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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge

Case No. 2023-CP-10-02575
Appellate Case No. 2024-000768

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.

FINAL BRIEF OF RESPONDENTS CITY OF CHARLESTON, SOUTH CAROLINA BOARD OF ARCHITECTURAL REVIEW – SMALL AND 117 SOB PROJECT, LLC

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STATEMENT OF ISSUES ON APPEAL

I. As a matter of statutory procedure and jurisdiction, did the circuit court properly dismiss the appeal taken from the board of architectural review because a notice of appeal naming all necessary parties was not timely filed; and did the appellant preserve arguments on this issue for review?

II. On the merits, did the circuit court correctly find that it would nonetheless affirm the unanimous decision of the board of architectural review; and did the appellant preserve arguments on this issue for review?

STATEMENT OF THE CASE[1]

This is a further appeal taken from an appellate decision of the circuit court regarding a unanimous (5 to 0) decision made by the City of Charleston Board of Architectural Review-Small (the "Board"), granting conceptual approval of a restoration project at 117 Broad Street in downtown Charleston (with final details to staff), under the South Carolina Local Government Comprehensive Planning Enabling Act, S.C. Code Ann. 6-29-310, *et seq*. (Order) (R. p. 3). The circuit court dismissed the appeal as a matter of statutory procedure and jurisdiction and nonetheless found that it would affirm the Board's decision on the merits under the "any evidence" standard. (Order) (R. p. 3).

The sole remaining appellant is Mr. Martin Alloy. The two individuals who joined Mr. Alloy in initially opposing the project before the Board and taking an appeal to the circuit court, Mr. Michael Laughlin and Mr. Henry Grimball, did not join Mr. Alloy in taking this further appeal to this Court. (Notice) (R. p. 17).

On April 27, 2023, the Board held a public hearing and made its decision. (Tr., p. 14, ll. 7-8) (R. p. 398, ll. 7-8). Mr. Alloy, together with his former co-appellants, were in

[1] The appellant's statement of the case is full of contested matter and argument, contrary to Rule 208(b)(C), SCACR, to which the respondents object.

attendance. (Tr. p. 7, l. 5 – p. 10, l. 8; Am. Pet.) (R. p. 391, l. 5 – p. 394, l. 8; R. p. 25). In addition to a transcript of the hearing, there is a video recording that was provided to the circuit court via You Tube and is included on a DVD submitted with the record on appeal. (Tr.; DVD, https://www.youtube.com/live/lpkg2bvvmIk?si=iYezjcQ9HytSOWyl) (R. p. 385; R. p. 399).

On May 26, 2023, which was 29 days after the Board rendered its decision on April 27, 2023, the circuit court appellants filed their original "Notice and Petition of Appeal." It named the Board as the only respondent. (Notice and Petition) (R. p. 17).

On June 2, 2023, which was 36 days after the Board rendered its decision on April 27, the circuit court appellants filed an "Amended Notice and Petition of Appeal." It named an additional respondent, 117 SOB Project, LLC, the owner/applicant/permittee. (Amendment) (R. p. 22).

On July 14, 2023, 117 SOB Project, LLC filed a motion to dismiss the appeal. (Motion) (R. p. 44).

On November 6, 2023, in advance of a hearing scheduled for November 8, 2023, the circuit court entered a consent order of continuance that was submitted by the parties to allow time for mediation. (Consent Order) (R. p. 13). A mediation was then held that ended in an impasse. (Impasse).

On December 12, 2023, the Board filed a motion to dismiss the appeal. (Motion) (R. p. 77).

On January 30, 2024, the appeal and the respondents' respective motions to dismiss were put on the roster to be heard on February 29, 2024. (Cir. Ct. Notice). The circuit

court also instructed the parties to file all briefs the week prior to the hearing, meaning by Friday, February 23, 2024. (Cir. Ct. E-mail).

On February 16, 2024, eight months after the circuit court appellants filed their appeal, and two weeks before the hearing, they filed a motion for writ of supersedeas. (Motion) (R. p. 27).

On February 23, 2024, the respondents timely filed their briefs, per the circuit court's instruction. (Brief) (R. p. 53).

On February 27, 2024, which was four days after the circuit court instructed the parties to file their briefs, the circuit court appellants filed their brief. (Brief) (R. p. 84).

On February 28, 2024, a reply brief was filed by 117 SOB Project, LLC. (Reply) (R. p. 93).

On February 29, 2024, the circuit court held a hearing via Webex on the appeal and all pending motions. (Tr.) (R. p. 96).

On April 9, 2024, the circuit court entered its order, dismissing the statutory appeal and nonetheless finding that it would affirm the unanimous decision made by the Board. (Order) (R. p. 3). The order also denied the motion for writ of supersedeas.[2] (Order) (R. p. 3).

The circuit court appellants did not file a motion for reconsideration.

On May 8, 2024, Mr. Alloy, by himself, took an appeal to this Court. (Notice).

[2] The appellant's brief does not challenge the denial of the motion for writ of supersedeas.

STATEMENT OF FACTS[3]

This case relates to a restoration project at 117 Broad Street in downtown Charleston. (Appl.; Tr. p.1, ll. 3-7) (R. pp. 344 – 377; R. p. 385, ll. 3-7). 117 SOB Project, LLC (for the family of Nedenia Rumbough & Jan Roosenburg) is endeavoring to restore a historically significant 18th century house, known as the Edward Rutledge House (the youngest signatory of the Declaration of Independence), into their personal residence. (Appl.; Tr. p. 1, ll. 12-14) (R. pp. 344 – 377; R. p. 385, ll. 12-14). In modern times, the house was modified for use as a hotel. (Appl.; Tr. p.1, ll. 12-14) (R. pp. 344 – 377; R. p. 385, ll. 12-14). Work is now required to restore the property in a manner consistent with its original Georgian period architectural style, and to correct water intrusion problems that are actively destroying the structure. (Appl.; Tr. p. 1, l. 11, p. 5, l. 20) (R. pp. 344 – 377; R. p. 385, l. 11, p. 389, l. 20).[4]

The project includes alterations to the current state of the property that are within the purview of the City of Charleston Board of Architectural Review-Small under Part 6 of the Zoning Ordinance of Charleston. (Appl.; Tr. p. 12 ll. 19-23) (R. pp. 344 – 377; R. p. 396, ll. 19-23). Accordingly, 117 SOB Project, LLC, represented by its architect (Simons Young, notably, a descendent of Edward Rutledge), filed an application with the Board for conceptual approval of a set of architectural plans. (Appl.; Tr. p. 1, l. 11) (R. pp. 344 – 377; R. p. 385, l. 11).

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[3] The appellant's brief does not include a statement of facts.

[4] The appellant critically characterizes this restoration project as constituting "hundreds of changes," seemingly counting the number of nails or boards or some other arbitrary unit of measure involved, which the appellant does not identify. (Cir. Ct. Tr. p. 17, l. 24) (R. p. 112, l. 24).

At a public hearing on April 27, 2023, the Board unanimously (by a vote of 5 to 0) granted the application for conceptual approval. (Tr. p. 14, ll. 7-8) (R. p. 398, ll. 7-8). The evidence before the Board in support of the application included:

(1) a 32-page application and presentation containing the following subsections:

(a) history,

(b) existing conditions,

(c) proposed site plan,

(d) proposed floor plans,

(e) proposed elevations, and

(f) proposed perspectives;

(2) testimony by architect Simons Young;

(3) testimony by landscape architect Glen Gardner;

(4) testimony by a representative of the Preservation Society of Charleston;

(5) a letter of support from the Historic Charleston Foundation; and

(6) testimony by the City's staff recommending approval.

(Appl.; Tr.; Letter) (R. pp. 344 – 377; R. pp. 385 – 398; R. p. 383).

The circuit court appellants, themselves, also added evidence in support of the application. They are three residents of Orange Street (to the south of 117 Broad Street). (Pet.; Tr. p. 7, ll. 5-6) (R. p. 17; R. p. 391, ll. 5-6). They were present at the public hearing, as they acknowledged in their circuit court appeal petition. (Pet.) (R. p. 20). One of the three, Mr. Grimball, an attorney, took the lead in speaking for them at the public hearing.

He testified: "*We applaud changes he wants to make in the main house in 117 [Broad Street].*" (Tr. p. 9, ll. 6-7) (R. p. 393, ll. 6-7). He explained that their concern, rather, was that 117 SOB Project, LLC would next apply to create an opening through a wall on Orange Street that they believed would exacerbate a problem with limited parking space on Orange Street: "*And the next shoe to fall is going to be that break in the wall which we are adamantly opposed . . . And if they do that, then they're going to see [sic] We've got to have an opening on Orange street. We object to that.*" (Tr. p. 10, ll. 1-2, ll. 6-7) (R. p. 394, ll. 1-2, ll. 6-7). That to which they objected, an opening in the wall on Orange Street, however, was not requested in the application at issue and consequently was not before the Board, nor the circuit court, and is not now before this Court.[5] (Appl.) (R. pp. 344 – 377).

The circuit court appellants' speculations were rebuffed during discussion by a member of the Board, who explained: "The back lot [17 Orange] is a separate lot and there is nothing in this submittal that pertains to that back lot and so I think we should focus on what is being submitted. It would be inappropriate for us to focus on something speculative that might occur in the future on a separate lot." (DVD at 3:14:30; Tr. p. 13, l. 23 – p. 14, l. 3) (R. p. 399; R. p. 397, l. 23 – p. 398, l. 3).

Mr. Grimball also critiqued the sign that was posted on the property in advance of the public hearing because he believed it insufficiently described the project. (Tr. p. 7, ll. 10-20) (R. p. 391, ll. 10-20). The sign posted on the property was prepared by the City of

[5] As the respondents explained to the circuit court in their memorandum, the issue of opening the wall on Orange Street was later raised in a separate application, by 17 Orange, LLC, owner of 17 Orange Street. That application was denied by the Board at a public hearing on July 13, 2023. 17 Orange, LLC initially appealed that decision to the circuit court, before voluntarily withdrawing it, with the Board's consent. The issue of an opening in the wall was not before the circuit court and is not before this Court. (Memo., p. 8) (R. p. 60).

Charleston Board of Architectural Review-Small on its standard form, intended to be visible from a distance. (Sign) (R. p. 71). It specified the time, date, and location of the meeting. (Sign) (R. p. 71). It named the Board and the Department of Planning. (Sign) (R. p. 71). It included a generalized description of the project in the space allotted on the form: "**LOCATION**: 117 Broad **REQUEST**: alterations to front stairs, rear fenestration." (Sign) (R. p. 71). It also provided instructions to "**CALL 724-3781 FOR INFORMATION**" and the website address, "**www.charleston-sc.gov/bar**," where the agenda, including the architectural plans submitted with the application, were made publicly available online. (Sign) (R. p. 71).

Mr. Grimball testified that, after seeing the sign, one of the other circuit court appellants, "*Mike Laughlin came down here[] And actually looked at the agenda*," (Tr. p. 7, l. 19) (R. p. 391, l. 19), which they "*applaud*" as to 117 Broad Street, (Tr. p. 9, ll. 6-7) (R. p. 393, ll. 6-7), notwithstanding their concern about what the owners might apply for "*next*" regarding the wall on Orange Street. (Tr. p. 10, ll. 1-2, ll. 6-7) (R. p. 394, ll. 1-2, 6-7). Mr. Laughlin also submitted a letter dated April 25, 2023, in advance of the April 27, 2023, public hearing, commenting on the architectural plans that had been submitted and he had been able to review. (Letter) (R. p. 384).

Mr. Alloy, himself, attended, but did not speak at the hearing. (Pet.) (R. p. 20). He relied on Mr. Grimball to speak for him and Mr. Laughlin. (Tr. p. 7, l. 5 – p.10, l. 8) (R. p. 391, l. 5 – p. 394, l. 8). Then, proceeding together as a group to the circuit court, Messers Alloy, Grimball, and Laughlin were all represented by the same attorney, who made joint

filings and assertions of fact and law on their collective behalf. (Pet., Am. Pet., Memo.) (R. p. 17; R. p. 22; R. p. 84). Now, before this Court, only Mr. Alloy remains.[6]

ARGUMENT

I. As a Matter of Statutory Procedure and Jurisdiction, the Circuit Court Properly Dismissed the Appeal Taken From the Board of Architectural Review Because a Notice of Appeal Naming All Necessary Parties Was Not Timely Filed; and the Appellant Did Not Preserve Arguments on This Issue for Review.

A. Standard of Review

The standard of review that applies to the circuit court's dismissal of the appeal as a matter of statutory procedure and jurisdiction is the *de novo* standard. *See Sanders v. Savannah Highway Auto. Co.*, 432 S.C. 328, 335, 852 S.E.2d 744 (Ct. App. 2020).

B. Legal Analysis

An appeal of a board of architectural review decision to circuit court is governed by S.C. Code Ann. § 6-29-900(A). The owner and successful applicant or permittee is a necessary party to an appeal under the statute, as held in *Spanish Wells Property Owners Ass'n, Inc. v. Board of Adjustment of Hilton Head Island*, 367 S.E.2d 160, 295 S.C. 67

[6] Mr. Alloy appears to be protracting this litigation against the respondents, without his circuit court co-appellants, because of his own, unrelated, personal objection to a separately permitted garage. This Court may take judicial notice that Mr. Alloy has filed two actions in the same circuit court objecting to the separately permitted garage. *Alloy v. City of Charleston*, Case No. 2024-10-CP-100-4780 (Appeal Petition) (September 23, 2024) (Charleston County) (arguing that the permitted garage will result in "obstruction of the first-floor windows of the neighboring property at 15 Orange Steet."); *Alloy v. 117 SOB Project, LLC*, Case No. 2023-CP-1005630 (Complaint) (November 16, 2023, Charleston County) (alleging that "25. Mr. Alloy's home was designed to have living spaces and windows on the northern side of the property. 26. The 1 ½ story conditioned storage facility proposed by SOB Project would block the windows and undermine the design of 15 Orange Street."). Notably, Mr. Alloy's elevated 7,000 square-foot modern home at 15 Orange Street was designed and built circa 2002 with north facing windows, contrary to the history and tradition in Charleston of building homes with few, if any, north facing windows, a practice known as "north side manners."

(1988). The statute's 30-day deadline to file an appeal runs from the date the decision is made at a public hearing attended by the appellants, as construed in *Blind Tiger, LLC v. City of Charleston*, 621 S.E.2d 361, 362-3 (2005). The statutory deadline is jurisdictional, as held in *Vulcan Materials v. Greenville Cty. Bd.,* 342 S.C. 480, 489, n.7, 536 S.E.2d 892 (Ct. App. 2000). The statute is controlling over the rules of civil procedure and provides no mechanism for an appeal to be amended, as held in *Austin v. Board of Zoning Appeals,* 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004).

Discussing the above authorities together, this Court, in *Friends of McLeod*, 658 S.E.2d 544, 376 S.C. 610 (Ct. App. 2008), *vacated on other grounds*, 682 S.E. 2d 488, 384 S.C. 438 (2009), explained that a notice of appeal that does not name the owner of the property and successful applicant or permittee, a necessary party, cannot later be cured by amendment because the timeliness of filing of the appeal is jurisdictional. Though that opinion issued by this Court was later vacated on other grounds by the Supreme Court "based on an agreement that renders this matter moot," its legal analysis remains correct and the other authorities it cites still support its legal conclusion.

Accordingly, the failure to name 117 SOB Project, LLC, the owner of the property and successful applicant or permittee, a necessary party, in the original notice of appeal, filed on May 26, 2023, within 30 days of the public hearing attended by the appellants where the Board made its decision on April 27, 2023, was a fatal, statutory, jurisdictional defect. (Tr.; Not.) (R. p. 385; R. p. 17). The filing of the amended notice of appeal, on June 2, 2023, was 36 days after the Board's April 27, 2023, decision at the public hearing, and thus after the strict statutory period had expired. (Am. Not.) (R. p. 22).

Section I of the appellant's argument asserts that the circuit court should be reversed because this Court should not repeat the same legal analysis it undertook in *Friends of McLeod* to reach the same legal conclusion from the same authorities. (App. Br. pp. 8-9). Though not binding, this Court's prior legal analysis in *Friends of McLeod* was correct, and the Supreme Court did not hold that it was wrong. There is no reason not to repeat the legal analysis, which is still sound. The circuit court did not err in being persuaded by it and adopting it as its own. *Cf. U.S. v. Garcia*, 470 F.3d 1001, 1003 (10th Cir. 2006) ("Although *Boyce* was vacated as moot on rehearing, we are persuaded by its reasoning.").[7]

The appellant otherwise attempts to distinguish some (not all) of the above cases. Arguing that there are varying degrees of lateness deserving of varying treatment, the appellant attempts to distinguish both *Friends of McLeod* and *Blind Tiger* as involving late time periods longer than 6 days. (App. Br. pp. 9, 11 n.1). But there is no statutory basis for discretionary leniency based on an arbitrary number of days that a proper notice of appeal is late, under S.C. Code Ann. § 6-29-900(A).

The appellant also attempts to distinguish *Spanish Wells* based not on the Supreme Court's decision, but the circuit court's nonprecedential decision below. (App. Br. pp. 10-11). The Supreme Court, however, explicitly held: "The sole question we address here is whether a permittee is a necessary party to an action to revoke a development permit." *Spanish Wells*, 367 S.E.2d at 161, 295 S.C. at 68. The Supreme Court did not address the question of whether it was proper for the circuit court to allow 15 days leave to join the

[7] Nor did the circuit court err in additionally being persuaded by the correct analysis performed in the same circuit court in other cases, for example, in *Citizens for Sensible Planning v. City of Charleston*, Case No. 2016-CP-10-6546, Order dated June 28, 2017 (Circuit Court, County of Charleston) (Judge Nicholson).

necessary party, which had become moot because an appeal had been taken instead. The above authorities that followed *Spanish Wells* in 1988, including *Vulcan* in 2000, *Austin* in 2004, and *Blind Tiger* in 2005, combine to address and answer that question in the negative, as this Court persuasively explained in *Friends of McLeod* in 2008.

For these reasons, under the *de novo* standard of review applicable to this issue of law, this Court should affirm the circuit court in dismissing the appeal taken from the Board because a notice of appeal naming all necessary parties was not timely filed.

Moreover, before taking this appeal, the appellant did not first ask the circuit court to reconsider its analysis of this issue on the grounds articulated in the opening brief, as would have been necessary to preserve those arguments on the issue for further review. *See I'ON, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) ("The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred.").

II. On the Merits, the Circuit Court Correctly Held That It Would Nonetheless Affirm the Unanimous Decision of the Board of Architectural Review; and the Appellant Did Not Preserve Arguments on This Issue for Review.

A. Standard of Review

The appellant's opening brief avoids the central standard of review on appeal as to the merits because it does not set forth the "any evidence" standard (or cite any zoning appeal cases). (App. Br., p. 7). The "any evidence" standard applied to the circuit court, as well as to this Court. *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004) ("On appeal, we apply the same standard of review as the circuit court below."). The "any evidence" standard requires deference to the Board's broad discretion and role as the final and conclusive finder of fact and an extremely narrow review of the

Board's decision as a matter of law. S.C. Code Ann. § 6-29-930 (A) ("The findings of fact by the board of architectural review are final and conclusive on the hearing of the appeal, and the court may not take additional evidence . . . In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law."); *Kurschner v. City of Camden Planning Comm'n*, 656 S.E.2d 346, 351, 376 S.C. 165 (2008) ("We refuse to apply a standard of review different from the any evidence standard in this case, for any other standard of review would be contrary to the legislature's intent in granting a planning commission broad discretion in this area. Furthermore, this standard of review does not violate the Kurschner's due process rights."); *Heilker v. Zoning Bd. of Appeals*, 346 S.C. 401, 552 S.E.2d 42 (S.C. App. 2001) ("In zoning matters, this Court is obligated to apply the extremely narrow standard of review outlined in *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000). The local zoning boards, and not the courts, are the primary entities responsible for the planning and development of our communities."); *Rest. Row Assocs. v. Horry Cty.*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999) ("A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision."); *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995) ("We give great deference to the decisions of those charged with interpreting and applying local zoning ordinances. The appellate court is not free to substitute its judgment for that of the BOAR. Accordingly, we will not reverse the circuit court's affirmance of the BOAR unless the BOAR's findings of fact have no evidentiary support or the BOAR commits an error of law.") (internal citations omitted).

B. Legal Analysis

i. The "Any Evidence" Standard Was Correctly Applied By the Circuit Court and Has Not Been Challenged by the Appellant.

Here, the "any evidence" standard was readily satisfied. The circuit court reviewed the record and found that ample supporting evidence was presented to the Board, in the form of documents and testimony, by multiple architects, preservation groups, City staff, and the appellants' themselves. (Order) (R. p. 3). Accordingly, the circuit court found that it could not substitute its judgment for that of the Board in exercising its broad discretion. (Order) (R. p. 3). Neither should this Court.

Further, because the appellant has not taken exception to the circuit court's application of the "any evidence" standard in his opening brief, the appellant has abandoned and conceded the point. (App. Br. p. 7). *See Langley v. Boyter*, 284 S.C. 162, 325 S.E.2d 550, 561 (Ct. App. 1984) ("South Carolina is an 'exception state.' This means the South Carolina Supreme Court and this court are 'confined to a disposition of appeals upon the exceptions taken....'" (internal citations omitted); *Ehlke v. Nemec Const. Co., Inc.*, 381 S.E.2d 508, 298 S.C. 477, 481 (Ct. App. 1989) ("Additionally, there is a presumption in favor of the correctness of an appealed order and the burden of showing error by the trial judge is on the appellant."); *Matthews v. City of Greenwood*, 305 S.C. 267, 407 S.E.2d 668, 669 (Ct. App. 1991) ("The issue . . . is neither raised by an exception nor argued in the brief. Therefore, this issue is not presented for review."); *State v. Austin*, 306 S.C. 9, 409 S.E.2d 811 (Ct. App. 1991) ("An exception not argued in the brief is deemed abandoned on appeal."); *Glasscock, Inc. v. US Fidelity & Guar.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001) ("[A]n argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief."); *In the Interest of Bruce O.*, 311 S.C.

514, 515 n. 1, 429 S.E.2d 858, 858 n. 1 (Ct. App. 1993) ("Further, an appellant may not use oral argument as a vehicle to argue issues not argued in the appellant's brief.").

Further failing to preserve the issue for review, the appellant did not ask the circuit court to reconsider its application of the "any evidence" standard. *See I'ON*, 338 S.C. 406, 526 S.E.2d 716.

ii. The Appellant's Arguments About the Board's Sign, Agenda, Executive Session, and Violations of FOIA, Are Unpreserved and Without Merit.

Section II of the appellant's argument criticizes the wording on the Board's sign and agenda, which the appellant contends did not provide notice of the entirety of the application; and the Board's executive session to receive legal advice about that notice issue, which the appellant contends violated South Carolina's Freedom of Information Act ("FOIA"), S.C. Code Ann. §§ 30-4-10, *et seq*. (App. Br. pp. 12-15).

As detailed above and as the circuit court correctly recognized, the sign enabled passers-by to see that the Board would be holding a public hearing about a request to make alterations to 117 Broad Street and directed them to call the Department of Planning for more information, or visit the City's website, where the agenda, which included the architectural plans submitted with the entirety of the application, were made publicly available online. (Order; Sign; Agenda) (R. p. 8; R. p. 71; R. p. 341). There is no statutory requirement for such a sign. Further, the sign was consistent with the City's zoning ordinance (Section 54-239), the Board's procedural rules (Article II, Section 5), and common practice and sense. It would be an impractical, if not impossible burden on the Board to exhaustively describe visually complex architectural plans in writing on a sign posted on a building, or an agenda sequentially listing items to be discussed at a meeting,

which agenda included the entire application in any respect.[8] The Board's choice of words in briefly describing such plans requires allowance and discretion. The evidence in the record detailed above further reflects that the circuit court appellants saw the sign, obtained the entirety of the application, reviewed the architectural plans, submitted letters about the same in advance of the hearing, attended the hearing, were given an opportunity to speak at the hearing, and applauded the proposed changes to the house at 117 Broad Street (despite their speculation about what might happen next with respect to the wall on Orange Street). (Tr.; Letters) (R. pp. 385 – 398; R. p. 384).

The appellant's brief presents no challenge to these points that were recognized by the circuit court. (Order) (R. p. 8). Nor does the appellant's brief make any mention of constitutional or procedural "due process" – thereby conceding that there has been no deprivation of due process here, as flexibly assessed in the context of a hearing before a board of architectural review afforded broad discretion by the legislature. *See Kurschner*, 656 S.E.2d at 350, 376 S.C. 165 ("In our view, due process does not require the full gamut of rules and procedures to which the Kurschners claim they were entitled… Furthermore, review of the procedures in this case reveals that the Kurschners were afforded a meaningful opportunity to be heard.").

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[8] *See supra* note 4. The appellant critically characterizes the restoration project at issue as constituting "hundreds of changes," seemingly counting the number of nails or boards or some other arbitrary unit of measure involved, which the appellant does not identify. (Cir. Ct. Tr. p. 17, l. 24) (R. p. 112, l. 24). Extending the appellant's logic here to reach an absurd result, the sign and agenda would have to make mention of every one of those "hundreds of changes."

Lastly, the appellant's argument that the Board violated FOIA is both unpreserved and without merit. The circuit court's order generally addressed the Board's executive session and found there to be no evidence to infer that the Board acted improperly:

> The Court likewise finds no merit in the appellants' related arguments that the Board somehow took improper action in executive session while receiving legal advice. There is simply no evidence that the Board acted improperly in executive session. The Board stated that no action or votes had been taken in executive session. The Court cannot infer that someone making a motion immediately upon coming out of executive session engaged in any voting on the matter while in executive session.

(Order, pp. 8-9) (R. pp. 10-11).

However, the circuit court's order did not specifically address whether the Board violated FOIA in any other respect, requiring the appellant to first seek reconsideration before making any argument that the Board violated FOIA to this Court. (Order) (R. pp. 10-11). *See I'ON*, 338 S.C. 406, 526 S.E.2d 716; *Croft as Trustee of James A. Croft Trust v. Town of Summerville*, 428 S.C. 576, 837 S.E.2d 219 (Ct. App. 2019) ("Appellants also contend the Board [of Architectural Review] unreasonably restricted access to the Developer's applications because the Town required that they file a FOIA request to view the documents. The circuit court did not rule on this question, and no Rule 59(e) motion was filed. Thus, this issue is unpreserved."). Moreover, none of the FOIA violation cases discussed in Section II of the appellant's opening brief were ever raised by the appellant before the circuit court. (*Compare* Pet., Am. Pet., and Memo. *with* App. Br. pp. 12-15) (R. p. 17; R. p. 22; R. p. 84).

Nevertheless, in compliance with FOIA, the record reflects: that the Board made and approved a motion to go into executive session for an announced purpose, per S.C.

Code Ann. § 30-4-70(b); which purpose was receiving legal advice from its attorney, per S.C. Code Ann. § 30-4-70(a)(2), regarding Mr. Grimball's adversarial claim that the Board did not provide notice of the entirety of the application based on its description on its sign and agenda; and that the Board took no action in that executive session, per S.C. Code Ann. § 30-4-70(b), but rather requested advice from the Board's attorney about the issue of proper notice, and came out of executive session to consider the application as submitted, per S.C. Code Ann. § 30-4-70(b):

> Well, I'll make a motion to get advice from the city attorney about the notice issue. Do I have a second? (multiple people say "I").
>
> . . .
>
> All right, can we have a motion [inaudible] this session? [multiple people second and are in favor]. Okay, we are now back in regular session no action was taken during executive session after reviewing the applicable code section that applies to the AR notice position with the board that proper notice was 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.

(Tr. p. 11, ll. 17-20; Tr. p. 12, ll. 19-23; DVD) (R. p. 395, ll. 17-20, p. 396, ll. 19-23; R. p. 399).

The appellant's FOIA violation argument is premised on twisting the above plainly spoken words by members of the Board and adding wildly accusatory speculation, suggesting that the Board secretly voted in executive session to add an item to the agenda and then lied about it. (App. Br., p. 13). That is simply not what the record reflects, which

is only that the Board properly received legal advice about the notice issue. (Tr. p. 11, ll. 17-20; Tr. p. 12, ll. 19-23; DVD) (R. p. 395, ll. 17-20, p. 396, ll. 19-23; R. p. 399).[9]

"Moreover, substantial compliance with the [FOIA] Act will satisfy its requirements where a technical violation has no demonstrated effect on a complaining party." *City Multimedia, Inc. v. Greenville Airport Com'n*, 339 S.E.2d 884, 887, 287 S.C. 521 (Ct. App. 1985). The lone remaining complaining party, Mr. Alloy, present at the meeting, had his opportunity to oppose the application as submitted to the Board. The evidence supporting the Board's decision to approve the application as submitted is all in the record. And Mr. Alloy had the opportunity to take an appeal of the Board's decision on the application as submitted to the circuit court, and then further to this Court. All along, Mr. Alloy has had the opportunity to make any notice argument he wishes to make based on the Board's description of the application on the sign and in the agenda. In sum, the Board's executive session has had no effect on Mr. Alloy.

iii. The Appellant's Arguments About One of the Board's Guiding References, Namely, "The Secretary of the Interior's Standards for the Treatment of Historic Properties," Are Unpreserved and Without Merit.

Section III of the appellant's argument is dedicated to one of the Board's guiding references, a 241-page publication by the U.S. Department of the Interior, namely "The

[9] The appellant's wrong accusation that a secret vote occurred in the executive session also does not make sense under Robert's Rules of Order, which applies to the Board and sets forth the duties and authority of the Chairman. Under Rule 58, no vote was required for the Chairman "to protect the assembly from annoyance from evidently frivolous or dilatory motions by refusing to recognize them." Here, the Chairman received advice from the City's attorney about the notice issue raised by Mr. Grimball and protected the assembly by moving forward with the application as submitted.

Secretary of the Interior's Standards for the Treatment of Historic Properties." (App. Br. p. 16); (Guide) (R. p. 166).

Once more, the appellant failed to preserve this argument for review. The circuit court's order did not specifically address that publication, and the appellant did not ask the circuit court to reconsider it. (Order) (R. p. 3). *See I'ON*, 338 S.C. 406, 526 S.E.2d 716; *Croft*, 428 S.C. 576, 837 S.E.2d 219.

Nonetheless, the appellant's argument is without merit. Specifically, the appellant asserts that the Board "disregarded" a singular sentence about "altering buildings" found on page 63 of that 241-page publication. (App. Br. p. 16); (Guide) (R. p. 166). That lengthy reference, however, is merely intended to provide "insight" and "guidance" to the Board, as the ordinance expressly states, and the appellant's brief acknowledged. (Ord. Sec. 54-236); (App. Br. p. 16). The appellant asks this Court to be second guessing how the Board weighed the sum and substance of the insight and guidance in that lengthy reference and the countless issues for consideration suggested therein, and exercised its broad discretion based on the evidence presented to it at the public hearing. The appellant's assertion that the Board disregarded it is nothing more than a short, conclusory statement. (App. Br. p. 16). *See Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285 n.3 (Ct. App. 1993) ("[A]n issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority."). Put another way, the appellant would have this Court read a singular sentence about "altering buildings" buried in a lengthy guiding reference to mean that all alterations to buildings are prohibited, no matter the circumstances and other considerations, removing the purpose and discretion of the Board. Such a reading would be absurd. Again, the "any

evidence" standard requires affirmance of the Board's decision because the project was applauded by preservation groups, City staff, and the circuit court appellants alike, and the detailed plans presented by the architects aligned with the goals and objectives of the Board, as guided, in exercising its broad discretion over the project.

CONCLUSION

The Board's unanimous decision, exercising its broad discretion, should not be overturned under the "any evidence" standard. The statutory notice of appeal to the circuit court was not timely filed naming the necessary parties. The appellant's opening brief does not challenge the circuit court's dispositive rulings and otherwise advances arguments that are unpreserved and without merit. And Mr. Alloy appears to be continuing this litigation without his circuit court co-appellants for a reason that is not related to the Board's decision to approve the applauded restoration project now before this Court.[10] The respondents also request affirmance based on any other ground appearing on the record under Rule 220(c), SCACR. Wherefore, this Court should affirm the circuit court's decision, dismissing the appeal of the Board's decision, and nevertheless affirming the Board's decision on the merits.

[10] *See supra* note 6.

Dated: December 10, 2024

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge

Case No. 2023-CP-10-02575
Appellate Case No. 2024-000768

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.

CERTIFICATE OF COMPLIANCE WITH RULE 211, SCACR

Undersigned counsel certifies that the Final Brief of Respondents City of Charleston, South Carolina Board of Architectural Review – Small and 117 SOB Project, LLC complies with Rule 211, SCACR.

Dated: December 10, 2024

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