



ALAN WILSON  
ATTORNEY GENERAL

February 10, 2023

The Honorable Seth C. Rose  
South Carolina House of Representatives  
1528 Blanding Street  
Columbia, SC 29201

Dear Representative Rose:

You have requested an opinion from this Office regarding the respective authorities of the Columbia Planning Commission and the Columbia Board of Zoning Appeals. In your request letter, you inform us:

Relevant to this Opinion request, the City of Columbia has established Zoning Districts within the City limits, a Board of Zoning Appeals (BOZA) which has authority to grant special exceptions to the Zoning Districts, and a Planning Commission which has authority to review and approve proposed site plans. The instant Opinion Request relates to a question as to the respective authorities of BOZA and the Planning Commission.

The specifics of the relevant situation are that an application was made to the Board of Zoning Appeals to grant a special exception to allow the construction and operation of public dormitories. In order to grant a Special Exception, state statute and the municipal zoning ordinance provide for certain criteria to be met. (SC Code. 6-29-800(A)(3); Columbia Ordinance: Section 17-2.5(e)(4)). Columbia's Ordinance required that, among other conditions, the applicant must demonstrate that automobile and pedestrian traffic are safe and do not cause disruption to surrounding properties.

A 935 space on-site parking garage was presented in the application and public testimony was offered as evidence for complying with one of the legally required conditions. The garage was also included as a component of the required traffic study.

The Board approved the Special Exception with the condition that “The proposed development shall operate in substantial conformance with the application, submitted materials, and testimony before the board regarding its construction and operation.” (Minutes of BOZA meeting, February 14, 2017)

Two years after BOZA granted the special exception, the project was presented to the Planning Commission for Site Plan Review. The Planning Commission approved the site with a different transportation plan that provided for a transportation hub with only 237 parking spaces for short-term parking and undetermined location for off-site long term parking to accommodate residents. (Columbia Planning Commission Minutes, December 2, 2019)

You are requesting that our Office answer the following questions:

1. Based upon the foregoing, the question is does the change in the parking and transportation plan ‘substantially’ differ from the condition approved by BOZA in granting the Special Exception?
2. And if so, does the Planning Commission have the authority to approve such a change?

### LAW/ANALYSIS

As we have stated in many prior opinions, this Office is not authorized to investigate or to make factual findings.<sup>1</sup> However, we can discuss the general authority of the Columbia Planning Commission and the Columbia Board of Zoning Appeals. To provide some background, the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (“1994 Act”), S.C. Code Ann. § 6-29-310 et seq (1976 Code, as amended), establishes local planning commissions. Section 6-29-320 of the 1994 Act authorizes city councils to create municipal planning commissions. S.C. Code Ann. § 6-29-320 (1976 Code, as amended). A planning commission is granted various powers to prepare a comprehensive plan and recommend it to a local government. S.C. Code Ann. § 6-29-340 (1976 Code, as amended). It also has the duty of reviewing and approving land development plans, and it can attach conditions to its approval. S.C. Code Ann. § 6-29-1150 (1976 Code, as amended). Decisions of a planning commission regarding land development plans are appealed to the circuit court. *Id.*

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<sup>1</sup> See *Op. S.C. Atty. Gen.*, 1989 WL 406130 (April 3, 1981) (“[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions.”).

Because you are specifically inquiring about the authority of the Columbia Planning Commission (“Planning Commission”), we must review the City of Columbia’s Ordinances. The Planning Commission was established in accordance with State law. City of Columbia, S.C. Code of Ordinances § 17-2.3(b) (Aug. 20, 2019). Its duties include reviewing and deciding applications for major site plans, major subdivision preliminary plats, street or road name changes, and variances for subdivision development. City of Columbia, S.C. Code of Ordinances § 17-2.3(b)(1) (Aug. 20, 2019). It hears and decides appeals from decisions of the Land Development Administrator or the City Engineer on particular matters. *Id.* It makes recommendations to City Council on various issues. *Id.* It also carries out powers and duties delegated to it in accordance with State law. *Id.*

Regarding site plan applications, the purpose of the Columbia Ordinances is to “establish a uniform mechanism to ensure that the layout and general design of proposed development complies with the standards of this Ordinance and all other applicable City regulations.” City of Columbia, S.C. Code of Ordinances § 17-2.5(i)(1) (Aug. 20, 2019). When reviewing a major site plan application, the Planning Commission can either “approve the application as submitted; approve the application subject to conditions of approval; or deny the application.” City of Columbia, S.C. Code of Ordinances § 17-2.5 (i)(5) (Aug. 20, 2019). A site plan can only be approved if the applicant meets certain standards. *Id.* The Planning Commission’s decision on a major site plan application can be appealed in accordance with State law. City of Columbia, S.C. Code of Ordinances § 17-2.4(i) (Aug. 20, 2019).

