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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Patrick C. Fant, III, Circuit Court Judge

Appellate Case No. 2024-001138
Case No. 2023-CP-23-6416

The Altamont Road Safety Alliance, Sussane Beattie, Brenda Cale, Elaine Carter, Ron And Ava Chitty, Aaron & Heather Collins, Margaret & Robert Degiorgio, Elliot & Jennifer Earle, Laura Edge, Travis Elmore, Marilyn Endler, John Fields, Jim Hambright, Leah Hunter, Lauren Johnson, Cynthia Kinghorn, Alex Kiriakides, Jason Kraning, Elaine & Bill Landreth, Robert & Patricia Lanning, Frank &Barbara League, Louis & Ann Leblanc, Frank Lewkowicz, Forrest & Jane Long, George & Fain McDaniel, Brian Mcsharry, Ronald And Kathy Mercer, Steven & Anna Mickle, Helen & Fred Moorhead, John Parker, Audrey Pasin, Jim Sheets, Matthew Phillips, Shannon Pierce, Michael Rawls, Ronald & Tommie Reece, Daniel And Kimberly Rudzinski, Jason Seefafer, David Taylor, Ronald Trammel, Greg Valente, and Emily & Caleb Vanwingerden, ... Appellants,

v.

Greenville County Board of Zoning Appeals, ... Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This is an appeal filed by the Appellants Altamont Road Safety Alliance and multiple residents of the Paris Mountain area in the vicinity of Altamont Road against the Respondent Greenville County Board of Zoning Appeals ("BZA").

On July 6, 2023, the Appellants submitted to the Greenville County Planning Department a proposed text amendment to the Greenville County Zoning Ordinance to amend Section 8.5 (ESD-PM Environmentally Sensitive District-Paris Mountain) regarding the district intent (Section 8:5.1) and park access to Altamont Road (Section 8:5.8). On August 14, 2023, the Appellants appealed to the BZA from the Zoning Administrator's interpretation of Section 3:2 of the Greenville County Zoning Ordinance as to the steps to be taken in processing the Appellants' citizen-initiated text amendment request. On August 15, 2023, Joshua T. Henderson as the Zoning Administrator issued an official interpretation of Section 3:2, which is included in the Record on Appeal.

On October 11, 2023, the appeal as to the official interpretation of Section 3:2 was heard by the BZA. By a unanimous vote of 6-0, the BZA upheld the Zoning Administrator's interpretation of Section 3:2, which was memorialized in the Final Decision and Order of the Greenville County Board of Zoning Appeals dated November 8, 2023.

Thereafter, the Appellants filed an appeal to the Circuit Court pursuant to S.C. Code Ann. § 6-29-820(A). After the issues were fully briefed by the parties, a hearing was held on April 9, 2024, before Circuit Court Judge Patrick C. Fant, III. By Order filed June 11, 2024, the Circuit Court affirmed the Final Decision and Order of the Greenville County Board of Zoning Appeals dated November 8, 2023, which upheld the Zoning Administrator's interpretation of Section 3:2

of the Greenville County Zoning Ordinance. The Appellants subsequently filed a Motion to Alter/Amend or Reconsider, which was subsequently denied by Form Order filed June 28, 2024.

The Appellants thereupon filed a timely appeal to the South Carolina Supreme Court. By Order filed March 3, 2025, the appeal was transferred to the Court of Appeals.

STATEMENT OF FACTS

To reiterate, the appeal from the Greenville County Board of Zoning Appeals, as asserted by the Appellants, challenges only the Zoning Administrator's interpretation of Section 3:2 of the Greenville County Zoning Ordinance – which presents purely a legal question for the appellate courts to decide. Nonetheless, in their opening brief, the Appellants have provided a detailed "Statement of the Facts" which addresses the *merits* of their citizen-initiated text amendment request as opposed to the legal question at issue.

