

**15th JUDICIAL DISTRICT COURT
LAFAYETTE PARISH, LOUISIANA**

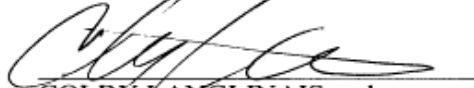
NO. **C-20212524**

IN RE: APPLICANTS, COLBY LANGLINAIS, ET AL

**CIVIL PROCEEDING
ON APPEAL FROM THE LAFAYETTE OFFICE OF
BOARD OF ZONING ADJUSTMENT
CASE NUMBER BOZ2021-0012**

**ORIGINAL PETITION OF APPEAL ON BEHALF OF APPELLANTS,
COLBY LANGLINAIS, ET AL**

RESPECTFULLY SUBMITTED,



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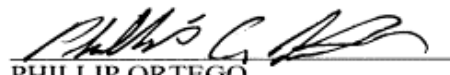
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COMES NOW, into court, Colby Langlinais, Jeanne Langlinais, Stephanie Cornay Dugan, Gregory Dugan, Gordon Schoeffler, Alison Schoeffler, ????, each individually and on behalf of all others similarly situated in Lafayette, La., who submit this appeal of the April 16, 2021 decision of the Lafayette Board of Zoning Adjustment which upheld a November 10, 2020 decision by the Lafayette Planning and Development Director authorizing the operation of a commercial short-term rental in a single family residential zoned area in Lafayette, La. Appellants show that the BOZA decision was illegal, in whole or in part, as specified below, and thus request this Court to Reverse the decision, in whole or in part, or to modify the decision as appropriate in accord with the law, for the following reasons to wit:

JURISDICTIONAL STATEMENT

1.

Pursuant to La. R.S. 33:4727(E) and Lafayette Development Code (“LDC”) § 89-68(g), Appellants invoke the jurisdiction of this Court, seeking review and reversal, wholly or in part, or modification of the decision brought up for review, of the Lafayette Board of Zoning Adjustment’s (“BOZA”) decision in the matter below.

2.

On February 23, 2021, Appellants originally filed an appeal to BOZA under the provisions of Lafayette’s former Unified Development Code, UDC 89-68(a)(2), all asserting that they were aggrieved and adversely impacted by the Lafayette Development and Planning Director’s (the “Director”) November 10, 2020 decision based on the UDC, to authorize the continued operation of a short-term rental in their neighborhood located at 105 Poinsetta St., Lafayette, La 70506. On or about December 16, 2020, Lafayette adopted the “Lafayette Development Code”, which provided for identical appellate procedures as those embodied in UDC 89-68(a)(2). An appeal hearing was conducted by the Board of Zoning Adjustment on April 8, 2021. At the end of the hearing, BOZA rendered a decision, denying the appeal by a vote of 3-2 amongst its 5 members, having conducted an open recitation on the record of the various reasonings of its members into the record.

3.

Thereafter, a written decision, appealable of right under the foregoing statute and ordinance, was filed in the office of the board, BOZA, on April 16, 2021. Appellants thus timely file this Petition for appeal to the District Court pursuant to La. R.S. 33:4727(E) and Lafayette Development Code (“LDC”) § 89-68(g).

PARTIES

4.

As alleged herein, the decision of the Director, upheld by BOZA which is at issue in this matter, in effect, authorizes and makes eligible every structure in Lafayette, as well as movables such as vehicles and tents, to be converted into commercial short-term rentals/internet motels, contrary to and/or regardless of prior zoning, contrary to the comprehensive plan for zoning and development in Lafayette (Plan Lafayette), and contrary to the character of residential neighborhoods all over the city. Worse yet, the decision authorizes the operation of such business activities in any and all residential neighborhoods without any sort of regulation whatsoever.

5.

La. R.S. 33:4727(E)(1) and UDC 89-68(g)(1)/ LDC 89-68(g)(1) defines the class(es) of individuals entitled to bring an appeal such as this as, "Any person or persons jointly or severally aggrieved by any decision of BOZA." Appellants, individually and on behalf of all those similarly situated have been aggrieved by the Director's decision upheld by BOZA and are thus among the class of individuals entitled to bring this appeal.

6.

Appellants consist of a group of property owners and residents within the City of Lafayette, who have been jointly and severally aggrieved as a result of the Director's unilateral decision, as upheld by BOZA, which authorizes and makes eligible every structure in Lafayette within residential zoned areas, to be converted into commercial short-term rentals/internet motels.

7.

Further, as a second short-term rental has opened in the immediate vicinity of the Subject Property, Appellants fear that the Director's decision, upheld by BOZA has and will set a precedent authorizing short-term rentals as a permitted use in the rest of the neighborhood, and the City of Lafayette at large, in effect, permitting every single structure in residential zoned areas of Lafayette to be converted into a short-term rental/internet motels.

8.

Appellants live in and own property in the neighborhood and surrounding areas and/or within the City limits of Lafayette and fear that the Director's decision, upheld by BOZA, has and will set a precedent authorizing short-term rentals as a permitted use in the rest of the neighborhood, and the City of Lafayette at large, which will have a deleterious effect on their homes, their families, their quality of life, and their neighborhoods.

9.

Appellants, individually and on behalf of all similarly situated citizens of Lafayette who own property and reside in residentially zoned areas received no notice whatsoever that the Director had made the initial determination at issue, thus this appeal is further submitted to address violations of their substantive and procedural due process. The Director, in doing so, acted in her official capacity, under color of state and local law, to deprive Appellants and others similarly situated of these due process rights.

ASSIGNMENTS OF ERROR/ILLEGALITY OF BOZA DECISION

1. The BOZA decision was illegal as it upheld a clearly erroneous determination by the Director which negated and rejected the clear and unambiguous provisions of Lafayette's UDC and LDC which expressly provide that the codes establish a *permissive* zoning regime.
2. The BOZA decision was illegal as it upheld a clearly erroneous determination by the Director which authorized the operation of unregulated commercial lodging businesses in areas zoned as single family residential by Lafayette's comprehensive zoning plan.
3. The BOZA decision was illegal as it upheld a clearly erroneous determination by the Director wherein she authorized a short-term rental to operate without a conditional use permit, when the UDC's Use Tables mandated that a short-term rental requires same. As such, her decision as upheld by BOZA was based on a clearly erroneous interpretation of the UDC.
4. The BOZA decision was illegal as it was based off of *LDC 89-21(c)* as presented by the Director at the hearing, when such law was not in effect at the time of the Director's decision and should have been rightly based on *UDC 89-21(c)*. Accordingly, the Director relied on the wrong ordinance after the fact, and BOZA's decision upholding her actions based thereon, was thus illegal.
5. The BOZA decision was illegal as it upheld a clearly erroneous determination by the Director based on an interpretation of the UDC that a short-term rental is functionally the same as an accessory apartment or any other listed permitted use in an RS-1 zoned area under the UDC Use Table.

