

# Oconee County Board of Zoning Appeals



415 S. Pine Street  
Walhalla, SC 29691  
Telephone (864)638-4218 Fax (864)838-4168

## ORDER ON APPEAL APPLICATION

Application Date: July 13, 2012  
Public Hearing Date: August 16, 2012

The Board of Zoning Appeals held a public hearing on August 16, 2012 to consider the request for an Appeal of staffs' decision made by Mr. Larry Brandt, on behalf of the St. John's Lutheran Church, from Section 38-2.6 of the Oconee County Code of Ordinances. The applicant is requesting reversal of staffs' decision to verify petitions for the Biggerstaff Road and Surrounding Area Rezoning Request (rezoning area).

After consideration of the evidence and arguments presented, the Board makes the following findings of fact:

1. Staff acted in accordance with established policies in place at the time petitions were reviewed; however,
2. Petitions were on separate documents that were not standardized for the rezoning area; and,
3. Petitions did not contain consistent verbiage that reflected the final rezoning area submitted to County Council for 1<sup>st</sup> reading; and,
4. Petitions for the rezoning area were signed from October of 2008 through the beginning of 2012; and,
5. Crescent Resources LLC never signed a petition but agreed to consent to rezoning; and,
6. Certain petitions did not mention the areas outside of their named subdivision; and,
7. Certain petitions mentioned that the petitioners were agreeing for their property, their named subdivision, and much of the surrounding area was to be rezoned; and,
8. There was no format prescribed for how petitions should be worded in order to be validated; and

THE BOARD, THEREFORE, concludes:

1. That, at the time, staff acted in accordance with established policies and procedures at the time of the review; and,
2. That certain petitions, being called into question, would result in the 51% standard under Sec. 38-8.5 (2) not being met. Therefore, the request would not have been presented to Council; and

3. Staff should have used a reasonable policy and required uniform petitions for the area that was presented to Council.

Date issued: \_\_\_\_\_

8/23/12

Chairman

Secretary

Date mailed to parties in interest: \_\_\_\_\_

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.



# Oconee County Planning Commission

415 S. Pine St. • Walhalla, South Carolina 29691  
Phone (864) 638-4218 • Fax (864) 638-4168

## NOTICE OF APPEAL

Date: July 13, 2012

I, St. John's Lutheran Church, Walhalla, SC, by its attorney, (owner) (agent of owner)

hereby request an appeal to the following action (be specific):

SEE ATTACHED

Reason for appeal:

SEE ATTACHED

Applicant's Name: Larry C. Brandt, Attorney for St. John's Lutheran Church

Address: P.O. Box 738, 5691 Blue Ridge Blvd., Walhalla, SC 29691

Mailing Address (if different):

Phone Number: 864-638-5406

Fax Number:

864-638-7873

Signature: *Larry C. Brandt*

Please be advised that an Appeals Application Fee of \$50 must be paid in full at the time the application is received by the Planning Department. Applicants shall be notified at the specified mailing address once a public hearing date is set.

# **Oconee County Planning Commission**

**415 S. Pine St. • Walhalla, South Carolina 29691**

**Phone (864) 638-4218 • Fax (864) 638-4168**

## **NOTICE OF APPEAL**

**Attachment**

**Re: St. John's Lutheran Church**

St. John's Lutheran Church, Walhalla, SC, by its attorney, Larry C. Brandt, hereby requests an appeal to the following action (be specific):

The further presentation and consideration of **Oconee County Ordinance 2012-12** in its entirety by the governing body of Oconee County and/or any and all of its departments, boards, commissions, etc.

I further object to the actions of the County in forcing St. John's Lutheran Church to go through this appeal process and unlawfully charging St. John's with the fees and costs associated with the appeal when the County Council is solely charged with the duty and responsibility to review the underlying petitions and assure that they meet the requirements of the applicable County Zoning Ordinance in effect at the time a rezoning request is initiated prior to giving any consideration to the issue and/or giving a rezoning ordinance first reading, even in title only. Accordingly, it is incumbent upon Council to resolve this matter in good faith and as a matter of law without expense or delay to the citizen whose property is sought to be unlawfully rezoned in accordance with a citizen initiated rezoning request. To attempt to "pass the buck" to the Board of Zoning Appeals, which clearly does not have jurisdiction of this matter, and to charge fees and costs to a citizen objecting to the legislative process, constitutes an unlawful taking of property, a denial of due process and equal protection of the laws.

Reason for appeal:

The Ordinance is unlawfully before County Council upon a purported citizen initiated rezoning request submitted by a singular citizen, Mr. Mike Smith, rather than petitions of 51% of the owners in the area requested to be rezoned and, on its face, does not comport with the applicable County Zoning Ordinance in effect at the time the Ordinance was introduced and passed on first reading "in title only." More specifically, the Ordinance states on its face that it is being requested by one (1) person rather than 51% as

required and Mr. Smith's request is not supported by the signatures of at least 51% of the owners requesting that Mr. Smith's proposed area be rezoned.

Furthermore, I, again, emphatically object to this appeal process as **§38-2.6 of the Oconee County Zoning Ordinance**, which is controlling on this matter, does not provide authority to the Board of Zoning Appeals to determine the matters raised herein.