Additionally, the Court is also advised that the Respondent BZA objected in the Circuit Court to the Appellants' submission of Exhibits A through WWW to the extent those exhibits are not included in the certified Record on Appeal from the BZA as filed on January 19, 2024. S.C. Code Ann. § 6-29-840 definitively states that "the court may not take additional evidence." S.C. Code Ann. § 6-29-840. Therefore, the only "factual" information that may be considered is what was submitted into evidence at the BZA. A review of the Circuit Court orders on appeal shows that the Circuit Court did not consider the factual information in Exhibits A through WWW, which the Appellants have nonetheless included in their "Statement of the Facts."

STANDARD OF REVIEW

S.C. Code Ann. § 6-29-840 prescribes the standard of review a court shall apply when considering an appeal from a local zoning board. Under that standard of review, "the court must determine only whether the decision of the board is correct as a matter of law." S.C. Code Ann. § 6-29-840. Accordingly, an "[a]ppeal to the circuit court is only for a determination of whether the board's decision is correct as a matter of law." *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 602 S.E.2d 76 (Ct. App. 2004). The same is true with respect to an appeal of a BZA decision to the Court of Appeals. *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346, 351 (2008) ("A decision of a zoning board will not be upheld where it is based on errors of law, where there is no legal evidence to support it, where the board acts arbitrarily or unreasonably, or where, in general, the board has abused its discretion").

Moreover, "issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." *Mikell v. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326, 329 (2009). "Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance." *Id*. "The determination of legislative intent is a matter of law." *Id*. Nonetheless, "[i]t is important to note that a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *McCrowey v. Zoning Board of Adjustment of City of Rock Hill*, 360 S.C. 301, 599 S.E.2d 617, 619 (Ct. App. 2004).

ARGUMENTS

I. The Circuit Court correctly ruled that the procedures set forth in Section 3:2.3 of the Greenville County Zoning Ordinance -- which allow for a citizen-initiated text amendment request but requires that the first step in the process be a review by the Planning and Development Committee of County Council -- is not in conflict with state law and thus falls within the prerogative of County Council to establish.

The Appellants' appeal challenges the Zoning Administrator's interpretation of Section 3:2 of the Greenville County Zoning Ordinance. In particular, the Appellants challenge the Zoning Administrator's determination as to the process to be followed with respect to a citizen-initiated text amendment request. Section 3:2.3 provides in pertinent part as follows:

> County Council, County Planning Commission, or Board of Zoning Appeals may initiate proposed changes or amendments to the ordinance text. *Petitions for text changes or amendments by any interested property owner or resident of Greenville County must first be presented to the Public Service, Planning and Development Committee of County Council.* In the event County Council recommends approval of the text change or amendment for public hearing, the text change or amendment shall be scheduled for public hearing, and considered for adoption.

Greenville County Zoning Ordinance, § 3:2.3. (Emphasis added). The highlighted language is the only reference in the ordinances to a citizen-initiated text amendment request. Section 3:2.3 requires that a petition for a citizen-initiated text amendment must first be presented to the Public Service, Planning and Development Committee of the Greenville County Council. That committee has since been renamed the "Planning and Development Committee."[1] The

[1] As the Circuit Court correctly concluded, to the extent that the Appellants contend that there is no such committee, they are incorrect. The Circuit Court explained: "It appears to the Court that Section 3:2.3 simply contains a clerical error that was apparently overlooked and not amended when the committee's name was changed to the "Planning and Development Committee." The Court notes that there are other references to the Planning and Development Committee within Section 3:2, such as Section 3:2.7. There is no confusion as to the identity of the committee that is referenced in Section 3:2.3." (Order, p. 4).

Appellants, however, contend that the Greenville County Planning Commission must be the first body to review a citizen-initiated text amendment request. The Appellants argue that state law dictates that a citizen-initiated text amendment request be first submitted to a planning commission and that the Greenville County Zoning Ordinance also requires that process. As the Circuit Court determined, the Appellants are incorrect in both respects. (Order, p. 4).

While the Appellants refer extensively to various provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 6-29-310, *et seq*., it is important to recognize that they do not reference any provision in the Planning Enabling Act that actually addresses citizen-initiated text amendment requests. In fact, as the Circuit Court ruled, "there is no state law that authorizes or prohibits or addresses in any respect a citizen-initiated text amendment request." (Order, p. 4).

Nonetheless, in a conclusory manner, the Appellants claim that "S.C. Code Ann. § 6-29-760 discusses and expressly allows citizen-based text amendments." *See*, Appellants' Brief, p. 23. More remarkably, they insist that "the entirety of state law addresses citizen-initiated text amendment requests." *See*, Appellants' Brief, p. 23. That is simply not correct.

While it is true that S.C. Code Ann. § 6-29-760 governs the procedures for the enactment or amendment of zoning regulations and zoning maps, the statute does not mention, let alone discuss, citizen-initiated text amendment requests. In other words, there is literally no mention of a citizen-initiated text amendment in S.C. Code Ann. § 6-29-760 nor in the "entirety of state law." The Circuit Court's ruling is correct in that regard. As further proof, it should be noted that S.C. Code Ann. § 6-29-760 explains that there is only limited statutory standing even for zoning amendment requests, i.e., rezonings of property. In fact, S.C. Code Ann. § 6-29-760 limits standing to owners of adjoining properties and not to all citizens. *See*, S.C. Code Ann. §

6-29-760(C) ("[a]n owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment). *See also*, *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337, 339 (2008) ("[b]ecause ATC is a nonadjoining landowner, it may not assert statutory standing"). Yet, even an adjoining property owner cannot initiate a rezoning of someone else's property; he/she may only contest a rezoning. In short, the Circuit Court correctly ruled that "there is no state law that authorizes or prohibits or addresses in any respect a citizen-initiated text amendment request." (Order, p. 4).

Moreover, the Appellants cite frequently to the case of *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), in which the Supreme Court speaks generally about the purpose of the Planning Enabling Act as codified in Chapter 29 of Title 6 of the South Carolina Code. But, that reliance is misplaced. In *I'On*, the Supreme Court only held that a zoning regulation cannot be enacted by initiative and referendum, and instead, the proper method is based on the Planning Enabling Act. In their brief, the Appellants argue that a provision in Section 3:2 refers to zoning by referendum which was "outlawed" in *I'On*; yet, that is a mere distraction because this appeal does not involve an amendment initiated by referendum as opposed to a text amendment initiated by citizen petition.

As for zoning amendments in general, S.C. Code Ann. § 6-29-760 does not set forth an established process or procedure that must be followed. Instead, it sets forth certain procedures that must be included by municipalities and counties in developing local zoning ordinances, but it does not establish or provide for a set or mandated procedure. In particular, S.C. Code Ann. § 6-29-760 requires (1) that a public hearing be held by either the planning commission or the governing authority (in this case County Council) prior to enactment and (2) that the new regulation or amendment must be submitted to the planning commission for review and

recommendation before it may be adopted as law by the governing body. The Appellants argue that the submission to the planning commission must be the *first step* in the process, but there is no support for that interpretation or for any specific timing of the planning commission review in the overall legislative process. In fact, it is common that a first reading of a zoning ordinance be made by a governing body before submission to the planning commission. S.C. Code Ann. § 6-29-760 only requires that "[n]o change in or departure from the text or maps" be made unless it is first presented to the planning commission; however, the timing of planning commission involvement is left to the local body to determine and establish by ordinance.

