THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2023-000296

J. Doe, ...Appellant,

v.

Design Review Board (DRB) of the Town of Sullivans Island (S.I.), and Town of Sullivans Island,. ..... Respondents.

INITIAL BRIEF OF RESPONDENTS DESIGN REVIEW BOARD OF THE TOWN OF SULLIVAN'S ISLAND AND TOWN OF SULLIVANS ISLAND

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STATEMENT OF ISSUES ON APPEAL

I. Did the circuit court correctly dismiss the appeal when Appellant failed to join a necessary party, the permittee, as required by Spanish Wells Property Owners Ass'n, Inc. v. Board of Adjustment, 295 S.C. 67, 367 S.E.2d 160 (1988)?

II. Is the Appellant entitled to pre-litigation mediation under S.C. Code Sections 6-29-900(B) and 6-29-915 when she is admittedly not the owner of the Property, and those statutes only provide that a property owner whose land is the subject of a decision of the board of architectural review may appeal by appealing and requesting mediation?

III. Did the DRB abuse its discretion or commit a reversible error of law when its decision is fully supported by the facts before it?

IV. Were Appellant's other claims, including the claim for violation of due process and unconstitutional taking, properly dismissed for the additional reason she has merely mentioned those claims in passing and failed to articulate any specific facts that would support such claims?

V. As an additional affirming ground, should the circuit court be affirmed and the appeal dismissed when the work approved by the DRB is now complete and an award in Appellant's favor would have no practical effect?

STATEMENT OF THE CASE

On March 24, 2021, Julie O'Conor ("O'Connor"), a designer from American Vernacular, Inc., serving as the agents of Fred and Debbie Nelson (collectively the "Nelsons")[1], submitted an application to the Town of Sullivan's Island's (the "Town") Design Review Board ("DRB") for renovations/additions to the Nelsons' home at 1608 Poe Avenue, Sullivan's Island 29482 (the "Property"). **(TOSI 1608 POE 91-100)**; **(TOSI 1608 POE 101-10)**. The DRB held a meeting via Zoom on May 19, 2021, to discuss that application. **(TOSI 1608 POE 61-90)**. At that meeting, O'Connor presented the application to the DRB. **(TOSI 1608 POE 37, 58-59)**. The application was subject to public comment, and the above-named Appellant, although not present, submitted materials in opposition to that application. (**TOSI 1608 POE 61-90); (TOSI 1608 POE 64-84)**. Town Staff recommended the approval of Nelsons' application. **(TOSI 1608 POE 37)**. The DRB found the project met the Standards for Neighborhood Compatibility and the DRB unanimously approved that application. **(TOSI 1608 POE 37, 58-59)**.

Appellant challenged that decision in two ways: (1) Appellant demanded the Town grant a rehearing in front of the DRB and (2) Appellant appealed the DRB's decision approving that project to the circuit court. (**TOSI 1608 POE 441-42)**; **(Appellant's Summons; Appellant's Notice of Appeal; Appellant's Appeal Pet., Jury Demand, Mot., and Req. for Decl. Relief and Inj. Relief, filed on June 21, 2021)**.

The Town denied Appellant's request for rehearing and Appellant requested an administrative appeal regarding this denial. **(TOSI 1608 POE 443-46)** (denying rehearing request)**; (TOSI 1608 POE 345, 426, 438-40)** (requesting administrative appeal). Another DRB

[1] The Nelsons are not a party to this appeal. As discussed below, Appellant was required to join them as parties and the appeal was properly dismissed for failure to name the property owners.

Meeting was held in-person at the Town Hall on August 18, 2021, to hear Appellant's administrative appeal. **(TOSI 1608 POE 336, 345-348, 379-388)**. The DRB entered a unanimous decision stating the Town correctly denied Appellant's rehearing request. **(TOSI 1608 POE 346, 348)**.

On June 21, 2021, Appellant filed a Summons, Notice of Appeal, an Appeal Petition, a Jury Demand, Motion, and a Request for Declaratory Relief and Injunctive Relief in the circuit court. **(Appellant's Summons; Appellant's Notice of Appeal; Appellant's Appeal Pet., Jury Demand, Mot., and Req. for Decl. Relief and Inj. Relief, filed on June 21, 2021)**. Respondents filed a Motion to Dismiss under SCRCP Rules 12, 12(b)(6), 12(b)(7) and 19, and Respondents filed an Answer and Return to the Notice of Appeal submitted by Appellant on December 15, 2021. **(Resp'ts Mot. to Dismiss, filed on Dec. 15, 2021); (Resp't Answer and Return to Notice of Appeal, Am. Appeal, Pet., Jury Demand, Mot., and Request for Decl. Relief and Injunctive Relief, filed on Dec. 15, 2021)**. In their Motion to Dismiss, Respondents explained "[Appellant] has not named the permittee/owner/applicant who is a necessary party to appeal the DRB approval." **(Resp'ts Mot. to Dismiss, filed on Dec. 15, 2021)**. Respondents filed the Record on Appeal. (**Certification of R. by Welch, filed on Dec. 16, 2021)**; **(Suppl. Certification of R. by Welch, filed April 26, 2022)**; **(Resp't's Suppl. Of R., filed on May 09, 2022)**. Additionally, Respondents filed a Memorandum of Law in Opposition to Appellant's Appeal of the May 19, 2021, Decision of the Town's DRB. (**Resp't's Mem. Of L. in Opp'n to J. Doe's Appeal of the May 19, 2021, Decision of the Town of Sullivan's Island Design Review Board, filed on Sept. 16, 2022)**.

A hearing was held on September 19, 2022.[2] See **(Order Dismissing Appeal, filed Dec. 07, 2022)**.[3] Appellant filed a Memorandum opposing Respondents' September 16, 2022, filings on October 03, 2022. **(Appellant's Mem. In Opp'n, filed Oct. 03, 2022)**. After the parties' memoranda and the September 19, 2022, hearing, the Honorable Judge Jenifer B. McCoy, granted the Respondents' Motion to Dismiss for Appellant's failure to join a necessary party, the permittees. **(Order Dismissing Appeal, filed Dec. 07, 2022)**; **(Form 4 of the Honorable Judge Jenifer B. McCoy, filed on November 11, 2022 at 3:12 PM)** (granting Respondents' Motion to Dismiss); **(Form 4 of the Honorable Judge Jenifer B. McCoy, filed on November 10, 2022 at 3:27 PM)** ("Based on the Court's Ruling on Defendant's Motion to Dismiss in the instant case, this Appeal is hereby Dismissed as Moot.").

Appellant filed a Motion challenging the decision. **(Appellant's Mot., filed on Dec 5, 2022)**. Appellant also filed a Motion to Reconsider Judge McCoy's Order granting Respondents' Motion to Dismiss on December 30, 2022, which was denied on January 23, 2023. **(Appellant's Mot. to Recons. Order Granting Resp'ts' Mot. to Dismiss, filed on Dec. 30, 2022)**; **(Form 4 Order Den. Appellant's Mot. to Recons., filed on Jan. 23, 2023)**. Appellant filed a Second Motion to Reconsider and an Amended Second Motion to Reconsider on February 6, 2023.

[2] A notice was served on both parties for a hearing via Webex on Respondent's Motion to Dismiss on or around March 23, 2022, however, this hearing was continued because Appellant "ha[d] no means or access to webex." **(Letter from Appellant RE: No Means to Have a Webex Hr'g, filed on April 15, 2022)** (containing a note from the Court that her request for an in-person hearing was granted on April 14, 2022). A new date for an in-person hearing on September 19, 2022, was set by the circuit court.

[3] Appellant also did not receive a copy of the transcript. **(Letter from Appellant received by COA, Feb. 28, 2024).** Ms. Harris, the Court Reporter for Charleston Court of Common Pleas at the time, had moved when Appellant mailed her a request for a copy of the transcript it was not forwarded to Ms. Harris. **(Letter from Court Reporter, received June 28, 2024)**. After receiving the request, Ms. Harris responded noting there was no evidence from the circuit court's docket that any hearing took place on June 5, 2023, the date requested by the Appellant. Id.

(**Appellant's Second Mot. to Recons. Order Granting Resp'ts' Mot. to Dismiss, filed on Feb. 06, 2023);** (**Appellant's Am. Second Mot. to Recons. Order Granting Resp'ts' Mot. to Dismiss, filed on Feb. 06, 2023)**. The circuit court denied Appellant's Second Motion to Reconsider. **(Form 4 Order Den. Appellant's Second Mot. to Recons., filed on June 23, 2023)**. The Notice of Appeal was filed with this Court on February 24, 2023. (**Appellant's Notice of Appeal to Court of Appeals, filed on Feb. 24, 2023)**. Appellant filed an Amended Notice of Appeal with the Court on July 03, 2023. **(Appellant's Am. Notice of Appeal, filed on July 03, 2023)**.

Appellant repeatedly violated this Court's rules and directives, resulting in dismissal of the appeal. **(Deficiency Letter, filed on Mar. 01, 2023)**; **(Letter to Appellant, sent by COA May 1, 2023)**; **(RE: Tr. Req. Form, sent by COA May 1, 2023)**; (**Letter from Appellant, received by COA May 08, 2023)**; **(Letter to Appellant, sent by COA July 21, 2023)**; **(Letter to Appellant, sent by COA July 21, 2023)**; (**Letter from Appellant, received by COA July 25, 2023)**; **(Letter to Appellant, sent by COA July 26, 2023)** (returning Appellant's filing fee because she did not receive the transcript); **(Letter to Appellant, sent by COA Oct. 10, 2023)**; **(Tr. Req. Form at 1, received by COA Oct. 20, 2023)** (Appellant requested a transcript of a hearing occurring "~6/5/23" but that was not the date of the hearing); **see (Letter from Ct. Rep., received June 28, 2024))**; **(Letter from Appellant, received by COA Nov. 02, 2023)**; **(Letter from Appellant, received by COA Dec. 08, 2023)**; **(Letter from Appellant, received by COA Jan. 10, 2024)**; **(Letter from Appellant, received by COA Feb. 12, 2024)**; **(Letter from Appellant, received by COA Feb. 28, 2024); (Letter to Appellant, sent by COA Apr. 1, 2024)**; **(Letter from Appellant, received by COA Apr. 09, 2024)**; **Letter to Appellant, sent by COA May 28, 2024)** ("you must serve and file your initial brief of appellant and designation of matter within ten (10)

days of the date of this letter, or your appeal will be dismissed"). On July 11, 2024, this Court issued an Order dismissing the appeal stating:

> Appellant has failed to file the initial brief of appellant and designation of matter, as required by Rules 208 & 209 of the South Carolina Appellate Court Rules (SCACR) and this Court's letter dated May 28, 2024. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

(Order of Dismissal at 1, filed on July 11, 2024). After the appeal was dismissed for failing to comply with the Court's rules and directives, Appellant filed an Initial Brief and a Motion to Reinstate the Appeal. **(Appellant's Initial Br., filed on July 22, 2024); (Appellant's Mot. to Reinstate at 1-4, filed on July 25, 2024)**. This Court granted that Motion to Reinstate the Appeal on October 15, 2024. **(Order Granting Appellant's Mot. to Reinstate at 1, filed on Oct. 15, 2024)**.

STATEMENT OF FACTS

The Nelsons, who were not named by Appellant as parties to this appeal, built their house on Sullivans Island in 1986 and are still the owners of the Property. **(TOSI 1608 POE 219)**. Seeking to make the Property their primary residence, the couple decided to improve it. **(TOSI 1608 POE 219-20)**.

By and through Julie O'Connor, a designer with American Vernacular Inc., the Nelsons applied to make renovations/additions to their home on March 24, 2021. **(TOSI 1608 POE 91-100)**. The Nelsons sought "the removal of the second story porch and to add an additional story for a family room and a modified porch." **(TOSI 1608 POE 58)**. Only two aspects of the plan required DRB approval: the principal building coverage and the side setback. **(TOSI 1608 POE 37)**.

A DRB meeting was held via Zoom on Wednesday May 19, 2021. **(TOSI 1608 POE 50-60)** (containing the Minutes of the May 19, 2021, DRB Meeting); **(TOSI 1608 POE 61-90)**

(containing the General Public Comments for the May 19, 2021, DRB Meeting). Prior to that meeting, Appellant submitted her objections to the Nelsons' proposed plans to the DRB, which were received by the DRB on May 16, 2021. **(TOSI 1608 POE 64-84)**. Those materials were presented at the DRB Meeting. See **(TOSI 1608 POE 64-84); (TOSI 1608 POE 58).** At that meeting, Ms. O'Connor presented the Nelsons' application to the DRB. **(TOSI 1608 POE 58-59)**. After hearing Ms. O'Connor's presentation, the Town Staff recommended approval of the application, and the DRB unanimously voted to approve the application. **(TOSI 1608 POE 37, 58-59)**. The DRB found that the plan conformed with the Standards for Neighborhood Compatibility and that the Nelsons' proposed plan would *reduce* the impervious surface on the site. **(TOSI 1608 POE 58-59, 219-20)**; see **(TOSI 1608 POE 111-39)** (depicting the design plans and photos of the then-existing structure at the Property); **(TOSI 1608 POE 500)** (containing a video of May 19, 2021, DRB meeting).

After the DRB approved the application**,** Appellant sent a letter dated May 22, 2021, requesting a rehearing.[4] **(TOSI 1608 POE 385-386)**. After Appellant's initial letter, Joe Henderson, the Director of Planning and Zoning at that time, explained Appellant's proper venue for challenging the DRB's decision was to appeal to the circuit court. See **(TOSI 1608 POE 443-46)** ("The Town's position remains unchanged from the previous[] . . . letter of May 25, 2021."). Appellant again requested a rehearing via a letter dated June 1, 2021. **(TOSI 1608 POE 469)**. Mr. Henderson informed the Appellant in a letter dated June 3, 2021, that her request was improper

[4] Article III, Section 8 Rehearing reads as follows: "The Board **may** grant a rehearing of an **application which has been dismissed or denied** upon written request filed with the secretary within fifteen (15) days after the date of the decision or receipt of minutes, whichever is applicable, accompanied by new evidence which could not reasonably have been presented at the hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome." **(TOSI 1608 POE 427)** (bold added)**.**

under DRB Bylaws Article III, Section 8 (Rehearing) because "the Board may grant a rehearing upon the request of the applicant or property owner (or authorized representative). Because [Appellant was] not the owner of 1608 Poe Avenue, [she was] unable to request a rehearing." See **(TOSI 1608 POE 443-46)**. The letter informed Appellant that the proper method of appealing the DRB's decision was by filing an appeal with the circuit court. **(TOSI 1608 POE 443-44)**.

Appellant responded in a letter dated June 7, 2021, where Appellant requested "an administrative appeal of the zoning administrator's interpretation of the Design Review Board's Bylaws, Article 3, Section 8 (Rehearing) and Zoning Ordinance, Sections 21-110 (Administrative Appeal) and 21-114 (Appeal to Circuit Court)."[5] **(TOSI 1608 POE 345, 426, 438-40)**. Mr. Henderson sent a letter on June 14, 2021, providing the relevant forms for an administrative appeal. **(TOSI 1608 POE 488-494)**.

Another DRB Meeting was held in-person at the Town Hall on August 18, 2021, to hear Appellant's administrative appeal. **(TOSI 1608 POE 336, 345-348, 379-388)**. The Appellant had the opportunity to fully present her case and elaborated her primary concerns were the effect the construction would have on storm water drainage, and she wanted the DRB to state that someone

[5] Zoning Ordinance Section 21-110(A) (Appeals of the administrative official) reads as follows: "Decisions of the Zoning Administrator or other appropriate administrative official in matters under the purview of the Design Review Board may be appealed to the Design Review Board where there is an alleged error in any order, requirement, determination, or decision. Appeals to the Design Review Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town." **(TOSI 1608 POE 491)**.

Zoning Ordinance Section 21-114 (Appeal to the circuit court) reads as follows: "A person who may have a substantial interest in any decision of the Design Review Board 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 shall be filed within thirty (30) days after the affected party receives actual notice of the decision of the Design Review Board. "(**TOSI 1608 POE 492)**.

other than any homeowner may request a rehearing. **(TOSI 1608 POE 346, 348)**.[6] **(TOSI 1608 POE 345-348, 379-388)**. The DRB entered a unanimous decision stating the following:

> Mr. Craver made a motion to affirm Town staff's interpretation of DRB Bylaws Article 3, Section 8 (Rehearing) and [Appellant] did not have proper standing for a rehearing, however, the Board made the decision to hear [Appellant's] case. Mr. Craver stated that the requirements for a storm water plan were not required for this application and the Board made an appropriate decision in approving the application for 1608 Poe Avenue. Mr. Wichmann seconded this motion. All were in favor. None opposed. Motion passed unanimously.

(TOSI 1608 POE 348). The DRB found that even though "Section 8 doesn't list a specific person as to who can file a rehearing" they agreed with the Director of Planning and Zoning's (Joe Henderson's) interpretation because Zoning Ordinance Section 21-114 provides the proper method of appealing a DRB decision by a non-applicant, non-property owner. **(TOSI 1608 POE 346).**

Addressing her other claims, the DRB found "proper notification [of the May 19, 2021, DRB Meeting] was made",[7] "the storm water issue and potential[] flooding [of] neighboring

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[6] The August 18, 2021, Meeting Minutes note Appellant's stated grievances. **(TOSI 1608 POE 346)** ("[Appellant] stated her request is to receive confirmation from an engineer stating that with the construction of this property, 1608 Poe Avenue, that the storm water will be contained and will not adversely affect the neighboring properties. [Appellant] stated that she also requested a rehearing of this application due to lack of evidence that has now been presented, clerical error in lack of notification, and confirmation that the neighboring properties will not be adversely affected by the project at 1608 Poe Avenue.").

[7] **(TOSI 1608 POE 348)** ("[A]ll notification requirements were met including the posing of signage in the yard well in advance of the required 10 days prior to the meeting and the agenda was advertise in the local paper in advance of the 15-day requirement. Agendas are also poste[d] in Town Hall and on the Town's website."); See **(TOSI 1608 POE 1)** (noting the date and time of the meeting as well as a zoom link); **(TOSI 1608 POE 210)** (noting an Affidavit of Publication from the Post and Courier outlining the details of the May 19, 2021 DRB meeting); **(TOSI 1608 POE 67)** (depicting Appellant's handwritten note requesting the delivery of the attached materials to the DRB Board Members on May 18, 2021, showing that she was aware of the meeting on May 19, 2021); **(TOSI 1608 POE 74-75)** (showing photos from the Appellant of the sign indicating where she could find the information regarding the DRB meeting, which was conducted over Zoom to facilitate Covid protocols).

properties . . . is not in the DRB's purview"[8] and "the applicants testified would be installing a pervious system which will benefit the stormwater issue" (which was the Appellant's primary issue), Appellant could not quantify any damage to the adjoining properties,[9] "[the DRB] can't make [the Nelsons] reduce their elevation height", and "the Board had the information and Town Staff checked all required information submitted by the applicant for this project." **(TOSI 1608 POE 345-48)**.

Appellant appealed the DRB's decisions to the circuit court on June 21, 2021. **(Appellant's Summons; Appellant's Notice of Appeal; Appellant's Appeal Pet., Jury Demand, Mot., and Req. for Decl. Relief and Inj. Relief, filed on June 21, 2021)**. In her Amended Appeal Petition, Appellant alleged the DRB committed an error of law and abused its discretion through their decisions. **(Appellant's Am. Appeal Pet., Jury Demand, Mot., and Req. for Decl. Relief and Inj. Relief at 3-8, 8-11, filed on Sept. 17, 2021)** (hereinafter, the "Appellant's Am. Appeal Pet.").

[8] **(TOSI 1608 POE 346)** ("Mr. Lewis stated that her concern is the storm water issue and potentially flooding neighboring properties but that something that is not in the DRB's purview."). Joe Henderson noted, the Town Staff can only "require a storm water plan on two conditions. First, if someone is adding 625 square feet of impervious surface or adding 20% or more of fill over the entire property." **(TOSI 1608 POE 347)**. Henderson noted, "1608 Poe . . . demonstrate[ed] a reduction of impervious surface." **(TOSI 1608 POE 347)**.

