Exhibit 2

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
James Ware, Alisa Ware, Jason DuBose, and Amanda DuBose, Appellants/Petitioners, v. Beaufort County Zoning Board of Appeals and Robert Merchant, in his Capacity as Planning Director of Beaufort County, Respondents/Defendants.	Civil Action Number: 2022-CP-07-01598 **ORDER DENYING APPELLANTS' RULE 59 (e), SCRCP, MOTION TO ALTER OR AMEND**

On May 17, 2023, this Court filed its Order that denied Appellants' Motion to Serve a Supplemental Pleading and granted Respondent Planning Director's Motion to Dismiss the case. Appellants then filed, on May 25, 2023, a Rule 59(e), SCRCP, Motion to Alter or Amend the May 17 Order. All parties filed thorough Memoranda concerning the Motion to Alter or Amend. In the exercise of its discretion pursuant to Rule 59(f), this Court determined to decide the May 25 Motion based on the Memoranda of the parties and without additional oral argument. Having now fully and deliberately considered the arguments for a Motion to Alter or Amend urged by Appellants, the Court, for the reasons set out below, and for the reasons set out in its May 17 Order, denies Appellants' Motion to Alter or Amend.

This case is an appeal from a decision of the County Zoning Board of Appeals (the "ZBA"). The determinative issue related to Respondent Planning Director's Motion to Dismiss was whether Appellants' appeal from the ZBA to circuit court was timely. The time period for appeals to the circuit court from decisions of zoning boards of appeal of local governments is prescribed by S.C.

Code § 6-29-820(A). That subsection provides that "The appeal must be filed within thirty days after the decision of the board is mailed." (Emphasis supplied). In the context of appeals from decisions of local zoning board decisions, adherence to the statutory time requirements for appeal to circuit court is viewed as "a jurisdictional requirement" that the court cannot extend or expand. Sadisco of Greenville, Inc. v. Greenville County Board of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000).

In the May 17 Order, this Court concluded that Appellants prematurely and untimely initiated this appeal from the County Zoning Board of Appeals to circuit court. Appellants filed the appeal in circuit court on August 23, 2022, a date that followed the initial ZBA hearing on July 28, 2022, but preceded the ZBA's reconsideration hearing on August 25, 2022, and, importantly, preceded the mailing, on September 20, 2022, of the written order of the Zoning Board. Additionally, after mailing of the Zoning Board's written order, Appellants failed to amend timely the pending circuit court action or initiate a new appeal action in circuit court within the required time period of thirty days after the mailing. Appellants' own pleadings plainly show that Appellants did not wait for mailing of the written order of the Zoning Board before commencing this action in circuit court, did not file a new Notice of Appeal in circuit court or amend the initial Notice of Appeal after they learned the date of mailing of the Zoning Board order, and did not even file their Motion to Serve a Supplemental Notice of Appeal within thirty days after the known mailing date of the Zoning Board order.

The Court's May 17 Order also considered and rejected Appellants' argument at the pre-Order hearing that Rule 6(e), SCRCP, applied to provide Appellants an additional five days for filing of the Motion to serve a Supplemental Pleading. The Order, in the Court's view, effectively distinguished the case of Dortch v. City of Columbia Planning & Development Services/ Zoning

Division, Op. No. 2015-UP-535, 2015 WL 7686970 (S.C. Ct. App. filed Nov. 22, 2015), relied on by Appellants at the hearing held before the May 17 Order (and in their supporting Memorandum for their current Motion). As discussed in the May 17 Order, Dortch is not reliable authority. The case does not hold that Rule 6(e), SCRCP, applies to the calculation of time for appeal pursuant to Code § 6-29-820(A) and has not been cited in any appellate cases for that proposition. Moreover, even if Rule 6(e) were applicable, the May 17 Order correctly determined, in the Court's view, that the Motion to Serve Supplemental Pleading was merely a request to the Court to be allowed to plead a new Notice of Appeal and Petition and was not itself a Supplemental Notice of Appeal or a Supplemental Petition.

