



SOUTH CAROLINA ASSOCIATION OF COUNTIES

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REGULATION AND CASE LAW UPDATE

To: Chief Administrative Officer; County Attorney
From: SCAC Legal Staff

SCAC legal staff compiles a monthly update of agency regulations and appellate court opinions impacting county government operations. CAOs/Attorneys are encouraged to forward this update to impacted county departments.

REGULATIONS

None (May 28, 2021)

COURT UPDATE

South Carolina Court of Appeals

In Re: Venture Engineering v. Horry County Zoning Board of Appeals, Appellate Case No. 2018-001221. May 12, 2021

Areas of Law: Zoning, Variances, Vested Rights

The Horry County Zoning Board of Appeals (Board) appealed the circuit court's reversal of two Board decisions denying Venture Engineering's (Venture) application for three variances and Venture's ability to accept construction and demolition debris from outside sources for recycling. Venture began operating the property in 1981, prior to the county enacting its first zoning ordinance in 1987. In the zoning ordinance the property was designated Limited Industrial (LI) which allows light industrial uses that are "not significantly objectionable in noise, odor, fumes, etc., to surrounding properties." The business license for the property listed the recycling activity as an accessory use to the principal use of Construction Heavy Equipment. The Zoning Administrator determined that due to the zoning designation the property could not accept

material for recycling from outside contractors and Venture appealed to the Board. The Board heard the appeal over the course of four meetings and initially voted to overturn the Zoning Administrator's decision. The Board reconsidered the vote at the next meeting and voted to uphold the Administrator's decision. Venture appealed to the circuit court. The circuit court reversed the Board's decision and awarded costs to Venture.

The Court of Appeals reversed the circuit court and upheld the Board's findings that Venture could recycle material from its own activity, but they could not accept material from outside contractors. The appellate court rejected the circuit court's finding that Venture possessed a "vested right" to continue third party recycling as a non-conforming use it possessed prior to the enactment of the zoning ordinance. The court held that a vested right to continue a non-conforming use can be extinguished if it constitutes a detriment to the public health, safety, or welfare. The court noted that sufficient evidence had been presented to the Board by residents of substantial complaints about the business. Finally, the court found that Venture failed to meet the statutory standards found in SC Code 6-29-800(A)(2) for a zoning variance due to the substantial detriment the activity presented to surrounding properties.

The full opinion can be found here: <https://www.sccourts.org/opinions/HTMLFiles/COA/5819.pdf>