[9] Appellant could not provide proof any harm that had occurred to relevant properties. **(TOSI 1608 POE 347)** ("Mr. Craver asked if [Appellant] **has any proof that the project at 1608 Poe Avenue has actually affected neighboring properties**. Mr. Henderson responded by stating that to date **no building permits have been issued for this project** because of the staff appeal and pending hearing date") (bold added); **(TOSI 1608 POE 347)** ("if someone is requesting to add pervious surface area that the drainage pattern will change but it will improve the drainage issue. . . . the applicants testified would be installing a pervious system which will benefit the stormwater issue so Mr. Wichmann stated he doesn't understand what the problem is. Mr. Wichmann believed that this sounds like an improvement.").

Appellant alleged the DRB committed an error of law because the DRB allegedly failed to provide adequate notice for the Zoom DRB Meeting on May 19, 2021,[10] the DRB approved an allegedly incomplete application,[11] the DRB allegedly wrongfully denied Appellant's request for rehearing,[12] the Property allegedly was in the Historic District,[13] the applicants allegedly falsified information and "requested relief and/or variances unnecessarily",[14] the DRB allegedly did not consider "Flood Zone[s]",[15] and because allegedly, "the record reflects the requirements of the [Zoning Ordinance] have not been met."[16] **(Appellant's Am. Appeal Pet. at 6-8, filed on Sept. 17, 2021)**. Appellant also alleged an abuse of discretion largely on the same grounds. **(Appellant's Am. Appeal Pet. at 8-10, filed on Sept. 17, 2021)**. Notably, the Amended Appeal Petition failed to name the Nelsons, the owners of the property at 1608 Poe. **See (Appellant's Am. Appeal Pet. at 1, filed on Sept. 17, 2021)**.

Respondents filed an Answer and a Motion to Dismiss on December 15, 2021, pursuant to SCRCP Rules 12, 12(b)(6), 12(b)(7), and 19. **(Resp'ts Mot. to Dismiss, filed on Dec. 15, 2021); (Resp't Answer and Return to Notice of Appeal, Am. Appeal, Pet., Jury Demand, Mot., and Request for Decl. Relief and Injunctive Relief, filed on Dec. 15, 2021)**. Citing Spanish Wells Property Ass'n v. Board of Adjustment, 295 S.C. 67, 367 S.E.2d 160 (1988), Respondents argued

[10] **(Appellant's Am. Appeal Pet. at ¶¶ 26-29, 35, filed on Sept. 17, 2021).**

[11] **(Appellant's Am. Appeal Pet. at ¶¶ 28-29, 35, filed on Sept. 17, 2021)**.

[12] **(Appellant's Am. Appeal Pet. at ¶¶ 30, 32, 36, filed on Sept. 17, 2021)**.

[13] **(Appellant's Am. Appeal Pet. at ¶¶ 28, 31-33, 37, 38c, 41, filed on Sept. 17, 2021)**.

[14] **(Appellant's Am. Appeal Pet. at ¶¶ 33, 38e, 38g, 40-41 filed on Sept. 17, 2021)**.

[15] **(Appellant's Am. Appeal Pet. at ¶¶ 34, 38d, filed on Sept. 17, 2021)**.

[16] **(Appellant's Am. Appeal Pet. at ¶¶ 33, 35, 38e, 41, filed on Sept. 17, 2021)**.

the appeal should be dismissed because "[Appellant] has not named the permittee/owner/applicant who is a necessary party to appeal the DRB approval . . . ." **(Resp'ts Mot. to Dismiss at 1, filed on Dec. 15, 2021)**. After a hearing on September 19, 2022, Judge McCoy granted Respondents' Motion to Dismiss because the Appellant failed to join a necessary party, the permittee, pursuant to the holding in Spanish Wells and SCRCP 19. **(Order Dismissing Appeal at 1-2, filed Dec. 07, 2022)**. Appellant filed two Motions to Reconsider, which were both denied by Judge McCoy. **(Appellant's Mot. to Recons. Order Granting Resp'ts' Mot. to Dismiss, filed on Dec. 30, 2022)**; **(Form 4 Order Den. Appellant's Mot. to Recons. at 1, filed on Jan. 23, 2023)**; (**Appellant's Second Mot. to Recons. Order Granting Resp'ts' Mot. to Dismiss, filed on Feb. 06, 2023);** (**Appellant's Am. Second Mot. to Recons. Order Granting Resp'ts' Mot. to Dismiss, filed on Feb. 06, 2023)**; **(Form 4 Order Den. Appellant's Second Mot. to Recons. at 1, filed on June 23, 2023)**.

Appellant then appealed to this Court on February 24, 2023. (**Appellant's Notice of Appeal to Ct. of Appeals, filed on Feb. 02, 2023); (Appellant's Am. Notice of Appeal, filed on July 03, 2023)**.

STANDARD OF REVIEW

The Court of Appeals reviews the decisions of architectural review boards in the same manner as trial courts, only acting when "the board abuses its discretion by committing errors of law or bases its decisions on findings of fact that are not supported by the evidence." Blind Tiger, LLC v. City of Charleston, 366 S.C. 182, 185, 621 S.E.2d 361, 362 (Ct. App. 2005). "The findings of fact by the board . . . are final and conclusive . . . and the court may not take additional evidence." S.C. Code § 6-29-930. "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*." Id. (italics added).

Motions to Dismiss under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure allow a circuit court to dismiss a claim when the allegations in a complaint show the plaintiff failed to "state facts sufficient to constitute a cause of action". Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 121-22, 634 S.E.2d 5, 7 (Ct. App. 2006) (quoting SCRCP 12(b)(6)). All inferences from the allegations in the complaint are construed in favor of the nonmoving party. Id. The Court of Appeals applies the same standard of review for motions under the South Carolina Rules of Civil Procedure, Rule 12(b)(6), as the circuit court. Id. Further, South Carolina Rules of Civil Procedure, Rule 12(b)(7) warrants dismissal of a case for failure to join a party pursuant to South Carolina Rules of Civil Procedure Rule 19. See SCRCP Rule 12(b)(7).

ARGUMENT

I. The circuit court's Order must be affirmed because Appellant failed to name the Nelsons, the permittees, as a necessary party and *Spanish Wells* requires dismissal for failure to join a necessary party.

By failing to name the permittees, the Nelsons, as a party in this suit, Appellant failed to name an indispensable party, and it was within the trial court's discretion to dismiss this case under Rule 19 of the South Carolina Rules of Civil Procedure.

