

Notice of Appeal - Form 1

Board of Zoning Appeals

Date Filed: 11/5/2025 Permit Application No. _____ Appeal No. _____

Instructions

This form must be completed for a hearing on **appeal** from action of a zoning official, application for a **variance** or application for **special exception**. Entries must be printed or typewritten. If the application is on behalf of the property owner(s), all owners must sign. If the applicant is not an owner, the owner(s) must sign the Designation of Agent. An accurate, legible plot plan showing property dimensions and locations of structures and improvements must be attached to an application for variance or special exception.

THE APPLICANT HEREBY APPEALS [indicate one]:

- ☒ from action of a zoning official as stated on attached Form 2
☐ for a variance as stated on attached Form 3.
☐ for a special exception as stated on attached Form 4.

APPLICANT(S) [print] W. Andrew Gowder, Jr. AND Justin Price

Address: PO Box 20820, Charleston, SC 29413

Telephone: (843)727-0060 [work] _____ [home]

Interest: Counsel Owner(s): _____ Adjacent Owner(s); Other: _____

OWNER(S) [if other than Applicant(s)]: See Attached Notice of Appeal

Address: _____

Telephone: _____ [work] _____ [home]

[Use reverse side if more space is needed.]

PROPERTY ADDRESS: See Attached Notice of Appeal

Block _____ Lot _____ Subdivision _____

Tax Map No. _____ Plat Book _____ Page _____

Lot Dimensions: _____ Area: _____

Zoning District: _____ Zoning Map Page: _____

DESIGNATION OF AGENT [complete only if owner is not applicant]: I (we) hereby appoint the person named as Applicant as my (our) agent to represent me (us) in this application.

Date: 11/5/2025

See attached Notice of Appeal Form

Owner signature(s)

I (we) certify that the information in this application and the attached Form 2, 3 or 4 is correct.

/s/ Justin Price

Date: 11/5/2025

/s/ W. Andrew Gowder, Jr.

Applicant signature(s)

Appeal from Action of Zoning Official - Form 2 Board of Zoning Appeals

Date Filed: 11/5/2025 Permit Application No. _____ Appeal No. _____

1. 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:

☐ granting ☒ denial of an application for a permit to determine zoning
was erroneous and contrary to provisions of the zoning ordinance in Section 21-70;
or other action or decision of the zoning official was erroneous as follows:

See attached appeal brief - Grounds for Appeal

2. Applicant is aggrieved by the action or decision in that:

See attached appeal brief.

3. Applicant contends that the correct interpretation of the zoning ordinance as applied to the property is:

See attached appeal brief - Legal Argument

4. Applicant requests the following relief:

See attached appeal brief - Requested Relief Section

Date: 11/5/2025

/s/ W. Andrew Gowder, Jr.

Applicant signature

Checklist for Zoning Appeals

Step	Action Required	Time	After
1. Notice of appeal to Board	File appeal form with zoning official and board secretary [Forms 1 and 2, 3 or 4]	Time set by rules or ordinance - if not, then 30 days	Actual notice of action
2. Set Board hearing	Board sets hearing date	Reasonable time	Appeal filed
3. Notice of hearing	Publish in newspaper and notify parties in interest	15 days	Prior to hearing
4. Board decision	Board conducts hearing and makes written decision with findings of fact and conclusions [Form 5, 6 or 7]	Reasonable time or as set by rules	Hearing
5. File decision	Serve on parties in interest by certified mail - retain as permanent public record	Immediately	Decision rendered
6(a). Appeal to circuit court	File petition with clerk of court stating grounds of appeal - copy to board desirable	30 days	Decision of board is mailed
6(b). Appeal to circuit court	Property owner elects to file notice of appeal with mediation request	30 days	Decision of board is postmarked
7. Notice by clerk of court	Notify board secretary of appeal	Immediately	Petition is filed
8. File record	Board secretary files certified copy of proceedings, transcript, evidence and decision with clerk. Board attorney may file a return and serve on opposing counsel with copy of certified record.	30 days	Notice from clerk
9. Hear appeal	Circuit court sets hearing at next term of court (probably will not be set until reached according to filing number)	10-day notice	During term of court
10. Appeal to state appellate courts	Serve and file notice of appeal	30 days	Notice of entry of circuit court order



