STAFF REPORT
TO THE
FLORENCE COUNTY PLANNING COMMISSION
Tuesday, September 23, 2014
PC#2014-08

SUBJECT: Text amendment request of the Florence County Code of Ordinances, Chapter 30 – Zoning Ordinance, Sec. 30-264. Responsibility of administrative official, Sec. 30-293. Board of zoning appeals.

APPLICANT: Florence County Planning & Building Department

STAFF ANALYSIS:

Periodically staff reviews ordinance items that need to be updated to meet the needs of Florence County as a whole. The amendments proposed provide more discretion to staff when there is proposed development in special flood hazard district.

The proposed amendment changes clarify the Zoning Administrators responsibilities for development in the special flood hazard district and provides a guide for when a variance is requested from Division 4. FH Flood Hazard District Section of the Zoning Ordinance.

The Florence County Code, Chapter 30 – Zoning Ordinance, Sec. 30-264. Responsibility of administrative official, Sec. 30-293. Board of zoning appeals. The Text amendment shall read as follows:

Sec. 30-264. Responsibility of administrative official.

Administrative responsibilities shall include, but are not limited to, the following:

(1) Interpretation of the general intent and/or specific meaning of any portion of the ordinance text, position of district boundaries, district designation, or other matters relating to the official zoning maps (atlas).

(2) Maintain the official zoning maps (atlas) and record all amendments to and information thereon.

(3) Maintain copies of this chapter for public inspection and have up to date copies available to the public. A mailing list of ordinance holders shall be kept in order to expedite dissemination of any annual amendments to the text.

(4) Provide public information relating to zoning matters including scheduled meetings of the Florence County Planning Commission and Florence County Board of Zoning Appeals.

(5) Receive, process, and record all applications for certificates of zoning compliance, zoning amendments, planned development projects, and variance requests with accompanying plans and documents which shall be a public record.

(6) Register and maintain records and maps on non-conforming uses, structures, and undeveloped lots.

(7) Receive and process applications for change and/or relief as provided for in article IX of this chapter.

(8) Appear before and provide assistance to the Florence County Planning Commission and the Florence County Board of Zoning Appeals.

(9) Revoke permits or certificates in violation of the provisions of this chapter.

In designated flood hazard areas, delineated on FEMA maps, the zoning administrator shall follow the procedures set forth by Division 4. FH Flood Hazard District of this ordinance. ~~have the following additional responsibilities:~~

~~(10) Advise applicants that additional federal and state permits may be required, and assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.~~

~~(11) Notify adjacent property owners and the S.C. Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency.~~

~~(12) Assure that appropriate maintenance is provided for in writing by the owner within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.~~

~~(13) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.~~

~~(14) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood-proofed.~~

~~(15) Obtain certification from a registered professional engineer or architect when flood-proofing is utilized for a particular structure.~~

~~(16) Obtain, review, and utilize any base flood elevation data available from a federal, state, or other source when such data are not available from FEMA.~~

~~(17) Maintain all records pertaining to the provisions of this chapter, which records shall be open for public inspection during workday hours.~~

~~(18) Review Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposal shall be reviewed to assure that:~~

~~a. All such proposals are consistent with the need to minimize flood damage within the flood-prone area;~~

~~b. All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;~~

~~c. Adequate drainage is provided to reduce exposure to flood hazards.~~

Sec. 30-293. Board of zoning appeals.

(a) *Board of zoning appeals; membership; terms of office; vacancies; compensation.* As a part of the administrative mechanism designed to enforce the Zoning Ordinance, the Zoning Ordinance may provide for the creation of a board to be known as the board of zoning appeals. Local governing bodies with a joint planning commission and adopting a common Zoning Ordinance may create a board to be known as the joint board of appeals. All of these boards are referred to as the board.

The Florence County Board of Zoning Appeals shall be established by county council by ordinance.

(b) *Board of zoning appeals; officers; rules; meetings; notice; records.* The board shall elect one of its members chairman, who shall serve for one year or until he is re-elected or his successor is elected and qualified. The board shall appoint a secretary who may be an officer of the governing authority or of the zoning board. The board shall adopt rules of procedure in accordance with the provisions of an ordinance adopted pursuant to this chapter. Meetings of the board must be held at the call of the chairman and at such other times as the board may determine. Public notice of all meetings of the board of appeals shall be provided by publication in a newspaper of general circulation in the municipality or county. In cases involving variances or special exceptions conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. The chairman or, in his or her absence, the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which must be immediately filed in the office of the board and must be a public record. The election of officers shall occur at the July meeting or the first meeting thereafter.

(c) *Powers of board of appeals; variances; special exceptions; remand; stay; hearing; decisions and orders.* The board of appeals has the following powers:

(1) To hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the Zoning Ordinance;

(2) To hear and decide appeals for variance 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 in writing the following findings:

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; and

d. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

1. The board may not grant a variance, the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance. Other requirements may be prescribed by the Zoning Ordinance.

