

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	Civil Action No.: 2021-CP-40-_____
)	
Congaree Riverkeeper and)	
Gills Creek Watershed Association,)	
)	
Appellants,)	
)	SUMMONS
vs.)	
)	
City of Columbia Board of Zoning)	
Appeals, and)	
American Scrap Iron & Metal, LLC.,)	
)	
Respondents.)	
_____)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint/Notice of Appeal and Appeal herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint/Notice of Appeal and Appeal upon the subscriber, at her office at P.O. Box 1380, Pawleys Island, SC, 29585 within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint/Notice of Appeal and Appeal within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/ Leslie S. Lenhardt
 Leslie S. Lenhardt
 Michael Martinez
 Amy E. Armstrong
 SOUTH CAROLINA ENVIRONMENTAL
 LAW PROJECT
 P.O. Box 1380
 Pawleys Island, SC 29585
 (843) 527-0078 (office)
 (843) 527-0021 (fax)

April 28, 2021

Attorneys for Appellants

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	Civil Action No.: 2021-CP-40-_____
)	
Congaree Riverkeeper and)	
Gills Creek Watershed Association,)	
)	
Appellants,)	
)	COMPLAINT/NOTICE OF APPEAL
vs.)	
)	
City of Columbia Board of Zoning)	
Appeals, and)	
American Scrap Iron & Metal, LLC.,)	
)	
Respondents.)	
_____)	

Appellants Congaree Riverkeeper and Gills Creek Watershed Association appeal the decision of the City of Columbia Board of Zoning Appeals granting a special exception to American Scrap Iron & Metal, LLC, to establish a scrap yard and recycling center located at 2420 Shop Road, within the City of Columbia corporate boundary. A copy of the Board of Zoning Appeals Decision is attached hereto as **Exhibit 1** to this Notice.

BACKGROUND, JURISDICTION, AND VENUE

1. Appellants Congaree Riverkeeper (CRK) and Gills Creek Watershed Association (GCWA) initiate this appeal of the decision of the City of Columbia Board of Zoning Appeals (BOZA) pursuant to S.C. Code Ann. § 6-29-820 of the South Carolina Code and Section 17-115 of the City of Columbia Code of Ordinances.
2. Sections 17-246, 17-258, and 17-273 of the City of Columbia Zoning and Land Development Ordinance require approval by the BOZA of a special exception for use of

property zoned as M-2, heavy industrial, for the purpose of operating scrapyards and recycling centers.

3. Respondent American Scrap Iron and Metal, LLC (American Scrap) requested a special exception to operate a scrapyard and recycling center located 2420 Shop Road, Columbia, South Carolina (Site). (**Exhibit 2**, American Scrap Application).
4. The site is located within the City of Columbia's corporate limits in Richland County and is zoned as M-2, Heavy Industrial.
5. CRK is a 501(c)(3) nonprofit corporation founded in 2008, headquartered in Columbia, South Carolina, and has approximately three hundred members.
6. CRK's mission is to protect and improve water quality, wildlife habitat, and recreation on the Congaree, Broad, and Lower Saluda Rivers, and their tributaries, through advocacy, education, and enforcement of environmental laws.
7. In January 2021, CRK began receiving citizen concerns about a possible illegal scrap yard located at 2420 Shop Road (the Site) that may be impacting Gills Creek.
8. On March 3, 2021, CRK submitted a letter to the BOZA opposing the proposed special exception requested by American Scrap. (**Exhibit 3**, CRK Letter)
9. GCWA is a 501(c)(3) nonprofit corporation headquartered in Columbia, South Carolina, which works to restore the Gills Creek, educate the communities with its watershed, and advocate for the protection and preservation of the Creek's resources, beauty, and environmental sustainability.
10. GCWA has approximately six hundred members living in and near Richland County, South Carolina, who enjoy the recreational opportunities afforded by the Creek and its tributaries.

