

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
	)	CASE NO.: 2021-CP-__-
West Street Farms, LLC, and Mix Farms, LLC,)	
)	
Plaintiffs,)	
	)	SUMMONS
v.)	
	)	(Declaratory Judgment, Permanent Injunction,
City of Beaufort, Beaufort Inn, LLC, and 303	)	Mandamus)
Associates, LLC,)	
	)	<i>Non-Jury</i>
)	
Defendants.)	

TO: THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at 1629 Meeting Street, Suite A, Charleston, South Carolina, 29405, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs will apply to the Court for judgment by default for the relief demanded in the Complaint.

Respectfully Submitted,

AUSTEN & GOWDER, LLC

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ATTORNEYS FOR PLAINTIFFS

April 5, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
	)	CASE NO.: 2021-CP-__-
West Street Farms, LLC, and Mix Farms, LLC,)	
)	
Plaintiffs,)	
)	
v.	)	COMPLAINT
)	
City of Beaufort, Beaufort Inn, LLC, and 303	)	(Declaratory Judgment, Permanent Injunction,
Associates, LLC,	)	Mandamus)
)	
	)	<i>Non-Jury</i>
Defendants.)	

TO: THE ABOVE-NAMED DEFENDANTS

The above-named Plaintiffs, complaining of the above-named Defendants, allege and state as follows:

PARTIES

1. Plaintiff West Street Farms, LLC (“**West Street**”) is a South Carolina limited liability company and a property owner and taxpayer in the City of Beaufort, South Carolina. West Street is the owner of 205, 207, 209, and 221 West Street. Mix Farms, LLC (**Mix Farms**) is a South Carolina limited liability company and a property owner and taxpayer in the City of Beaufort, South Carolina and the owner of 211 Scott Street (West Street and Mix Farms are collectively, “**Plaintiffs**”). All of these properties (“**Adjacent Properties**”) are adjacent to the projects that are the subject of this action.

2. Defendant City of Beaufort, South Carolina (the “**City**” or “**Beaufort**”) is a municipal corporation and body politic created by and subject to the laws of the State of South Carolina.

3. The Defendants 303 Associates, LLC (“**303 Associates**”) and the Beaufort Inn, LLC (“**Beaufort Inn**”) are limited liability companies incorporated in the State of Georgia, in good

standing and registered to do business as foreign corporations by the State of South Carolina (collectively, “**Developer**”). Beaufort Inn, upon information and belief, is a special purpose entity owned or controlled by 303 Associates and has been the applicant for approvals before the City for some or all of the projects challenged herein. Developer owns and seeks to develop the properties that are the subject of this action:

- a. 812 Port Republic Street and 212 Scott Street, identified as R120, Tax Map 4, Parcel 984, as a 77-unit hotel building, with retail/commercial space on the ground floor and the hotel on the upper floors (“**Hotel Project**”); and
- b. 918 Craven Street for which it has sought approval of plans for a parking garage (“**Parking Garage Project**”); and
- c. 916 and 918 Port Republic Street and 209 and 211 Charles Street for which it has sought approval of plans for apartments (“**Apartment Project**”).

STANDING

4. Plaintiffs have constitutional, public importance, and taxpayer standing to seek and obtain the declaratory and other relief sought herein.

5. The property that Plaintiffs own in the City of Beaufort, the Adjacent Properties to the proposed projects challenged by this action, will suffer direct and unique damages if the challenged projects are allowed to proceed without lawful authority under the laws of this State and the City of Beaufort. These damages include but are not limited to the reduction of value, the ability to use the property due to increased traffic and noise, obstruction of views and other impairments to the use and enjoyment of this property.

6. Plaintiffs have an individual stake in the subject matter of this action, by virtue of their ownership of the Adjoining Property, and they are real parties in interest having a real, material, and substantial interest in the subject matter of this action. As a result of the actions of the Defendants

alleged in this complaint, Plaintiffs will sustain or are in imminent danger of sustaining direct injury of a personal nature to them, not common to all members of the general public.

7. Given the foregoing, Plaintiffs have a direct, concrete, and particularized interest in the outcome of this litigation.

8. Further, Plaintiffs have standing due to the great public importance of the issues that this civil action raises, that are capable of being repeated and regarding which judicial guidance is required.

JURISDICTION AND VENUE

9. This Honorable Court has both subject matter and personal jurisdiction over the parties to this action.

10. Venue is proper in Beaufort County in that the real property and development projects at issue and one or more questions, actions, or controversies at issue in this case arise in Beaufort County.

FACTUAL ALLEGATIONS

The Beaufort Code and Large Footprint Buildings

11. The parties and projects at issue in this case are governed by the zoning ordinance for the City of Beaufort, adopted on June 27, 2017 and updated on July 10, 2018 (“**Beaufort Code**”).¹

12. The Hotel Project, the Parking Garage Project, and the Apartment Project are located in the Downtown Core District (T5-DC) zoning district under the Beaufort Code.

