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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE CIRCUIT COURT
FOURTEENTH JUDICIAL CIRCUIT

The Honorable Bentley D. Price

Appellate Court Case No. 2024-002129
Unpublished Opinion No. 2024-UP-372 (S.C. Ct. App. Filed October 30, 2024)
Circuit Court Case No. 2021-CP-07-01241 and
Circuit Court Case No. 2021-CP-07-01231

Historic Beaufort Foundation, Petitioner,
v.
City of Beaufort, City of Beaufort Historic District Review Board,
and The Beaufort Inn, LLC, Respondents.

AND

West Street Farms, LLC and Mix Farms, LLC, Petitioners,
v.
City of Beaufort, City of Beaufort Historic District Review Board,
and The Beaufort Inn, LLC, Respondents.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Appellants Historic Beaufort Foundation, West Street Farms, LLC, and Mix Farms, LLC (“Appellants”) make the following points in reply to the Return to Petition for Writ of Certiorari (the “Return”) filed by Respondents City of Beaufort, City of Beaufort Historic District Review Board, and The Beaufort Inn, LLC (“Respondents”) on January 15, 2025.

POINTS IN REPLY

1. The ordinance cited by Respondents as proof that this is a purely local issue is not substantively different than the one at issue in this case.

In support of their argument that this matter does not warrant review under Rule 242(b), SCACR, Respondents rely on a City of Charleston Municipal Ordinance in an effort to demonstrate that this is a purely local issue. Charleston Ordinance 54-248 provides “[a] person who may have a substantial interest in any decision of the Board or any officer or agent of the appropriate governing authority may appeal from a decision of the Board to the circuit court in 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.” For comparison, as noted in Respondents’ brief the Beaufort Unified Development Ordinance (the “UDO”) Section 3.20.I stated: “A person having substantial interest may make an appeal from a Historic District Review Board decision to the Circuit Court of Beaufort County within 30 days after the decision of the Board is postmarked” and the later-enacted Beaufort Code (the “Beaufort Code”) Section 9.10.I states: “Any party aggrieved by the decisions of the HRB may appeal to the circuit court within 30 days of the decision.” (R. 029). This comparison clearly illustrates that this is not a purely local issue. Neither the Charleston ordinance nor either of the Beaufort ordinances answer the threshold question presented by this Certiorari petition which is are aggrieved parties required to appeal from

conceptual and preliminary approvals? That uncertainty is precisely why the petition should be granted to provide zoning officials in Beaufort and Charleston much needed guidance on that question.

Also, the Respondents also note that the HDRB memorandum noted in Footnote 1 of their Return was categorically rejected. While Appellants concede that the HDRB did not make any changes to the ordinance or its own procedures as a result of that memorandum, the mere fact that staff thought it necessary to raise the issue in the wake of the decision from the Court of Appeals illustrates the need for clarity and guidance from this Court.

Petitioners, reiterating the arguments made in their Petition, respectfully request that the Supreme Court exercise its discretion to grant review because this appeal involves novel legal questions under Rule 242(b)(1), SCACR. Specifically, such a review would provide much-needed guidance to local governments like the City of Beaufort charged with interpreting and administering the South Carolina Local Government Comprehensive Planning Enabling Act. The prior decision in this matter has produced uncertainty in the very jurisdiction from which this appeal originated.

2. The Opinion issued by the Court of Appeals did not address substantive arguments presented by the Appellants.

Throughout their Return, the Respondents argue that Petitioners abandoned arguments related to their issues on appeal. However, this fails to acknowledge that the Court of Appeals simply dismissed the appeal as untimely in a one-page decision based upon the novel determination that preliminary or conceptual approvals by an architectural review board established under the state enabling law are final decisions that must be immediately appealed. The threshold issue presented here is whether appeal was required at the conceptual and preliminary stage or only after final approval. Appellants believe that the Court of Appeals erred

in affirming the dismissal of the appeal as untimely and seek not only a decision from this Court reversing that decision but also a decision on the substantive issues raised by Appellants.

3. Respondents do not cite authority in support of their argument that appeals from decisions made in conceptual and preliminary approvals must be filed in 30 days.

Appellants were not required to appeal conceptual or preliminary HDRB approvals under local practice in the City of Beaufort and a long-established precedent that holds that only final judgments are subject to appeal. In their brief, Respondents focus heavily on the argument that the present appeal is not timely. (Resp. Br. pp. 13-17). However, they fail to address the substance of the HRB decision that is the center of this appeal. Respondents do not present any support for their assertion that many of the issues raised by Appellants are time-barred because each conceptual, preliminary, and final approval by the HRB for both projects was “indisputably” a decision which had to be appealed within thirty (30) days of each decision. No statutory provision or case law is cited in support of the conclusion that an appeal of the final decision of the HDRB is untimely. Respondents’ argument is also at odds with well-established law and policy in this state that requires that only final decisions and orders can be appealed.

In sum, neither Respondents nor the decision below cite any statutory provision or case law in support of the conclusion that an appeal of decisions reached during the conceptual and preliminary review processes is untimely if made after the final decision of the HDRB is rendered under S.C. Code Ann. § 6-29-900. Likewise, the cases citing that statute do not provide any clarity as those decisions do not address the issue of whether an HRB decision granting conceptual or preliminary approval must be immediately appealed pursuant to § 6-29-900.

4. The Respondents fail to acknowledge that the developer substantially changed the designs of the Project following the conceptual and preliminary approval stages.

Respondents argue that the design for the Hotel was finally approved in 2019. However, the developer substantially changed the design of the Hotel in 2021 which required the developer to return to the HDRB for an approval of the new design. Those changes were not minor revisions. Significantly, the design presented to the HDRB in 2021 included the addition of a roof top deck which clearly altered the height, scale and mass of the building and were not approved until June 9, 2021, the meeting from which this appeal filed.

The HRB failed to reconsider conceptual approval when 303 Associates submitted for final approval a building with four stories, plus solar panels, rather than three stories that had been approved at conceptual and preliminary stages. The addition of the new floor alters the entire proportion of the building. The design was entirely different. This was even recognized at the June 9, 2021 meeting, where the Board acknowledged that the additional floor affected the mass and scale of the Hotel. (See R. p. 186). Appellants therefore did not have the prior opportunity to appeal the height scale and mass of the building that was given final approval in 2021 because the design approved on June 9, 2021 was different than the design presented during the conceptual or preliminary review by HDRB.

CONCLUSION

For these reasons and those presented in the Petition for Writ of Certiorari filed on December 18, 2024, Petitioners respectfully request this Honorable Court issue a writ of certiorari to review the issues presented by this appeal.

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