6. The BOZA decision was illegal as it upheld a clearly erroneous determination by the Director based on an interpretation of the UDC that a short-term rental has similar visual, traffic, and other similar impacts as a “community home” or any other listed permitted use in an RS-1 zoned area under the UDC Use Table.
7. The BOZA decision was illegal as it upheld a clearly erroneous determination by the Director based on an interpretation of the UDC that a short-term rental fall within the same industry classification as another listed permitted use in an RS-1 zoned area under the UDC Use Table.
8. The BOZA decision was illegal as it upheld a clearly erroneous, unlawful, and unconstitutional action by the Director which far exceeded any authority she had or may have under UDC 89-21(c), which was intended to permit a Director to make limited determinations regarding a single property in Lafayette, not to make broad and sweeping changes to the comprehensive zoning plan for Lafayette.
9. The BOZA decision was illegal as it upheld a clearly erroneous, unlawful, and unconstitutional action by the Director which derogates from the Lafayette Comprehensive Zoning plan embodied in PlanLafayette.
10. The BOZA decision was illegal as it upheld a clearly erroneous, unlawful, and unconstitutional action by the Director which deprived Appellants of their substantive and procedural Due Process Rights.
11. The BOZA decision was illegal as it upheld a clearly erroneous, unlawful, and unconstitutional action by the Director as she had no authority in law or in fact, or she exceeded any such authority, by unilaterally dismissing an appeal to BOZA.
12. The BOZA decision was illegal as it was not supported by any timely produced or competent evidence or papers on which the Director based her decision at issue or which supported same, and in the absence of such evidence, BOZA was unable to make a reasoned and competent decision when determining the appeal.
13. The BOZA decision failed to address constitutionality of Director’s decision or the due process violations complained of by the Appellants.
14. The BOZA decision was illegal as it upheld a clearly erroneous, unlawful, and unconstitutional action by the Director which authorized a previously unpermitted use in the entire community and was thus unconstitutional in that it altered property rights for the entire community without notice to the community, or an opportunity to be heard.
15. The BOZA decision was illegal as it upheld a clearly erroneous, unlawful, and unconstitutional action by the Director in which she unilaterally enacted a change in the law and/or impermissibly exercised policy making power, an unconstitutional exercise of legislative powers not conferred on her as a part of the executive branch of Lafayette Government in violation of Separation of Powers established by Lafayette’s Home Rule Charter.
16. The BOZA decision was illegal as it upheld a clearly erroneous, unlawful, and unconstitutional action by the Director which violated Section 2-11 of Lafayette’s Home Rule Charter which provides that any action which “Adopt[s] or modif[ies] the zoning plan, maps, and regulations” can only occur through the enactment of an ordinance by the City/Parish Council(s).

STATEMENT OF FACTS

11.

Many of the Appellants live in a historic and charming neighborhood in Lafayette, La locally known as “Myrtle Place” and also the “Flower Streets” nestled between the Saint Streets and Downtown Lafayette. Other Appellants live in similar neighborhoods in Lafayette.

12.

Appellants all purchased their homes in and chose to live in the neighborhood because of the historic, quiet, and family friendly atmosphere surrounded by other residential properties and single-family homes, with the intent of living and raising their children and families there. Appellants have all invested significantly in their homes and property with these intentions in mind. When Appellants purchased their homes, they had no way of knowing that commercial uses such as short-term rentals, could be unilaterally authorized in their neighborhood by the Director years later. All Appellants purchased their homes with the reasonable expectation that they would be surrounded by other residents and the reasonable expectation that they would enjoy the quiet and family friendly atmosphere in keeping with the historical character of the neighborhood, not commercial properties.

13.

The area in which the property made the subject of this appeal is located (the home bearing the municipal address 105 Poinsetta St. (hereinafter, the “Subject Property”)) was zoned RS-1 (predominantly detached, single family neighborhoods) under Lafayette’s Unified Development Code (“UDC”) until December 16, 2020. Lafayette recently adopted the Lafayette Development Code (“LDC”) on December 16, 2020. The area in which the Subject Property is located remained in an RS-1 zone under the new LDC.

14.

The Subject Property is situated immediately adjacent to certain of the Appellants’ homes and in the same neighborhood as certain other of the Appellants.

15.

In 2015, the Subject Property was purchased by its present owner, a domestic limited liability company, which operates as a short-term rental business and/or hotelier. The property apparently underwent a renovation for the next few years.

16.

Since its purchase in 2015, no-one has ever resided at the Subject Property as a permanent residence. Thus, at all times pertinent, the Subject Property is not, nor has it ever been “owner occupied.”

17.

Beginning in October of 2017, and continually since then, the owner has operated the Subject Property as a short-term rental. A short-term rental is the rental of a residential property for short term lodging purposes, typically on a nightly basis and/or for temporary lodging by transient occupants as opposed to the establishment of a residence by a homeowner or long-term tenant.

18.

The Subject Property is thus let out to the general public and/or users of short-term/ vacation rental booking sites on the internet for use and lodging by transient occupants who pay a nightly rate for the use of the entire home and property.

19.

As such, the Subject Property has been and continues to be utilized for commercial purposes, under the ordinary meaning of the word as well as it is defined by Lafayette’s zoning laws (whether under the former UDC or the present LDC)- “Any business, trade, industry, or other activity engaged in for profit.” UDC 89-151/ LDC 89-151.

20.

It is well settled law in Louisiana, that transient lodging accommodations such as these are treated as commercial and are taxable as such. Commercial uses such as this, particularly for lodging purposes, are not nor have they ever been among the permitted uses in RS-1 zoned areas in Lafayette as defined by the former UDC unless by conditional use permit if it met the use standards applicable,

which it cannot. The present LDC's "Use Tables" embodied at LDC 89-21, have completely removed short-term rentals as a permitted use altogether in Lafayette.

21.

Lafayette's former UDC and present LDC clearly provide that if something is not expressly permitted, it is not allowed. Significantly, Lafayette's LDC and former UDC establishes a "permissive" zoning regime intended to *prohibit* all uses that are not expressly permitted in the district in which a given property is located.

22.

Like every permissive zoning code in this country, Lafayette's former UDC and present LDC broadly establish: "**No building or land shall be used, and no building or part shall be erected, reconstructed, converted, moved, or structurally altered unless they conform to all applicable regulations in this Chapter.**" LDC/UDC 89-3. Indeed, Louisiana Courts interpreting similar "permissive" zoning ordinances have recognized this principal. See e.g., *Redfearn v. Creppel*, 436 So.2d 1210, 1214 (La. App. 4 Cir. 1983); *New Orleans v. Elms*, 498 So.2d 773, 776 (La. App. 4 Cir. 1986) ("A zoning ordinance, by its very nature, sets forth the uses permitted and does not have to specifically exclude every non-permitted use.")

