

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

June 12, 1989

The Honorable Joyce C. Hearn
Member, House of Representatives
1300 Berkeley Road
Columbia, South Carolina 29205

Dear Representative Hearn:

By your letter of June 9, 1989, you have asked that we resolve two questions for you:

1. Can Richland County Council legally grant a special exception to a zoning ordinance?
2. If it is illegal for County Council to grant a special exception to a zoning ordinance, what recourse do people have who are aggrieved by such an exception that County Council has granted?

By Section 6-7-740 of the Code of Laws of South Carolina (1976 & 1988 Cum. Supp.), a county council is empowered to create a zoning board of adjustment or appeals to hear matters as outlined in the statute. One of those powers is

(3) To hear and decide special exceptions subject to the terms of any ordinance upon which such board is required to pass under the terms of such ordinance; provided, that the governing authority may by ordinance designate itself or another body as the proper body to hear and decide special exceptions.

Presumably acting pursuant to this grant of authority, Richland County Council has designated the Zoning Board of Adjustment to hear

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and decide special exceptions. See Section 11-2.2 of the Richland County Code, Appendix A - Zoning, at pages 1771-1772.

As you are well aware, however, one legislative body may not bind a subsequent legislative body. Ops. Atty. Gen. dated October 9, 1985 and June 13, 1985. The opinion of October 9, 1985, dealt with a county council's power to adopt supplemental appropriations in a manner inconsistent with an ordinance previously adopted by council concerning adjustments to the county's annual budget. After a review of the relevant law, it was stated: "Should County Council choose to adopt a supplemental appropriation notwithstanding Section 6.1-22 of the county's code of ordinances, such an appropriation not in conformity with the ordinance would serve as an amendment thereto." A copy of the opinion is enclosed. 1/

Based on the reasoning and legal principles contained in the above-cited opinions, it could be concluded that Richland County Council has at least impliedly amended its zoning ordinance if it should decide to hear and decide a matter involving a special exception. In reaching this conclusion, this Office does not comment on whether any actions of Richland County Council would be considered to have amended the county's zoning ordinance or whether any action taken by County Council would be valid. Such would be a matter for the appropriate judicial tribunal. If that should be the case, however, Section 6-7-740 of the Code has given a county council the authority to grant special exceptions to a zoning ordinance.

Should any person be aggrieved by the decision made by Richland County Council or the Zoning Board of Adjustment with respect to special exceptions to zoning laws or ordinances, recourse would be through the courts of this State.

Conclusions

1. Richland County Council appears to have delegated to the Zoning Board of Adjustment the power to hear and decide requests for special exceptions to the zoning ordinances of the county. Whether Richland County Council may have at least impliedly amended the ordinance to hear and decide special exceptions cannot be decided by this Office; such would be within the purview of the appropriate judicial tribunal. If that be the case, however, Richland County Council could grant a special exception to a zoning ordinance.

2. Recourse by any person aggrieved by any action of Richland County Council or the Zoning Board of Adjustment with respect to a special exception matter would be through the courts of this State.

1/ Of course, the clearest and least ambiguous way to amend an ordinance would be by another ordinance or by a legislative act of equal dignity.

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With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions