

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Judicial Circuit

SC Court of Appeals

The Honorable Jennifer B. McCoy, Circuit Court Judge
Charleston County

Appellate Case No.: 2024-000768
Trial Court Case No.: 2023-CP-10-02575

Martin Alloy, Michael Laughlin, and Henry Grimball,

Appellants Below,

v.

City of Charleston, South Carolina Board of Architectural
Review – Small and 117 SOB Project, LLC,

Respondents,

of whom Martin Alloy is the Appellant.

INITIAL BRIEF OF APPELLANT MARTIN ALLOY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE..... 2

A. *The Edward Rutledge House*..... 2

B. *Application to the BAR-S and Public Hearing*..... 3

C. *Appeal to the Circuit Court*..... 5

STANDARD OF REVIEW ON APPEAL 7

ARGUMENT..... 7

I. THE CIRCUIT COURT ERRED IN DISMISSING THE APPEAL WHERE ALL NECESSARY PARTIES WERE JOINED IN THE APPEAL, WHICH WAS FILED WITHIN THE REQUIRED TIMEFRAME 7

II. THE CIRCUIT COURT ERRED IN FINDING NO MERIT TO THE ISSUE ON APPEAL THAT THE BAR-S VIOLATED FOIA WHEN IT ENTERED EXECUTIVE SESSION DURING WHICH IT DECIDED TO PROCEED ON THE UNNOTICED ITEMS..... 12

III. THE CIRCUIT COURT ERRED IN AFFIRMING THE BAR-S’S DECISION TO APPROVE CHANGES THAT VIOLATE PRESERVATION STANDARDS AND GUIDELINES..... 15

CONCLUSION 18

TABLE OF AUTHORITIES

Cases

Bivens v. Watkins, 313 S.C. 228, 437 S.E.2d 132 (Ct. App. 1993) 7

Blind Tiger, LLC v. City of Charleston, 366 S.C. 182, 621 S.E.2d 361 (Ct. App. 2005)..... 13

Bus. License Opposition Comm. v. Sumter Cnty., 311 S.C. 24, 426 S.E.2d 745 (1992) 17

Citizens for Sensible Planning v. City of Charleston, Case No. 2016-CP-10-6546 (S.C. Com. Pl. June 28, 2017) 10, 11, 12, 13

Donohue v. City of N. Augusta, 412 S.C. 526, 773 S.E.2d 140 (2015) 16

Friends of McLeod, Inc. v. City of Charleston, 376 S.C. 610, 658 S.E.2d 544 (Ct. App. 2008), vacated by 384 S.C. 438, 682 S.E.2d 488 (2009) 9, 10, 12, 13

Gurganious v. City of Beaufort, 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995)..... 18, 19

Lambries v. Saluda County Council, 409 S.C. 1, 760 S.E.2d 785 (2014) 7

Miramonti v. Richland Cnty. Sch. Dist. One, 438 S.C. 612, 885 S.E.2d 406 (Ct. App. 2023)..... 17

Quality Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 547 S.E.2d 862 (2001) 16

Sloan v. S.C. Bd. of Physical Therapy Exam’rs, 370 S.C. 452, 636 S.E.2d 598 (2006)..... 7

Spanish Wells Prop. Owners Ass’n, Inc. v. Bd. of Adjustment of Town of Hilton Head Island, 295 S.C. 67, 367 S.E.2d 160 (1988)..... 12, 13, 14

Town of Summerville v. City of N. Charleston, 378 S.C. 107, 662 S.E.2d 40 (2008) 7

Statutes

City Ord. Sec. 54-236..... 16, 17

S.C. Code § 15-53-10..... 10

S.C. Code § 30-4-15..... 14

S.C. Code § 30-4-60..... 13

S.C. Code § 30-4-70..... 13

S.C. Code § 30-4-70(b)..... 14

S.C. Code § 30-4-80(A) 13

| | |
|---|----------|
| S.C. Code § 6-29-1510..... | 10 |
| S.C. Code § 6-29-760(d)..... | 10 |
| S.C. Code § 6-29-900..... | 2, 8, 11 |
| S.C. Code §§ 30-4-10, <i>et seq</i> | 12 |

Other Authorities

| | |
|---|--------|
| U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties | 15, 16 |
|---|--------|

Rules

| | |
|----------------------------|----|
| Rule 19, SCRCP..... | 10 |
| Rule 268(d)(2), SCACR..... | 9 |

STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT ERR IN DISMISSING THE APPEAL WHERE ALL NECESSARY PARTIES WERE JOINED IN THE APPEAL, WHICH WAS FILED WITHIN THE 30-DAY DEADLINE?