Dismissal is appropriate under Rule 12(b)(7) of the South Carolina Rules of Civil Procedure if a party fails to join a necessary party under Rule 19. SCRCP 12(b)(7), (19). Rule 19 of the South Carolina Rules of Civil Procedure requires joinder if complete relief cannot be granted in a party's absence or if the party's absence would impede that party's ability to protect their interests. SCRCP 19. In appeals like the one at issue here, permittees are necessary parties in appeals. See Savannah Riverkeeper v. S.C. Dep't of Health & Env't Control, 400 S.C. 196, 204, 733 S.E.2d 903, 907 (2012) (citing Spanish Wells Property Ass'n v. Board of Adjustment, 295 S.C. 67, 367 S.E.2d 160 (1988)).

In Spanish Wells,[17] the Supreme Court dismissed an appeal from a board like the DRB because a necessary party was not joined. Spanish Wells, 295 S.C. at 161-62, 367 S.E.2d at 68-69. There, the Hilton Head Island Planning Commission approved a development permit submitted by Calibogue Yacht Properties, Inc. ("Calibogue"). Id. 295 S.C. 67 at 68, 367 S.E.2d at 161. Thereafter, the Spanish Wells Property Owners Association, Inc. ("Spanish Wells") appealed the issuance of this permit to the Board of Adjustment (the "Board"). Id. The Board denied Spanish Wells's appeal, and Spanish Wells appealed to the circuit court. Id. Failing to name the permittee, Calibogue, as a party, the Board moved to dismiss under Rule 12(b)(7). Id. The circuit court granted the motion, but permitted Spanish Wells fifteen days leave to join the permittees, which they failed to do. Id. Spanish Wells appealed to the Court of Appeals, which reversed the decision, and the case subsequently went to the Supreme Court. Id. The Supreme Court reversed the decision from the Court of Appeals finding that a "permittee is a necessary party to an appeal of its permit." Id. 295 S.C. at 68-69, 367 S.E.2d at 160-61 ("Designating the permittee a necessary party ensures the most vitally interested party's participation in the appellate process").

Spanish Wells is the controlling case. The instant case is nearly identical procedurally to Spanish Wells. Just as Spanish Wells failed to join Calibogue, the permittee in that case, Appellant failed to name the Nelsons as a party in this appeal. **See (Appellant's Am. Appeal Pet. at 1, filed on Sept. 17, 2021)**. Judge McCoy's Order identified the necessary party that was not joined. **(Order Dismissing Appeal at 2, filed Dec. 07, 2022)** ("[Appellant] appeals a decision of the DRB

[17] Appellant states that Spanish Wells is "outmoded, and superseded by statute" but then relies heavily on Spanish Wells in argument VIII of their brief. See **(Appellant's Initial Br. at 6, 18-19, filed on July 22, 2024)**. Spanish Wells has not been superseded by statute and is still cited for its holding related to joinder and is not abrogated by statute as the Appellant contends. See Savannah Riverkeeper, 400 S.C. at 204, 733 S.E.2d at 907 (citing Spanish Wells, 295 S.C. 67, 367 S.E.2d 160 (1988)).

seeking to overturn its decision granting approval of a project but has failed to name the permittee in the appeal. For those reasons, the appeal is dismissed"). The circuit court should be affirmed in full on this basis alone.

Appellant quotes Newton, claiming she is not required to name the necessary parties in her Appeal Petition. **See (Appellant's Initial Br. at 17-20, filed on July 22, 2024)**; Newton v. Zoning Bd. of Appeals for Beaufort Cnty., 396 S.C. 112, 117, 719 S.E.2d 282, 284 (Ct. App. 2011) ("This procedure does not allow for issue identification, or even party identification, prior to the filing of a petition with the circuit court."). Appellant is wrong about the holding in that case and omits key facts. There, the zoning board claimed Newton did not preserve his arguments for appeal, because he did not bring them before the zoning board prior to appealing to the circuit court. Id. 396 S.C. at 116-117, 719 S.E.2d at 284-85. The Court found that "prior to filing a petition" there is no requirement to communicate with the board. Id. (bold added). "[T]he sole preservation requirement for a first-level appeal of a zoning board's decision is that an appellant must set forth his issues on appeal in a written petition and file that petition with the circuit court before the thirty-day filing period expires." Id. That is case is inapplicable here.

The DRB issued its decision on May 19, 2021, then also heard an administrative appeal from Appellant on August 18, 2021. See **(TOSI 1608 POE 345-48)**. Appellant, then filed her Appeal Petition on June 21, 2021, to the circuit court, failing to name the permittees as a party. While under Newton, Appellant was not required to bring her arguments to the zoning board *prior* to filing a petition in the circuit court (which she did anyway), Appellant ***was required*** to name the permittees in her Appeal Petition under Spanish Wells.

Therefore, under Spanish Wells, which is still controlling law, the dismissal was proper and the circuit court should be affirmed.

II. Appellant is not entitled to request prelitigation mediation under S.C. Code Sections 6-29-900(B) and 6-29-915 since she is not the property owner of the land subject to the DRB's decision.

Appellant's claim that she is entitled to prelitigation mediation is unsupported and the circuit court's dismissal of that claim should be affirmed for the additional reason that she has no right to demand prelitigation mediation because she is admittedly not the owner of the Property, and the applicable statutes only provide that a property owner whose land is the subject of a decision of the board of architectural review may appeal by appealing and requesting mediation.

By law, only a "property owner whose land is the subject of the board of architectural review" may appeal by requesting prelitigation mediation under S.C. Code § 6-29-915. See S.C. Code § 6-29-900(B); S.C. Code § 6-29-915(A). A non-owner who possesses a "substantial interest" is only allowed to "petition to intervene as a party"[18] if a property owner pursues prelitigation mediation. Id. Nothing in the statute permits a non-property owner the right to appeal and request pre-litigation mediation. See id.

"The cardinal rule of statutory construction is that we are to ascertain and effectuate the actual intent of the legislature." Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). "In interpreting a statute, the court will give words their plain and ordinary meaning[ ] and will not resort to forced construction that would limit or expand the statute." State

[18] To be sure, a non-owner is also allowed to appeal (but not request mediation) pursuant to SC Code § 6-29-900(A), which provides:

> (A) 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.

v. Johnson, 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011).