23.

Since the subject short-term rental/ internet motel business has opened for business, it has presented a myriad of nuisances and problems for the neighborhood as a result.

24.

Events involving large numbers of people who arrived in multiple vehicles, have occurred at the subject property since the business began, on some occasions involving cars parking for blocks around the Subject Property, adding to congestion on the otherwise quiet neighborhood streets.

25.

The Subject Property has a single car driveway; thus, any time customers arrive with multiple vehicles, they must park along the narrow neighborhood street or in the front yard of the Subject Property. This situation is exacerbated when customers invite additional guest(s) to the Subject Property.

26.

The Subject Property's inadequate off-street parking has regularly contributed to congested parking around the Subject Property, adversely impacting the Appellants' own use of the streets, even preventing access for some Appellants to their own home on occasion. This could also pose a problem for emergency vehicles such as fire and ambulance that may need to access the neighborhood.

27.

The Subject Property is heavily advertised/marketed on the internet as a 3 bed/ 2 bath property which allows for up to six occupants for which the entire home and property is available for a nightly rate. This rate has changed over time. Much like a commercial motel/hotel, the operator of the Subject Property has check-in and check-out times, offers discounts, receives/holds/ and if necessary, retains deposits, and has cancellation policies.

28.

In fact, Lafayette, which has obviously recognized the intensive commercial activity that short-term rentals are, collects sales and use/hotel/occupancy taxes from the operators of short-term rentals such as the Subject Property.

29.

The property has thus been impermissibly monetized through heavy commercial use in an area where such activities are not permitted under Lafayette's zoning laws and are not in keeping with the general character of the neighborhood.

30.

As its customers are largely from internet sites, there is no way to competently vet them and/or the guests/invitees that may arrive with such customers or who may ultimately be invited to the Subject Property by customers during their stay. The websites utilized to market and book the subject property specifically and expressly advise and warn of the limitations present in vetting guests and guests-of-guests, offering lengthy disclaimers as to such limitations. This only contributes to the nuisance complained of herein, and fuels Appellants' fears for the safety of themselves, their children, and their respective properties.

31.

The Subject Property is within 300 feet of Lafayette Middle School and within 900 feet of Cathedral Carmel Elementary, raising grave concerns over the safety of children at these schools due to the inherent limitations in the ability to vet customers or guests/invitees of customers of the subject property.

32.

There have been various unidentified transient occupants, too numerous to count, that have come and gone from the subject property since its business began, contributing to the Appellants' fears for themselves, their children, and their properties as well as a lost sense of security and community.

33.

In February of 2020, without warning and without a permit from the City of Lafayette beforehand, the Subject Property was let out to a commercial film company for purposes of filming a movie. This filming involved the staging of a commercial film set on and about the Subject Property, the use of bright stage lights which shown directly into the neighbors' homes and yards as well as large commercial trucks and generators and other noisy equipment surrounding the property for approximately two weeks. The filming also involved a great many members of the film cast and crew who came and went from the Subject Property at very early and late hours, blocked off streets without permits beforehand, and parked vehicles for blocks surrounding the subject property- all adversely impacting the neighborhood.

34.

As a result of the use of the Subject Property as a short-term rental/internet motel/ film set, Appellants have been adversely impacted by noise, lights, parking problems, and a general fear that customers of the property might be unsafe, untrustworthy, criminal, loud, obnoxious, violent, or otherwise. Given the transient nature of the business, there is no way for Appellants to know or anticipate whether any given customer (or any guests they may bring or invite onto the property) will be noisy, unsafe, untrustworthy, criminal, loud, obnoxious, violent, or otherwise or whether they will create light and parking problems.

35.

Further, as a result of the short-term rental/ internet motel activities, leading to the regular coming and going of transient occupants, Appellants have lost their sense of community and security in their own back yards and in their neighborhood, and fear for the safety of themselves and their families, many of which include minor children.

36.

Given the Director's actions complained of herein, Appellants fear that this sort of commercial use in residential zoned areas of the City will become the norm, disrupting formerly quiet neighborhoods, uprooting neighbors and replacing them with a revolving door of transients, and otherwise destroying the character of the neighborhood.

37.

Further, the Director's Decision upheld by BOZA has rendered every single structure and property, and indeed, vehicles, tents, and other movables eligible to be converted to an unregulated short-term rental in Lafayette as a whole. If the business operations on the Subject Property are left to continue, and such operations begin on any other properties which are now eligible to be converted into such use as a result of the Director's decision upheld by BOZA, such activities will serve to fundamentally transform the neighborhood and other similarly situated neighborhoods in Lafayette.

38.

In fact, a second short term rental/internet motel operated by another individual, has sprung up on the same block as the Subject Property at issue herein. Thus, Appellants are facing a growing problem in their neighborhood.

PROCEDURAL BACKGROUND

39.

Appellants, Langlins and Schoeffler originally filed a complaint about the operation of the short-term rental at issue with the Lafayette Planning and Zoning department on December 16, 2019. A second complaint was filed on February 6, 2020 and a third on May 27, 2020.

40.

On February 7, 2020 the prior director of the Lafayette Planning and Zoning Department, Danielle Breaux, issued a notice of abatement to the operator of the short-term rental at issue, advising it that its use of the property for such purposes was not permitted by the UDC and asking it to discontinue its use of the Subject Property as a short-term rental/ internet motel by February 21, 2020.

41.

The operator submitted an appeal of the prior Director's abatement notice on March 9, 2020, thus triggering a hearing before Lafayette's Board of Zoning Adjustment ("BOZA").

42.

On May 6, 2020, Lafayette Mayor President Josh Guillary appointed a new Director of Planning and Development, Mary Sliman.

43.

The initial BOZA hearing underwent some scheduling delays due to COVID. Ultimately, the BOZA hearing was scheduled to occur on July 9, 2020. Prior to the hearing though, on June 30, 2020, the new Director notified interested parties, including some of the Appellants, that the BOZA hearing on the initial appeal was again deferred due to the COVID pandemic.

44.

Despite protest from some of the Appellants, the BOZA appeal regarding the Subject Property was deferred indefinitely.

45.

The new Director assured those inquiring that the appeal would be heard once it was safe to do so.

46.

Notwithstanding, BOZA continued to hold regular meetings to address numerous *other* cases while the referenced appeal was deferred.

47.

In the meantime, the Director permitted the subject property to continue operating as a short-term rental/internet motel while the hearing on the appeal was deferred indefinitely.

48.

On November 10, 2020, without notice to any interested parties, including Appellants, the new Director, Mary Sliman, reversed the prior position of the prior Director regarding abatement of the short-term rental, and issued a letter to the Short-term rental operator, unilaterally authorizing the short-term rental's operation, further advising the owner to disregard the prior abatement notice.

49.

The New Director also summarily and unilaterally dismissed the operator's appeal to BOZA which had been pending as referenced above.

