

**STAFF REPORT
TO THE
FLORENCE COUNTY BOARD OF ZONING APPEALS
TUESDAY, FEBRUARY 21, 2023
BZA#2023-01**

SUBJECT: An appeal requested by Michael Lindley, from requirements of the Florence County Code of Ordinances, Chapter 30 - ZONING ORDINANCE ARTICLE VII. - GENERAL AND ANCILLARY REGULATIONS, Sec.30-249. - Nonconformities for property located at 2537 Heathway Drive, Florence, SC 29501 as shown on Florence County Tax Map No. 00125, Block 01, Parcel 138.

LOCATION: 2537 Heathway Dr. Florence, SC

TAX MAP NUMBER: 00125, Block 01, Parcel 138

COUNCIL DISTRICT(S): 9; County Council

OWNER OF RECORD: Stephanie and Michael Lindley

APPLICANT: Michael Lindley

LAND AREA: Approximately .59 acres

APPEAL REQUESTED: The applicant appeals to the Board of Zoning Appeals that the Zoning Administrator erred in the interpretation of the Zoning Ordinance in regards to legally non-conforming structures.

STAFF ANALYSIS:

Existing Land Use and Zoning:

The subject property is residential and unzoned.

Surrounding Land Use and Zoning:

North: Residential/Unzoned/Florence County
South: Residential/Unzoned/Florence County
West: Residential/Unzoned/Florence County
East: Residential/Unzoned/Florence County

Background:

The request is an appeal to the zoning administrator's decision concerning the determination of what constitutes a legally non-conforming structure. Michael Lindley, owner of the subject property, was initially issued a permit to construct an accessory pool house on October 13, 2020. Once construction was completed, a certificate of occupancy was issued for the pool house on December 23, 2020. The Florence County Codes Enforcement division received a written

complaint on January 25, 2021 that a hair salon was being operated at the subject property. On January 27, 2021 Codes Enforcement staff made a site visit to confirm that a business was being conducted at the location. Mr. Lindley was informed of the requirements to have the structure correctly permitted and the necessary steps to be issued that permit. After failing to have a permit issued for the structure within reasonable time, Mr. Lindley was issued a citation on November 2, 2022. Mr. Lindley then contacted staff to inform them that he was still working on having an engineer complete the necessary procedures so that a permit could be issued. Mr. Lindley was then informed that as of January 27th, 2022 a moratorium had gone into effect that would prohibit him from being issued a zoning compliance to operate the business, even if necessary building standards were met.

This moratorium was put into place by Florence County Council to prohibit certain changes of use while staff was tasked with recommending zoning designations for unzoned properties and clusters of properties surrounded by municipal limits. Mr. Lindley was informed that the moratorium would no longer effect the property once the property was zoned. However, since Mr. Lindley’s property is being recommend for a residential zoning district, zoning would still prohibit the commercial use of the building once the moratorium has been lifted. The applicant maintains the position that this zoning restriction should not apply to this particular situation since the structure was being used for a business prior to the moratorium.

The zoning administrator determined that this did not meet the requirements of a legally non-confirming structure since the structure was not being occupied lawfully. This determination came from the fact that there was no prior zoning compliance issued for the site to be used as a business and the building’s original certificate of occupancy was issued for the structure to be used as a pool house. Also, the structure currently does not meet the standards of the unzoned area for commercial use. The zoning code requires that a structure which is intended for commercial use must have a rear setback of 20ft. The site plan that was submitted with the original building application only shows the structure having a 16ft rear setback. To be exempt from this setback requirement under the nonconformity section of the zoning code, the structure would have had to be constructed prior to the adoption of the current Florence County zoning code, which was adopted in 1999.

Per the Florence County Zoning Ordinance, Chapter 30 - ZONING ORDINANCE, ARTICLE VII. – GENERAL AND ANCILLARY REGULATIONS, Sec. 30-249. – Nonconformities., it is referenced in continuation that any such use, building, or structure must be lawful.

The zoning of the subject property is scheduled to appear before County Council for third reading at their March meeting. The recommended zoning district is R-1 Single Family Residential. Mr. Lindley was scheduled to appear before the Magistrate Court on January 19th 2023, but Codes Enforcement has postponed the trial until Mr. Lindley’s case is heard before the Board of Zoning Appeals.