Appellant' Brief cites to Quality Rural Living, to support her false claim that she is entitled to prelitigation mediation. See Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n, 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019). In that case, which analyzed similar statutes applicable to planning commissions, the court found that an organization had standing to challenge a "land development" scheme. Quality Rural Living, 825 S.E.2d at 724-29. There, the court elaborated that the only party entitled to statutorily request prelitigation mediation under S.C. Code Section 6-29-1150(D)[19] was the property owner whose land was the subject of the decision:

> The **plain language** of section 6-29-1150 as a whole provides Appellant the right to appeal the Commission's decision to the circuit court. First, subsection (C) allows "any party in interest" to appeal staff action to the planning commission. This language clearly contemplates an organization such as Appellant.[6] In turn, subsection (D)(1) allows this class of persons to appeal a commission decision to the circuit court. From this class of appellants, subsection (D)(2) ***carves out the subclass of property owners and gives this subclass the option of seeking pre-litigation mediation in addition to an appeal***.
>
> Further, subsection (D) as a whole gives different treatment to the larger class of appellants and the subclass of property owners who seek pre-litigation mediation. Under subpart (1), the larger class of appellants have thirty days after **receiving actual notice** of a commission decision to file an appeal to the circuit court; the use of the word "must" indicates that the appellant must file within the designated deadline in order to invoke the circuit court's appellate jurisdiction. On the other hand, subpart (2) uses the word "may" to indicate that a property owner has the option of adding a request for pre-litigation mediation to his notice of appeal, and

[19] S.C. Code Ann. § 6-29-1150(D) provides:

> (1) An appeal from the decision of the planning commission must be taken to the circuit court within thirty days after actual notice of the decision.
>
> (2) A property owner whose land is the subject of a decision of the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1155.
>
> A notice of appeal and request for pre-litigation mediation must be filed within thirty days after the decision of the board is mailed.

> if he takes advantage of this option, he must file the notice of appeal and the mediation request within thirty days after the Commission's decision is **mailed** in order to invoke the circuit court's appellate jurisdiction. If the owner of the subject property does not opt to request pre-litigation mediation, he would be subject to the more liberal deadline in subpart (1).
>
> Based on the foregoing, the larger class of appellants, i.e., "any party in interest," is not diminished due to the reference to property owners ***in subsection (D)(2), which simply gives property owners the option to seek pre-litigation mediation***

Quality Rural Living, 426 S.C. at 106–07, 825 S.E.2d at 726 (double emphasis added).

Appellant admitted she is not the owner of the Property; she is the owner of a property on the same street. See **(TOSI 1608 POE 443)**. As such, a plain reading of the applicable statutes, S.C. Code Sections 6-29-900 and 6-9-915 indicate that Appellant is not entitled to prelitigation mediation. Appellant's own citation supports this conclusion. See Quality Rural Living, 426 S.C. at 106–07, 825 S.E.2d at 726.

Therefore, the circuit court should be affirmed.

III. The Record on Appeal is complete and the Record on Appeal fully supports the DRB's decision.

Appellant does not state any evidence supporting her contentions that the Record on Appeal (the "Record") is incomplete or that the DRB's decision is not supported by the Record. Among her many baseless claims, Appellant asserts that the Supplement to the Record on Appeal (the "Supplement") was improper and the DRB's decision was not supported by the Record.

A. The Respondents' Record and Supplement were complete, certified, and required under S.C. Code Section 6-29-920.

The DRB and Town's Record was complete, certified by the Town Clerk of Sullivan's Island, and was required by law. S.C. Code Section 6-29-920 states: "[T]he board must file with the clerk a duly certified copy of the proceedings held before the board of architectural review, including a transcript of the evidence heard before the board, if any, and the decision of the board

including its findings of fact and conclusions."

Appellant claims the Record was a "document dump" and the Supplement was impermissible pursuant to S.C. Code Section 6-29-900 et seq.; however, Appellant cites no law or facts indicating why the Supplement was improper. Appellant merely cites the provisions of the South Carolina Code pertaining to architectural review boards and fails to state how any of those statutes make the Record or the Supplement improper. **See (Appellant's Initial Br. at 5, filed on July 22, 2024)**. When a party cites no legal authority for their claims, the argument is "abandoned and the [Court of Appeals] will not address the merits of the issue. Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019).

The Record was submitted to the circuit court on December 16, 2021. (**Certification of R. by Welch, filed on Dec. 16, 2021)**. The DRB then supplemented the Record, with a recording of the DRB meeting on May 19, 2021, and served the Supplement on the Appellant. **(Resp't's Suppl. Of R., filed on May 09, 2022)**; (**Certification of R. by Welch, filed on Dec. 16, 2021)**; **(Suppl. Certification of R. by Welch, filed April 26, 2022)**. The circuit court also permitted this Supplement, even though it is better characterized as a reiteration of the Record. **See (Resp't's Suppl. Of R., filed on May 09, 2022)**. The Record already contains the information within the Supplement—which was the recording of the May 19, 2021, DRB Meeting via Zoom. (**TOSI 1608 POE 50-90); (TOSI 1608 POE 3-49)**; **(TOSI 1608 POE 500)**. Since Appellant does not support her baseless claim through any legal analysis, this Court should consider her argument abandoned as dictated by Palmer.

Therefore, since the Record was certified, submitted to the Court, and because the Supplement did not contain any new materials, the Record and Supplement were proper under S.C. Code Section 6-29-920.

B. All the evidence in the Record on Appeal fully supports the DRB's decisions.

When appealing a DRB decision, "[t]he findings of fact by the board . . . are final and conclusive . . . and the court may not take additional evidence." S.C. Code § 6-29-930. "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*." Id. (emphasis added). The Court should act only when the DRB abuses its discretion by committing errors of law or when the DRB bases its decision on findings of fact which are not supported by the evidence. See Blind Tiger, LLC v. City of Charleston, 366 S.C. 182, 185, 621 S.E.2d 361, 362 (Ct. App. 2005); see also, Gurganious v. City of Beaufort, 317 S.C. 481, 486, 454 S.E.2d 912, 915 (Ct. App. 1995).

Appellant challenges the DRB's decision in several ways: she alleges the Record was improper and incomplete,[20] she alleges she did not receive adequate notice for the DRB Meeting on May 19, 2021, she alleges the property was within the Historic District, and she alleges the DRB did not consider flood zones or the impact their decision would have on property owners in the surrounding area.[21]

1. Not only was Appellant aware of the DRB Meeting on May 19, 2021, but also upon review, the DRB found that all notice requirements were met.

Nothing in the Record supports Appellant's claim that she did not receive proper notice of the DRB meeting held via Zoom on May 19, 2021. Quite the opposite, the Record shows all notice requirements were satisfied and Appellant even submitted written comments prior to the meeting.

[20] This argument has already been addressed and refuted. See supra Section III.A.

[21] Appellant's Brief largely makes incomprehensible claims that are unsupported by law, and therefore should be deemed abandoned. See Palmer, 427 S.C. at 47, 829 S.E.2d at 261. As such, Respondents refer this Court to Appellant's Amended Appeal Petition to address her "arguments". See supra notes 10-16 and accompanying text.

The Record is replete with evidence that proper notice was furnished.[22] **(TOSI 1608 POE 211)** ("All requirements of the Freedom of Information Act were verified to have been satisfied.");[23] **(TOSI 1608 POE 210)** (noting an affidavit of publication for the DRB meeting). Appellant even submitted comments to the DRB ahead of the meeting, demonstrating she was constructively aware of the meeting. (**TOSI 1608 POE 225-245)** (written objection Appellant submitted to the DRB containing many of the same claims she brings in this appeal); see also, **(TOSI 1608 POE 228)** (writing from Appellant admitting her knowledge of the DRB meeting on May 19, 2021); see supra note 7 and accompanying text for more proof that Appellant had notice of the meeting).