BOARD OF ZONING APPEALS

IN ACCORDANCE WITH **ZONING ORDINANCE SECTION 21-175,**

I W. Andrew Gowder, Jr. AND Justin Price HAVE SUBMITTED A COMPLETED BOARD OF ZONING
APPEALS APPLICATION, FOR THE MEETING DATE OF December 11, 2025 , WHICH WILL BE HELD AT
SULLIVAN'S ISLAND TOWN HALL LOCATED AT **2056 MIDDLE STREET, SULLIVAN'S ISLAND, SOUTH CAROLINA.**

ADDITIONALLY, I UNDERSTAND THAT THE BOARD MAY POSTPONE OR PROCEED TO DISPOSE OF A MATTER ON THE RECORD
BEFORE IT IN THE ABSENCE OF AN APPEARANCE ON BEHALF OF AN APPLICANT.

/s/ Justin Price

/s/ W. Andrew Gowder, Jr.

11/5/2025

APPLICANT SIGNATURE

DATE

BEFORE THE BOARD OF ZONING APPEALS
TOWN OF SULLIVAN'S ISLAND, SOUTH CAROLINA

IN RE: APPEAL OF ZONING DETERMINATION)
FOR PROPERTIES IN THE 2200 BLOCK OF)
ATLANTIC AVENUE)
(TMS NOS. 529-09-00-041, 529-09-00-042,)
529-09-00-043, 529-09-00-044, 529-09-00-045,)
AND 529-09-00-046).)

NOTICE OF APPEAL AND APPEAL BRIEF

TO: Town of Sullivan's Island Board of Zoning Appeals
2056 Middle Street
Sullivan's Island, SC 29482

The undersigned property owners and their attorney, pursuant to S.C. Code Ann. § 6-29-820 and the Town of Sullivan's Island Zoning Ordinance, hereby appeal the zoning determination issued by Charles Drayton, Director of Planning and Zoning, dated October 21, 2025, regarding properties at 2201, 2205, and 2213 Atlantic Avenue (TMS Nos. 529-09-00-046, 529-09-00-045, and 529-09-00-043, respectively), and by extension, all similarly situated “King's Grant Properties” in the 2200 block of Atlantic Avenue.

PARTIES AND REPRESENTATION

Appellants:

1. Todd Aaron and Jessica Aaron, owners of 2213 Atlantic Avenue (TMS 529-09-00-043);
2. High Tide Productions, LLC, owner of 2205 Atlantic Avenue (TMS 529-09-00-045); and
3. Mark Reinhardt Trust, owner of 2201 Atlantic Avenue (TMS 529-09-00-046).

Additional affected property owners who may join this appeal:

4. Owner of TMS 529-09-00-041;
5. Owner of TMS 529-09-00-042; and
6. Owner of TMS 529-09-00-044.

Represented by:

W. Andrew Gowder, Jr., Esq.
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(representing Todd Aaron, Jessica Aaron, and High Tide Productions, LLC)

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justin.price@dhwlegal.com
(representing Mark Reinhardt Trust)

JURISDICTION AND TIMELINESS

This appeal is timely filed within thirty (30) days of the October 21, 2025 zoning determination letter issued by the Planning Administrator, as required by S.C. Code Ann. § 6-29-820(B).

The Board of Zoning Appeals has jurisdiction over this matter under S.C. Code Ann. § 6-29-800 and Town of Sullivan's Island Zoning Ordinance Sec. 21-177.

DECISION BEING APPEALED

Appellants appeal the October 21, 2025 zoning verification letters from Charles Drayton, Director of Planning and Zoning, which determined that the properties at 2201, 2205, and 2213 Atlantic Avenue (TMS Nos. 529-09-00-046, 529-09-00-045, and 529-09-00-043, respectively) are "split-zoned" with a portion designated as RC-1 Recreation and Conservation Area District.