Access and Circulation:

The property is currently accessed by way of Heathway Dr., Florence, SC.

Sec. 30-293. – Board of zoning appeals (c)

Powers of board of appeals; variances; special exceptions; remand; stay; hearing; decisions and orders. The board of appeals has the following powers:

- (1) To hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;
- (2) To hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:
 - a. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
 - b. These conditions do not generally apply to other property in the vicinity;
 - c. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
 - d. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

APPEAL REQUEST: (Applicant responses are underlined)

Applicant hereby appeals to the Board of Zoning Appeals from the action of the Zoning Official affecting the property described in the Notice of Appeal (Form 1) on the grounds that: **We have been working with Florence County Code Enforcement and Zoning regarding the usage of our Pool House and converting it to commercial use since before the current permitting moratorium was put into place. Our usage was confirmed as valid according to Zoning, we just needed to switch the permitted use of the building to commercial. A permit has not been opened because I was instructed to have engineering plans done first so the needed changes would be know, and non-responsive, so I have retained a new one who is ready to complete the work as soon as we are allowed.**

() granting (x) denial of an application for a permit to **change the building to commercial** was erroneous and contrary to provisions of the Zoning Ordinance in Section _____ or other action or decision of the Zoning Official was erroneous as follows: **Our ability to run a Salon out of the building in this location was confirmed by zoning, and we have been in the process of working with the County towards engineering plans, permitting, and physical changes to support the use of the building as commercial since before any zoning changes were suggested or moratorium was put into place.**

Applicant is aggrieved by the action or decision in that:

We feel that we should be “grandfathered” in to the existing zoning and allowed to continue as legally non-conforming so that our small business will not be negatively impacted by have to close.

Applicant contends that the correct interpretation of the Zoning Ordinance as applied to the property is:

Permitting building for commercial use.

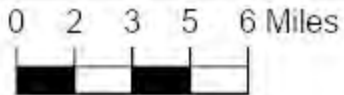
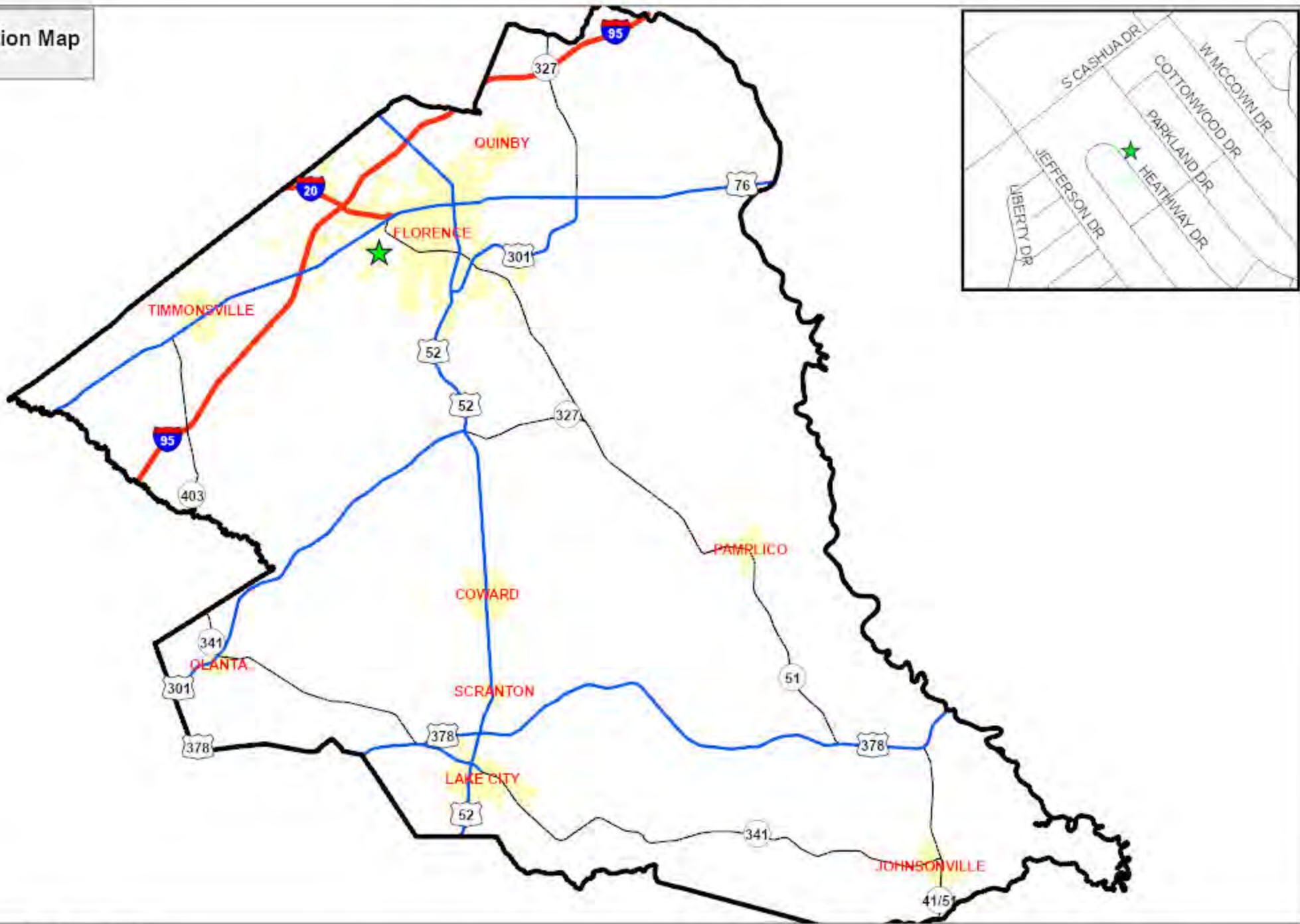
Applicant requests the following relief:

We be allowed to follow through on plans to permit the building as commercial that were made with various entities within Florence County, that we have been acting on in good faith, and that started in advance of any proposed zoning changes to the property.

ATTACHMENTS:

1. Location Map
2. Zoning Map
3. Aerial Map
4. Certification of Occupancy
5. S.C. Department of Revenue Retail License

Location Map



Florence County
Planning Department
Meeting Date:
02/21/2023



Council District 9
BZA#2023-01

**Florence County
Zoning Map**



0 20 40 80 Feet

Florence County
Planning Department
Meeting Date:
02/21/2023



**Council District 9
BZA#2023-01**

BZA 2023-01



HEATHWAY DR





FLORENCE COUNTY

Planning, Building Inspection, Engineering, E-911 Addressing,
and Code Enforcement Department
518 S. Irby St., Florence, SC 29501
(843) 676-8600

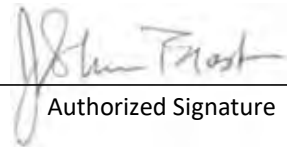
Florence County

Certificate of Occupancy

This certificate issued pursuant to the requirements of the International Building Code certifying that at the time of issuance this structure was in compliance with the various ordinances of the jurisdiction regulating building construction or use.

Permit Number:	51406-0920-ACCP-SF	Building Code:	2018
Classification:	Single Family Detached	Occupancy:	R-3 Residential (Single Family)
Work Classification:	Pool House	Construction Type:	VB
Total Construction Area:		Occupancy Load:	
Construction Value:	\$80,000.00	Fire Protection System:	No
Zoning District:	UNZONED	Rated Assemblies:	None
Owner of Building:	Lindley Michael D & Lindley Stephanie Milligan	Contractor:	Michael Lindley
Building Address:	2537 Heathway Dr Florence, SC 29501	Address:	2537 Heathway Dr Florence, SC 29501
Description:	Building a pool house	Date:	12/23/2020

J. Shawn Brashear
Building Official



Authorized Signature



THIS LICENSE MUST
BE PUBLICLY
DISPLAYED AS
PROVIDED BY LAW

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
RETAIL LICENSE

THIS LICENSE IS NEITHER
TRANSFERABLE NOR
ASSIGNABLE
BEFORE POSTING READ
INSTRUCTIONS BELOW

ST-1
(Rev. 08/28/18)
5000

OWNER NAME AND BUSINESS LOCATION:

WILD ORCHID SALON LLC
2537 HEATHWAY DR
FLORENCE SC 29501-5300

**LICENSE MUST BE RETURNED
FOR ALL CHANGES AND/OR
CLOSE OF BUSINESS**

WILD ORCHID SALON LLC
2537 HEATHWAY DR
FLORENCE SC 29501-5300



INDUSTRY
TYPE ▶

812112

EFFECT
DATE ▶

01-Dec-2020

LICENSE NUMBER

101443047

Letter ID: L0016259478

TRADE NAME AND MAILING ADDRESS

THIS LICENSE IS VALID FOR ABOVE LOCATION ONLY. CHANGE OF LOCATION OR OWNERSHIP REQUIRES NEW LICENSE.