Pursuant to the 1994 Act, county and municipal councils can adopt a zoning ordinance to implement a comprehensive plan. S.C. Code Ann. § 6-29-720 (1976 Code, as amended). A board of zoning appeals (“board”) can be created to administratively enforce the zoning ordinance. See S.C. Code Ann. § 6-29-780 (1976 Code, as amended). A board is empowered to hear and decide appeals from decisions of zoning officials; to hear and decide appeals for variance from a zoning ordinance; and to permit uses by special exception. S.C. Code Ann. § 6-29-800(A)(3) (1976 Code, as amended). Decisions of a board are appealed to the circuit court. S.C. Code Ann. § 6-29-820 (1976 Code, as amended).

The Columbia Board of Zoning Appeals (“BOZA”) was established in accordance with State law. City of Columbia, S.C. Code of Ordinances § 17-2.3(c) (Aug. 20, 2019). It reviews and decides applications for special exception permits and variances; hears and decides appeals from decisions of the zoning administrator on particular matters; and carries out any other powers and duties delegated to it by the City Council in accordance with State law. City of Columbia, S.C. Code of Ordinances §§ 17-2.3(c)(1) (Aug. 20, 2019).

Regarding special exception permit applications, the purpose of the Columbia Ordinances is to “establish a uniform mechanism to review special exceptions to ensure they are appropriate for the location and zoning district where they are proposed.” City of Columbia, S.C. Code of

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Ordinances § 17-2.5(e)(1) (Aug. 20, 2019). In its decisions, BOZA can “approve the [special exception permit] application as submitted; approve the application subject to conditions of approval; or deny the application.” City of Columbia, S.C. Code of Ordinances § 17-2.5(e)(3)(e)(1) (Aug. 20, 2019). Applications for a special exception permit can only be approved if certain standards are met. City of Columbia, S.C. Code of Ordinances § 17-2.5(e)(4) (Aug. 20, 2019). Pursuant to the Columbia Ordinances, “any violation of a condition of approval of a special exception permit shall be deemed a violation of this ordinance and shall void the Special Exception Permit.” City of Columbia, S.C. Code of Ordinances § 17-2.5(e)(3)(e)(4) (Aug. 20, 2019). Appeals of BOZA’s decisions on applications for special exception permits are governed by State law. City of Columbia, S.C. Code of Ordinances § 17-2.5(e)(3)(g) (Aug. 20, 2019).

This Office will rely exclusively on the information provided by the Columbia Ordinances in its analysis, as we are not aware of a procedures manual or any additional sources of information. Please be aware that our response to your questions could be affected or changed if there are additional sources of information.

You are inquiring as to whether the Planning Commission is authorized to approve a change to a condition approved by BOZA in granting a special exception. It is difficult to answer your question, because the Columbia Ordinances provide a separate process for major site plan approval and for a special exception permit. The Ordinances state that their purpose is to establish a “uniform mechanism” for reviewing and deciding major site plan applications, and another “uniform mechanism” for reviewing and deciding applications for special exception permits.

The Planning Commission reviews and decides major site plan applications, while BOZA reviews and decides applications for special exception permits. When reviewing an application, the Planning Commission and BOZA only have three options. They can approve the application as submitted, approve it subject to conditions of approval, or deny it. An application can only be approved if certain standards set by the Ordinances are met. The Planning Commission and BOZA are not authorized to hear appeals of each other’s decisions, because both types of decisions are appealed to the circuit court.

The Columbia Ordinances explain that the approval of one development application does not guarantee the approval of another development application:

Approval of a development application in accordance with this Ordinance authorizes only the particular use, plan, or other specific activity approved, and not any other development requiring separate application and approval. In the event that one development approval or permit is a prerequisite to another development approval or permit (e.g., variance approval prior to a site plan

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approval), development may not take place until all required approvals or permits are obtained. Approval of one development application does not necessarily guarantee approval of any subsequent development application.

City of Columbia, S.C. Code of Ordinances § 17-2.4(h)(4) (Aug. 20, 2019). The facts presented in your letter appear to affirm that the process for major site plan approval is separate from the process for a special exception permit in Columbia. Therefore, we do not believe the Planning Commission has authority over a special exception permit application. Nor does BOZA have authority over a major site plan application.

You are also inquiring as to whether the condition approved by BOZA in granting the special exception has been violated in the facts you presented. As we explained earlier, this Office is not authorized to make that determination. However, it is our opinion that the Columbia Ordinances grant BOZA the authority to decide whether a condition of approval for a special exception permit has been violated and the permit is void.

In order to interpret a statute or ordinance,<sup>2</sup> we apply the principles of statutory construction:

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*. 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000) ... “[C]ourts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature or that would defeat plain legislative intention.” *State v. Johnson*. 396 S.C. 182, 189, 720 S.E.2d 516, 520 (Ct. App. 2011)

Op. S.C. Atty. Gen., 2013 WL 5494616 (Sept. 18, 2013).