# Oconee County Planning Department

415 S. Pine Street, Walhalla, SC 29691

Telephone: 864-638-4218  
Fax: 864-638-4158

January 13, 2011

Mr. Ed Haley  
710 Ebeyn Drive  
Seneca, SC 29678

Parcel Address: not applicable  
Tax Map : 193-00-02-004  
RE: Zoning Compliance Letter

To Whom It May Concern:

This letter is to certify that the above reference parcel is located with the control free zoning district and complies with all adopted zoning regulations. However, before any construction begins a building permit will need to be obtained from the County Building Code Office.

Sincerely,

A handwritten signature in cursive script that reads "Aaron J. Gadsby".

Aaron Gadsby, County Planner  
415 S. Pine Street  
Walhalla, SC 29691

FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA

Doc ID: 003872390003 Type: DEE  
BK 1835 PG 206-208

2011 MAY 17 P 1:37

COUNTY OF OCONEE

\*

PROPOSED SITE PLAN

PROPERTY OF ED C. HALEY

*Drawn  
1000  
012439*

WHEREAS, ED C. HALEY (hereinafter "Haley") is the owner of a tract of real property located in Oconee County, South Carolina, shown and designated as one and two hundred thirty one-thousandths (1.230) acres, more or less, according to a plat of survey thereof recorded in Plat Book A422, page 1, records of Oconee County, South Carolina; and

WHEREAS, Haley intends to use and develop said property as a mini-warehouse and boat storage facility; and

WHEREAS, Haley, by the recording of this Proposed Site Plan, does hereby put the general public on notice of his intent as to the future development and use of the property that is shown on the hereinabove referenced plat recorded in Plat Book A442, page 1;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT this property shall be used and developed as mini-warehouse and boat storage. Said storage facilities shall be constructed and placed on said property according to the building site plan attached hereto as Exhibit "A" and recorded herewith.

IN WITNESS WHEREOF, ED C. HALEY has hereunto placed his Hand and Seal, this 16 day of May, in the year of our Lord, two thousand eleven.

Witnesses:

*Clara Brown*  
*Ann D. McCall*

*Ed C. Haley* (SEAL)  
ED C. HALEY

PERSONALLY APPEARED the Undersigned Witness, who being duly sworn says that (s)he saw the within named ED C. HALEY, sign, seal and as his act and deed deliver the within written instrument for the uses and purposes therein mentioned, and that the Deponent, with the second Witness above subscribed, witnessed the execution thereof.

Clara Brown

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE

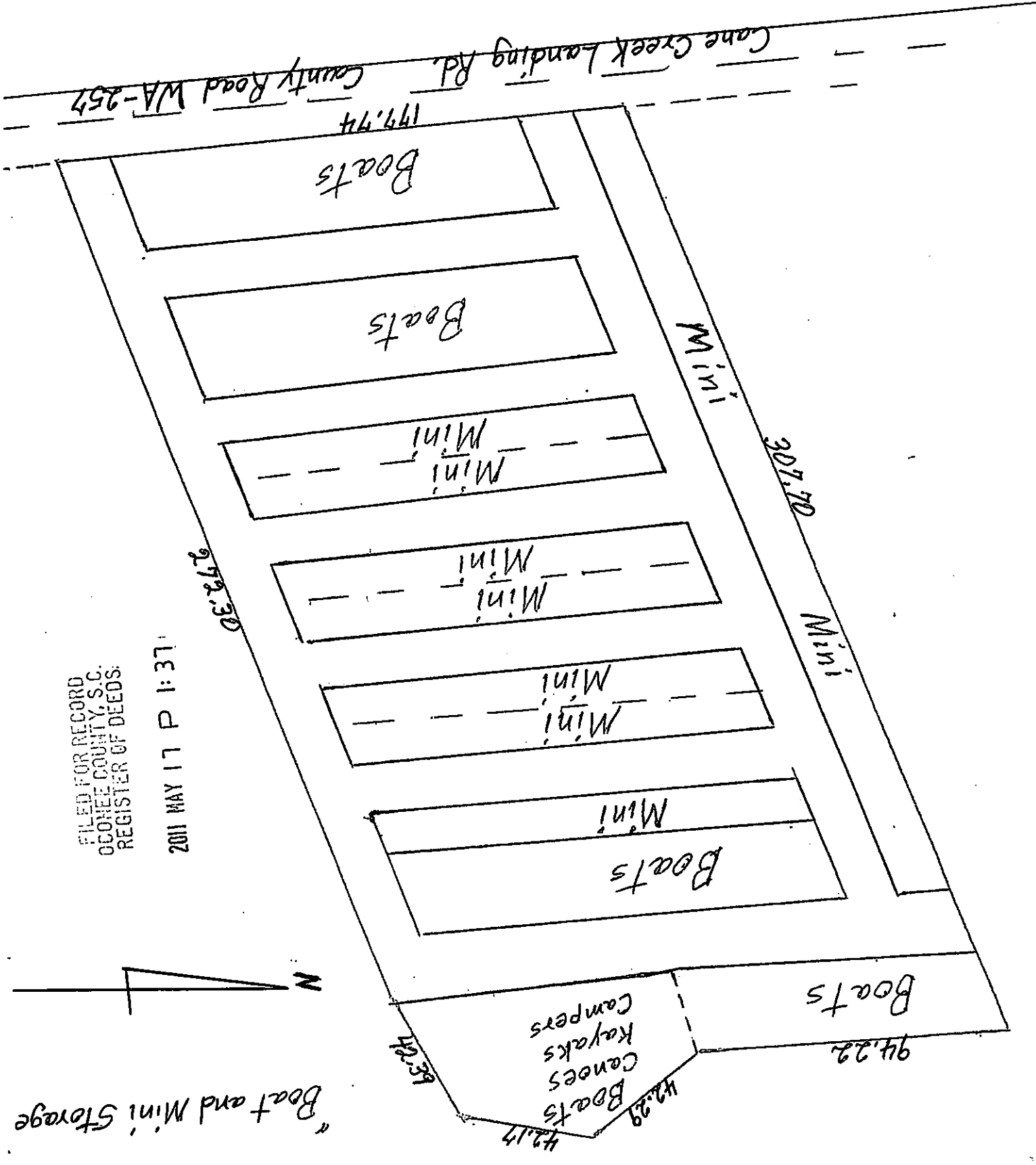
)  
)  
)  
PROBATE

Sworn to before me this 16 day of May, 2011  
[Signature]  
Notary Public of South Carolina  
My Commission Expires 2-4-2018  
(LS)