11. Pollution of the Creek or its tributaries will deprive members of GCWA the full enjoyment of those activities and impose a negative impact on subsistence fishers who regularly fish in the Creek.
12. Additionally, GCWA provides professional services to Richland County, including coordinating the update and implementation of the Gills Creek Strategic Plan, monitoring water quality, and providing educational opportunities to the public.
13. GCWA frequently collaborates with public and private entities to secure funding and execute projects to improve stormwater control or otherwise physically improve the existing condition of the Creek, its tributaries, and the overall Gills Creek Watershed.
14. On March 1, 2021, GCWA submitted a letter to the BOZA detailing its opposition to the special exception requested by American Scrap. (**Exhibit 4**, GCWA Letter)
15. The Site is located approximately 400 feet from Gills Creek and is immediately adjacent to a ditch that drains to the creek.
16. Gills Creek ultimately flows into the Congaree River.
17. The proposed use authorized by the special exception creates a risk of water quality harm, degradation, and contamination to both Gills Creek and the Congaree River due to the operation's potential discharges of fuel, oil and grease, heavy metals, and other pollutants.
18. S.C. Code Ann. §6-29-820(A) permits an appeal of the BOZA's decision within thirty days of its mailing "to the circuit court in and for the county, by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law."
19. As a person with a substantial interest in the BOZA's decision, CRK and GCWA have standing to bring this appeal pursuant to §6-29-820(A).

20. Jurisdiction and venue in this Court are proper.
21. During its scheduled meeting on March 4, 2021, the BOZA granted the requested special exception.
22. S.C. Code Ann. § 6-29-800(F) requires the BOZA’s “findings of fact and conclusions of law [to] be separately stated in final decisions or orders of the Board.”
23. On March 30, 2021, the BOZA issued its final written decision. (**Exhibit 1**, BOZA Final Decision).
24. CRK and GCWA timely filed their Notice of Appeal and Appeal.

GROUND FOR APPEAL

25. Sections 17-112(c) and 17-308 of the City of Columbia’s Code of Ordinances mandate two sets of criteria for the BOZA to evaluate in considering a special exception for the operation of a scrap yard on the Site.
26. The BOZA failed to properly apply the requirements of §§17-112 and 17-308 in its consideration of American Scrap’s request for a special exception.
27. First, §17-112(c) states: “In addition to definitive standards applicable to [scrap yard and recycling center uses], the Board of Zoning Appeals shall approve an application for special exception only upon a finding that the following criteria are met:
 - a. The proposed special exception will not have a substantial adverse impact on vehicular traffic or vehicular and pedestrian safety and adequate provisions are made in the proposed exception for parking and for loading and unloading;
 - b. The proposed special exception will not have a substantial adverse impact on adjoining properties in terms of environmental facts such as noise, lights, glare, vibration, fumes, odors, obstruction of air or light, and litter;

- c. The proposed special exception will not have a substantial adverse impact on the aesthetic character of the area, to include a review of the orientation and spacing of buildings;
 - d. The proposed special exception will not have a substantial adverse impact on public safety or create nuisance conditions detrimental to the public interest or conditions likely to result in increased law enforcement response;
 - e. The establishment of the proposed special exception does not create a concentration or proliferation of the same or similar types of special exception use, which concentration may be detrimental to the development or redevelopment of the area in which the special exception use is proposed to be developed;
 - f. The proposed special exception is consistent with the character and intent of the underlying district as indicated in the zoning district description, with any applicable zoning overlay district goals and requirements;
 - g. The proposed special exception is appropriate for its location and compatible with the permitted uses adjacent to and in the vicinity of the property; and
 - h. The proposed special exception will not adversely affect the public interest.
28. The BOZA failed to make any requisite findings of fact demonstrating the above criteria were satisfied.
29. The record contains no evidence supporting any or all of the BOZA's conclusions of law.
30. Second, §17-308 imposes additional regulation and review for the Site because of its location within a Floodplain Overlay Zoning District.
31. Pursuant to §17-308(d)(3), "All applications for zoning permits for uses permitted within [Floodplain] areas shall be reviewed by the city engineer in accordance with subsection (e)

of this section . . . before the Board of Zoning Appeals may grant a special exception. The findings and recommendations of the city engineer shall be binding upon . . . the Board of Zoning Appeals.”

