

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R Scarborough, Master-In-Equity

MAY 11 2011

S.C. Supreme Court

Case No 2007-CP-10-4692

HISTORIC CHARLESTON FOUNDATION and
PRESERVATION SOCIETY OF CHARLESTON,

Respondents,

v

THE CITY OF CHARLESTON, THE CITY OF CHARLESTON
CITY COUNCIL, and LIBRARY ASSOCIATES, LLC,

Appellants

RESPONDENTS' JOINT FINAL BRIEF

G Trenholm Walker
Lindsay K Smith-Yancey
Daniel S McQueeney Jr
Katie F Monoc
Pratt-Thomas Walker, P A
P O Drawer 22247
Charleston, SC 29413-2247
(843) 727-2208
Attorneys for ██████████
Preservation Society of Charleston

Edward K Pritchard III, Esquire
Samia H Nettles, Esquire
Pritchard & Elliott, LLC

129 Broad Street
Charleston, SC 29401
(843) 722-3300
Attorneys for ~~XXXXXX~~
Historic Charleston Foundation

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STATEMENT OF THE ISSUES ON APPEAL

Did the master err in setting aside an ordinance rezoning a portion of a small parcel of real property from the 55/30 height district to the 3X height district where the purpose of the ordinance was to avoid Respondents' appeal of a variance granted with respect to the same property, the ordinance permitted a height increase unprecedented for similarly-situated parcels in the surrounding area, and the City's comprehensive plan advocated replacing—not expanding—the 3X height district?

STATEMENT OF THE CASE

On August 21, 2007, the City of Charleston (the "City") enacted an ordinance rezoning a portion of a small parcel of real property located at 404 King Street in Charleston, South Carolina ("404 King") from the 55/30 height district to the 3X height district (**R p 529**) 3X is a height district that allows the maximum height of a building to be three times the distance from the front of the building to the center line of the street it fronts 55/30 is a height district with a fifty-five foot maximum and thirty foot minimum height

On October 19, 2007, Respondents Historic Charleston Foundation and the Preservation Society of Charleston ("Respondents") filed an action in the Charleston County Court of Common Pleas challenging the ordinance as arbitrary and illegal spot zoning (**R pp 27-89**) The action was consolidated for trial with another matter involving a variance for 404 King, and the consolidated actions were referred to the Charleston County Master-in-Equity by consent of the parties (**R pp 17-20, R p 21-24**)

The actions were tried before the master on January 12, 2009, and March 9, 2009 (**R p 1**) On August 20, 2010, the master invalidated the zoning ordinance, finding it was arbitrary and constituted illegal spot zoning (**R pp 1-15**) On September 9, 2010, Appellants filed a motion to alter, amend or reconsider, which the master denied by order filed on November 9, 2010 (**R p 16**) On December 3, 2010, Appellants served their notice of appeal of the master's

order invalidating the zoning ordinance and the master's order denying their motion to alter, amend or reconsider **(R p 25)**

FACTS

404 King was the site of the former main branch of the Charleston County Public Library before being purchased by Appellant Library Associates, LLC, ("Developer") in the 1990s. The Developer seeks to construct a 105-foot tall hotel at 404 King. 404 King is located on the southeast corner of the intersection of King and Hutson Streets, adjacent to the historic Old Citadel building and Marion Square, across the street from St. Matthew's Lutheran Church and the historic Aimar Building at 409 King Street, and within Charleston's Old and Historic District, which is also listed as a National Historic Landmark by the U.S. Department of the Interior.

At the time the Developer acquired 404 King, the parcel was split zoned. The portion of the parcel fronting King Street was zoned 3X, and the back portion of the parcel was zoned 55/30. Split zoning is typical in the area where 404 King is located. In fact, all properties on the east side of King Street from George Street to Line Street are split zoned.