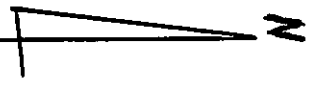
*[Handwritten signature]*

Cane Creek Landing Rd. County Road WA-257



FILED FOR RECORD  
OCHOEE COUNTY, S.C.  
REGISTER OF DEEDS

2011 MAY 17 P 1:37



"Boat and Mini Storage"

Email forwarded by Beth Hulse regarding property 193-00-02-004

This is in reference to property identified as being tax map ID # 193-00-02-004 (adjacent to the 1st Choice Realty Office) and reported with address being 412 Cane Creek Landing Road, Seneca, SC.

The owner, Mr. Ed. C. Haley, has, within the last two weeks, cleared the property of all vegetation and filled in the previously excavated area made many years ago as part of an apparent plan to construct his home on the property. While accomplishing the clearing, he advised a North Harbour Subdivision Resident that he planned to construct a boat storage facility on the property and that he had a letter authorizing this action.

Calls to the Oconee County Planning and Codes departments made while the clearing was underway resulted in the assurance that there was no record of a request or permit on file for development of the property. It seems reasonable that complete removal of trees, vegetation, and landfill operations would require some form of permit approval, be it grading, land disturbance, storm water runoff mitigation plans, etc. and posting of such permits at the site. None of this is evident.

Further inquiry by interested personnel results in the discovery of a document apparently prepared with legal assistance, signed by Mr. Haley on May 16, 2011, and filed with the Register of Deeds the following day. This document, apparently prepared and filed in secrecy, purports to "put the general public on notice of his intent as to future development and use of the property". This was only a deed modification, lacking all public notification, even to the appropriate county planning and building codes departments.

The development of the subject property as a "mini-warehouse and boat storage facility" is in complete contradiction of the current and approved zoning. The public record will attest that the County Council letter of 1/27/2011, predating any action by Mr. Haley, identified the property by lot number as being planned for residential area zoning with subsequent final approval on 3/6/2012 as Lake Residential.

"Grandfathering the use of property" focuses on the word "use" as per its current daily function. It is impossible to "use" something that does not exist.

The property in question is approved as "Lake Residential", not "Commercial" and it is requested that the County, in concert with the County Council, as well as others that may be required, take action to insure that the approved Zoning is upheld.

Expedited action is requested to minimize expenditures by Mr. Haley in pursuit of construction.

Thanks,  
Walt Carter, President  
North Harbour Owners Association  
864-882-1440

Your message is ready to be sent with the following file or link attachments:

3\_0002  
3\_0003  
3\_0004  
lot

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



# Oconee County Planning and Codes

415 S. Pine St. - Walhalla, South Carolina 29691  
Phone (864) 638-4218 - Fax (864) 638-4168

## Zoning and Code Violation Complaint Form

Date: May 8, 2012

Location of alleged violation: Tax map property #193-00-02-004 and located at 412 Cane Creek Landing Road, Seneca

Please describe the nature of the alleged violation: Reported commercial development of the above listed property as a mini-warehouse/boat storage facility. Refer to the two attached pages for additional description and zoning violation.

Complainant's Name: North Harbour Owners Association (Walter Carter, President)

Address: 425 Cane Creek Landing Road, Seneca, S.C. 29672

Phone Number: 864-882-1440

Fax Number: \_\_\_\_\_

Signature: Walter J. Carter

Date: May 19, 2012

Please be advised that submitting this form does not imply that enforcement action will be taken. County personnel will investigate the issue and will respond within 10 working days.

### Official Use Only

Investigated by: \_\_\_\_\_

Findings: \_\_\_\_\_

The Oconee Count Planning and Zoning Department certified, by letter dated Jan. 13, 2011, property identified as Tax Map # 193-00-02-004 and later identified as 412 Cane Creek Landing Road as being within the "Control Free District". This was apparently based upon passage of the Zoning Enabling Ordinance by Oconee County in November, 2008, which initially zoned the entire County into the Control Free District, and the absence of any re-zoning action on the property in question until a later date.

After receipt of the above letter, the property owner, Mr. Ed C. Haley, apparently by-passed all appropriate planning, permitting and zoning offices in the filing of an amendment, with sketch, to his deed in the office of the Registrar of Deeds with actions dated May 16 and May 17, 2011. The above letter and deed amendment has been quoted as providing a "Vested Interest" in development of the property as a mini-warehouse/boat storage facility.

County personnel indicate that Chapter 29 of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 is the defining authority used by Oconee County for "Vested rights".