- II. DID THE CIRCUIT COURT ERR IN ACCEPTING THE BAR-S INSISTENCE THAT NO ACTION OR VOTES HAD BEEN TAKEN IN EXECUTIVE SESSION WHEN THE RECORD DEMONSTRATES THAT THE BAR-S CONVENED AN EXECUTIVE SESSION IN WHICH THE BAR-S DECIDED IT WOULD CONSIDER THE UNNOTICED ITEMS?

- III. DID THE BAR-S ABUSE ITS DISCRETION BY APPROVING UNNOTICED PLANS TO GROSSLY TRANSFORM A NATIONAL HISTORIC LANDMARK IN A MANNER THAT IS INCONSISTENT WITH APPLICABLE STANDARDS AND GUIDELINES?

STATEMENT OF THE CASE

This appeal arises out of the mishandling of a national landmark by the current owner/applicant, Respondent 117 SOB Project, LLC (“SOB Project”) and by Respondent City of Charleston, South Carolina Board of Architectural Review – Small (“BAR-S”). The BAR-S approved a “demolition and salvage plan” and a “site plan” that will result in significant modifications to a National Historic Landmark by allowing SOB Project to circumvent applicable procedures. The decision of the BAR-S to allow SOB Project to degrade and diminish the character of a historic site was made without notice to the public and in violation of its own guidelines and standards.

Appellant Martin Alloy (“Appellant”) brought this appeal pursuant to S.C. Code § 6-29-900 to challenge the decision of the BAR-S. Mr. Alloy resides at 15 Orange Street located in historic downtown Charleston, which is immediately adjacent to the historic property known as the Edward Rutledge House. (Am. Notice, p. 1 at ¶ 1; Notice, p. 1 at ¶ 1.)

A. The Edward Rutledge House

SOB Project purchased the Edward Rutledge House in 2022 for \$7,200,000.00. (Ex. E to Mem. in Supp. of Pet.) Since purchasing the Edward Rutledge House, SOB Project has requested hundreds of changes that will permanently alter the overall historic character of a historic landmark in order to suit the owners’ personal tastes. The Edward Rutledge House property is comprised of two historic buildings: a three-story main residence located at 117 Broad Street (TMS No. 457-12-04-010) and a two-story residence located at 17 Orange Street (TMS No. 457-12-04-116) (collectively, the “Edward Rutledge House”). Built in 1760, the Edward Rutledge House was once the home of Edward Rutledge, who was a founding father and the youngest person to sign the Declaration of Independence before serving as Governor of South Carolina. The Edward Rutledge

House has been designated a National Historic Landmark by the United States Department of the Interior. confirmed by the National Register of Historic Places Inventory Form, it “is the only existing structure that can be associated with Edward Rutledge.” (Ex. A to Mem. in Supp. of Pet.) The National Register of Historic Places Inventory Form notes that it is the entire “site” of the Edward Rutledge House that is recognized as a National Historic Landmark, as opposed to just the mansion. (Ex. A to Mem. in Supp. of Pet., p. 1.)

The Edward Rutledge House is bounded by a historic wall dating back to the eighteenth century that runs along Orange Street. The wall and pedestrian gate along Orange Street have significant historical importance. For example, the pedestrian gate has been featured in works by the renowned early American Photographer Frances Benjamin Johnston and in an etching by Antoinette Guerard Rhett. (Exs. B and C to Mem. in Supp. of Pet.) A circular oyster shell tabby and concrete driveway serves both structures on the Edward Rutledge House property and provides access to Broad Street. There are approximately twelve (12) off-street parking spaces along the property. Historically, the Edward Rutledge House has operated as a single building site. The mansion (117 Broad Street) and the kitchen house (17 Orange Street) have been owned and sold together. The entire “property” is subject to a set of Restrictive Covenants stating that “subdivision” of the property is prohibited. (Ex. D to Mem. in Supp. of Pet.) When SOB Project purchased the Edward Rutledge House in 2022 for \$7,200,000.00, the mansion (117 Broad Street) and the kitchen house (17 Orange Street) were conveyed in a single deed. (Ex. E to Mem. in Supp. of Pet.)