Section 8.4 of the Downtown Plan, the portion of the land use element of the City of Charleston's Comprehensive Plan applicable to 404 King, specifically states that the 3X height district is an overly permissive height zone that should be replaced. **(R pp 619-767)** In a 2005 City Council meeting, the City referred to the 3X height district as "prehistoric" and no longer appropriate. **(R pp 952-1019)**

In September 2006, the City eliminated the 3X height district on King Street for all the blocks north of Hutson Street with one exception in the subject area of 404 King. Prior to the rezoning of 404 King, no parcel on the east side of King Street was zoned entirely 3X. Only

three parcels on the west side of King Street, between Calhoun and Vanderhorst Streets, are zoned entirely 3X. These three parcels are not available to new development and contain the Francis Marion Hotel, St. Matthew's Lutheran Church, and the parking garage in between.

The rezoning of 404 King to extend the 3X height district is the one and only instance in which 3X zoning has been expanded since the City's adoption of the Comprehensive Plan. Section 8.4 of the Downtown Plan states that a goal of the plan is to preserve downtown's existing skyline and height zones. (R pp 694-697) The Downtown Plan allows for only slight increases to the existing skyline of one story and disfavors tall buildings that detract from historic sites. (R pp 694-697) Section 9.2 of the Downtown Plan refers to 404 King as the "old library site" and states that new development on this parcel should pay particular attention to preserving the prominence of the church steeples, the old Citadel building and the "Calhoun column" on the skyline. (R pp 709-714) If 404 King were entirely rezoned to the 3X height district, the resulting building would be fifty feet taller than the adjacent historic old Citadel building, and substantially taller than many other historic structures in the area.

On December 4, 2006, the Developer filed an application with the Board of Zoning Appeals-Zoning ("BZA-Z") seeking a variance from the height limitation of fifty-five feet for the rear portion of 404 King in the 55/30 height district. (R pp 78-84) This portion of 404 King adjoins the old Citadel building. On January 2, 2007, the BZA-Z conducted a hearing and granted Developer a variance allowing a building height of up to 105 feet on the portion of 404 King that had been zoned 55/30. (R pp 86) Ultimately, Respondents appealed the BZA-Z's decision granting a variance for 404 King to the circuit court. (R pp 1762-1785)

After Respondents appealed the BZA-Z's variance decision to the circuit court, the Developer began discussions with the City to rezone 404 King by expanding the 3X zoning

classification to the entire parcel. The purpose of the rezoning was to avoid the Respondents' challenge to the variance. (R pp 499-500, 506-507) Respondents and their members spoke in opposition to the rezoning of 404 King at the City's Planning Commission and City Council deliberations. Despite Respondents' objections and despite the admittedly "prehistoric" nature of the 3X height district, on August 21, 2007, the City, acting through City Council, adopted an ordinance rezoning the rear portion of 404 King to the 3X height district that the City's own Comprehensive Plan stated should be replaced. (R p 529)

No other parcel in the area was rezoned at the time. (R p 529) Further, the zoning on all of the properties to the north, south and west of the property along King Street, as well as the properties to the east on Hutson Street, which were also subject to split zoning, were not rezoned, instead, these parcels retained the exact same split height zoning restrictions they had prior to the rezoning of 404 King.

Respondents filed the present lawsuit challenging the City's rezoning of 404 King. (R pp 27-89) After the case was consolidated with the Respondents' appeal of the BZA-Z's variance decision, the master affirmed the BZA-Z's decision granting a variance to the Developer, and Respondents appealed that ruling to the South Carolina Court of Appeals, where it is currently pending.

With respect to Respondents' challenge of the zoning ordinance, the master recognized that "the zoning change was pursued even though the variance had already been approved in order to avoid the Plaintiffs' lawsuit surrounding the variance." (R p 3) The master cited the trial testimony to this effect in ruling that "avoiding litigation as to one small parcel of land was in fact the motive of the City in pursuing the rezoning of 404 King Street." (R p 7) As a result, the master found "that the rezoning was an improper act by the City which sought to

insulate the City and Library Associates from judicial review of the purported legal deficiencies in the Variance Decision ” (R p 7)