Section 6-29-1520 defines "Vested Rights" under item (10) and reads as follows:

*"Vested right" means the right to undertake and complete the development of property under the terms and conditions of a site specific development plan or a phased development plan as provided in this article and in the local land development ordinances or regulations adopted pursuant to this chapter".*

[Emphasis supplied here and in several following paragraphs]

Section 6-29-1530 reads: (A)(1) A vested right is established for two years upon the approval of a site specific development plan.

Section 6-29-1140 states: *Development plan to comply with regulations: submission of unapproved plan for recording is a misdemeanor. (Unapproved development was apparently considered by the State to be a serious misdeed; thus justifying misdemeanor status, and the following requirements established.)*

*After the local governing authority has adopted land development regulations (the county zoning districts were established in Nov. 2008), no subdivision plat or other land development plan within the jurisdiction of the regulations may be filed*

or recorded in the office of the county where deeds are required to be recorded, and no building permit may be issued until the plat or plan bears the stamp of approval and is properly signed by the designated authority. The submission for filing or recording of a subdivision plat or other land development plan without proper approval as required by this chapter is declared a misdemeanor and, upon conviction, is punishable as provided by law.

Oconee county code, under section 38-10.2 established the requirements for "Control Free District" and was the approved zoning for property from Nov. 2008 until re-zoned as "Residential" on March 6, 2012. There is no known evidence of an approved development plan for the property. The sketch (not a plan) and the deed amendment, filed in an apparent violation of the above regulations, does not contain any indication of official review or approval. Mr. Haley's signature is affixed to both the document and sketch while the document contains additional signatures of two witnesses, McCall and Bryson.

**"Vesting" is an action initiated by filing of an approved development plan as indicated by the above listed sections 6-29-1520 and 6-29-1530, South Carolina Local Government Comprehensive Planning Enabling Act of 1994, not by a zoning district classification or an apparent unlawful filing of documentation with the Registrar of Deeds.** Consequently, with the disregard of vesting requirements, the property cannot be considered as "Vested" for development as a mini-warehouse/boat storage facility or any other commercial development.

Section 38-10.2, Oconee County Code of Ordinance, reads "The Control Free District is intended to be the initial zoning district for all parcels within the jurisdiction at the time of adoption only; any parcel subsequently re-zoned to any other district shall not be a part of the Control Free District at any future date".

Regardless of the misdemeanor issue, the property owner has failed to comply with State and County zoning requirements needed to establish a "vested" right for development. The property in question was **correctly re-zoned as "Residential" on March 6, 2012.** The county is requested to ensure that all action taken with regard to this property is in keeping with the approved Residential zoning as well as any additional overriding regulations that may be in effect.



## Oconee County Planning Department

415 S. Pine Street, Walhalla, SC 29691

Telephone: 864-638-4218  
Fax: 864-638-4168

June 4, 2012

Mr. Walter Carter  
President of North Harbour Owners Assoc.  
425 Cane Creek Landing Rd  
Seneca, SC 29672

Parcel Address: 412 Cane Creek Landing Rd, Seneca  
Tax Map: 193-00-02-004  
RE: Formal Complaint

Mr. Carter,

This is to inform you that we have completed our investigation of your complaint filed on May 10, 2012 in reference to the above named property. Staff reviewed the documents issued and recorded in reference to the above named property, and consulted the attorney for Oconee County regarding the vesting question. Furthermore, Oconee County had no regulations or procedures for approving site plans of this nature at the time Mr. Haley recorded the site plan in question. Therefore, when taking into account all the information, we have determined that Mr. Haley is vested in the proposed use of the property for boat storage and mini-warehouses for two years and subject to a series of one year renewals.

Thank you for your time and feel free to contact me at 864-638-4218 or [istephens@oconeesc.com](mailto:istephens@oconeesc.com) with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "J. A. Stephens", written over a light blue horizontal line.

Joshua A. Stephens  
Oconee County Zoning Administrator





## Oconee County Planning Department

415 S. Pine Street, Walhalla, SC 29691

Telephone: 864-638-4318  
Fax: 864-638-4368

June 4, 2012

Mr. Ed Haley  
710 Ebeyn Dr.  
Seneca, SC 29678

Parcel Address: 412 Cane Creek Landing Rd, Seneca (193-00-02-004)  
RE: Formal Complaint

Mr. Haley,

This letter is to inform you that a formal complaint was filed with the Planning Department in regards to the above listed property on May 10, 2012.

After reviewing the issues surrounding the complaint, it is our conclusion that you are vested, for two years and subject to a series of one year renewals, in the proposed use of the property for boat storage and mini-warehouses, as recorded with the Oconee County Register of Deeds office.

Please note that at the time you begin to use the property for boat storage you will need to acquire a Zoning Use permit from the Planning Department in order to remain compliant with Oconee County's Zoning Enabling Ordinance. The property is also within the Lake Overlay District. Per South Carolina Code of Laws (6-29-1540 (12)), Overlay requirements apply to the property. The Oconee County Board of Zoning appeals, using Appendix A, would review a site specific plan prior to any construction and prior to any zoning and building permits being issued.

Thank you for your time and feel free to contact me at 864-638-4218 or [jstephens@oconeesc.com](mailto:jstephens@oconeesc.com) with any questions you may have.

Sincerely,  
Joshua A. Stephens  
Oconee County Zoning Administrator

WALTER D. CARTER  
425 Cane Creek Landing Road  
Seneca, South Carolina 29672

June 28, 2012

Oconee County Planning Department  
Board of Zoning Appeals  
415 S. Pine Street  
Walhalla, South Carolina 29691

RE: Parcel Address: 412 Cane Creek Landing Road  
Seneca, South Carolina  
Tax Map ID #: 193-00-02-004  
Appeal to Zoning Board of Appeals

Sir/Madam:

I enclose herewith an appeal from a decision of Joshua A. Stevens, Oconee County Zoning Administrator dated June 4, 2012. I also enclose one copy for your convenience.