Therefore, there is no evidence in the Record supporting Appellant's assertions. The circuit court should be affirmed for that additional reason.

2. The Record includes evidence that the Property is not within the Historic District and Appellant cites nothing to support her meritless allegation that it is within the Historic District.

The only evidence in the Record is that the property is not within the Historic District. Appellant asserts that the property is within the Historic District, yet she cites no authority or evidence to support her claim. Appellant's claim is false and contrary to the facts. Town staff noted in the DRB meeting that "[1608 Poe Avenue] is located outside of the [H]istoric [D]istrict." **(TOSI 1608 POE 58)**. Other portions of the Record support the same conclusion. See application noting 1608 Poe is outside of the Historic District **(TOSI 1608 POE 101-10)**; see also, meeting agenda of DRB noting the Property is outside the Historic District **(TOSI 1608 POE 2)**.

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[22] See supra note 7.

[23] Town Ordinance Sec. 21-109 includes the notice requirements which were confirmed to have been satisfied at the meeting.

Therefore, because the only evidence in the Record is that the Property is not in the Historic District, Appellant's argument must be rejected and the circuit court affirmed.

3. The Record and law fully support that storm water issues are outside of the DRB's purview and that the approved construction will reduce the impervious surface area at 1608 Poe.

Appellant complains about storm water and claims in passing that the DRB's approval of the Nelsons' permit constitutes an affirmative act resulting in a taking. That claim is unsupported and should be rejected.

The DRB does not review stormwater plans. The DRB's review does include the impervious lot coverage. **See (TOSI 1608 POE 93)**. However, in this case, it is worth noting that the impervious lot coverage was actually being reduced. **(TOSI 1608 POE 58-59, 219-20)**. For those reasons, Appellants' claim should be rejected and circuit court affirmed for this additional reason.

Appellant relies on South Carolina Code Sections 6-29-930[24] and 5-31-450 to claim the DRB's decision to approve the Nelsons' application resulted in a taking. Appellant cites to Hawkins v. City of Greenville asserting that an affirmative act of the DRB entitles her to file a claim for relief under S.C. Code Section 5-31-450. See **(Appellant's Initial Br. at 6, 11-12, filed on July 22, 2024);** Hawkins v. City of Greenville, 358 S.C.280, 594 S.E.2d 577 (Ct. App. 2004). That case has no application here. To the extent it does, it is contrary to Appellant's case.

In Hawkins, heavy rainfall flooded the plaintiff's business and led to substantial damage

[24] As discussed above, Appellant is admittedly not the owner of the property that is the subject of this decision, so the statutes relating to the rights of "property owners" under this part of the South Carolina Code, including 6-29-930, are not applicable to her. See supra Section II; S.C. Code § 6-29-900, 915 (distinguishing different rights between "property owners" and those who are non-property owners with a "substantial interest"); **(TOSI 1608 POE 443)** (noting Appellant is not the property owner).

to the property at issue in that case. Id. 358 S.C. at 285-86, 594 S.E.2d at 560. Prior to the flooding, the City of Greenville (the "City") authorized several improvements to the drainage system. Id. 358 S.C. at 286, 594 S.E.2d at 560. The City also authorized the construction of "neighboring parcels of commercial property", and the plaintiff alleged those acts added elevation to the area, produced more strain on the water system, and then led to the water pipes failure. Id. 358 S.C. at 291, 594 S.E.2d at 562-63. The plaintiff claimed the City's negligent design and failure to maintain the storm water drainage system led to damage to his property. Id. The plaintiff brought several claims against the City. Id. 358 S.C. at 294-97, 594 S.E.2d at 564-66. The Court of Appeals found the plaintiff failed to allege any affirmative acts by the city which "damaged the [plaintiff's] property or otherwise diminished his rights in the property." Id. 358 S.C. at 291, 296, 594 S.E.2d at 562-63, 565. The appellate court ruled in the City's favor on all claims and affirmed the circuit court's grant of summary judgment. Id. 358 S.C. at 298, 594 S.E.2d at 566.

As discussed above, the DRB does not approve drainage plans and certainly does not design or build them. Further, Appellant only makes speculative claims that her property will be harmed and fails to allege any causal link between the DRB approving the Nelsons' application and any harm to her property. On the contrary, the DRB found that there will be a reduction in the impervious surface area. **(TOSI 1608 POE 347)** (noting the Nelsons' plans will cause a reduction in the impervious surface on the site, which would "add pervious surface area that . . . will change but improve the drainage issue.") ("applicants testified [they] would be installing a pervious system which will benefit the stormwater issue"; **(TOSI 1608 POE 219-20)**. To the extent any drainage implications could be extrapolated from the DRB approval, the evidence is that the Nelsons' project would improve drainage.

Therefore, since the storm water issue is outside of the scope of the DRB's review, the

Respondents took no affirmative acts, and because the Record supports the contrary position that the drainage at the site will be improved, Appellant's claims must be rejected and the court affirmed for these additional reasons.

IV. Appellant has not been denied due process of law because her case has been heard twice by the DRB, once at the circuit court, and now at this Court.

Having already presented her case twice to the DRB, once to the circuit court, and now to this Court, Appellant has had ample opportunity to present her case, and has not been denied due process. Procedural due process encompasses the ability of a party whose rights have been adversely affected to be heard. Fuentes v. Shevin, 407 U.S. 67, 82 (1972). The right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner. Fuentes v. Shevin, 407 U.S. 67, 80, 92 S. Ct. 1983, 1994, 32 L. Ed. 2d 556 (1972). The touchstone of due process is one's ability to be heard before the deprivation takes place. Id. The South Carolina Supreme Court notes the requirements of procedural due process are: (1) notice; (2) opportunity to be heard; (3) the right to introduce evidence; and (4) the right to cross-examine witnesses. Moore v. Moore, 376 S.C. 467, 473, 657 S.E.2d 743, 746 (2008).

As discussed, Appellant received adequate notice of the DRB's decision. See supra Section III.B.1. Appellant has had multiple opportunities to present her arguments. See **(TOSI 1608 POE 345-348, 379-388)**; **(TOSI 1608 POE 61-90)**; (**TOSI 1608 POE 500)**; **(TOSI 1608 POE 345-48)**; **(TOSI 1608 POE 379-88)**.

Therefore, this argument must be rejected and the circuit court affirmed for this additional reason.