B. Application to the BAR-S and Public Hearing

In April 2023, SOB Project applied to the BAR-S for conceptual approval of changes to 117 Broad Street only. According to the BAR-S sign posted at 117 Broad Street, the changes to

117 Broad Street to be considered at the April 27, 2023 BAR-S hearing included “alterations to front stairs, rear fenestration.” (Am. Notice, p. 2 at ¶ 6; Notice, p. 2 at ¶ 5; Ex. F to Mem. in Supp. of Pet.) However, the actual scope of the changes was significantly broader, and included a partial demolition of a wall and relocation of a driveway along Broad Street without complying with the requirements for the partial demolition of a structure. (Applicant’s Presentation, Agenda Item # 11 (117 Broad Street & 17 Orange Street).)

There were numerous irregularities that occurred during the April 27, 2023 BAR-S meeting. The BAR-S allowed SOB Project to present a “Demolition & Salvage Plan” and a “Preliminary Site Plan” at the April 27, 2023 meeting, which were not identified on the posted notice or on the published agenda. (Exs. F and G to Mem. in Supp. of Pet.) The Demolition & Salvage Plan and Preliminary Site Plan included a partial demolition of a wall, demolition of the circular oyster shell tabby and concrete driveway that provides access, relocation of the driveway, and numerous other changes that had no relation to the front stairs or rear windows. (Applicant’s Presentation, Agenda Item # 11 (117 Broad Street & 17 Orange Street).) None of the changes to the driveway, the demolition, or the numerous changes sought through the site were mentioned in the BAR-S sign posted for the April 27, 2023 meeting, nor were these changes referenced in the published agenda for the April 27, 2023 meeting of the BAR-S. Article 2, Section 5 of the BAR-S Rules of Procedure states that “the property that is the subject of the application shall be posted with a sign at least five (5) days prior to the meeting [and] the sign shall contain a description of the matter to be heard and specify the appropriate city department to contact concerning the information regarding the application.” (Am. Notice, p. 3 at ¶ 8(b); Notice, p. 3 at ¶ 7(b).)

Members of the public who attended the April 27, 2023 meeting objected to the expansion of the agenda to include the unnoticed items. The BAR-S, without voting on the issue, held an

executive session to discuss whether the BAR-S could act upon items that were not included in the posted notice or on the published agenda. Approximately 15 minutes later, the BAR-S returned to the public hearing. (Minutes of April 27, 2023 BAR-S Meeting, p. 11, lines 17 – 20.) Upon returning from executive session, the BAR-S stated that the BAR-S was “now back in regular session” and that “no action was taken during executive session.” (Minutes of April 27, 2023 BAR-S Meeting, p. 12, lines 19 – 21.) However, immediately upon returning from executive session, the BAR-S stated as follows:

“[A]fter reviewing the applicable code section that applies to the AR notice position with the board that proper notice as provided. And so therefore we are willing to consider the full application as submitted. So at this point we are now back in the board session.”

(Minutes of April 27, 2023 BAR-S Meeting, p. 12, lines 20 – 23.)

As indicated by the meeting minutes, the BAR-S held an executive session and apparently reached a decision while in executive session to act upon the items that were not included on the published agenda.

C. Appeal to the Circuit Court

Mr. Alloy filed a timely Notice and Petition of Appeal of the decision of the BAR-S pursuant to S.C. Code § 6-29-900(A). The original notice and petition of appeal was filed on Friday, May 26, 2023, twenty-nine (29) days after the April 27, 2023 hearing of the BAR-S. The original notice and petition of appeal plainly, fully, and distinctly set forth the reasons why the decision of the BAR-S was contrary to law and public policy, including the issues relating to the lack of notice, the failure to adhere to the BAR-S’s own procedural requirements applicable to demolition, and the violation of the Freedom of Information Act resulting by convening an improper executive session. (Notice, pp. 3 – 5 at ¶ 7(a) – (r).) The grounds for the appeal, along with citation to the applicable statutes and ordinances at issue, are fully set forth in the original

notice and petition of appeal. (Notice, pp. 3 – 5 at ¶ 7(a) – (r).) The original notice of appeal and petition names the BAR-S as a respondent. However, one week later, on Friday, June 2, 2023, Mr. Alloy filed the Amended Notice and Petition of Appeal to include both the BAR-S and SOB Project as respondents. (Am. Notice.)

During the pendency of the appeal to the circuit court, Mr. Alloy requested a writ of supersedeas to allow for the status quo to be preserved pending final determination of the appeal. (Mot. for Writ of Supersedeas.) Although the parties had been operating under an informal stay up until that point, Mr. Alloy filed a Motion for Writ of Supersedeas on the basis that allowing for the improperly approved improvements to proceed fails to preserve the status quo and would erode the benefit of a successful outcome. (Hearing Tr., p. 21, lines 18 – 25; Mot. for Writ of Supersedeas.)

A hearing held before the circuit court on Thursday, February 29, 2024, on Mr. Alloy’s Petition of Appeal, Respondents’ Motions to Dismiss the Appeal, and Motion for Writ of Supersedeas. During the hearing on the appeal and the motions to dismiss by the Respondents, the undersigned counsel for Mr. Alloy ask that the supersedeas be limited to modifications in the “Demolition & Salvage Plan” and “Preliminary Site Plan,” as those items did not appear in the posted notice or the official agenda. (Hearing Tr., p. 25, lines 6 – 9.) Mr. Alloy requested that the circuit court reverse only the portion of the BAR-S’s approval of the changes presented in the “Demolition & Salvage Plan” and “Preliminary Site Plan” proposing significant modifications to architectural features of the Edward Rutledge House, which if lost, would compromise the historic architectural character of the structure. (Hearing Tr., p. 24, lines 4 – 13; p. 25, lines 6 – 14.)

By Order dated April 9, 2024, the circuit court granted Respondents’ motions to dismiss the appeal and affirmed the BAR-S’s decision on the merits and denied the Motion for Writ of

Supersedeas as moot (the “Order”). (Order, p. 9.) The Notice of Appeal was filed with this Court on May 8, 2024, and served on counsel for Respondents.

STANDARD OF REVIEW ON APPEAL

Determining the proper interpretation of a statute is a question of law. *See Lambries v. Saluda County Council*, 409 S.C. 1, 7, 760 S.E.2d 785, 788 (2014). As to questions of law, the appellate court’s standard of review is de novo. *See Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). “In a case raising a novel issue of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court.” *Sloan v. S.C. Bd. of Physical Therapy Exam’rs*, 370 S.C. 452, 466, 636 S.E.2d 598, 605 (2006). “Our standard of review of a law case tried by a court sitting without a jury is to search the record for errors of law and to determine if there is any factual basis to support the findings of the trial court.” *Bivens v. Watkins*, 313 S.C. 228, 230, 437 S.E.2d 132, 133 (Ct. App. 1993).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN DISMISSING THE APPEAL WHERE ALL NECESSARY PARTIES WERE JOINED IN THE APPEAL, WHICH WAS FILED WITHIN THE REQUIRED TIMEFRAME

The appeal to the circuit court was filed within thirty days after the BAR-S rendered its decision on April 27, 2023, by filing the original notice and petition of appeal on May 26, 2023. (Notice.) The original notice and petition sufficiently set forth plainly, fully, and distinctly why the decision of the BAR-S is contrary to South Carolina law, the City’s Ordinances, and public policy as required under Section 6-29-900(A). (Notice, pp. 3 – 5 at ¶ 7(a) – (r).) *See* S.C. Code § 6-29-900(A). The original notice and petition of appeal was amended to name SOB Project as a respondent and filed one week later on June 2, 2023. (Am. Notice and Pet. of Appeal.) The timely,

original notice and petition of appeal is five pages long and itemizes eighteen (18) issues on appeal. (Notice, pp. 3 – 5 at ¶ 7(a) – (r).) The issues raised in the original notice and petition of appeal are the same as those addressed in the supporting memorandum filed by Mr. Alloy and the opposing memoranda filed by SOB Project and the BAR-S, indicating that all parties were aware of the issues raised. (Mem. in Supp. of Pet.; SOB Project’s Omnibus Br. in Supp. of Mot. to Dismiss; Mem. in Supp. of Mot. to Dismiss Appeal.)

The original notice and petition of appeal was filed within the time frame set forth in Section 6-29-900(A), which provides as follows:

A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the affected party receives actual notice of the decision of the board of architectural review.