50.

The new Director's actions were not disclosed to Appellants, nor were they advised that the appeal had been dismissed.

51.

The new Director claimed as her authority for these actions, the provisions of UDC 89-21© (which was in effect at that time). In her determination to authorize the short-term rental at issue, the new Director states, "Although *not listed as a permitted use in RS zoning districts, Short-term Rentals are not expressly prohibited*, as they are undefined and unregulated by the UDC. As such, pursuant to UDC Section 89-21(c) and applying guidelines contained therein, the Administrator has determined that the use of your property as a Short-Term rental at 105 Poinsetta Street will be considered an authorized use by this office."

52.

The Director's determination in essence was that because short term rentals were not prohibited, they are allowed. This is an erroneous interpretation and application of the zoning ordinance, which as noted above, is expressly a *permissive* code, meaning, unless it is expressly permitted, it is prohibited. As a result, the Director's decision, upheld by BOZA, was illegal, contrary to law, and clearly erroneous.

53.

Further, the Director had no authority whatsoever in law or otherwise, to summarily dismiss a BOZA appeal, without notice to interested parties or BOZA itself. Her actions were thus illegal in these regards.

54.

Appellants became aware of the Director's decision in January, 2021, as a happenstance result of litigation over the subject property.

55.

The Appellants, consisting of 41 individuals from the neighborhoods surrounding the property filed their own appeal to BOZA in February, 2021, seeking a determination of whether the Director acted erroneously and whether her actions violated their due process rights.

BOZA HEARING

56.

The hearing on that appeal to BOZA took place on April 8, 2021.

57.

Prior to the hearing, the Director apparently provided no documents or evidence to BOZA on which she based or in support of her decision. In fact, on the night of the hearing, BOZA saw ***for the first time***, a PowerPoint presentation prepared by counsel for the Director, consisting largely of legal argument, and no facts or documents upon which she based her decision. One of the BOZA members admonished the Director for not providing anything to the board prior to the hearing.

58.

La. R.S. 33:4727©(2)(a) provides pertinently that upon the filing of an appeal to BOZA, "The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken, after all transcript costs and all other costs of appeal are paid by the person or entity taking the appeal, the appellant."

59.

The Director failed to produce anything to BOZA in conformity with the foregoing. What she did produce was a Power Point presentation prepared by her attorney and provided to the BOZA members for the first time at the hearing on the appeal. Thus, BOZA's decision on the appeal was

procedurally defective, rendered without any evidence supporting the Director's decision, and was otherwise illegal, arbitrary and capricious, and rendered through gross negligence.

60.

Upon information and belief, the Director submitted no evidence to BOZA pursuant to La. R.S. 33:4727©(2)(a) because no such evidence exists, furthering evidencing the arbitrary and capricious nature of her decision, further exacerbated by BOZA's affirmation of same. As a result, BOZA's decision made the subject of this appeal was illegal, arbitrary and capricious, and rendered through gross negligence.

61.

In addition to the foregoing, BOZA was presented with making its determination under the wrong law. The Directors decision was based on authority embodied in UDC 89-21(c), which provided three factors under which she could have taken the action she did. But after that action was taken, Lafayette adopted the LDC which amended 89-21(c) to include four factors under which she can base such a decision.

62.

At the hearing of the BOZA appeal at issue though, the Director through counsel argued that she had acted under the authority given her under the *four* conditions available under the LDC. In fact, the Director, through counsel, suggested that if BOZA found that the Director's action was supported by any of the *four* factors enumerated in LDC 89-21©, they had to rule against the appeal.

63.

This assertion was patently wrong as a matter of law and of fact, as the LDC was not even in effect at the time of the Director's decision.

64.

To the extent that BOZA made its determination upholding the Director's November 2020 decision under the LDC as was presented to it at the hearing, it made a clearly erroneous and illegal decision based upon an ordinance that was not even in existence at the time of the Director's decision at issue.

65.

Ultimately, BOZA rendered its decision, upholding the Director's unlawful decision in a 3-2 vote amongst its five-member board.

66.

It is apparent that at least one of the BOZA members completely failed to utilize the appropriate standard of review and/or failed to use the appropriate analysis for the issues presented. Specifically, board member Melissa Llewellyn posed her thoughts on the subject during deliberations of the board, openly stating that the Board was tasked with deciding whether the Director "did her job". This respectfully was not the issue before the Board, and evidences a fundamental misunderstanding by at least one of the board members of the nature of the issue before the board, which was whether the Director's decision was correct under the law. Accordingly, the vote by this member was clearly erroneous and the result of gross negligence on her part.

67.

Prior to casting her vote, Board Member Llewellyn went on to openly disclose that she herself had "rentals" and had no problem with them, so she was voting to uphold the Director's decision regarding short-term rentals. Accordingly, this member openly stated her potential for bias and inherent conflict of interest, yet still cast a vote on the subject. Accordingly, the vote by this member was clearly erroneous and unduly influenced by bias and conflict of interest and thus illegal.

68.

Lastly, as noted above, the Director failed to produce anything to BOZA prior to the hearing, and only submitted a Power Point Presentation containing only legal arguments to BOZa on the night of the hearing. The Board Members, having received no evidence whatsoever from the Director, and having only received a presentation containing legal argument the night of the hearing, were left without any evidence whatsoever with which to base their decision on. Their decision was thus not supported by facts, law, or evidence and was thus rendered with gross negligence and contrary to law.

69.

Accordingly, the BOZA hearing, the evidence submitted, and the deliberations of the board members clearly evidenced a lack of lawful proceeding, substantively and procedurally, thus rendering the decision illegal and subject to reversal by this Honorable Court.

MERITS OF DIRECTOR'S DECISION/ DIRECTOR's ARGUMENTS TO BOZA

A. Director's determination at issue was based on an erroneous interpretation of the LDC and/or former UDC

70.

Short-term rentals are not a permitted use in an RS-1 zoned area under the LDC or the former UDC and the Director's determination otherwise, without notice to anyone affected, was based on an erroneous interpretation of the LDC and/or former UDC, specifically the permitted uses within an RS-1 zoned area pursuant to LDC 89-21/ former UDC 89-21.

71.

In the November 10, 2020 determination letter at issue, the Director expressly admits that short term rentals "are not listed as a permitted use in RS-1 zoning districts." This admission, which should be treated as a judicial admission on the record, in and of itself is fatal to the authorization granted.

72.

The Director made no arguments whatsoever in support of this position at the BOZA appeal hearing.

1. Short-Term Rentals do not meet the definition of Single-Family Residences

73.

The area in which Appellants reside is zoned RS-1 which the LDC and the UDC designates as "predominantly detached, single family neighborhoods." LDC/UDC Sec. 89-9. Within RS-1, "Dwellings, single-family detached" are permitted, defining same as "A detached building designed as a residence for one family." LDC/UDC 89-21.