Attorney Michael D. Glenn, 121 West Benson Street, Anderson, South Carolina, 29624 is the attorney for North Harbor Owners Association and for me personally. You may respond to this appeal directly to Mr. Glenn at his address shown above. He may also be reached at 864-226-1885 or by email at [mglenn@ghmslaw.com](mailto:mglenn@ghmslaw.com).

I enclose a check from North Harbor Owners Association in the amount of \$50.00 payable to Oconee County for the fee for filing this appeal. If you have any questions or if there is anything further which needs to be done to perfect this appeal, please let me know.

Yours very truly,



Walter D. Carter





# Oconee County Planning Commission

415 S. Pine St. • Walhalla, South Carolina 29691  
Phone (864) 638-4218 • Fax (864) 638-4168

## NOTICE OF APPEAL

Date June 28, 2012

I, Walter D. Carter, individually & as President of North Harbour (owner) (agent of owner)

hereby request an appeal to the following action (be specific):

By letter dated June 4, 2012, Joshua A. Stephens, Oconee County Zoning Administrator, responded to my complaint filed on May 18, 2012 in reference to 412 Cane Creek Landing Road, Seneca, SC. Mr. Stephens ruled that the owner, Mr. Haley, is vested in the proposed use of the property for boat storage and mini-warehouses for two years and subject to a series of one year renewals. My complaint and Mr. Stephens' ruling are attached as exhibits.

Reason for appeal:

See Attached Reasons For Appeal

Applicant's Name Walter D. Carter, individually & as President of North Harbour Owners Association

Address 425 Cane Creek Landing Rd., Seneca, SC 29672

Mailing Address (if different) \_\_\_\_\_

Phone Number 864-832-1440

Fax Number \_\_\_\_\_

Signature: Walter D. Carter

Please be advised that an Appeals Application Fee of \$50 must be paid in full at the time the application is received by the Planning Department. Applicants shall be notified at the specified mailing address once a public hearing date is set.

## REASONS FOR APPEAL

This appeal is filed for the following reasons:

1. The Oconee County Planning and Zoning Department certified, by letter dated January 13, 2011, property identified as Tax Map # 193-00-02-004 and later identified as 412 Cane Creek Landing Road as being within the “Control Free District”. This was apparently based upon passage of the Zoning Enabling Ordinance by Oconee County in November, 2008, which initially zoned the entire County into the Control Free District, in the absence of any re-zoning action on the property in question until a later date.
2. The property owner, Mr. Ed. C. Haley, apparently by passed all appropriate planning, permitting, and zoning offices in the filing of an amendment, with sketch, to his deed in the office of the Registrar of Deeds on May 16 and May 17, 2011. The above letter and deed amendment has been quoted as providing a “Vested Interest” in development of the property as a mini-warehouse/boat storage

facility.

3. County personnel indicate that Chapter 29 of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 is the defining authority used by Oconee County for “Vested Rights”.
4. Section 6-29-1520 defines “Vested Rights” under item (10) and reads as follows:  
  
*“Vested Right” means the right to undertake and complete the development of property under the terms and conditions of a site specific development plan or a phased development plan as provided in this article and in the local land development ordinances or regulations adopted pursuant to this chapter”.*
5. Section 6-29-1530 reads: *(A)(1) A vested right is established for two years upon the approval of a site specific development plan.*
6. Section 6-29-1140 states: *Development plan to comply with regulations: submission of unapproved plan for recording is a misdemeanor. After the local governing authority has adopted land development regulations, no subdivision plat or other land development plan within the jurisdiction of the regulations may be*

*filed or recorded in the office of the county where deeds are required to be recorded, and no building permit may be issued until the plat or plan bears the stamp of approval and is properly signed by the designated authority. The submission for filing or recording of a subdivision plat or other land development plan without proper approval as required by this chapter is declared a misdemeanor and, upon conviction, is punishable as provided by law.*

7. Oconee County Code, under §38-10.2 established the requirement for “Control Free District” and was the approved zoning for the property from November, 2008 until re-zoned as “Residential” on March 6, 2012. There is no known evidence of an approved development plan for the property. The sketch and the deed amendment, filed in an apparent violation of the above regulations, does not contain any indication of official review or approval. Mr. Haley’s signature is affixed to both the document and sketch while the document contains additional signatures of two witnesses.
8. “Vesting” is an action initiated by filing of an approved development plan as indicated by the above listed §§6-29-1520 and

6-29-1530, South Carolina Local Government Comprehensive Planning Enabling Act of 1994, not by a zoning district classification or an apparent unlawful filing of documentation with the Registrar of Deeds. Consequently, with the disregard of vesting requirement, the property cannot be considered as “Vested” for development as a mini-warehouse/boat storage facility or any other commercial development.

9. Section 38-10.2, Oconee County Code of Ordinance, reads:

*“The Control Free District is intended to be the initial zoning district for all parcels within the jurisdiction at the time of adoption only; any parcel subsequently re-zoned to any other district shall not be a part of the Control Free District at any future date”.*

10. Oconee County Ordinance 38-11.1, Lake Overlay District, Section (d)(1)a3 provides: *“Marinas and commercial boat storage shall comply with Duke Energy’s regulations and shall not be located within a mile radius of an existing platted and properly recorded subdivision.”*

The property in question does not comply with Duke Energy’s

regulations and is prohibited since it is within one mile of North Harbour Subdivision.