32. Sections 17-308(e)(1)(d) and (e)(9) require the city engineer to review and certify findings to the BOZA that any special exception within a Floodplain area is appropriate within thirty days of receipt of all required materials.
33. Specifically, pursuant to §17-308(e)(2)(a)-(g), the city engineer must account for the following considerations in reviewing applications for special exceptions:
- a. “No structure, storage of materials or equipment, filling or other use should be approved which, acting alone or in combination with existing or future uses, will significantly increase the hazard of flood damage to other land or property;
 - b. The danger to life and property due to increased flood heights or velocity or erosion damage shall be considered;
 - c. The danger that materials may be swept onto other lands to the injury of others shall be considered;
 - d. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions shall be considered;
 - e. The relationship of the proposed use to the floodplain management program for the area shall be considered;
 - f. The safety of access to the property in times of flood for ordinary and emergency vehicles shall be considered;
 - g. The expected heights, velocity, rate of rise and sediment transport of the floodwaters expected at the site shall be considered.”

34. Further, §17-308(e)(6) mandates the city engineer to consider the following when “reviewing applications relating to the storage of materials and equipment”:
- a. “The storage or processing of materials that in time of flooding are flammable, explosive, or similarly hazardous or injurious should be prohibited;
 - b. Other materials or equipment stored in areas subject to flooding should not be subject to major damage by flooding and should be firmly anchored to prevent flotation or readily removable from the area within the time normally available after flood warning.”
35. According to American Scrap’s business plan included in its application packet for the special exception, the proposed recycling center and scrap yard would receive, unload, dismantle vehicles for the purpose of wholesale trade of vehicle parts. (**Exhibit 2**, pp. 10).
36. Additionally, the business plan notes that its industrial processes will inherently accumulate waste not appropriate for resale, which will be disposed of in “an appropriate and economically safe and reasonable way”; the plan fails to describe the specific method or manner it would dispose of the described waste. (*Id.*).
37. Common wastes in the dismantling of vehicles would likely include potentially hazardous materials such as gasoline, engine oil, or other engine related fluids.
38. The BOZA did not consider any report by the city engineer mandated by §17-308(e) evaluating all of the above requirements and considerations during the hearing or in its order relating to American Scrap’s request for a special exception. (**Exhibit 1**).
39. The Site’s location and intended operation in a Floodplain area and its proximity to Gills Creek, which flows into the Congaree River, increases the potential for water quality harm, degradation, and contamination.

40. This increased potential for harm highlights the BOZA's error in granting the special exception when it wholly failed to require and consider the city engineer's report and the impact of the factors outlined in § 17-308.
41. Additionally, §17-273 establishes the following requirements for the granting of a special exception for the operation of a scrap yard or recycling center in M-2 zoning districts:
- a. "Stocks and supplies shall be either stored inside enclosed buildings or screened by solid walls, opaque fences, dense evergreen shrubbery or the like so that they are not visible from any public street or from the ground level of adjacent property used for residential or office purposes;
 - b. Any required front yard shall not be used for storage;
 - c. The side yard setback for storage areas and buildings adjacent to residential or office uses shall be at least 25 feet;
 - d. Adequate ingress and egress shall be provided;
 - e. Adequate off-street parking and storage shall be provided to accommodate vehicles serving or being served by the center;
 - f. The recycling center shall comply with any other requirements determined by the Board of Zoning Appeals to be essential for safeguarding the public health and safety and for protecting adjacent areas and uses."
42. The BOZA failed to mandate the requirements outlined in items (a) through (e) when it issued its order granting the special exception for the operation of a recycling center and scrap yard on the Site.
43. The BOZA failed to consider any other requirement available to it through item (f) in granting the special exception for the Site.

44. The BOZA erred in granting American Scrap’s request for a special exception without compliance with the applicable requirements of §§17-112, 17-273, and 17-308.
45. The BOZA’s failure to comply with §§17-112, 17-273, and 17-308 is an abuse of discretion and arbitrary and capricious action that requires reversal of the granting of the special exception.

CONCLUSION

Accordingly, CRK and GCWA respectfully request this Court reverse the decision of the BOZA due to its failure to comply with §§17-112(c), 17-273, and 17-308 of the City of Columbia Code of Ordinances, remand the matter to the BOZA for a new hearing or further proceedings, and any other relief this Court deems just and proper.

s/ Leslie S. Lenhardt
Leslie S. Lenhardt
Michael Martinez
Amy E. Armstrong
SOUTH CAROLINA ENVIRONMENTAL
LAW PROJECT
P.O. Box 1380
Pawleys Island, SC 29585
(843) 527-0078 (office)
(843) 527-0021 (fax)

leslie@scelp.org
mike@scelp.org
amy@scelp.org

Attorneys for Appellants

April 28, 2021