74.

"Dwelling" is further defined as "A building, or individual units within a mixed-use building, designed for or used exclusively for residential purposes. A dwelling includes any use designated as a "residence" in the Use Table." LDC /UDC 89-151.

75.

A “family” is defined as one or more persons who are related by blood or marriage, civil union, adoption, or foster care living together and occupying a single housekeeping unit, or a group of not more than four single persons living together by joint agreement and occupying a single housekeeping unit on a non-profit, cost-sharing basis. Domestic servants residing on the premises shall be considered as part of the family.” LDC/UDC 89-151.

76.

The Subject Property does not fit the definition of a “Dwelling- single family detached” due to the transient nature of short-term rentals. Moreover, no “family” as defined by the UDC/LDC resides on the property. The LDC/UDC does not define the word “residence”, but the Meriam-Webster Dictionary offers a definition in pertinent part as: “the place where one actually lives as distinguished from one’s domicile or a *place of temporary sojourn.*” (emphasis ours).

77.

Accordingly, there is no scenario in which a short-term rental meets the definition of any acceptable use within RS-1 or in which the use of the subject property as a short-term rental somehow fits the definition of a Dwelling-Single Family Detached residence. As such, the Director’s determination was clearly erroneous.

78.

As such, the Director’s decision, which was upheld by BOZA, was illegal, contrary to law, and otherwise clearly erroneous.

2. Short-Term Rentals are a Commercial Use of Property which is not Permitted in a, RS-1 Zoned Residential Area

79.

The use of the subject property as a short-term rental is plainly a for-profit activity aimed at monetizing property by letting it out to transient occupants on a regular basis. Just like a commercial hotel, there are check-in and check-out times, discounts offered, deposits paid, and cancellation policies. The business which operates there is heavily marketed on the internet and plainly seeks to operate for profit. It is undeniable that the Subject Property is being utilized for commercial purposes, which the LDC/UDC defines as “Any business, trade, industry, or other activity engaged in for profit.” LDC/UDC 89-151.

80.

Commercial use of property in an RS-1 zoned area is in direct conflict with the residential nature of the neighborhood.

81.

More importantly, short-term rentals are not itemized among any of the permitted commercial uses within an RS-1 zone. The Use Table at LDC/UDC 89-21 provides that the only commercial use allowed in an RS-1 zoned district is a "Nursery/Horticulture/Farm Supply." Even then, such a use is allowed only through a conditional use permit.

82.

Further, under "Lodging" uses defined by the Table, the only lodging permitted in an RS-1 zone would be a Bed and Breakfast, again, only under a conditional use permit. LDC/UDC 89-21. No such conditional use permit was ever obtained for the subject property. Moreover, the subject property could never meet the definition of a Bed and Breakfast under the UDC or LDC, both of which defined same as "An owner-occupied house, or part of a house, where no more than four rooms (for a total of 8 guests) are provided for short-term (1 night to 2 weeks) lodging, and where breakfast-only meals are provided for compensation." UDC/LDC 89-21(d).

83.

The respective codes also provided "Use Standards" for Bed & Breakfasts as follows: "...The owner/proprietor must live in the principal structure and the Bed and Breakfast facility use shall be secondary to the principal use of the dwelling for residential purposes... The structure where the bed and breakfast is established must be – (1) Defined as any residential structure designated as a landmark by the Lafayette Preservation Commission, or (2) Listed on the National Register of Historic Places, or (3) Located in a structure, district, neighborhood, landmark, property, or cultural resource that has been officially designated as historic... One parking space for each guest room shall be placed in the rear of the property and shall be screened from adjacent properties with a sight proof fence or dense vegetation providing adequate screening... Receptions or private parties for a fee on the premises of a bed and breakfast facility – (1) Are not allowed in an "RS" zoning district..." UDC/LDC 89-74 (a-g).

84.

The Subject Property can never qualify as a Bed & Breakfast under these rules as first and foremost, it is no owner occupied, not in a historically designated landmark, does not have parking in the rear, and ultimately, never applied for let alone acquired a conditional use permit.

85.

Because the Director's decision, upheld by BOZA, permits such a commercial use in a residential zoned area without even a conditional use permit, the decision as upheld by BOZA is illegal on these grounds alone, and only further served to deprive Appellants of their Due Process rights.

86.

The short-term rental at issue in this appeal, as well as many others operating in Lafayette, are not operating under any conditional use permits.

87.

Hotels and motels are not permitted at all in RS-1 zoned areas.

88.

Short-term rentals which do not and cannot fit the definition of a bed and breakfast, a hotel, or a nursery/horticulture/farm supply simply are not permitted as a commercial or lodging use in RS-1 zones in Lafayette.

89.

Louisiana Courts have been explicit about commercial uses in residential areas. The Louisiana Supreme Court has recognized that one of the principal regulations which has been utilized to carry out the purposes of zoning laws in Louisiana is the exclusion of commercial uses from residential districts- noting that business uses are generally excluded from residential districts by simply omitting them from the list of permitted uses. *New Orleans v. Elms*, 566 So.2d 626, 629 (La. 1990); citing *State ex rel. Giangrosso v. City of New Orleans*, 159 La. 1016, 1017, 106 So. 549, 550 (1925).

90.

Lafayette's zoning ordinance, whether under the UDC or LDC, is no exception to the rule. It too was specifically designed to prevent commercial uses in residential areas.

91.

Again, the Director's determination to authorize a commercial short-term rental in a residential single family zoned area was based on an erroneous interpretation of the LDC and/or former UDC and should be reversed.

92.

As such, the Director's decision, which was upheld by BOZA, was illegal, contrary to law, and otherwise clearly erroneous.

3. Director's Determination that Because Short-Term Rentals are not Expressly Prohibited, they should be Permitted, is an Erroneous Interpretation of the LDC/ UDC

93.

In her determination to authorize the short-term rental at issue, the Director states, "Although *not listed as a permitted use in RS zoning districts, Short-term Rentals are not expressly prohibited*, as they are undefined and unregulated by the UDC. As such, pursuant to UDC Section 89-21© and applying guidelines contained therein, the Administrator has determined that the use of your property as a Short-Term rental at 105 Poinsetta Street will be considered an authorized use by this office." The Director's determination in essence is that because its not prohibited, it is allowed.

94.

This is an erroneous interpretation and application of the zoning ordinance, which is expressly a permissive ordinance, meaning, unless it is expressly permitted, it is prohibited.

95.

Lafayette's LDC and former UDC broadly establishes: "*No building or land shall be used, and no building or part shall be erected, reconstructed, converted, moved, or structurally altered unless they conform to all applicable regulations in this Chapter.*" LDC/UDC 89-3. Thus, the ordinance establishes a "permissive" zoning regime intended to prohibit all uses that are not expressly permitted, or incidental to uses so permitted, in the district in which a given property is located. Indeed, Louisiana Courts interpreting similar "permissive" zoning ordinances have recognized this principal. See e.g., *Redfearn v. Creppel*, 436 So.2d 1210, 1214 (La. App. 4 Cir. 1983); *New Orleans v. Elms*, 498 So.2d 773, 776 (La. App. 4 Cir. 1986) ("A zoning ordinance, by its very nature, sets forth the uses permitted and does not have to specifically exclude every non-permitted use.")