The master did not simply find that the rezoning rested upon an arbitrary purpose, to the contrary, the master also held that the rezoning constitutes illegal spot zoning (R pp 8-15) In particular, the master held that “City Council engaged in spot zoning by rezoning only a portion of one parcel of land to expand the 3X district, a zoning classification that is disfavored by the City and which has been in the process of being phased out in the downtown area ” (R p 9) The master concluded “I find that the rezoning of 404 King Street to extend the 3X zoning classification was not only spot zoning, but illegal spot zoning because it did not adhere to the City’s Comprehensive Plan and did not promote the good of the common welfare ” (R p 14)

STANDARD OF REVIEW

“[A] municipality has the legislative power to amend its general zoning ordinance and rezone small areas, so long as its action is not arbitrary or unreasonable ” Bob Jones Univ., Inc. v City of Greenville, 243 S C 351, 359, 133 S E 2d 843, 847 (1963) The court should not disturb the findings of a municipal body “unless such action is arbitrary, unreasonable or in obvious abuse of its discretion, or unless it has acted illegally and in excess of its lawfully delegated authority ” Id. at 360, 133 S E 2d at 847

An appellate court has the power to set aside a municipal body’s zoning decision where there has been a clear abuse of discretion by the municipal body Talbot v Myrtle Beach Bd of Adjustment, 222 S C 165, 173, 72 S E 2d 66, 70 (1952) The presumption of fairness a municipal body normally enjoys as to their decisions will be set aside when the municipal body has acted arbitrarily or in obvious abuse of its discretion or where the board has acted illegally and in excess of its lawfully delegated authority Id.

ARGUMENT

The master did not err in setting aside the ordinance rezoning a portion of 404 King from the 55/30 height district to the 3X height district because the purpose of the ordinance was to avoid Respondents' appeal of the variance decision, the ordinance permitted a height increase unprecedented for similarly-situated parcels in the surrounding area, and the City's Comprehensive Plan advocated replacing—not expanding—the 3X height district

In his order invalidating the zoning ordinance, the master appropriately concluded that the City arbitrarily adopted the ordinance for the purpose of avoiding Respondents' appeal of the BZA-Z decision granting a variance to the Developer. The master then recognized that the ordinance applied to only a portion of a small parcel of real property. In fact, since the adoption of the City's Comprehensive Plan in 1999, the zoning ordinance was the first to expand the "prehistoric" 3X height district, which applied to only three other parcels in the area—all of which were not subject to new development.

The master also recognized that the zoning ordinance ignored the plain language of the City's Comprehensive Plan, which advised replacing the 3X height district and placing *greater* (not lesser) height restrictions on the buildings in downtown Charleston to protect the existing skyline. In short, the evidence supports the master's conclusion that the zoning ordinance was arbitrary and constituted an abuse of the City Council's discretion. Consequently, the master's decision setting aside the ordinance should be affirmed.

A. The zoning ordinance, which applies to only a portion of a small parcel of real property and permits a height increase unprecedented for similarly-situated parcels in the surrounding area, constitutes spot zoning.

As the master concluded "the rezoning at issue did apply to a 'spot,' that 'spot' being a portion of the single parcel of 404 King Street" (R p 8)

“‘Spot zoning’ is a process of singling out a small parcel of land for use classification totally different from that of the surrounding area, for the benefit of owners of such property and to detriment of other owners” Bob Jones Univ., Inc v City of Greenville, 243 S C 351, 361, 133 S E 2d 843, 848 (1963), see also Knowles v City of Aiken, 305 S C 219, 221, 407 S E 2d 639, 641 (1991) (reiterating this definition from Bob Jones) “Typically, in such a case, the land in question has been ‘upzoned’ at the owner’s request to allow a higher density or more intensive use or development” 3 Rathkopf’s The Law of Zoning and Planning § 41 2 (4th ed) “[C]ourts tend to be more lenient with respect to zone changes in relatively undeveloped areas than in established areas” 3 Rathkopf’s The Law of Zoning and Planning § 41 8 (4th ed)

Singling out one lot or small area for treatment less onerous than that imposed upon nearby, indistinguishable properties qualifies as spot zoning W R Grace Co v Cambridge City Council, 779 N E 2d 141, 151 (2002) Spot zoning is also defined as an instance where one lot or small area is singled out for different treatment from that accorded to similar surrounding land indistinguishable from it in character for the economic benefit of the owner of that lot Putney v Township of Abington, 108 A 2d 134, 140 (1954)