13. In the T5-DC transect zoning district, buildings are restricted to 100 feet building width at the frontage. Beaufort Code Sec. 2.4.1(D)(3). Buildings that exceed 100 feet building width

¹ Though the Developer presented preliminary applications for the Hotel Project and the Parking Garage Project to the City in 2016, it substantially revised those plans in 2017 such that the City considers the 2017 submissions a new application and is applying the Beaufort Code to the Hotel Project and the Parking Garage Project.

shall comply with the Large Footprint Building standards in Beaufort Code Sec. 4.5.10. Beaufort Code Sec. 2.4.1(D)(3), footnote 9.

14. The Beaufort Code defines Large Footprint Buildings as “a building that has a footprint greater than 20,000 square feet. It is a type often used by big-box, national retailers. In the T4 and T5 transect zones, they shall be integrated into the streetscape or screened with Liner Buildings (see Section 4.5.9).” Beaufort Code Sec. 4.5.10(A).

15. Large Footprint Buildings have various specific development requirements under Beaufort Code Sec. 4.5.10 (B)(1)-(7).

16. One preliminary and fundamental requirement for Large Footprint Buildings is that in the Historic District, except along Boundary Street, Large Footprint Buildings “are permitted by Special Exception only.” Beaufort Code Sec. 4.5.10 (B)(5).

17. The Hotel Project, the Parking Garage Project, and the Apartment Project are located within the Beaufort Historic District (HD) Overlay as defined by Beaufort Code Sec. 2.7.1 and as shown on the official Zoning Map of the City of Beaufort.

18. Special Exceptions to the Beaufort Code can only be granted by the City of Beaufort Zoning Board of Appeals (“**ZBOA**”) Beaufort Code Sec. 10.3.1(C)(3).

The Hotel Project

19. Developer made a preliminary submission of the Hotel Project in some form to the City in 2016, then made a new submission of the project to the City in 2017. The Hotel Project received preliminary approval by the City on July 12, 2017.

20. Thereafter, the Developer has changed the concept several times and resubmitted the Hotel Project plans to the Historic District Review Board (“**HDRB**”) on July 10, 2019 and October 9, 2019.

21. Though the Hotel Project received a Certificate of Appropriateness in October 2019,

Developer has made subsequent substantial changes to the plans in February 2021, and, as of the date of the filing of this Complaint, those submissions were still under review by the City.

22. The Hotel Project as currently submitted has a 179-foot building width and, as such, is a Large Footprint Building under the Beaufort Code and subject to the requirements of Sec. 4.5.10.

23. The Hotel Project, despite receiving some development approvals from the City, has not applied for or received a Special Exception by the ZBOA.

24. When the applications for preliminary approval of the Hotel Project was presented to the HDRB in 2017, neither the City staff members nor the Developer's agents presenting these plans for approval made the members of the HDRB aware that these projects as planned were Large Footprint Buildings or of the requirement for Special Exception approval by the ZBOA of Large Footprint Buildings before further planning approval could be obtained. In fact, the HDRB was told at the 2017 meeting when that version of the Hotel Project was presented that "no zoning issues existed."

The Parking Garage Project

25. In 2016, the HDRB granted conceptual approval to the Parking Garage with conditions.

26. On July 12, 2017, the HDRB approved a motion for the Parking Garage to undergo significant revision and come back to the HDRB with a simpler design.

27. On September 20, 2017, the HDRB gave preliminary approval for the Parking Garage plan with various conditions. The then current drawings were approved as submitted and the Developer was tasked with refining the design details in order to receive final approval

28. In July 2019 and July 2020, the Parking Garage received first and second extensions of preliminary approval, respectively, and on March 4, 2021, Developer submitted for final approval which submission is currently under review.

29. Like the Hotel Project, the Parking Garage Project is also a Large Footprint Building, having a frontage of 300 feet.

30. Like the Hotel Project, the Parking Garage Project has not applied for or received a Special Exception from the ZBOA.

The Apartment Project

31. Developer submitted plans for approval for the Apartment Project, but on June 18, 2020, withdrew those plans after comments by the HDRB.

32. On February 10, 2021, the HDRB postponed a pending demolition request for the Apartment Project site to its next meeting and gave conceptual approval to a new building on the Apartment Project site.

33. On March 10, 2021, the HDRB granted approval for demolition of the existing building on the Apartment Project parcel on the condition that the demolition permit will not be issued until a building permit is issued for the replacement building on that site.

34. Like the Hotel Project and the Parking Garage Project, the Apartment Project is also a Large Footprint Building, having a frontage of 130 feet on Port Republic Street.