Specifically, the determination states:

As was previously determined in the zoning letter issued on January 17, 2025 (attached), the subject property is a split-zoned property located within the RS, Residential Single Family, Zoning District and the RC-1, Recreation and Conservation, Zoning District. The property contains one single-family residence located entirely within the RS Zoning District boundaries... The RC-1-zoned portion of the property consists of an undevelopable portion

of the property that is beachward of the straight line described in Section 21-68 A. (1) of the Zoning Ordinance...

This determination applies the RC-1 zoning classification to privately owned portions of the King's Grant Properties extending to the low water mark of the Atlantic Ocean.

GROUND'S FOR APPEAL

This appeal is brought on the following grounds:

1. The Planning Administrator's interpretation that RC-1 zoning applies to privately owned King's Grant Properties contradicts the plain language of Section 21-70 of the Zoning Ordinance.
2. The RC-1 zoning classification, by its terms and structure, applies solely to Town-owned property and cannot lawfully be imposed on private property.
3. Applying RC-1 restrictions to privately owned property would result in an unconstitutional regulatory taking without just compensation.
4. The determination does not consider the established private ownership of these properties extending to the low water mark through succession from the 1883 King's Grant.
5. The determination conflicts with the Town's own 2020 acknowledgment that it does not own the King's Grant Properties.
6. The determination incorrectly applies Section 21-68 A.(1) to define the RC-1 boundary on private property.

STATEMENT OF FACTS

The King's Grant Properties

1. In 1883, the South Carolina General Assembly granted Robert Chisholm a title to land on Sullivan's Island explicitly bounded by "the low water mark on the South or the beach side."
2. This 1883 King's Grant established a parcel now made up of six lots on the 2200 block of Atlantic Avenue, all privately owned and extending to the low water mark of the Atlantic Ocean.

3. All subsequent surveys and recorded deeds for these properties consistently confirm the low water mark boundary.
4. These six properties are unique on Sullivan's Island—they are the only known properties formed by King's Grant with seaward boundaries extending to the low water mark.
5. Unlike typical oceanfront properties governed by the public trust doctrine below mean high water, these King's Grant Properties retain clear, unencumbered private title to the low water mark.

The Town's Acknowledgment of Private Ownership

6. On January 17, 2025, the Planning Administrator issued a zoning verification letter acknowledging:
"The oceanside boundary of both the parcel and the RC-1 District are delineated by the low water mark of the Atlantic Ocean."
7. In 2020, the Town and Lowcountry Land Trust clearly acknowledged that the King's Grant Properties were not owned by either the Town or the Land Trust.
8. The Town and Land Trust made amendments to exclude these properties from the conservation easement management area, confirming the Town's recognition of private ownership.
9. The deed dated February 12, 1991, that claimed to transfer these properties to the Town was void *ab initio* because the Town never held title to them.

Historical Use and Maintenance

10. For decades before February 2025, the owners of these six properties kept the vegetation between their homes and the ocean neat and properly maintained, consistent with residential standards.
11. This maintenance was carried out openly, publicly, and with the knowledge of Town officials.
12. The Town never objected to this maintenance or claimed RC-1 restrictions on these properties until 2025.
13. This long-standing use and maintenance establish vested nonconforming use rights even if RC-1 zoning were properly applicable (which it is not).

LEGAL ARGUMENT

I. THE PLAIN LANGUAGE OF SECTION 21-70 LIMITS RC-1 ZONING TO TOWN-OWNED PROPERTY

Section 21-70 of the Sullivan's Island Zoning Ordinance is titled "General provisions for RC-1 Area District" and states in relevant part:

The provisions of this Article are applicable to the RC-1 Area District land area of the Town. The Town of Sullivan's Island retains full authority over RC-1 Area District land, subject to the conditions, restrictions, and covenants set forth in the Title to Real Estate dated February 12, 1991, conveying said land to the Town of Sullivan's Island.