The rezoning of 404 King falls squarely within the definition of “spot zoning” There is no question that this rezoning applied only to a portion of a single parcel, i e , a “spot” In fact, the rezoning ordinance changed the height district for a portion of 404 King alone The height districts for other parcels were not changed as part of the rezoning

Further, by expanding the 3X height district classification, the City rezoned the single parcel of 404 King in a manner inconsistent with the surrounding area As the master ruled, “City Council engaged in spot zoning by rezoning only a small portion of one parcel of land to

expand the 3X district, a zoning classification that is disfavored by the City and which has been in the process of being phased out in the downtown area ” (R p 9)

It is undisputed that 3X zoning is a disfavored zoning classification that is in the process of being actively phased out. A year before this rezoning, the City’s mayor went so far as to characterize the 3X height district as “prehistoric.” The City’s Comprehensive Plan called for elimination of the 3X height district. In September 2006, the City eliminated the 3X height district on King Street for all the blocks north of Hutson Street with one exception. According to the City’s zoning administrator, the 3X height district has never before been expanded. This was the one and only instance. Thus, the rezoning of 404 King to extend the 3X height district was inconsistent with the zoning scheme of not only the surrounding parcels but the Charleston peninsula as a whole. It was *per se* inconsistent with the Comprehensive Plan.

Appellants argue that the west side of King Street between Calhoun and Vanderhorst Streets contains parcels that are zoned entirely 3X. As the master recognized in his order, these parcels contain the Francis Marion Hotel, St. Matthew’s Lutheran Church, and the parking garage in between. None of these is a parcel subject to development, and none is on the east side of King Street. This portion of the 3X height district where the parcels were not split zoned for height is atypical for the immediate vicinity, as was clear from the zoning maps admitted into evidence.

Finally, the rezoning of 404 King was done for the benefit of the Developer and to the detriment of surrounding properties. The Developer will benefit economically from the rezoning due to the increased number of rooms that extra height allows to be added to the owners’ proposed hotel. “The rezoning allowed a larger hotel, which in turn increases the revenue potential from the project.” (R pp 9-10)

The “stepback” for the upper floors on the west and east elevations, adjacent to King Street and the Old Citadel building respectively, is minimal at best. The effect is a 105 foot building near to historic buildings that are shorter by 50 feet or more. “City Council’s rezoning of 404 King Street is detrimental to surrounding properties and other owners” (R p 10)

One of the primary goals in the Downtown Plan adopted in 1999, which is the current land use comprehensive plan for the City, is the preservation of the existing skyline at Marion Square with only slight increases in elevation (R pp 619-767). The rezoning violates this stated public goal. The difference in height would make the building at 404 King the predominant building in comparison to the adjacent, historic Old Citadel building. Its elevation would also shadow the historic Aimar Building across King Street.

The rezoning in this case is distinguishable from those in Bob Jones and Knowles for several reasons. In Bob Jones, 243 S C at 355-56, 133 S E 2d at 845, the Supreme Court of South Carolina was faced with a challenge to a rezoning of “lands commonly known as the Wilson property, from a residential zone into a retail shopping center classification.” Unlike in the present case, the evidence in Bob Jones established that the Wilson property was one of only a few properties in the general area that had *not* been rezoned for business purposes. “[A]ll of the property along Wade Hampton Boulevard, from Main Street in the City of Greenville to the appellant’s property, has been zoned for business purposes, with the exception of the Wilson property and certain property across Wade Hampton Boulevard.” Id at 357, 133 S E 2d at 845. Thus, whereas the rezoning in this case will make the permissible height at 404 King stand out more from the surrounding parcels, the rezoning in Bob Jones involved *conforming* the permissible uses of the Wilson property to the surrounding uses.