96.

An interpretation of the LDC/UDC as permitting everything it fails to expressly prohibit could also lead to absurd consequences for the Appellants' neighborhood and this community when considering the virtually infinite number of untold "undefined" and "unregulated" potential activities/ uses that the LDC/UDC also fails to expressly prohibit. Taken to its extremes, the Director's action sets a dangerous precedent which could be used to justify virtually any use which is not "expressly prohibited."

97.

Worse yet, the Director's interpretation negates the very purpose of zoning laws in the first place- for the promotion of "health, safety, morals, or the general welfare of the community..." La. Rev. Stat. 33:4721. This also ignores that Louisiana law provides that zoning regulations "shall be made with reasonable consideration of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the values of buildings and encouraging the most appropriate use of land throughout the municipality". La. Rev. Stat. 33:4723.

98.

Lastly, the Director's decision upheld by BOZA to permit intensive commercial uses such as short term rental/ internet motels to operate in strictly residential zones squarely derogates from Lafayette's Comprehensive plan embodied in the "PlanLafayette" Document which the UDC and LDC both incorporated by reference. Both Codes also provided that "any amendment to this Chapter [UDC/LDC] shall be consistent with PlanLafayette." See UDC 89-4/ LDC 89-4.

99.

As such, the Director's decision, which was upheld by BOZA, was illegal, contrary to law, and otherwise clearly erroneous.

B. Director's Authorization under UDC/LDC 89-21© is Not Supported by fact or law

100.

In the determination at issue, the Director cites UDC 89-21(c) as the authority on which she granted permission for the subject short-term rental to operate. That provision provides pertinently:

- “(c) If a use is not defined in this section or in article 8, the administrator may issue a building permit authorizing the use if-
- (1) The use functionally the same is a listed use, or
 - (2) The use has similar visual, traffic, environmental and similar impacts as an expressly listed use. The administrator may refer to empirical studies or generally accepted planning or engineering sources in making this determination. The burden is on the applicant to establish that the use is similar to the expressly listed use, or
 - (3) The use is within the same industry classification as another permitted use. In making this determination, the administrator may refer to the most recent edition of the North American Industry Classification Manual (Executive Office of the President, Office of Management and Budget, 2012)(“NAICS”). If the use is not defined in the NAICS, the administrator may refer to the American Planning Association, Land-Based Classification Standards LBCS Tables (April 1, 2001).”

UDC 989-21(c).

101.

As noted above, Lafayette adopted the LDC on December 16, 2020 (roughly one month *after* the Director made the decision at issue), and this new code amended the provision of the UDC’s 89-21©, providing as follows:

- “© If a use is not defined in this Section, the Administrator may authorize the use if –
- (1) The use is functionally the same as a listed use, or
 - (2) The use has similar visual, traffic, environmental and similar impacts as an expressly listed use. The Administrator may refer to empirical studies or generally accepted planning or engineering sources in making this determination. The burden is on the applicant to establish that the use is similar to the expressly listed use, or
 - (3) Other comparably sized jurisdictions have successfully integrated the use in one or more equivalent zoning districts.
 - (4) The use is within the same industry classification as another permitted use. In making this determination, the Administrator may refer to the most recent edition of the North American Industry Classification Manual (Executive Office of the President, Office of Management and Budget, (“NAICS”). If the use is not defined in the NAICS, the Administrator may refer to the most recent addition of the American Planning Association, Land-Based Classification Standards LBCS Tables, or any other recognized and accepted publication in the industry.”

LDC 89-21©.

102.

Thus, the LDC, added an additional fourth ground for the Director to act under this provision. Significantly though, the LDC was not even enacted at the time the Director made her decision in November of 2020, which is the subject of this appeal.

103.

At the hearing of the BOZA appeal at issue though, the Director through counsel argued that she had acted under the authority given her under the *four* conditions available under the LDC. In fact, the Director, through counsel, suggested that if BOZA found that the Director's action was supported by any of the *four* factors enumerated in LDC 89-21(c), they had to rule against the appeal. This assertion was patently wrong as a matter of law and of fact, as the LDC was not even in effect at the time of the Director's decision.

104.

To the extent that BOZA made its determination upholding the Director's November 2020 decision under the LDC as was presented to it at the hearing, it made a clearly erroneous and illegal decision based upon an ordinance that was not even in existence at the time of the Director's decision at issue.

105.

Under any circumstance, the Director's determination indicates that she applied the guidelines embodied in *UDC 89-21©* referenced above in her determination, but provides no specific information as to which guideline(s) were utilized, or the factual or legal basis on which she based the decision.

106.

A review of each guideline (whether under the UDC or the LDC) though, illustrates that the authorization of a short-term rental in an RS-1 zoned district is not supported by any of 89-21(c)'s guidelines.

- 1. Short-term rentals are not "functionally the same as a listed use" in RS-1 Zones**

107.

As noted above, and as can be seen in the LDC/UDC Use Table at 89-21, short term rentals simply are not permitted uses in an RS-1 Zone. The Director candidly admitted this in her determination letter at issue on this appeal.

108.

The only permitted uses in an RS-1 zone are Dwelling, single family detached, accessory apartment, community home, and several public/civic, infrastructure, and agriculture uses defined. Id.

109.

The UDC and now the LDC defines “Dwelling, single family detached” as “A detached building designed as a residence for one family.” UDC/ LDC 89-21(d). As noted above, the subject property cannot ever meet the definition of, nor can it be deemed “functionally the same” as a single family detached dwelling.

110.

The UDC and now the LDC defines “accessory apartment” as “A secondary, independent living facility located in, or on the same lot as, a single-family residence. An accessory apartment may be rented to a household separate from that occupying the principal building on the lot.” UDC/ LDC 89-21(d). The Subject Property cannot ever meet the definition of, nor can it be deemed “functionally the same” as an accessory apartment as it is a stand alone structure, on its own lot, owned by a unique entity, and which receives its own electrical, water, and sewer services, and pays its own separate property taxes. It is not and never will be a secondary structure to a principal single family residence.

111.

Moreover, the LDC and UDC both provided certain use standards for an accessory apartment. Specifically, the “Maximum living area [for an accessory apartment] is the greater of: a. 25 percent of the gross floor area of the principal dwelling unit, or b. 500 square feet.” UDC/LDC 89-74. As the Subject Property is not secondary to any principal dwelling unit, section “a” is completely inapplicable. And the Subject Property far exceeds 500 square feet in size.

112.