EACH PLACE OF BUSINESS MUST BE LICENSED SEPARATELY

File # 101443047

SID # 9485607

Florence

Florence

2286

This retail license is issued pursuant to Article 5, Chapter 36, Title 12, Code of Laws of South Carolina, 1976, as amended. The retail license is valid so long as the person to whom it is issued continues in the same business at the same location as shown on license, unless revoked by the Department of Revenue for cause. It is presumed that a retailer is not continuing in the same business and must surrender the retail sales license if the retailer has no retail sales for twenty-four consecutive months. To allow the license to remain valid, the retailer may submit an affidavit to the department swearing that the business is continuing. If the business is closed, moved or sold, the licensee must complete the questions listed below and return this license to the SC Department of Revenue, PO Box 125, Columbia, SC 29214.

IF THERE ARE ANY QUESTIONS REGARDING THIS LICENSE, CONTACT THIS DIVISION AT 1-844-898-8542

OUT OF BUSINESS OR CHANGE OF OWNERSHIP (Also complete C-278)

DATE OF CLOSING OR SALE _____

NEW FIRM NAME _____

NEW OWNER'S NAME OR NAMES _____

CHANGE OF ADDRESS AND/OR TRADE NAME (Also complete SC-8822)

IF BUSINESS LOCATION CHANGES, RETURN THIS LICENSE AND COMPLETE CHANGE OF ADDRESS/BUSINESS LOCATION FORM SC-8822.
IF BUSINESS IS MOVED OR THE TRADE NAME IS CHANGED, GIVE THE:

NEW TRADE NAME _____ DATE BUSINESS MOVED _____

NEW LOCATION ADDRESS _____ BUSINESS MUNICIPAL LIMITS _____

MAILING ADDRESS _____ NEW TELEPHONE NUMBER _____



INSTRUCTIONS

This is your new license. Please fold on the above perf marks and display in a conspicuous place.

If you have any questions concerning this license, please call the SC Department of Revenue 1-844-898-8542.

If the business is closed, moved, or sold, please complete the form above and return it with the original license to:

South Carolina Department of Revenue
Registration Section 15
P.O. Box 125, Columbia, SC 29214-0400

JP:469E:00118S:010IN:0A#:A0572291473J:0000029169*

**FLORENCE COUNTY BOARD OF ZONING APPEALS
 2023 MEETING SCHEDULE
 TUESDAYS @ 6:30 PM
 COUNTY COMPLEX
 180 N. IRBY STREET, FLORENCE, SC 29501
 ROOM 803 – COUNTY COUNCIL CHAMBERS
 DEADLINE: 3rd TUESDAY OF PREVIOUS MONTH**

*****MEETING & DEADLINE DATE EXCEPTIONS DUE TO HOLIDAY**

MEETING DATES 3 RD TUESDAY OF EACH MONTH	DEADLINE FOR ALL ITEMS REQUESTING APPEARANCE ON A RESPECTIVE AGENDA
JANUARY 17, 2023	DECEMBER 20, 2022
FEBRUARY 21, 2023	JANUARY 17, 2023
MARCH 21, 2023	FEBRUARY 21, 2023
APRIL 18, 2023	MARCH 21, 2023
MAY 16, 2023	APRIL 18, 2023
JUNE 20, 2023	MAY 16, 2023
JULY 18, 2023	JUNE 20, 2023
AUGUST 15, 2023	JULY 18, 2023
SEPTEMBER 19, 2023	AUGUST 15, 2023
OCTOBER 17, 2023	SEPTEMBER 19, 2023
NOVEMBER 21, 2023	OCTOBER 17, 2023
***DECEMBER 12, 2023	***NOVEMBER 14, 2023