This language is clear and unambiguous.

1. RC-1 provisions apply to "land area of the Town"—meaning land owned by the Town.
2. The ordinance explicitly cites the February 12, 1991 deed "conveying said land to the Town" as the foundation for RC-1 authority.
3. The statute gives the Town "full authority" over RC-1 land—a power the Town can only exercise over property it owns.

The fundamental principle of statutory interpretation is that clear, unambiguous language should be given its plain meaning. *Poinsett Constr. Co. v. Fischer*, 301 S.C. 343, 346, 391 S.E.2d 875, 877 (Ct. App. 1990) ("In the interpretation of statutes our sole function is to determine and, within constitutional limits, give effect to the intention of the legislature. We must do this based upon the words of the statutes themselves. To do otherwise is to legislate, not interpret. The responsibility for the justice or wisdom of legislation rests exclusively with the legislature, whether or not we agree with the laws it enacts.")

When the language is clear and capable of legal construction, there is no room for interpretation, and courts must apply it according to its plain meaning. *Joiner v. Rivas*, 342 S.C. 102, 108, 536 S.E.2d 372, 375 (2000) ("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used...").

The Planning Administrator's interpretation that RC-1 can apply to private property conflicts with the explicit language restricting it to "land area of the Town."

II. THE STRUCTURE AND CONTENT OF ARTICLE V CONFIRM THE PUBLIC OWNERSHIP REQUIREMENT

Throughout Article V (Sections 21-67 to 21-76), the RC-1 district is consistently described as publicly owned conservation land managed by the Town.

Section 21-70(A) refers to trimming and pruning permits as "accommodations" for "landowners living immediately adjacent to" RC-1 areas, not as rights of owners within RC-1 areas.

Section 21-70(C) states: "Nothing in this Article shall be construed to prevent the Town of Sullivan's Island from erecting or having erected signs in the RC-1 Area District." The Town cannot put signs on private property without easements or ownership.

Section 21-71 mandates that property owners must obtain permits from the Town to trim vegetation, hire Town-approved contractors, pay fees, and follow Town-mandated procedures—powers that constitute a taking if exercised over private property.

The findings in Section 21-67 describe RC-1 areas as contributing to public welfare and state they "greatly contribute to the health, safety and welfare of the residents" and provide "Island residents as well as visitors, with countless hours of pleasurable activity"—language describing public recreation areas, not private property.

Furthermore, this statutory provision does not treat these Kings Grant properties the same way it does other "split zoned" parcels, showing that the Town drafters clearly intended RC-1 to include only Town-owned property. Sec. 21-49 (last revised 3/20/12) states that there are only a limited number of split-zoned parcels on the island (actually listed by TMS No. in Ex. 1.1), and the split-zoning applies only to certain homes just outside the commercial corridor that have both residential and commercial uses. This suggests that the Town believed it owned the King's Grant

subject area when it was zoned RC-1; otherwise, it would have been very easy for the Town, while already inventorying split-zoned lots, to include these six lots in the amendment.

III. SECTION 21-68 CANNOT OVERRIDE PRIVATE PROPERTY RIGHTS

The Planning Administrator's determination relies on Section 21-68 A(1), which provides a general geographic description of the RC-1 District, including areas between specific boundaries. However, this section cannot be used to override established private property rights.

The critical language in Section 21-68 A.(1) states:

...all that area within the corporate limits of the Town of Sullivan's Island between, on the one hand, a line commencing at a point being the centerline of Breach Inlet... and running... along the low water mark of the Atlantic Ocean... and, on the other hand, (1) the property platted on Sullivan's Island or (2) the primary oceanfront sand dune... or (3) the seaward face of a functional erosion control device, whichever line includes more area within the RC-1 Area...

This description cannot be used to include private property for several reasons.

First, the phrase "whichever line includes more area within the RC-1 Area" assumes that the property can be included in RC-1—that it is not already privately owned.