Accordingly, the subject property cannot ever meet the definition of, nor can it be deemed “functionally the same” as an “accessory apartment”.

113.

The UDC and now the LDC defines “community home” as “A facility certified, licensed, or monitored by the Department of Health and Hospitals to provide resident services and supervision to six or fewer handicapped persons. Such facility shall provide supervisory personnel in order to function as a single-family unit but not to exceed two live-in persons. (Source: LRSA § 28:477) This use does not include persons handicapped by reason of current drug abuse or alcohol abuse, nor shall it apply to handicapped persons currently under sentence or on parole from any criminal violation or who have been found not guilty of a criminal charge by reason of insanity.” UDC/ LDC 89-21(d).

114.

The Subject Property is not a “facility certified, licensed, or monitored by the Department of Health and Hospitals to provide resident services and supervision to six or fewer handicapped persons” nor does it “provide supervisory personnel” to over see such handicapped persons. Accordingly, the subject property cannot ever meet the definition of, nor can it be deemed “functionally the same” as a “community home”.

115.

Given the nature of what it is and how it operates, i.e. as a commercial, for-profit, by-the-night rental for transient occupants from the internet, a short-term rental is not and cannot be deemed “functionally the same as [any] listed use.”

116.

At the hearing on the BOZA appeal at issue here, counsel for the Director argued that the short term rental at issue was functionally the same as an accessory apartment. For the reasons noted above, this argument was misplaced at best and certainly not supported by the law referenced above.

117.

To the extent that BOZA based its decision on a finding that the Director correctly authorized the short-term rental at issue because it was functionally the same as an accessory apartment, its decision was clearly erroneous, illegal, and contrary to law.

2. Short-term rentals do not have similar visual, traffic, environmental and similar impacts as an expressly listed use

118.

Short-term rentals do not have similar impacts to the Appellant's neighborhood that a home, occupied by a family, does. The coming and going of transient occupants, the parking of multiple vehicles on the streets, the light and noise problems that have been experienced by Appellants, are not similar at all to those uses permitted by the LDC/UDC.

119.

Worse yet, the genuine and imminent fear that Appellants have for their children, families, homes, and property resulting from the revolving door of short-term rental guests from the internet lodging next door is a far cry from the impacts of the long-term neighbor/resident living next door.

120.

The Director was provided with a plethora of information from some of the Appellants and other concerned citizens in this community evidencing that the impacts of a short-term rental next door to one's home are not at all similar to visual traffic environmental or other similar impacts as any expressly listed use in an RS-1 zoned district.

121.

The Director's determination otherwise was erroneous or ignores the information she was provided to the contrary.

122.

At the hearing on the BOZA appeal at issue here, counsel for the Director argued that the short-term rental at issue had similar visual, traffic, and other similar impacts as a "community home". For the reasons noted above, this argument was misplaced at best and certainly not supported by the law referenced above.

123.

To the extent that BOZA based its decision on a finding that the Director correctly authorized the short term rental at issue because it had similar visual, traffic, and other similar impacts as a “community home”, its decision was clearly erroneous, illegal, and contrary to law.

3. There is no evidence whatsoever that other comparably sized jurisdictions have successfully integrated the use in one or more equivalent zoning districts

124.

At the hearing on the BOZA appeal at issue here, counsel for the Director made no arguments and submitted no evidence with regard to whether the Director considered this particular factor when authorizing the Short term rental at issue in this case.

125.

As this provision was not a part of the UDC, but was added to the LDC after the fact, it is presumed that the Director could not have and did not rely on this factor when making her determination.

126.

Out of an abundance of caution, and in order to preserve this issue on appeal, Appellants address this factor.

127.

It is uncertain whether the Director utilized this guideline in her determination, but if she did, the evidence that is out there is far from settled as to whether any other comparably sized jurisdictions have successfully integrated short-term rentals in their zoning districts.

128.

For example, the governing authorities of Baton Rouge have remained in a deadlock over how and if to regulate short-term rentals; New Orleans has enacted strict regulations for short-term rentals embodied in a 58 page *City Of New Orleans Department Of Safety And Permits Short Term Rental Handbook* which can be found at link: <http://www.nola.gov/nola/media/311/str-handbook-version-20191203.pdf>. Jefferson Parish has completely banned short term rentals in its residential zoned districts. Smaller communities like Mandeville and Abita Springs have also enacted strict regulations

for the operation of such businesses in their communities. Zoning provisions for each of these communities were submitted on the record at the subject BOZA hearing.

129.

A cursory review of cities, large and small, across America reveals that communities across the country are grappling with how to manage the problems generated by short-term rentals.

130.

The debate on the “successful integration” of short-term rentals in communities nationwide is anything but settled. Where they have been implemented, they are heavily regulated.

131.

The Director’s determination to authorize the short-term rental in this case does so with no regulatory framework whatsoever for same to operate within. This is problematic for Appellants, some of whom have to live next door to this unregulated business.

132.

There are no communities that have successfully integrated short-term rentals into their communities without any regulation whatsoever. This guideline did not support the Director’s determination.

133.

To the extent that BOZA based its decision on a finding that the Director correctly authorized the short-term rental at issue because “other comparably sized jurisdictions have successfully integrated the use in one or more equivalent zoning districts”, its decision was clearly erroneous, illegal, and contrary to law.

4. Short-term rentals are not within the same industry classification as another permitted use

134.

At the hearing on the BOZA appeal at issue here, counsel for the Director made no arguments and submitted no evidence with regard to whether the Director considered this particular factor when authorizing the Short term rental at issue in this case.

135.

Out of an abundance of caution, and in order to preserve this issue on appeal, Appellants address this factor.

136.

It is unclear whether the Director utilized this guideline but there seems to be no consensus on which NAICS guideline a short-term rental would fall under. It appears that NAICS code 721199- "All Other Traveler Accommodation Description" is the suggested code for use though by authorities on the subject.

137.

This code provides "This U.S. industry comprises establishments primarily engaged in providing short-term lodging (except hotels, motels, casino hotels, and bed-and-breakfast inns)."

138.

Apparently, the preferred NAICS code for short-term rentals falls in the general industry category for the lodging industry, which includes hotels, motels, casino hotels, and bed-and-breakfast inns.

139.

None of these uses are permitted in RS-1 zones, with the exception of a bed and breakfast, which as noted above is subject to a conditional use permit and strict use guidelines embodied in the LDC/UDC. Under any circumstance, this guideline simply cannot serve as grounds for the Directors' authorization of a short-term rental in an RS-1 zone in Lafayette.

140.

To the extent that BOZA based its decision on a finding that the Director correctly authorized the short-term rental at issue because short-term rentals fall within the same industry classification as another permitted use, its decision was clearly erroneous, illegal, and contrary to law.

C. CONSTITUTIONALITY OF BOZA'S DECISION UPHOLDING ACTIONS OF DIRECTOR

141.