See S.C. Code § 6-29-900(A). Both Respondents moved to dismiss the appeal on the basis that the Amended Notice and Petition of Appeal was filed 36 days after the April 27, 2023 meeting and therefore, the statutory period had expired since § 6-29-900(A) provides no mechanism for an appeal to be amended. Although the plain language of the statute does not prohibit an amendment to a timely notice of appeal, the circuit court adopted Respondents’ arguments and found that the failure to name SOB Project in the original, timely notice and petition of appeal “was a fatal, statutory, jurisdictional defect” because the statute provides no mechanism for an appeal to be amended. (Order, p. 7; SOB Project’s Omnibus Br., pp. 7, 16.)

The circuit court was persuaded by a decision vacated by the South Carolina Supreme Court, and by an unpublished order rendered by the trial court in 2017. (Order pp. 6 – 7.) This was an error. As indicated in the Order, the circuit court was persuaded by the analysis in *Friends of*

McLeod, Inc. v. City of Charleston. (Order p. 6.) See *Friends of McLeod, Inc. v. City of Charleston*, 376 S.C. 610, 612, 658 S.E.2d 544, 545 (Ct. App. 2008), vacated by 384 S.C. 438, 682 S.E.2d 488 (2009). However, a vacated decision is not precedent. In addition to the fact that a vacated decision is not precedent, the decisive facts involved in *Friends of McLeod* distinguish it from the present appeal. In *Friends of McLeod*, the appellant filed its initial appeal within the thirty-day time period prescribed by statute but failed to name the applicant as a party. “Several months later,” the appellant filed a motion to amend the petition to add the applicant. *Id.* at 612, 658 S.E.2d at 545. The vacated decision points to the fact that the motion to amend the petition to add the applicant as a party to the appeal was filed “several months” after the initial appeal had been filed. *Id.* The circuit court denied the motion to amend based, in part, on the fact that the appellant lacked standing and had suffered no individualized harm. *Id.* Mr. Alloy, the owner of the property immediately adjacent to the Edward Rutledge House, has a substantial interest in the decision of the BAR-S and standing to appeal pursuant to S.C. Code § 6-29-900. (Am. Notice, p. 1 at ¶ 1; Notice, p. 1 at ¶ 1.) The original notice of appeal was amended one week later, not “[s]everal months later” like the amendment sought by *Friends of McLeod*. *Id.* at 612, 658 S.E.2d at 545.

The circuit court was also persuaded by its own prior decision in an unpublished order from 2017 in the matter captioned *Citizens for Sensible Planning v. City of Charleston*, Case No. 2016-CP-10-6546 (S.C. Com. Pl. June 28, 2017). (Order, pp. 6 – 7.) Unpublished orders “have no precedential value and should not be cited except in proceedings in which they are directly involved.” See Rule 268(d)(2), SCACR. In *Citizens for Sensible Planning*, the plaintiff-appellant sought a Declaratory Judgment and Writ of Mandamus relating to the City Attorney’s or City zoning staff’s explanation of the role of the Design Review Board (“DRB”) during the DRB’s meeting in connection with a Planned Unit Development (“PUD”) submitted by the permittee-

applicant CPC James Island, LLC. *Id.* at *1. The permittee-applicant was never named a party in the action, which included a claim for declaratory relief pursuant to the South Carolina Declaratory Judgments Act, S.C. Code § 15-53-10 *et seq.* The trial court concluded that “even if a challenge to legal advice is actionable, such does not excuse the failure to join a necessary party, as the rights of that party are at stake in these proceedings.” *Id.* at *7.

As indicated in the unpublished order in *Citizens for Sensible Planning*, the plaintiff-appellant lacked standing because a non-member corporation cannot assert rights of its members because it does not have members. *Id.* at *5. The trial court in *Citizens for Sensible Planning* also found that the plaintiff-appellant failed to make a timely challenge to City Council’s decision to rezone the property to PUD since the DRB reviewed the project after Council had given first reading to the ordinance establishing the PUD on June 21, 2016. The plaintiff-appellant filed its petition and appeal on December 6, 2016. *Id.* at *3. The trial court concluded that the “lawsuit is now moot because the PUD is now final and incontestable due to the lack of a timely challenge under S.C. Code § 6-29-760(d) and the resulting vested rights pursuant to S.C. Code § 6-29-1510, *et seq.*, and the PUD does not allow the DRB to make further review of the development until one year after the certificates of occupancy are issued.” *Id.* at *4.