Section 21-70 explicitly limits RC-1 to "land area of the Town," making clear that private property cannot be within RC-1 regardless of its location.

The reference to "property platted on Sullivan's Island" as a boundary necessarily excludes platted private property from RC-1 designation.

Reading Section 21-68 to override private property rights would render Section 21-70's ownership requirement meaningless, violating the rule against surplusage. *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (a statute should be construed so that no word, clause, sentence, provision, or part becomes superfluous).

The correct interpretation is that Section 21-68 describes the geographic areas where RC-1 zoning applies to Town-owned property, but it cannot reclassify private property as RC-1 solely based on location.

IV. APPLYING RC-1 TO PRIVATE PROPERTY WOULD CONSTITUTE AN UNCONSTITUTIONAL TAKING

If the Town's interpretation is upheld, it would amount to both a physical and regulatory taking of private property, requiring just compensation under the Fifth Amendment to the U.S. Constitution, the Fourteenth Amendment, and Article I, Section 13 of the South Carolina Constitution.

1. Physical Taking

The RC-1 ordinance grants the Town "full authority" over designated areas, allows the Town to erect signs, requires property owners to obtain permits and pay fees for basic vegetation maintenance, and mandates the use of Town-licensed contractors. This level of control amounts to a physical appropriation of property. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982).

2. Regulatory Taking

The RC-1 restrictions would deprive property owners of all economically beneficial use of the beachward portions of their property

Section 21-71(A) forbids "construction of any type" and "destruction or removal of vegetation by any means except trimming and pruning."

Only three species may be trimmed (Wax myrtle, Baccharis, and Popcorn trees), and only from November 1 through February 28.

All trimming must maintain a minimum 5-foot height.

Manmade alterations to topography are prohibited.

All work requires Town permits, approved contractors, and fees.

These restrictions completely eliminate development potential and severely limit even basic property maintenance. Under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), a regulation that deprives property of all economically beneficial use is considered a taking that requires compensation.

The *Lucas* case is directly relevant—it involved South Carolina beachfront property and regulations that banned construction. The United States Supreme Court ruled that such complete restrictions on use must be compensated for unless the restrictions are part of the title or align with fundamental principles of property law.

Here, the restrictions do not reside in the title—the King's Grant explicitly grants ownership to the low water mark. The restrictions are not aligned with background principles—these properties have been used residentially for over a century.

3. *Penn Central* Factors

Even if the restriction were not deemed a total taking, it would still fail the Penn Central analysis. *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978), outlined three factors:

a. Economic impact: The RC-1 restrictions would eliminate all ability to have any control over large sections of their property.

b. Interference with investment-backed expectations: Property owners purchased with title extending to the low water mark and with the reasonable expectation of residential use throughout. The properties have been maintained for residential purposes for decades.

c. Character of government action: This is a direct appropriation of private property for public recreation and conservation purposes—the classic taking requiring compensation.

4. *Nollan/Dolan*

The Town cannot condition property rights on surrendering the beachward portions to public conservation purposes without demonstrating an essential nexus and rough proportionality. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

V. MUNICIPAL AUTHORITY IS LIMITED BY STATE LAW

South Carolina municipalities only have powers explicitly granted by the General Assembly or those that are necessarily implied. S.C. Code Ann. § 5-7-10; *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) (municipalities have the authority to enact regulations for government services that are necessary and proper for the safety, general welfare, and convenience of the municipality or to preserve health, peace, order, and good government). The zoning enabling act, S.C. Code Ann. § 6-29-710 et seq., authorizes municipalities to regulate land use within their jurisdiction. However, it does not authorize municipalities to:

1. Zone property they do not own, as if it were publicly owned recreation or conservation land;
2. Impose conservation restrictions equivalent to conservation easements without compensation;
3. Exercise "full authority" over private property as outlined by Section 21-70; or
4. Overrule established property rights using geographic zoning designations.