Moreover, unlike in the present case, the character of the surrounding area in Bob Jones was changing to become *more like* the uses permitted on the Wilson property “The Master also found that the area here involved has essentially changed and, as a result, the property in question should be rezoned, citing the fact that only recently there was a rezoning in order to allow the erection of a building for the First Federal Savings and Loan Association and for a filling station, both on the northern side of Wade Hampton Boulevard, and the shopping center designated as the Wade Hampton Shopping Center, immediately west of the property in question and on the southern side of Wade Hampton Boulevard” Id. at 358-59, 133 S E 2d at 846 In contradistinction, the master in the present case held that “3X zoning was, and is, a disfavored zoning classification that is in the process of being actively phased out” (R p 9) Consequently, unlike in Bob Jones, the rezoning in this case works a *detriment* to the development plan of the surrounding area, not another logical step in such plan

Similarly, although in Knowles the Supreme Court of South Carolina concluded the zoning at issue was not “spot zoning,” the facts of the present case are plainly distinguishable In Knowles the subject property had been previously unzoned, therefore its zoning actually created more restrictions for the use and development of the land Knowles, 305 S C at 220, 407 S E 2d at 640 Here, however, 404 King was already zoned, and the rezoning eliminated a critical building dimensional restriction in an effort to benefit the owner alone

Additionally, in Knowles, the subject land was simply being zoned for professional office, a commercial zoning category entirely consistent with the zoning of many surrounding parcels Id. at 221, 407 S E 2d at 641 In contrast, the 3X height district in the present case did not apply to any other parcels in the vicinity on the East side of King Street Also, there was no

indication in Knowles, as here, that the zoning classification applied to the subject property was “prehistoric” and being phased out in compliance with the municipality’s comprehensive plan

The benefit the Developer received from the rezoning in this case, combined with singling out a portion of 404 King to be rezoned in a manner inconsistent with the surrounding area and the zoning policies of the City, all to the detriment of surrounding properties and the public interest, amounts to “spot zoning” by the City. As the master held: “The actions of City Council in rezoning a portion of 404 King Street to expand the 3X zoning classification squarely falls within the definition of spot zoning because it was the singling out and rezoning of one small parcel to a classification totally different from that of the surrounding area for the benefit of the owner, Library Associates, and to the detriment of other owners.” (R p 11) This holding, which is wholly supported by the evidence, should be affirmed.

B The zoning ordinance, which negates the stated purpose in the City’s Comprehensive Plan to preserve and protect the existing skyline and which facilitates a building that will dwarf nearby historic properties, constitutes illegal spot zoning

“[W]here an ordinance establishes a small area within the limits of a zone in which are permitted uses different from or inconsistent with those permitted within the larger, such ‘spot zoning’ is invalid where the ordinance does not form a part of a comprehensive plan of zoning or is for mere private gain as distinguished from the good of the common welfare.” Galbot v. Myrtle Beach Bd. of Adjustment, 222 S.C. 165, 175, 72 S.E.2d 66, 71 (1952) (citations omitted)

“Hence, in reviewing spot zoning issues, upon a finding that there was in fact spot zoning, the appropriate analysis is to closely scrutinize the following factors: (1) the adherence of the zoning to the City’s comprehensive plan, and (2) promotion of the good of the common welfare but to

only correct injustices which are clearly shown ” Knowles v City of Aiken, 305 S C 219, 223, 407 S E 2d 639, 642 (1991)

“[T]he decision of the zoning board will not be upheld where it is based on errors of law, or fraud, or where there is no legal evidence to support it, or where the board acts arbitrarily or unreasonably, or in a discriminatory manner or where, in general, the board has abused its discretion ” Gurganious v City of Beaufort, 317 S C 481, 486, 454 S E 2d 912, 915 (Ct App 1995) While the municipal body enjoys a presumption of fairness as to their decision, “this presumption of fairness and correctness will fall and if favorable to a variance, the same will be set aside where there is a clear abuse of discretion by the board ” Talbot, 222 S C at 173, 72 S E 2d at 70 (citations omitted) Further, “[w]here the board of adjustment or appeals has acted after considering *all the facts and circumstances of a particular case*, the court should not disturb the findings of the board unless the board has acted *arbitrarily or in the obvious abuse of its discretion* or unless *the board has acted illegally* and in excess of its lawfully delegated authority ” Id at 174, 72 S E 2d at 70 (emphasis added) (citation omitted)