Furthermore, both the vacated decision in *Friends of McLeod* and the unpublished trial court order in *Citizens for Sensible Planning* cite to the South Carolina Supreme Court’s decision in *Spanish Wells Prop. Owners Ass’n, Inc. v. Bd. of Adjustment of Town of Hilton Head Island*, 295 S.C. 67, 69, 367 S.E.2d 160, 161 (1988) (holding that a development permittee is a necessary party to an appeal of its permit). In *Spanish Wells*, the circuit court dismissed the appeal for failure to join a necessary party under Rule 19, SCRCP, but expressly allowed the appellant fifteen (15) days leave to add the permittee as a party from the date of the eventual hearing on the motion. *Id.*

at 67, 367 S.E.2d at 161. The appellant, however, chose not to amend the petition to add the permittee and instead appealed the circuit court’s ruling that a permittee is a necessary party. *Id.* Unlike the permittee in *Spanish Wells*, SOB Project is a party to this appeal. The Amended Notice and Petition of Appeal was filed within a week of the original notice of appeal, which is within the 15-day timeframe allowed by the circuit court in *Spanish Wells*.¹ The same logic and result applied in *Spanish Wells* should apply here.

The plain language of Section 6-29-900(A) does not prohibit an amendment to a notice of appeal. There is no relevant legal authority that provides that an amendment to a timely notice of appeal under Section 6-29-900 is prohibited. In fact, the suggestion that a “strict statutory period” should be imposed to dismiss this appeal is not supported by South Carolina law. The circuit court’s dismissal of the appeal in reliance on the vacated decision in *Friends of McLeod* and the unpublished trial court order in *Citizens for Sensible Planning* is an error that warrants reversal. Even if these decisions offered any precedential value, they still do not support the circuit court’s conclusion that a timely notice of appeal under S.C. Code § 6-29-900(A) cannot be amended. There is no law that would suggest that this appeal should be dismissed and the decision to the contrary has been vacated.

Accordingly, this Court should reverse the circuit court’s dismissal of the timely appeal where the grounds of the appeal are plainly, fully, and distinctly described in the original notice

¹ The Order also cites to this Court’s decision in *Blind Tiger, LLC v. City of Charleston* for the proposition that the statute governing an appeal of a board of architectural review is construed to be a strict 30-day deadline. (Order p. 6.) See *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 621 S.E.2d 361 (Ct. App. 2005) (affirming the circuit court’s dismissal of an appeal as untimely under Section 6-29-900). The Court in *Blind Tiger* explicitly pointed to the fact that the appeal was filed “some 82 days after actual notice under [S]ection 6-29-900.” *Id.* at 186, 621 S.E.2d at 363.

and petition of appeal and all necessary parties were added within the time frame contemplated by the *Spanish Wells* case.

II. THE CIRCUIT COURT ERRED IN FINDING NO MERIT TO THE ISSUE ON APPEAL THAT THE BAR-S VIOLATED FOIA WHEN IT ENTERED EXECUTIVE SESSION DURING WHICH IT DECIDED TO PROCEED ON THE UNNOTICED ITEMS

As discussed above, the circuit court dismissed the timely appeal based on a “fatal, statutory, jurisdictional defect.” (Order p. 7.) Despite having already determined that it lacked statutory jurisdiction, the circuit court goes on to address the merits of the appeal in the Order by adopting Respondents’ argument that the “any evidence” standard had been satisfied because evidence supporting the application had been presented to the BAR-S, namely the application itself and testimony by the architect and landscape architect. (Order, pp. 3 – 4, 7 – 9; Omnibus Br., pp. 16 – 18.) In undertaking to resolve the merits of the appeal, the circuit court simply adopted the BAR-S’s assurance that “no action or votes had been taken in executive session” without giving appropriate weight to the April 27, 2023 meeting minutes and the plain language of South Carolina Freedom of Information Act, S.C. Code §§ 30-4-10, *et seq.* (“FOIA”). (Order p. 9.) The record before the circuit court demonstrated a lack of transparency that violates FOIA and warrants reversal of the decision of the BAR-S.