Another principle of statutory construction provides:

Sections which are part of the same statutory law of the State must be construed together. In construing statutory language, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. Statutes pertaining to the same subject matter must be harmonized if at all possible.’ *In Interest of Doe*. 318 S.C. 527, 531-32, 458 S.E.2d 556, 559 (Ct. App. 1995) (citations omitted).

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<sup>2</sup> In interpreting ordinances, the rules of statutory construction may be applied. Op. S.C. Atty. Gen., 2019 WL 1644874 at 7 (Apr. 8, 2019) (citing Forrester v. Smith & Steele Builders, Inc., 291 S.C. 196, 352 S.E.2d 522 (1987)).

Op. S.C. Atty. Gen., 2014 WL 3886690 (July 28, 2014) (quoting Op. S.C. Atty. Gen., 2008 WL 3198122 (July 11, 2008)).

The Columbia Ordinances establish a “special exception permit procedure,” which includes BOZA’s decisions:

**e. Decision-making Body Hearing, Review, and Decision**

Required (see Sec. 17-2.4(h), Decision-Making Body Hearing, Review, and Decision).

1. The Board of Zoning Appeals shall review and make a decision on the application in accordance with Sec. 17-2.5(e)(4), Special Exception Permit Decision Standards. The decision shall be one of the following:
  - (i) Approve the application as submitted;
  - (ii) Approve the application subject to conditions of approval; or
  - (iii) Deny the application.
2. The Board’s decision shall be in writing and shall include findings of fact and conclusions of law.
3. Subject to Sec. 17-1.9, Vested Rights, The Board may include as a condition of approval a time limit within which the action for which the Special Exception Permit is required shall be begun or completed, or both. Failure to begin or complete, or begin and complete, such an action within the time limit shall void the Special Exception Permit.
4. Any violation of a condition of approval of a Special Exception Permit shall be deemed a violation of this Ordinance and shall void the Special Exception Permit.

City of Columbia, S.C. Code of Ordinances § 17-2.5(e)(3)(e) (Aug. 20, 2019).

The procedure in section 17-2.5(e)(3)(e) regulates BOZA’s authority regarding special exception permits. Pursuant to paragraphs 1 and 2, BOZA is required to take certain action in its decisions. BOZA must approve, approve subject to conditions of approval, or deny an application. Its decisions must be based on standards provided by the ordinance and include findings of fact and conclusions of law.

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Paragraph 3 grants BOZA the discretion to include a time limit as a condition of approval. It subsequently provides that a permit is void if a time limit is not met. These provisions must be construed together, as they are located next to each other in a separate paragraph. Because BOZA is authorized to include a time limit as a condition of approval, we believe that BOZA is also authorized to decide if the time limit is violated. Thus, BOZA decides if a permit is void.

Paragraph 4 of section 17-2.5(e)(3)(e) provides that a violation of a condition of approval is deemed a violation of the ordinance and voids the special exception permit. It is our opinion that paragraph 4 authorizes BOZA to decide if any conditions of approval have been violated and a permit is void. Paragraphs 3 and 4 must be construed together, as they are part of the same ordinance. In paragraph 3, we believe that BOZA is authorized to decide if a particular condition of approval is violated. Paragraph 4 appears to be a continuation of paragraph 3, extending the authorization to all conditions of approval. Additionally, a reading of all four paragraphs together shows that the purpose of section 17-2.5(e)(3)(e) is to regulate BOZA's authority regarding its decisions. Accordingly, each paragraph directs BOZA's actions. We therefore believe that the Columbia Ordinances authorize BOZA to decide if a condition of approval for a special exception permit has been violated and the permit is void.

### **CONCLUSION**

This Office is authorized to advise you on the general authority of the Columbia Planning Commission and the Columbia Board of Zoning Appeals, but not on the facts presented. See Op. S.C. Atty. Gen., 1989 WL 406130 (April 3, 1989) (“[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions.”) Please be aware that our conclusions are based exclusively on the Columbia Code of Ordinances and that our response to your questions could be affected or changed if there are additional sources of information.

The Columbia Code of Ordinances (“Columbia Ordinances”) provides a separate process for major site plan approval and for a special exception permit. The Columbia Planning Commission reviews and decides major site plan applications, while the Columbia Board of Zoning Appeals (“BOZA”) reviews and decides applications for special exception permits. The Columbia Ordinances explain that the approval of a development application authorizes only the specific activity approved and does not guarantee the approval of another development application. See City of Columbia, S.C. Code of Ordinances § 17-2.4(h)(4) (Aug. 20, 2019). It is our opinion that the Columbia Ordinances authorize BOZA to decide if a condition of approval of a special exception permit has been violated and the permit is void. Of course, while we have presented you with the proper authority, this Office takes no position in this matter.

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Sincerely,



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REVIEWED AND APPROVED BY:



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