11. The owner of the property in question, Mr. Haley, has failed to comply with State and County zoning requirements needed to establish a “Vested Right” for development. Mr. Haley’s property was correctly re-zoned as “Residential” on March 6, 2012.
12. Any action taken by Oconee County or Mr. Haley in regard to Mr. Haley’s property should be in keeping with the approved residential zoning as well as any over riding regulations that may be in effect.
13. The decision of Joshua A. Stephens, Oconee County Zoning Administrator dated June 4, 2012 was in error and should be overturned.

From: WALTER D CARTER <[walterdcarter@bellsouth.net](mailto:walterdcarter@bellsouth.net)>  
Subject: Cane Creek Landing Road Zoning Issue  
To: [smoulder@oconeesc.com](mailto:smoulder@oconeesc.com)  
Cc: Paul [Corbeil@bellsouth.net](mailto:Corbeil@bellsouth.net), [abarron@oconeesc.com](mailto:abarron@oconeesc.com), [jthrift@nuvox.net](mailto:jthrift@nuvox.net), [regdexter@bellsouth.net](mailto:regdexter@bellsouth.net), Wayne [McCall@oconeesc.com](mailto:McCall@oconeesc.com), [Bhulse@oconeesc.com](mailto:Bhulse@oconeesc.com)  
Date: Sunday, April 22, 2012, 9:16 AM

This is in reference to property identified as being tax map ID # 193-00-02-004 (adjacent to the 1st Choice Realty Office) and reported with address being 412 Cane Creek Landing Road, Seneca, SC.

The owner, Mr. Ed. C. Haley, has, within the last two weeks, cleared the property of all vegetation and filled in the previously excavated area made many years ago as part of an apparent plan to construct his home on the property. While accomplishing the clearing, he advised a North Harbour Subdivision Resident that he planned to construct a boat storage facility on the property and that he had a letter authorizing this action.

Calls to the Oconee County Planning and Codes departments made while the clearing was underway resulted in the assurance that there was no record of a request or permit on file for development of the property. It seems reasonable that complete removal of trees, vegetation, and landfill operations would require some form of permit approval, be it grading, land disturbance, storm water runoff mitigation plans, etc. and posting of such permits at the site. None of this is evident.

Further inquiry by interested personnel results in the discovery of a document apparently prepared with legal assistance, signed by Mr. Haley on May 16, 2011, and filed with the Register of Deeds the following day. This document, apparently prepared and filed in secrecy, purports to "put the general public on notice of his intent as to future development and use of the property". This was only a deed modification, lacking all public notification, even to the appropriate county planning and building codes departments.

The development of the subject property as a "mini-warehouse and boat storage facility" is in complete contradiction of the current and approved zoning. The public record will attest that the County Council letter of 1/27/2011, predating any action by Mr. Haley, identified the property by lot number as being planned for residential area zoning with subsequent final approval on 3/6/2012 as Lake Residential.

"Grandfathering the use of property" focuses on the word "use" as per its current daily function. It is impossible to "use" something that does not exist.

The property in question is approved as "Lake Residential", not "Commercial" and it is requested that the County, in concert with the County Council, as well as others that may be required, take action to insure that the approved Zoning is upheld.

Expedited action is requested to minimize expenditures by Mr. Haley in pursuit of construction.

Thanks,  
Walt Carter, President  
North Harbour Owners Association



**Oconee County Planning Department**  
**415 S. Pine Street, Walhalla, SC 29691**

Telephone: 864-638-4218  
Fax: 864-638-4168

EXHIBIT 2

June 4, 2012

Mr. Walter Carter  
President of North Harbour Owners Assoc.  
425 Cane Creek Landing Rd  
Seneca, SC 29672

Parcel Address: 412 Cane Creek Landing Rd, Seneca  
Tax Map: 193-00-02-004  
RE: Formal Complaint

Mr. Carter,

This is to inform you that we have completed our investigation of your complaint filed on May 10, 2012 in reference to the above named property. Staff reviewed the documents issued and recorded in reference to the above named property, and consulted the attorney for Oconee County regarding the vesting question. Furthermore, Oconee County had no regulations or procedures for approving site plans of this nature at the time Mr. Haley recorded the site plan in question. Therefore, when taking into account all the information, we have determined that Mr. Haley is vested in the proposed use of the property for boat storage and mini-warehouses for two years and subject to a series of one year renewals

Thank you for your time and feel free to contact me at 864-638-4218 or [jstephens@oconeesc.com](mailto:jstephens@oconeesc.com) with any questions you may have.

Sincerely,

Joshua A. Stephens  
Oconee County Zoning Administrator



# Planning Department

415 South Pine Street Walhalla, South Carolina 29691  
Phone: 864-718-1005  
Fax: 864-638-4168  
www.oconeesc.com



June 28, 2012

Mr. Carter filed a formal appeal with the Planning Department in regards to a decision made by Oconee County Zoning Administrator Joshua A. Stephens. He did pay the fifty dollar filing fee and is aware that we will bill him for the cost of advertising at a later date.

Joshua A. Stephens  
Oconee County Zoning Administrator

A handwritten signature in black ink, appearing to be "JS", written over a horizontal line.

A handwritten signature in black ink, appearing to be "WCC", written in a cursive style.