A municipal body has abused its discretion and acted illegally when it engages in ‘spot zoning’ that “*does not form a part of a comprehensive plan of zoning or is for mere private gain as distinguished from the good of the common welfare* ” Id at 175, 72 S E 2d at 71 (emphasis added) (citation omitted) While it is the law of South Carolina that “[c]ourts cannot become city planners but can only correct injustices when they are clearly shown to result from the municipal action,” the Court here should consider that there are clear injustices emanating from the City’s decision that must be corrected Id at 175, 72 S E 2d at 70 (citation omitted)

The rezoning of 404 King does not adhere to the City’s Comprehensive Plan and does not promote the good of the common welfare The City’s Comprehensive Plan disfavors tall

buildings that detract from historic sites (R p 692) The City's Comprehensive Plan further states that the 3X height district is an overly permissive height zone (R p 697) In fact, the City's Comprehensive Plan specifically requires particular attention to be paid to the skyline, including the prominence of church steeples and the old Citadel towers located adjacent to 404 King (R p 710)

City Council adopted the Downtown Plan as the land use comprehensive plan for the City Ordinances of a local government are subject to the same rules of statutory construction as statutes Arthurs ex rel Estate of Munn v Aiken County, 346 S C 97, 104, 551 S E 2d 579, 582 (2001) While the Appellants argue that the rezoning is consistent with the comprehensive plan's general goal of economic growth, the rules of statutory construction recognize that specific provisions prevail over general provisions Atlas Food Sys & Servs , Inc v Crane Nat Vendors Div of Unidynamics Corp., 319 S C 556, 558, 462 S E 2d 858, 859 (1995) Additionally provisions should be read in harmony, to give meaning to all terms if possible Foothills Brewing Concern, Inc v City of Greenville, 377 S C 355, 363, 660 S E 2d 264, 268 (2008) Hence, the Downtown Plan's specifications as to the skyline and height of buildings around Marion Square controls over the general statements in the comprehensive plan in favor of economic growth Moreover, the overall economic growth facilitated by a 55 foot tall hotel will be indistinguishable from that of 105-foot tall hotel—the skyline need not be sacrificed to facilitate a hotel, only a 105-foot tall hotel

Whether the extension of the 3X height district at 404 King to allow an elevation 50 feet above the existing zoning, and 50 feet above the adjacent historic Old Citadel building, complies with the City's Comprehensive Plan is not "fairly debatable," as urged by the Appellants The diagram illustrating the desired height and skyline in the Downtown Plan, as well as the specific

text governing Marion Square, clearly cannot be reconciled with the extension of the 3X height district and the radical increase in height—almost double that which would be allowed—by this rezoning

The rezoning of a portion of 404 King on Marion Square to the 3X height district is additionally contrary to the common welfare. It contributes to material adverse changes in this area of historical significance, and irremediably damages the skyline around Marion Square—the skyline which the Downtown Plan seeks to preserve. “[A]llowing a building nearly twice the height of many adjacent and nearby historically significant structures would have a negative impact on the common welfare [and] the rezoning of 404 King Street to extend the 3X zoning classification does not promote the good of the common welfare.” (R p 14)

The rezoning of 404 King to extend the 3X zoning classification was not only spot zoning, but *illegal* spot zoning because it did not adhere to the City’s Comprehensive Plan and did not promote the good of the common welfare. By engaging in illegal spot zoning, the City clearly abused its discretion, and therefore the presumption of fairness normally applying to a municipal body’s decision does not apply in this case. There is a lack of evidence supporting the City’s zoning decision, and therefore the decision is not fairly debatable. As the master recognized, “the rezoning of 404 King Street to extend the 3X zoning classification was not only spot zoning, but illegal spot zoning because it did not adhere to the City’s Comprehensive Plan and did not promote the good of the common welfare.” (R p 14) This ruling, which is supported by the unambiguous language in the Downtown Plan, should be affirmed.

