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Dec 03 2024

SC Court of Appeals

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

G. D. Morgan, Judge

Appellate Case No. 2024-000727

Letchworth Properties, LLC .....  
Appellant,

v.

City of Greer and City of Greer  
Board of Zoning Appeals .....  
Respondents.

**MOTION TO AMEND FINAL BRIEF**

J. Marshall Lawson (S.C. Bar No. 17020)  
The Lawson Law Firm, LLC  
4329 Kilbourne Road  
Columbia, South Carolina 29206  
Phone: (803) 730-3510

**Attorney for Appellant**

Letchworth Properties, LLC

## **INTRODUCTION**

Appellant filed a request for a hardship variance with the Greer Board of Zoning Appeals (“Board”) on August 19, 2022. The Board conducted a public hearing on the matter on September 12, 2022, in which Petitioner argued it satisfied each element required for a hardship variance under the South Carolina Comprehensive Planning and Enabling Act of 1994 (“1994 Comprehensive Act”) and additionally the fence, as constructed, was consistent with the public purpose of the City’s zoning code in promoting the safety, health and the general welfare. After a hearing lasting less than one hour, in which Appellant was denied the basic right to challenge planning staff’s clearly erroneous statements of fact and law, the Board summarily rejected the variance. The decision prompted Appellant’s appeal to the circuit court and ultimately to the Court of Appeals.

## **PROCEDURAL BACKGROUND**

After filing initial briefs and Appellant’s Designation of Matter to be Included in the Record on Appeal, Respondents filed a Motion to Strike certain matters from Appellant’s Designation.

Those matters are as follows:

1. DOM Number 13, Deed containing a restrictive covenant for public parking on Appellant’s property.
2. DOM Number 14, Appellant’s 2018 offer to City of an easement for public parking (Written Offer and Easement) wherein the City would construct security fencing and warning signs between the public parking lot on Appellant’s property and the abutting active rail line.
3. DOM Number 17, Email and Letter to City Council regarding Fence Location (which Appellant agreed to strike).
4. DOM Number 18, Email from CSXT stating the Railroad did not grant permission to the City or the public to park or otherwise trespass on its right of way.
5. Amended DOM Number 1, Public Policy (Appendix A) preamble to the City of Greer Zoning Code stating its zoning code was premised upon public safety and welfare. The

Public Policy statement which was cited verbatim to the Board at the Hearing satisfies one of the key criteria under the 1994 Comprehensive Act that a variance would be in keeping with the public policy of the code.

6. Amended DOM Number 2, Federal Railroad Administration Report on the hazards of trespass on railroad rights of way stating, *inter alia*, that 1,100 pedestrians were killed in 2017 alone while trespassing on railroad property.

Respondents' Motion to Strike the aforementioned matter was rejected by the Court via a letter to counsel on October 9, 2024 for failure to comply with Rule 240 of the Appellate Court Rules. Respondents filed an amended Motion to Strike with the Court on October 11, 2024, citing S.C. Code § 6-29-840 and Rule 210(c), SCACR, barring the submission of evidence on appeal not submitted to the trial court or tribunal.

Appellant filed a Return to Respondents' Motion on October 28, 2024, arguing exceptions to Rule 210(c), SCACR, in the form of the Board's lack of jurisdiction over fencing in a section of Appellant's property, the Court's right to take judicial notice of adjudicative facts, the Court's right to take judicial notice of adjudicative legislation and the fact one of the items the Court ordered struck, the Public Purpose of the Greer Zoning code, was presented with specificity to the Board at the Hearing. Appellant also argued it would be fundamentally unfair to strike any matters in light of the Board's refusal to hear Appellant's objections and arguments at the Board Hearing.

On November 14, 2024, the Court issued an Order granting Respondents' Motion in full on the ground "appellate courts are generally reluctant to notice adjudicative facts even when those facts may be absolutely reliable."<sup>1</sup> The Order did not address Appellant's remaining arguments, prompting Appellant's letter to the court requesting clarification whether the Order was meant to include, *inter alia*, the zoning code section included in Appellant's presentation to the Board. In

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<sup>1</sup> Order (citing Masters v. Rogers Dev. Grp., 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984).

response, the clerk's office notified Appellant via letter that any request for clarification or reconsideration would have to be brought via a Motion under Rule 240, SCACR.

### **ARGUMENTS**

Rule 240(i), SCACR provides that a motion to reconsider the Court's ruling on a motion can be brought only where the ruling would have the effect of dismissing or finally deciding a party's appeal. The Rule effectively renders any challenge to the Court's ruling in the present matter moot.

Rule 211(b), SCACR bars any substantive changes to a party's final brief other than correction of typographic and grammatical errors and changing citations to reflect the Record on Appeal. The Court's Order, however, will require Appellant to amend its Final Brief so as to omit citation to the Record of the aforementioned matters.

### **CONCLUSION**

Court rules do not provide for substantive amendments to a brief pursuant to a successful motion to strike. In light of the Court's Order, Appellant respectfully moves the Court for leave to amend its Final Brief to conform with the Order.

Respectfully submitted,

*/s/ J. Marshall Lawson*

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**Attorney for Appellant**

*Letchworth Properties, LLC*

Columbia, South Carolina  
December 3, 2024

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM GREENVILLE COUNTY  
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G. D. Morgan, Jr., Circuit Court Judge

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Appellate Case No. 2024-000727

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Letchworth Properties, LLC..... Appellant,

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City of Greer, South Carolina, and Greer Board of Zoning Appeals..... Respondents.

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**PROOF OF SERVICE**

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*Attorney for Appellant  
Letchworth Properties, LLC*

I, J. Marshall Lawson, do hereby certify that I served Appellant's MOTION TO AMEND FINAL BRIEF on the following counsel of record for Respondents via electronic mail (see attached email) to counsel's AIS E-mail address on December 3, 2024.

Daniel R. Hughes, Esq.  
Duggan & Hughes, LLC  
457-B Pennsylvania Avenue  
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(864) 334-2500  
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Respectfully submitted,

By: /s/ J. Marshall Lawson  
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*Attorney for Appellant*

*Letchworth Properties, LLC*

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December 3, 2024

**SENT VIA EMAIL: ctappfilings@sccourts.org**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: **APPELLANT'S MOTION TO AMEND FINAL BRIEF**: Letchworth Properties, LLC v. City of Greer and City Greer Board of Zoning Appeals, Appellate Case No. 2024-000727

Dear Ms. Kitchings:

Attached for filing is Appellant's Motion to Amend Final Brief and Proof of Service in the matter referenced above. A check for the filing fee in the amount of \$50.00 will be deposited in today's mail.

Please let me know if you have questions or comments.

Sincerely,

*/s/ J. Marshall Lawson*

The Lawson Law Firm, LLC

Attachment(s) as stated

cc: Daniel Hughes, Esquire