WALTER D. CARTER  
425 Cane Creek Landing Road  
Seneca, South Carolina 29672

August 1, 2012

Oconee County Planning Department  
Board of Zoning Appeals  
415 S. Pine Street  
Walhalla, South Carolina 29691

RE: Parcel Address: 412 Cane Creek Landing Road  
Seneca, South Carolina  
Tax Map ID #: 193-00-02-004  
Appeal to Zoning Board of Appeals

Sir/Madam:

By letter dated June 28, 2012, I filed the above mentioned appeal with the Zoning Board of Appeals.

Since that time I have made two (2) significant changes to the Reasons for Appeal. I enclose the Revised Reasons for Appeal. Please note that the substantive changes are in Paragraphs 3 and 5 of the Reasons for Appeal. In addition, I have added information to indicate that several Code Sections referred to in my initial filing were actually Sections of the South Carolina Code of Laws.

I shall appreciate your adding these Revised Reasons for Appeal to my Notice.

In the event you require an additional filing fee, I shall appreciate your notifying me or my attorney, Michael D. Glenn, as soon as possible and we will be happy to comply. I can be reached at 864-882-1440. Mr. Glenn can be reached at 864-226-1885.

Thank you for your attention to this matter.

Yours very truly,



Walter D. Carter

## REASONS FOR APPEAL

This appeal is filed for the following reasons:

1. The Oconee County Planning and Zoning Department certified, by letter dated January 13, 2011, property identified as Tax Map # 193-00-02-004 and later identified as 412 Cane Creek Landing Road as being within the "Control Free District". This was apparently based upon passage of the Zoning Enabling Ordinance by Oconee County in November, 2008, which initially zoned the entire County into the Control Free District, in the absence of any re-zoning action on the property in question until a later date.
2. The property owner, Mr. Ed. C. Haley, apparently by passed all appropriate planning, permitting, and zoning offices in the filing of an amendment, with sketch, to his deed in the office of the Registrar of Deeds on May 16 and May 17, 2011. The above letter and deed amendment has been quoted as providing a "Vested Interest" in development of the property as a mini-warehouse/boat storage

facility.

3. County personnel indicate that Chapter 29 of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 is the defining authority used by Oconee County for "Vested Rights". Oconee County makes no reference to vesting in Chapter 38, Oconee County Code of Ordinance, nor does it establish vesting requirements.

4. South Carolina Code §6-29-1520 defines "Vested Rights" under item (10) and reads as follows:

*"Vested Right" means the right to undertake and complete the development of property under the terms and conditions of a site specific development plan or a phased development plan as provided in this article and in the local land development ordinances or regulations adopted pursuant to this chapter".*

5. South Carolina Code §6-29-1530 reads:

*(A)(1) A vested right is established for two years upon the approval of a site specific development plan.*

*(A)(2) On or before July 1, 2005, in the local land development ordinance or regulations adopted pursuant to this chapter, a local governing body*

*must provide for:*

- (a) The establishment of a two year vested right in an approved site specific development plan.*

South Carolina Code §6-29-1540 provides:

*“Conditions and Limitations”*

*A vested right established by this article and in accordance with the standards and procedures in the land development ordinances or regulations adopted pursuant to this chapter is subject to the following conditions and limitations:*

- (1) The form and contents of a site specific development plan must be prescribed in the land development ordinances or regulations:*
- (2) The factors that constitute a site specific development plan must be prescribed in the land development ordinances or regulations:*

The county, in chapter 38, made no provisions for vesting, content of a site specific development plan, factors (requirements) that constitute a site specific development plan, or a process for approval of such plan. Consequently, without guidelines or procedures, vesting is not possible. Consequently the property

remained zoned as Control Free, subject to lake overlay requirements, until rezoned as Residential, again with lake overlay requirements.

6. South Carolina Code §6-29-1140 states: *Development plan to comply with regulations: submission of unapproved plan for recording is a misdemeanor. After the local governing authority has adopted land development regulations, no subdivision plat or other land development plan within the jurisdiction of the regulations may be filed or recorded in the office of the county where deeds are required to be recorded, and no building permit may be issued until the plat or plan bears the stamp of approval and is properly signed by the designated authority. The submission for filing or recording of a subdivision plat or other land development plan without proper approval as required by this chapter is declared a misdemeanor and, upon conviction, is punishable as provided by law.*
7. Oconee County Code, under §38-10.2 established the requirement for “Control Free District” and was the approved zoning for the property from November, 2008 until re-zoned as “Residential” on March 6, 2012. There is no known evidence of an approved development plan for the property. The sketch and the deed amendment, filed in an

apparent violation of the above regulations, does not contain any indication of official review or approval. Mr. Haley's signature is affixed to both the document and sketch while the document contains additional signatures of two witnesses.