C The ordinance rezoning a portion of 404 King was an arbitrary attempt by the City to single out a particular parcel to avoid Respondents' appeal of the BZA-Z's variance decision

“The zoning power must be exercised reasonably and not arbitrarily” Byrd v City of N Augusta, 261 S C 591, 594, 201 S E 2d 744, 746 (1974) “A zoning regulation is legal or valid only when it is reasonable” Id

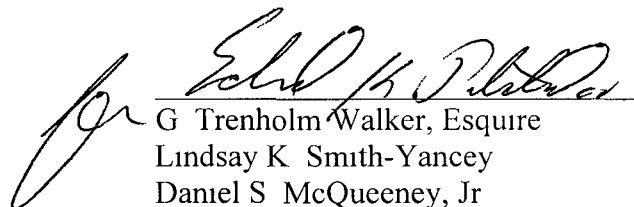
During the hearing before the master, the City confirmed that the true purpose of the zoning change was pursued even though the variance had already been approved in order to avoid the Respondents' lawsuit surrounding the variance (R pp 499-500, 506-7) Appellants confirm this purpose on appeal “Mayor Riley's testimony demonstrates he entertained the rezoning not because of concerns with the legitimacy of the variance litigation Just the opposite because the variance would withstand judicial review, its litigation would unnecessarily delay progress, and would result in a waste of time and money” (Apps ' Initial Br p 14) The City advocated for the zoning change despite the fact that the 3X height district was referred to by the City as “prehistoric” and no longer appropriate in a September 2005 City Council meeting

Thus, the rezoning of 404 King was no ordinary act of zoning, but was instead an attempt by the City to single out a particular parcel to avoid litigation over the variance previously granted on that parcel The primary purpose of the rezoning was to subvert the Appellants' rights to judicial review of the variance decision because the City did not believe such review worthwhile


CONCLUSION

City Council's zoning ordinance of August 21, 2007, rezoning a portion of 404 King to extend the 3X height district to the entire parcel, was an invalid act of illegal spot zoning, as confirmed in the testimony and exhibits submitted to the master, as well as the unambiguous language of the Downtown Plan. Based on the foregoing, the master's decision annulling the ordinance should be AFFIRMED.

Respectfully submitted,



G. Trenholm Walker, Esquire
Lindsay K. Smith-Yancey
Daniel S. McQueeney, Jr.
Katie F. Monoc
Pratt-Thomas Walker, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
(843) 727-2208
Attorneys for [REDACTED]
Preservation Society of Charleston



Edward K. Pritchard, III, Esquire
Samia H. Nettles, Esquire
Pritchard & Elliott, LLC
129 Broad Street

Charleston, SC 29401
(843) 722-3300
Attorneys for [REDACTED]
Historic Charleston Foundation

Charleston, South Carolina
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ASSOCIATES, LLC,

Respondents

CERTIFICATE OF COUNSEL

In accordance with Rule 211(a), SCACR, I hereby certify that the Respondents' Joint Final Brief complies with Rule 211(b), SCACR



Samia H Nettles
Pritchard & Elliott, LLC
129 Broad Street
Post Office Box 630
Charleston South Carolina 29401
(843) 722-3300

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R Scarborough, Master-In-Equity

Case No 2007-CP-10-4692

RECEIVED

MAY 11 2011

SC Supreme Court

HISTORIC CHARLESTON FOUNDATION and
PRESERVATION SOCIETY OF CHARLESTON,

Appellants,

v

THE CITY OF CHARLESTON, THE CITY OF CHARLESTON
BOARD OF ZONING APPEALS – ZONING and LIBRARY
ASSOCIATES, LLC,

Respondents

PROOF OF SERVICE

I hereby certify that I served the Respondents' Joint Final Brief on Frances I Cantwell, Esquire, and Timothy A Domin, Esquire, attorneys for Appellants, by depositing a copy of it in the United States Mail, postage prepaid, on May 9, 2011, addressed to follows

Frances I Cantwell, Esquire
Regan & Cantwell
105 Wappoo Creek Drive, Ste 1-A
Charleston, SC 29412

Timothy A Domin, Esquire
Clawson & Staubes LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492



Samia H Nettles
Pritchard & Elliott, LLC
129 Broad Street
Post Office Box 630
Charleston, South Carolina 29401
(843) 722-3300