V. The appeal and Appellant's request for declaratory relief should be dismissed because the claims are all moot.

The work on the Property is now complete, rendering any relief sought by the Appellant

moot; ruling on any of these issues would constitute an advisory opinion, which is impermissible. See **(Resp'ts' Mot. to Dismiss, filed Dec. 13, 2024).**[25]

In addition to the appeal and her other sprawling claims, Appellant appears to seek some type of declaratory relief. Putting aside whether Appellant has actually requested declaratory relief when she does not support the assertion with legal argument,[26] the request was properly dismissed along with her other claims for the additional reason that the appeal is moot. Every declaratory judgement action requires the existence of an actual controversy that is "concrete and substantial . . . and not merely a dispute of contingent hypothetical or abstract character. See West v. West, 263 S.C. 146, 149, 208 S.E.2d 530, 532 (1974). Courts should not issue advisory opinions. Id. at 532-33. Additionally, courts should incorporate the doctrines of ripeness, **standing, and mootness** when considering declaratory judgements and whether a justiciable controversy exists. See Holden v. Cribb, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002) (bold added). "A case becomes moot when judgement, if rendered, will have no practical effect upon [an] existing controversy." Id. (internal citations omitted).

In her Appeal Petition, Appellant purports to seek the Court find she has standing under the Declaratory Judgement Act because their "interests . . . are adversely affected by the decision of the DRB." **(Appellant's Am. Appeal Pet. at ¶ 70, filed on Sept. 17, 2021)**. Second, Appellant purports to seek a "uniform standard for the DRB's application of land use plans, Historic District Standards, Zo's, and applicable law." **(Appellant's Am. Appeal Pet. at ¶ 71, filed on Sept. 17, 2021)**. Third Appellant purports to seek:

The Appellant requests that this Court make a finding that the DRB has authority

[25] To be sure, the entire appeal and all claims should be dismissed as moot as explained in the Motion to Dismiss. The mootness is equally applicable to every aspect of the appeal, but is discussed in additional detail here with regard to the purported declaratory judgment claims.

[26] She has not and the dismissal should be further affirmed for that reason.

> to and should take into consideration the land use plans, the Historic District standards, the purposes and intent of the land development regulations, and the ZO's, all as adopted by the governing bodies, when making decisions regarding applications to the DRB. Moreover, the Appellant requests that this Court make a finding that the DRB is not bound to "rubber stamp" the decisions of the ZA and/or staff, but rather to act in the best interests of the Historic District, residents, and community to assure, in general, the prudent and judicious development of the Town.

(Appellant's Am. Appeal Pet. at ¶ 70, filed on Sept. 17, 2021).

Appellant makes highly unintelligible claims that are not based on any applicable legal authority. **(Appellant's Initial Br .at 9-11, filed on July 22, 2024)**. These requests (and the entire appeal) are all non-justiciable because Appellant's dispute is of "contingent hypothetical or abstract character." 263 S.C. at 149, 208 S.E.2d at 532. Notably, the work on the Property has been completed for some time. **(Resp'ts' Mot. to Dismiss, filed Dec. 13, 2024).**

Therefore, because her appeal does not present any justiciable controversy, this Court should affirm the circuit court.

CONCLUSION

Based on the foregoing, Respondents respectfully request this Court **AFFIRM** the decision of the circuit court.

Respectfully submitted,

December 16, 2024
Charleston, South Carolina

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ATTORNEY FOR DESIGN REVIEW BOARD OF THE TOWN OF SULLIVAN'S ISLAND AND TOWN OF SULLIVANS ISLAND

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2023-000296

J. Doe, ...Appellant,

v.

Design Review Board (DRB) of the Town of Sullivans Island (S.I.), and Town of Sullivans Island,. ..... Respondents.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL BY RESPONDENTS DESIGN REVIEW BOARD (DRB) OF THE TOWN OF SULLIVANS ISLAND (S.I.) AND TOWN OF SULLIVANS ISLAND

ORDERS

1. Form 4 Order, Judge McCoy, Motion to Dismiss is Granted, 11/10/22
2. Form 4 Order, Judge McCoy, Appeal is Dismissed as Moot, 11/10/22
3. Order Dismissing Appeal, 12/06/24
4. Form 4 Order, Judge McCoy, Denies Motion to Reconsider (without hearing), 01/23/23
5. Notice of Entry of Judgment/Order Pursuant to Rule 77 SCRCP, 01/23/23
6. Form 4 Order, Judge McCoy Denies Petitioner's Motion to Reconsider (without hearing), 06/04/23

PLEADINGS

7. Amended Appeal, Petition, Jury Demand, Motion, and Request for Declaratory Relief, and Injunctive Relief, filed 09/17/21
8. Answer and Return to Notice of Appeal, Amended Appeal, Petition, Jury Demand, Motion, and Request for Declaratory Relief and Injunctive Relief, 12/15/21

MOTIONS

9. Notice of Motion and Motion to Dismiss of Respondents, 12/15/21

10. Memorandum of Law of Respondents in Opposition to J. Doe's Appeal of the May 19, 2021, Decision of the Town of Sullivan's Island Design Review Board, 09/16/22

11. Memorandum in Opposition of Petitioner J. Doe, served 09/26/22

12. Notice of Motion and Rule 59(e), SCRCP, Motion, 12/27/22

13. Notice of Motion and Motion for Reconsideration, Rule 59(e), SCRCP, 02/04/23

14. Amended Notice of Motion and Amended Motion, 02/04/23

RECORD

15. Certification of Record by Town Clerk of Sullivan's Island and Record Bates numbered TOSI 1608 POE 0001-0498 on 12/14/21

16. Supplemental Certification of Record by Town Clerk of Sullivan's Island and CD recordings of Design Review Board meeting on May 19, 2021, 04/26/22, verified by Clerk of Court on 05/09/22

17. Letter From Appellant Re: no means or access to Webex and not able to participate in hearing on Motion to Dismiss, 04/07/22

NOTICES

18. Notice of Appeal of DRB Approval of Application on May 19, 21, served 06/17/21

19. Notice of Appeal of DRB's Approval of Application on May 19, 21,dated 09/17/21

20. Notice of Appeal Order Entered 01/23/23, dated 02/22/23

21. Amended Notice of Appeal All Orders, dated 06/30/23 (without Proof of Service)

s/ John P. Linton, Jr.
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December 16, 2024
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2023-000296

J. Doe, ... Appellant,

v.

Design Review Board (DRB) of the Town of Sullivans Island (S.I.), and Town of Sullivans Island,. ..... Respondents.

PROOF OF SERVICE

I certify that the **Initial Briefe and Designation of Matter to be Included in the Record on Appeal of Respondents Design Review Board (DRB) of the Town of Sullivans Island (S.I.) and Town of Sullivans Island's** were served on the following by depositing a copy in the U.S. Mail, postage prepaid, and by electronic mail on this 16th day of December, 2024:

C. Holmes
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Nancy Jane Dennis, Paralegal