It appears to the Court that Appellants' Motion to Alter or Amend and supporting Memorandum fail to raise any new pertinent issues or points of law or fact that were overlooked or disregarded by this Court in its Order. Similarly, the arguments advanced by Appellants in their supporting Memorandum present no material matters not raised at the oral argument before the Court on April 18 prior to the May 17 Order.[1]

It bears emphasis that Appellants' Motion to Alter or Amend and supporting Memorandum make no assertion that the statutory thirty-day deadline for appeal to circuit court after mailing of the decision was not known to Appellants' attorney. This plain and specific statutory time period for appeal has been in existence since the section's enactment, in 1994, as

[1] Appellants' supporting Memorandum does advance arguments that are not material or pertinent. For example, Appellants' argument that the zoning board decision was delayed unreasonably is not material since there is no time limit specified in the State Code or County zoning ordinance for issuance of the board's written decision. Moreover, as set out in the Zoning Board's decision, a second hearing was necessitated by the Appellants' own Motion for reconsideration directed to the Zoning Board. Additionally, the argument that the tie vote on the motion to reverse the Planning Director determination was "no action" is fatally undercut by the Conclusions of Law in the Board decision including the statement that Appellants' attorney agreed with the Chair at the Board hearing that the effect of the tie vote was a denial of the appeal.

part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994. Appellants cannot rely on pre-1994 zoning statutes to base calculation of filing deadlines in 2022.

Particularly significant, in light of the cases cited in the supporting Memorandum, is the further circumstance that Appellants provide **no** factual basis for the assertion that their failure to timely file before or after mailing of the zoning board decision was a mere "clerical" error. Although Appellants, in their supporting Memorandum, appear to imply that the failure to file timely was "a good faith clerical error", no explanation was given that would convert untimely filing to the equivalent of a typing or spelling error.

The cases cited by Appellants in their supporting Memorandum deal with "clerical errors" contained in notices of appeal. In Moody v. Dickinson, 54 S.C. 526, 32 S.E. 562 (1899), argued by Appellants in their supporting Memorandum, the error was "a mere clerical error in the title of the notice" of appeal to the appeals court. In Charleston Lumber Company, Inc. v. Miller Housing Corporation, 318 S.C. 471, 458 S.E.2d 431 (Ct. App. 1995), also argued by Appellants in their supporting Memorandum, the court allowed the appellant to continue its appeal due to "a mere clerical error" in failing to list one of five related cases in the notice of appeal. Finally, in State v. Scott, 351 S.C. 584, 571 S.E.2d 700 (2002), argued by Appellants in their supporting Memorandum, the "clerical error" was the listing of the wrong County (Richland rather than Lexington) in the notice of appeal filed with the circuit court. All of these cases involved "clerical errors." However, no such situation of "clerical error" is shown to be present here.

Appellants' additional arguments that Respondents were "on notice" of an appeal and, therefore, are not prejudiced by allowance of an appeal is unpersuasive. Knowledge of an opposing party's attempt to undertake an appeal is not a waiver of the Respondents' legal rights. Similarly, Respondents plainly are prejudiced if the court were to allow an untimely appeal to continue

against them, and particularly when the Court, because of the untimely appeal, lacked subject matter jurisdiction. Contrary to Appellants' argument, fairness and justice would not be served if this Court were to allow an untimely appeal from the zoning board to continue when the Court itself lacked subject matter jurisdiction. The Respondents clearly would be prejudiced by such an unlawful appeal.

ORDER

Based on the above reasons, and based on the reasons set out in the Court's previous Order of May 17, 2023, **IT IS ORDERED** that Appellants' Motion to Alter or Amend is **DENIED,** with the effect that this case is dismissed.

AND IT IS SO ORDERED.

Beaufort Common Pleas

Case Caption: James Ware , plaintiff, et al VS Beaufort County Zoning Board Of Appeals , defendant, et al

Case Number: 2022CP0701598

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165