The appeal was made to the circuit court to challenge the decision of the BAR-S as contrary to law on the basis that the decision of the BAR-S was arbitrary, unreasonable, outside the scope of the BAR-S’s authority, tainted with procedural irregularity, contrary to applicable criteria and standards, and incompatible with the interests of the Historic District and the City. (Am. Notice, p. 3 at ¶ 8(a); Notice, p. 3 at ¶ 7(a).) One such ground for the appeal to the circuit court involved the BAR-S’s failure to follow notice requirements, including but not limited to failing to include appropriate description of SOB Project’s application on the agenda or the public notice and

convening an improper executive session relating to the unnoticed items. (Am. Notice, pp. 3 – 5 at ¶ 8; Notice, pp. 3 – 5 at ¶ 7.)

FOIA mandates that every meeting of all public bodies shall be open to the public unless closed pursuant to Section 30-4-70. *See* S.C. Code § 30-4-60; S.C. Code § 30-4-70. When acting on the application relating to the Edward Rutledge House, the BAR-S intentionally allowed SOB Project to present a “Demolition & Salvage Plan” and a “Preliminary Site Plan.” (Am. Notice, p. 3 at ¶ 8; Notice, p. 3 at ¶ 7.) These items were not included on the posted notice or the published agenda. (Exs. F and G to Mem. in Supp. of Pet.) Under South Carolina law, after a meeting begins, “an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting.” *See* S.C. Code § 30-4-80(A). The BAR-S did not vote on the issue. (Minutes of April 27, 2023 BAR-S Meeting, p. 11, line 17 – p. 12, line 23.)

The citizens present during public meeting objected to the illegal expansion of the agenda item. The BAR-S, without voting on the issue, held an improper executive session to discuss whether the BAR-S could act upon items that were not included in the posted notice or on the published agenda. Approximately 15 minutes later, the BAR-S returned to the public hearing. (Minutes of April 27, 2023 BAR-S Meeting, p. 11, lines 17 – 20.) Contrary to the stated assurance that “no action was taken during executive session,” the meeting minutes confirm that the BAR-S entered executive session in which the BAR-S reviewed “the applicable code section that applies to the AR notice” and decided it was “willing to consider the full application as submitted.” (Minutes of April 27, 2023 BAR-S Meeting, p. 12, lines 19 – 23.)

The purpose of FOIA is to protect our democratic society by ensuring that “public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of

public policy.” See S.C. Code § 30-4-15. A public body is forbidden from entering executive session without complying with Section 30-4-70(b), which states: “Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session.” See S.C. Code § 30-4-70(b). FOIA is clear in its mandate that the specific purpose of the session shall be announced. FOIA is not satisfied merely because citizens have some idea of what a public body might discuss in private. See *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 164, 547 S.E.2d 862, 866 (2001) (holding that the clear language and the express purpose of FOIA was violated by the presiding officer’s failure to announce the specific purpose for the executive session); *Donohue v. City of N. Augusta*, 412 S.C. 526, 533, 773 S.E.2d 140, 143 (2015) (remanding case where circuit court erred in finding that an announcement that the purpose of the executive session was the discussion of a “proposed contractual matter” satisfied the specific purpose requirement). The meeting minutes show that the BAR-S retreated into executive session “about the notice issue.” (Minutes of April 27, 2023 BAR-S Meeting, p. 11, line 19.).

South Carolina law is clear that “[t]he members of a public body may not commit the public body to a course of action by a polling of members in executive session.” See S.C. Code § 30-4-70(b). No action may be taken in executive session except to adjourn or return to public session. See S.C. Code § 30-4-70(b). The BAR-S, however, proceeded with the approval of the unnoticed items based on an apparent decision made by the BAR-S while in executive session “after reviewing the applicable code section.” (Minutes of April 27, 2023 BAR-S Meeting, p. 12, lines 20 – 23.) Nevertheless, the circuit court adopted the BAR-S’s insistence that no action or votes had been taken in executive session. (Order p. 9; Hearing Tr., p. 34, lines 9 – 18.) See *Miramonti v. Richland Cnty. Sch. Dist. One*, 438 S.C. 612, 617, 885 S.E.2d 406, 408 (Ct. App. 2023)

(affirming circuit court’s finding that school board violated FOIA by deciding how to respond to a parent’s complaint during executive session notwithstanding the school board’s insistence that no action or votes had been taken in executive session); *see also Bus. License Opposition Comm. v. Sumter Cnty.*, 311 S.C. 24, 28, 426 S.E.2d 745, 748 (1992) (finding that the evidence of record demonstrated that an amendment to County’s ordinance was illegally adopted at a closed meeting despite the County’s contention that no formal action was taken).