Both the Federal and Louisiana Constitutions recognize citizens' paramount rights to due process, particularly with regards to their property rights.

142.

As the Director's decision, upheld by BOZA, to authorize short-term rentals in Appellants' neighborhood occurred without any notice or opportunity for affected or interested parties to be heard, and operation of short-term rentals on adjacent properties may have an adverse impact on Appellants' property values, security, and quality of life, a decision by this Court is needed to remedy the violation of the Appellants' constitutional rights, or to provide a reasonable accommodation of those rights granted them under federal law, including but not limited to their substantive and procedural Due Process rights.

143.

Appellants assert that the operation of a short-term rental next door to their homes, their families, their pets- all traditional things existing in a residential area- has and will have a detrimental impact on them, their property values, their quality of life, and their substantial investments in their residences.

144.

La R.S. 33:4724 specifically provides "The legislative body of a municipality which has provided for a comprehensive zoning plan shall provide for the manner in which the regulations and restrictions and the boundaries of the districts shall be determined, established, and enforced and from time to time amended... No regulations or restrictions shall become effective until after a public hearing at which parties in interest have an opportunity to be heard. A public hearing in relation to the regulations may be held by the legislative body of a municipality which has provided for a comprehensive zoning plan. In such a case, notice of the time and place of the hearing shall be published at least three times in the official journal of the municipality or, if there be none, in a paper of general circulation therein. At least ten days shall elapse between the first publication and the date of the hearing."

145.

The Director's decision, upheld by BOZA, clearly effected a change in the regulations and restrictions for use of properties within residential zoned areas in Lafayette. And it was done so without any notice whatsoever to the public at large or interested parties in violation of federal and state law.

146.

Appellants, having lost their opportunity to be heard by the Director's Nov. 10, 2020 determination, had their property rights and their quality of life substantially altered by a decision by the Director without any notice or opportunity to be heard.

147.

The Director's unilateral actions which occurred under the cover of the COVID Pandemic, were taken with no notice to any of the affected parties, violating Appellants' substantive and procedural due process rights, quietly taking away notice and opportunity to be heard on the issue.

148.

This decision by the new Director, a single individual, which was upheld by BOZA, affects the entire community of Lafayette, not just the Appellants in this case, as it has authorized a previously unpermitted use in the entire community. This action was thus unconstitutional in that it altered property rights for the entire community without notice to the community, or an opportunity to be heard.

149.

The Director's action also effected a change in the law and/or was an exercise of policy making power, an unconstitutional exercise of legislative powers not conferred on her as a part of the executive branch of Lafayette Government in violation of Lafayette's Home Rule Charter.

150.

Under any circumstance, and in the alternative, the Director's action which authorized a use not previously permitted in the entirety of Lafayette far exceeded the intended limits of UDC 89-21(c), which was intended to permit a Director to make limited determinations regarding a single property in Lafayette, not to make broad and sweeping changes to the comprehensive zoning plan for Lafayette.

151.

Appellants became aware of the Director's decision in January, 2021, as a happenstance result of litigation over the subject property.

152.

The Appellants, consisting of 41 individuals from the neighborhoods surrounding the property filed their own appeal to BOZA in February, 2021, seeking a determination of whether the Director acted erroneously and whether her actions violated their due process rights.

153.

As such, the Director's decision which was upheld by BOZA was a gross violation of Appellants' substantive and procedural due process rights.

154.

While the Appellants did file their own appeal, only upon learning of the decision by happenstance, the decision had already occurred and the due process violation had already occurred.

155.

As such, the Director's decision, which was upheld by BOZA, violated Appellant's due process rights and was illegal, contrary to law, and otherwise clearly erroneous.

RELIEF REQUESTED

156.

For those reasons alleged and argued above, Appellants submit that the decision by BOZA, which upheld the Director's decision is illegal, in whole or in part.

157.

Appellants thus request under the provision of La. R.S. 33:4727 that the Court issue a writ of certiorari to BOZA to review its decision, and that this Honorable Court prescribe a time within which a return may be made and served upon the relators that shall be not less than ten days unless extended by the Court.

158.

Pursuant to La. R.S. 33:4727, Appellants request that the writ direct BOZA to produce a transcribed record of the appeal hearing at issue as well as all documents and evidence submitted at the hearing as part of the record for this appeal.

159.

Pursuant to La. R.S. 33:4727, Appellants further request that the writ direct BOZA in its return to concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and that such statement be verified by BOZA.

160.

After the record is lodged, Appellants request that a briefing deadline be set and a hearing held for the presentation of oral argument.

161.

If, upon the hearing, it appears to the Court that testimony is necessary for the proper disposition of the matter, Appellants request that the Court take additional evidence in accordance with the law.

162.

Appellants respectfully request that after due proceedings are had, that the Court reverse BOZA's decision, wholly or in part, and/or modify the decision brought up for review reversing the Director's decision.

163.

Appellants further suggest that they have shown, and the record will reveal that BOZA acted with gross negligence, in bad faith, or with malice in making the decision appealed from and as such, should be made to pay the costs of these proceedings pursuant to La R.S. 33:4727(E)(5).

WHEREFORE, Appellants, COLBY LANGLINAIS, et al, pray that the Appellee, the Lafayette Board of Zoning Adjustment, be served with a certified copy of this Petition for Appeal and Request for Declaratory Judgment, and that a writ of certiorari issue herein as follows:

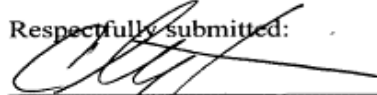
- a. Prescribing a time within which a return may be made by BOZA and served upon the relators that shall be not less than ten days unless extended by the Court;
- b. That BOZA is directed to produce a transcribed record of the appeal hearing at issue as well as all documents and evidence submitted at the hearing as part of the record for this appeal; and
- c. That BOZA is directed in its return to concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and that such statement be verified by BOZA.

Appellants further pray that after the appeal record is lodged, that a briefing deadline be set and a hearing held for the presentation of oral argument on this appeal. If, upon the hearing, it appears to

the Court that testimony is necessary for the proper disposition of the matter, Appellants pray that the Court take additional evidence in accordance with the law.

Appellants respectfully request that after due proceedings are had, that the Court reverse BOZA's decision, wholly or in part, and/or modify the decision brought up for review reversing the Director's decision, that there be judgment rendered herein in favor of Appellants, and that BOZA be cast with all costs of these proceedings and for all other general, equitable and declaratory relief to which they are or may be entitled.

Respectfully submitted:



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PLEASE SERVE:

LAFAYETTE BOARD OF ZONING ADJUSTMENT
Through its chairman, Chris German, or his designee,
At the office of the Board
220 West Willow Street, Building B
Lafayette LA 70501

and

LAFAYETTE BOARD OF ZONING ADJUSTMENT
through City Parish Attorney, Greg Logan
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