Most recently, the board approved a [115-unit lodging](#) near Charleston's City Market. This week, the board's agenda includes a 50-unit hotel request on King Street and two applications related to short-term rentals.

The Meeting Street lot's likely future as a hotel — and its listed selling price — also prompted debate among City Council members last month.

Council voted to end its long-held agreement with the Charleston School of Law for the property, with some [arguing that the deal wasn't fair](#) to the city. The agreement will expire in July, meaning the school will need to pay back the \$865,000 the city charged them for the site in 2005.

A Charlotte company has a contract to buy the parcel for \$12.5 million and develop it as a hotel. According to the agreement, the city will get 25 percent of the profits from the sale, and the school will keep the rest.

Law school president Ed Bell said the sale proceeds will be used to buy another downtown property where the school can build a new facility.

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#### MORE INFORMATION



**Large hotel approved for downtown Charleston won't be reconsidered, city board says**

Charleston to end agreement for School of Law site, poised to sell and become hotel

Charleston's mayor says zoning board is key for slowing hotel growth. Here's what it does.

As part of settlement, large downtown hotel will follow Charleston's new rules



**EMILY WILLIAMS**

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