35. Since neither the Hotel Project, the Parking Garage Project, nor the Apartment Project have received Special Exception approval by the ZBOA, all preliminary and other approvals granted by boards or agencies of the City to the Developer for these projects are void, and the Developer has no legal authority to proceed with any demolition, construction or alteration of the Hotel Project, Parking Garage Project, or the Apartment Project sites based on any plans or approvals purportedly granted by the City without obtaining first a Special Exception approval by the ZBOA.

FOR A FIRST CAUSE OF ACTION
Declaratory Judgment
(S.C. Code Ann. § 15-53-30)

36. Plaintiffs restate and reiterate all preceding paragraphs as if specifically restated herein.

37. S.C. Code Ann. § 15-53-30 provides that any person whose rights, status or other legal relations are affected by a contract, statute, or ordinance may have determined any question regarding construction or validity and obtain a declaration of rights, status or other legal relations.

38. Plaintiffs seek a declaratory judgment pursuant to S.C. Code Ann. § 15-53-30 and Rule 57, SCRCP, for the purposes of resolving one or more actual cases and controversies between and among the parties to this case.

39. These issues are ripe for this Court's determination because, among other things, the City has issued permits, approvals and a Certificate of Appropriateness to the Hotel Project, the Parking Garage, and the Apartment Project without the ZBOA having first granted Special Exceptions to these Large Footprint Buildings in the Historic District as required by the Beaufort Code.

40. The City and the Developer are parties in interest concerning the declaratory relief being sought, because the Developer has sought approvals to develop and build these projects and such approval is the responsibility of the City by its ordinances as granted and provided by state statute.

41. Plaintiffs seek an Order containing the following declarations from this Court:

- a. The Hotel Project, the Parking Garage Project, and the Apartment Project as currently designed and submitted to the City, exceed 100 feet width frontage and, under the Beaufort Code, shall comply with the Large Footprint Building standards of Beaufort Code Sec. 4.5.10.
- b. Under Sec. 4.5.10, as the Hotel Project, the Parking Garage Project, and the Apartment Project are located in the Historic District Overlay, both are permitted only by the granting of a Special Exception by the ZBOA.
- c. Neither the Hotel Project, the Parking Garage Project, nor the Apartment

Project have received a Special Exception from the ZBOA.

- d. Neither the Hotel Project, the Parking Garage Project, nor the Apartment Project may proceed with any construction, alteration or improvement on those project sites with first receiving a Special Exception for each project from the ZBOA.
- e. All prior approvals by the City that were issued without the prerequisite Special Exception permitting by the ZBOA are null, void and of no effect.

FOR A SECOND CAUSE OF ACTION
(Permanent Injunction, Mandamus and
Other Equitable/Injunctive Relief)

42. Plaintiffs restate and reiterate all preceding paragraphs as if specifically restated herein.

43. Based on the aforementioned declarations, Plaintiffs respectfully seek an Order prohibiting the City from proceeding with any further review or approval of any plans or submissions for the Hotel Project or the Parking Garage Project prior to each of the projects receiving a Special Exception from the ZBOA.

44. Plaintiffs also respectfully request the court issue a Writ of Mandamus requiring the City through its officials, boards, and commissions to do its duty to follow the Beaufort Code and not proceed with any approvals or submissions for the Hotel Project, the Parking Garage Project, or the Apartment Project without the ZBOA first having granted a Special Exception as required by Beaufort Code. Sec. 4.5.10(B)(5).

45. Further, Plaintiffs seek an Order prohibiting the Developer from taking any action to alter, construct or develop either the Hotel Project, the Parking Garage Project or Apartment Project without first obtaining a Special Exception from the ZBOA.

46. Plaintiffs also respectfully seek all other injunctive and equitable relief necessary and

appropriate to prevent the unlawful development of these projects not in accordance with the Beaufort Code.

**FOR A THIRD CAUSE OF ACTION
(Attorneys' Fees Pursuant to the State Action Statute)**

47. Plaintiffs restate and reiterate all preceding paragraphs as if specifically restated herein.

48. Plaintiffs in this case are contesting multiple instances of failure to act in accordance with the law by the City in issuing approvals to these projects without first complying with its own ordinance, Beaufort Code 4.5.10(B)(5).

49. Should this Court grant all, or some, of the declaratory and other relief requested herein, Plaintiffs respectfully request this Court deem Plaintiffs the "prevailing party" and award attorneys' fees and costs under S.C. Code Ann. § 15-77-300.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for this Honorable Court to grant the declaratory, injunctive, and other relief requested herein; grant attorneys' fees and costs pursuant to S.C. Code Ann. § 15-77-300 and S.C. Code Ann. § 30-4-100 (B) and grant such other, further, or different relief as may be deemed just and proper.

Respectfully Submitted,

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