2. In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare;

(3) To permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the Zoning Ordinance; and

(4) To remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review. A party's motion for remand may be denied if the board determines that the record is sufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within 60 days unless otherwise agreed to by the parties. The board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

Appeals to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality or county. The appeal must be taken within a reasonable time, as provided by the Zoning Ordinance or rules of the board, or both, by filing with the officer from whom the appeal is taken and with the board of appeals notice of appeal specifying the grounds for the appeal. If no time limit is provided, the appeal must be taken within 30 days from the date the appealing party has received actual notice of the action from which the appeal is taken. The officer from whom the appeal is taken immediately must transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed other than by a restraining order which may be granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

The board must fix a reasonable time for the hearing of the appeal or other matter referred to the board, and give at least fifteen days' public notice of the hearing in a newspaper of general circulation in the community, as well as due notice to the parties in interest, and decide the appeal or matter within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney.

In exercising the above power, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board, in the execution of the duties specified in this chapter, may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail.

(d) *Contempt; penalty.* In case of contempt by a party, witness, or other person before the board of appeals, the board may certify this fact to the circuit court of the county in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.

(e) *Appeal from zoning board of appeals to circuit court; pre-litigation mediation; filing requirements.* A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to the circuit court in and for the county, by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within 30 days after the decision of the board is mailed.

A property owner whose land is the subject of a decision of the board of appeals may appeal either:

(1) As provided in subsection (a); or

(2) By filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with S.C. Code 1976, § 6-29-825.

Any notice of appeal and request for pre-litigation mediation must be filed within 30 days after the decision of the board is postmarked.

Any filing of an appeal from a particular board of appeals decision pursuant to the provisions of this chapter must be given a single docket number, and the appellant must be assessed only one filing fee pursuant to S.C. Code 1976, § 8-21-310(11)(a).

(f) *Pre-litigation mediation; notice; settlement approval; effect on real property; unsuccessful mediation.* If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted, and the mediation must be conducted in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules and this section. A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the board of appeals.

The property owner or his representative, any other person claiming an ownership interest in the property or his representative, and any other person who has been granted leave to intervene pursuant to subsection (a) or his representative must be notified and have the opportunity to attend the mediation. The governmental entity must be represented by at least one person for purposes of mediation.

Within five working days of a successful mediation, the mediator must provide the parties with a signed copy of the written mediation agreement.

Before the terms of a mediation settlement may take effect, the mediation settlement must be approved by:

(1) The local legislative governing body in public session; and

(2) The circuit court as provided in subsection 30-293(g).

Any land use or other change agreed to in mediation which affects existing law is effective only as to the real property which is the subject of the mediation, and a settlement agreement sets no precedent as to other parcels of real property.

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 30 days of:

(1) The report of an impasse as provided in the South Carolina Circuit Court Alternative Dispute Resolution Rules; or

(2) The failure to approve the settlement by the local governing body.

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:

(1) In the same manner as provided by law for appeals from other judgments of the circuit court; or

(2) By filing an appeal pursuant to subsection (f).

(g) *Notice of appeal; transcript; supersedes.* Upon the filing of an appeal with a petition as provided in S.C. Code 1976, § 6-29-820(A) or § 6-29-825(F), the clerk of the circuit court must give immediate notice of the appeal to the secretary of the board and within thirty days from the time of the notice, the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions.

The filing of an appeal in the circuit court from any decision of the board does not ipso facto act as a supersedes, but the judge of the circuit court may in his discretion grant a supersedes upon such terms and conditions as may seem reasonable and proper.

(h) *Determination of appeal; costs; trial by jury.* At the next term of the circuit court or in chambers, upon ten days' notice to the parties, the presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings. The findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law. In the event that the decision of the board is reversed by the circuit court, the board is charged with the costs, and the costs must be paid by the governing authority which established the board of appeals.

When an appeal includes no issues triable of right by jury or when the parties consent, the appeal must be placed on the nonjury docket. A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases. Nothing in this subsection prohibits a property owner from subsequently electing to assert a pre-existing right to trial by jury of any issue beyond the subject matter jurisdiction of the board of appeals, such as, but not limited to, a determination of the amount of damages due for an unconstitutional taking.

(i) *Appeal to supreme court.* A party in interest who is aggrieved by the judgment rendered by the circuit court upon the appeal may appeal in the manner provided by the South Carolina Appellate Court Rules.

(j) *Financing of board of zoning appeals.* The governing authority may appropriate such monies, otherwise unappropriated, as it considers fit to finance the work of the board of appeals and to generally provide for the enforcement of any zoning regulations and restrictions authorized under this chapter which are adopted and may accept and expend grants of money for those purposes from either private or public sources, whether local, state, or federal.

(k) *Exceptions.* The board of zoning appeals does not have the authority to issue variances or special exceptions of Division 4. FH Flood Hazard District of this ordinance. Refer to Sec. 30-63 of this ordinance for procedures in granting variances or special exceptions of Division 4. FH Flood Hazard District.

STAFF RECOMENDATION:

Staff recommends approval by Florence County Planning Commission of the amendment request as presented.

FLORENCE COUNTY PLANNING COMMISSION ACTION-TUSEDAY, SEPTEMBER 23, 2014:

FLORENCE COUNTY COUNCIL:

This item is tentatively scheduled to appear on the agenda for introduction on Thursday, October 16 2014 @ 9:00 a.m. in the County Council Chambers, 180 N Irby St. Florence, SC.