VI. THE TOWN'S 2020 ACKNOWLEDGMENT IS BINDING

The Town's actions with the Lowcountry Land Trust, removing the King's Grant Properties from the conservation easement area, constitute an official acknowledgment that:

1. The Town does not own these properties.
2. These properties were improperly included in the 1991 transaction.

3. These properties are not subject to the conservation restrictions in the Town's conservation easement.

Having acknowledged that it does not own the King's Grant Properties and having removed them from the conservation easement, the Town cannot now assert RC-1 zoning authority over those same properties. Property owners have relied on the Town's acknowledgment in maintaining their properties.

VII. VESTED NONCONFORMING USE RIGHTS EXIST EVEN IF RC-1 WERE APPLICABLE

Even if this Board were to find that RC-1 zoning properly applies to these properties (which it does not), the property owners have vested nonconforming use rights allowing them to continue their historical use and maintenance. See Town of Sullivan's Island Zoning Code Sec. 21-150 Nonconforming uses.

Here:

1. Property owners and their predecessors have maintained these properties to the low water mark for over a century.
2. This maintenance was public, well-known, and acknowledged by Town officials.
3. The Town never objected or claimed RC-1 restrictions until 2025.
4. Property owners relied reasonably on their title and the Town's acquiescence to maintain their properties.
5. It would be very unfair to now ban this long-standing use.

Nonconforming uses existing when a zoning ordinance is adopted or amended may continue. The residential use and maintenance of these properties predate any RC-1 restrictions.

REQUESTED RELIEF

For the foregoing reasons, Appellants respectfully request that the Board of Zoning Appeals:

1. Reverse the October 21, 2025 zoning determination and any similar determinations that apply RC-1 zoning to the King's Grant Properties.
2. Confirm that Section 21-70 of the Zoning Ordinance restricts RC-1 zoning to "land area of the Town" and that RC-1 cannot be applied to privately owned property.
3. Verify that the King's Grant Properties in the 2200 block of Atlantic Avenue (TMS Nos. 529-09-00-041 through 529-09-00-046) are correctly zoned RS Single Family Residential District to their actual boundaries at the low water mark.
4. Instruct the Planning Administrator to update the Official Zoning Map to:
 - a. Remove the RC-1 designation from all King's Grant Properties;
 - b. Show RS zoning extending to the low water mark; and
 - c. Display accurate property lines extending to the low water mark.
5. Declare that these property owners have the right to maintain their entire properties to the low water mark in accordance with RS zoning standards and applicable state and federal regulations, free from RC-1 permit requirements and restrictions.
6. Alternatively, if the Board determines that RC-1 zoning could apply, decide that the property owners have vested nonconforming use rights to continue their historical maintenance and use; and
7. Grant such other and additional relief as the Board considers just and proper.

CONCLUSION

The Planning Administrator's decision that RC-1 zoning applies to the privately owned King's Grant Properties contradicts the plain language of Section 21-70, which restricts RC-1 to "land area

of the Town." The Town has acknowledged that it does not own these properties. It cannot zone property it does not own as if it were Town-owned conservation land.

Section 21-68's geographic description of RC-1 boundaries cannot override the ownership requirement in Section 21-70. The entire structure and content of Article V confirm that RC-1 was designed for publicly owned conservation areas, not private property.

Applying RC-1 restrictions to private property would constitute an unconstitutional taking, exceed the Town's delegated authority, and contradict the Town's own 2020 acknowledgment that it does not own these properties.

These property owners hold clear title to the low water mark through succession from an 1883 King's Grant. They have maintained their properties as residential for generations. The zoning map must be corrected to reflect reality: these are privately owned RS-zoned properties extending to the low water mark.

For all these reasons, the Board should reverse the decision and provide the relief requested.

REQUEST FOR HEARING

Pursuant to S.C. Code Ann. § 6-29-800 and Town procedures, the Appellants respectfully request a public hearing on this appeal at the earliest feasible date. We request the opportunity to present oral arguments, submit additional evidence, and cross-examine any Town witnesses or staff members providing testimony.

Respectfully submitted,

/s/ W. Andrew Gowder, Jr.
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DATED: November 5, 2025