The BAR-S committed an error of law that warranted reversal by the circuit court. *See Gurganious v. City of Beaufort*, 317 S.C. 481, 486, 454 S.E.2d 912, 915 (Ct. App. 1995) (“[T]he trial court, when reviewing a decision by a board of architectural review, should act where the [BAR] has abused its discretion by committing errors of law or bases its decision on findings of fact which are not supported by the evidence.”). The circuit court found that “[t]here is simply no evidence” that the BAR-S acted improperly in executive session. (Order pp. 8 – 9.) However, the meeting minutes undercut the circuit court’s finding and instead show that a decision was made during executive session after reviewing “the applicable code.” (Minutes of April 27, 2023 BAR-S Meeting, p. 12, lines 19 – 23.)

Accordingly, the BAR-S committed an error of law that warrants reversal of the decision to approve SOB Project’s application relating to the unnoticed items.

III. THE CIRCUIT COURT ERRED IN AFFIRMING THE BAR-S’S DECISION TO APPROVE CHANGES THAT VIOLATE PRESERVATION STANDARDS AND GUIDELINES

The BAR-S abused its discretion by approving the “Demolition & Salvage Plan” and “Preliminary Site Plan” that will undoubtedly diminish the character of the historic Edward Rutledge House in a manner that violates the U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties and applicable guidelines. The BAR-S’s decision is

unsupported by the evidence, or is clearly erroneous, in light of the applicable standards and guidelines governing historic structures and therefore, is not fairly debatable but is instead arbitrary and an abuse of discretion. *See Gurganiou*, at 486, 454 S.E.2d at 915.

The City's Zoning Ordinance states that the BAR shall be guided by the Secretary of the Interior's Standards for the Treatment of Historic Properties when evaluating applications before the BAR. Section 54-236 of the City's Zoning Ordinance provides as follows:

“In order to provide guidance and insight into desirable goals and objectives for the Old City District, the Old and Historic District and Historic Corridor District for desirable types of development, and for the maintenance of consistent policies in guiding the building public toward better standards of design, the Board of Architectural Review shall be guided by the Secretary of the Interior's Standards for Historic Preservation and the 2017 BAR Principles for New Construction and Renovation and Repairs, said Standards and Principles being incorporated herein by reference[.]”

See City Ord. Sec. 54-236. The BAR-S disregarded the published standards and criteria of the BAR-S set forth in the City's Ordinances and within the Secretary of the Interior's Standards for the Treatment of Historic Properties and approved SOB Project's application to completely transform one of the City's oldest residential structures. (Hearing Tr., p. 23, lines 17 – 23; Am. Notice, p. 3 at ¶ 8(q); Notice, p. 3 at ¶ 7(q).)

The Demolition & Salvage Plan and Preliminary Site Plan include modifications to the masonry features of the Edward Rutledge House, as well as to the overall building site. The Secretary of the Interior's Standards for the Treatment of Historic Properties explicitly advise against “altering masonry features which are important in defining the overall historic character of the building so that, as a result, the character is diminished” and “altering buildings and their features or site features which are important in defining the overall historic character of the property.” (Ex. H to Mem. in Supp. of Pet., p. 31; pp. 63 – 64.) The Demolition & Salvage Plan and Preliminary Site Plan propose changes that are incompatible with the applicable standards

and guidelines by which the BAR-S “shall be guided[.]” *See* City Ord. Sec. 54-236. The BAR-S abused its discretion by violating or ignoring these standards in approving the unnoticed items presented by SOB Project during the April 27, 2023 meeting.

For these reasons, the Court should reverse the decision of the BAR-S with respect to the unnoticed items seeking approval to completely transform and diminish the masonry features and overall building site of a National Historic Landmark.

CONCLUSION

For these reasons, Appellant Martin Alloy respectfully requests that this Court reverse the circuit court's decision, or in the alternative, remand the case for further proceedings.

Respectfully submitted,

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