8. "Vesting" is an action initiated by filing of an approved development plan as indicated by the above listed §§6-29-1520 and 6-29-1530, South Carolina Local Government Comprehensive Planning Enabling Act of 1994, not by a zoning district classification or an apparent unlawful filing of documentation with the Registrar of Deeds. Consequently, with the disregard of vesting requirement, the property cannot be considered as "Vested" for development as a mini-warehouse/boat storage facility or any other commercial development.
9. Section 38-10.2, Oconee County Code of Ordinance, reads: *"The Control Free District is intended to be the initial zoning district for all parcels within the jurisdiction at the time of adoption only; any parcel subsequently re-zoned to any other district shall not be a part of the Control Free District at any future date"*.
10. Oconee County Ordinance 38-11.1, Lake Overlay District, Section

**(d)(1)a3 provides: *“Marinas and commercial boat storage shall comply with Duke Energy’s regulations and shall not be located within a mile radius of an existing platted and properly recorded subdivision.”***

**The property in question does not comply with Duke Energy’s regulations and is prohibited since it is within one mile of North Harbour Subdivision.**

- 11. The owner of the property in question, Mr. Haley, has failed to comply with State and County zoning requirements needed to establish a “Vested Right” for development. Mr. Haley’s property was correctly re-zoned as “Residential” on March 6, 2012.**
- 12. Any action taken by Oconee County or Mr. Haley in regard to Mr. Haley’s property should be in keeping with the approved residential zoning as well as any over riding regulations that may be in effect.**
- 13. The decision of Joshua A. Stephens, Oconee County Zoning Administrator dated June 4, 2012 was in error and should be overturned.**



**Derrick, Ritter, Williams & Morris, P. A.**

James L. Williams\*  
Emma W. Morris

**Attorneys at Law**  
107 North Fairplay Street  
**Post Office Box 795**  
**Seneca, South Carolina**  
**29679-0795**  
Telephone (864) 882-2747  
Fax (864) 882-2705

William F. Derrick, Sr.  
(1935-2006)

Richard L. Ritter  
Of Counsel

\*ADR Circuit Court Certified

July 30, 2012

Mr. Joshua A. Stephens  
Oconee County Zoning Administrator  
Oconee County Planning Department  
415 S. Pine Street  
Walhalla, SC 29691

IN RE: Ed Haley – Appeal to the Board of Zoning Appeals

Dear Administrator Stephens:

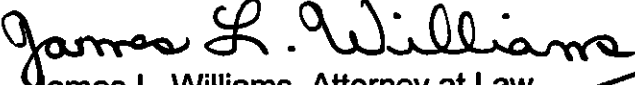

For many years, I have represented Mr. Ed Haley who is the owner of property located at 412 Cane Creek Landing Road in Seneca. He has been informed that the Board's recent decision saying that his prior intended use of the property was a "vested" use has been appealed. The appeal is set for August 16, 2012 at 6:00 p.m. I continue to represent Mr. Haley in regard to these matters and intend to appear and speak on his behalf. Unfortunately, on that date I am scheduled for a medical procedure which can not be rescheduled and which would prevent my attendance. I, therefore, respectfully request that this appeal be continued, or stayed, to a later date. I understand that the Board regularly meets on Thursdays and I am available on any of the following dates at the pleasure of the Board, to wit:

August 9; August 23; August 30; September 6.

Please advise me if this is acceptable to the Board.

Sincerely,

DERRICK, RITTER, WILLIAMS & MORRIS, P.A.

  
James L. Williams, Attorney at Law 

JLW:md

Cc: Ed Haley

# Oconee County Board of Zoning Appeals



415 S. Pine Street  
Walhalla, SC 29691  
Telephone (864)638-4218 Fax (864)638-4168

## **NOTICE OF PUBLIC HEARING**

This notice is to all owners of properties adjacent to or within the area located at:  
Biggerstaff Road and surrounding area.

A public hearing will be held by the Oconee County Board of Zoning Appeals at 6:00 p.m. on Thursday, August 16<sup>th</sup>, 2012 in the Council Chambers of the County Administrative Complex, 415 South Pine Street, Walhalla, SC 29691. The purpose of the hearing is to consider an appeal related to proposed rezoning of Biggerstaff Road and surrounding area.

A copy of the document related to the appeal is available for public viewing during business hours in the Oconee County Planning Department (Telephone 864-638-4218).

# Oconee County Board of Zoning Appeals



415 S. Pine Street  
Walhalla, SC 29691  
Telephone (864)638-4218 Fax (864)638-4168

## NOTICE OF PUBLIC HEARING

This notice is to all owners of properties adjacent to a parcel located at:  
Cane Creek Landing Road, **Tax Map # 193-00-02-004**

A public hearing will be held by the Oconee County Board of Zoning Appeals at 6:00 p.m. on Thursday, August 16<sup>th</sup>, 2012 in the Council Chambers of the County Administrative Complex, 415 South Pine Street, Walhalla, SC 29691. The purpose of the hearing is to consider an appeal related to proposed development on tax map number 193-00-02-004, 412 Cane Creek Landing Road.

A copy of the document related to the appeal is available for public viewing during business hours in the Oconee County Planning Department (Telephone 864-638-4218).

# Oconee County Board of Zoning Appeals



415 S. Pine Street  
Walhalla, SC 29691  
Telephone (864)638-4218 Fax (864)638-4168

.....LEGAL AD.....

## **PLEASE ADVERTISE IN THE NEXT ISSUE OF YOUR NEWSPAPER**

TO: DAILY JOURNAL [classadmgr@dailyjm.com]

The Oconee County Board of Zoning Appeals will conduct a public hearing on Thursday, August 16th, 2012 at 6:00 p.m. in the Council Chambers of the County Administrative Complex, 415 S. Pine Street, Walhalla, SC 29691. The first applicant, Walt Carter, is requesting a reverse of staff decision regarding a property located along Cane Creek Landing Road TMS# 193-00-02-004. The second applicant, Larry Brandt, is requesting a reverse of staff decision regarding the proposed rezoning of the properties along Biggerstaff Road and the surrounding area. If you would like additional information concerning these requests, please contact the Planning Department at 864-638-4218.