In the case at bar, the Appellants have proposed a citizen-initiated text amendment submitted under the auspices of Section 3:2.3. However, as indicated, state law does not require that such a text amendment be presented immediately to the planning commission as the initial step in the process. State law only requires, before the text amendment is adopted as an ordinance, that the amendment be presented to the planning commission for review and recommendation. The process outlined in Section 3:2, as interpreted by the Zoning Administrator and upheld by the BZA and the Circuit Court, includes a review by the planning commission as a second step in the process for a citizen-initiated text amendment request. Therefore, under current procedures a text amendment will be considered by the planning commission before being enacted as an ordinance.

Ironically, the Appellants cite case law holding that "[z]oning ordinances may not override state law and policy; enabling legislation is not merely precatory, but prescribes the parameters of conferred authority." *Bostic v. City of West Columbia*, 268 S.C. 386, 234 S.E.2d 224, 226 (1977). However, as the Circuit Court observed, if that is applied as strictly as the Appellants suggest, such that the Planning Enabling Act controls the timing as to when planning

commission review takes place in the overall process, the Appellants appear to overlook the fact that Planning Enabling Act does not even authorize a citizen-initiated text amendment request. In effect, if the Planning Enabling Act provides for no discretion in the procedures permitted (which is not the case), then the Court will not even reach the issue presented because the Planning Enabling Act does not even expressly allow for a citizen-initiated text amendment request in the first place.

In reality, it is the BZA's position that Greenville County Council is authorized to provide for zoning procedures that do not conflict with the parameters set by state law. That includes the enactment of a citizen-initiated text amendment process, which includes establishing the different steps in the process and the timing to be followed for each step. As the South Carolina appellate courts have held in the zoning context,

> Where an ordinance is not preempted by State law, the ordinance is valid if there is no conflict with State law. In order for there to be a conflict between a State law and a municipal ordinance, both must contain either express or implied conditions that are inconsistent and irreconcilable with each other. If either is silent where the other speaks, there is no conflict.

McKeown v. Charleston County Bd. of Zoning Appeal, 347 S.C. 203, 553 S.E.2d 484, 486 (Ct. App. 2001). Moreover, "[a]s a general rule, additional regulation to that of the State law does not constitute a conflict therewith." *Id*. Similarly, the Supreme Court has explained that "[i]n order for there to be a conflict between a state statute and a municipal ordinance, both must contain either express or implied conditions that are inconsistent and irreconcilable with each other. If either is silent where the other speaks, there is no conflict." *Barnhill v. City of North Myrtle Beach*, 333 S.C. 482, 511 S.E.2d 361, 363 (1999). *See also*, *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 397 S.E.2d 662 (1990). Notably, this is also consistent with Article VIII, § 17 of the South Carolina Constitution, which states:

> The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

S.C. Const., Art. VIII, § 17. *See also*, *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 429 S.E.2d 802 (1993) (town had power to adopt ordinance by virtue of home rule amendments to State Constitution without express statutory authorization).

In sum, as the Circuit Court correctly ruled, the procedures set forth in Section 3:2.3 -- which allow for a citizen-initiated text amendment request but requires that the first step in the process be a review by the Planning and Development Committee of County Council -- is not in conflict with state law and thus falls within the prerogative of County Council to establish. In other words, Section 3:2.3, as interpreted by the Zoning Administrator, is a valid ordinance, and the decisions of the BZA and the Circuit Court should be affirmed.

II. The Circuit Court correctly rejected the Appellants' argument that other provisions in Section 3:2 contradict, overrule, or even repeal the requirement in Section 3:2.3 that a citizen-initiated text amendment request first be presented to the Planning and Development Committee of County Council.

The Appellants also argue that there are inconsistencies in the various provisions of Section 3:2 that should require a different interpretation of Section 3:2.3 than the one reached by the Zoning Administrator. The Circuit Court, however, was correct in rejecting that premise.

To recap, the only provision that addresses a citizen-initiated text amendment request is Section 3:2.3, which states: "Petitions for text changes or amendments by any interested property owner or resident of Greenville County must first be presented to the Public Service, Planning and Development Committee of County Council." Greenville County Zoning

Ordinance, § 3:2.3. The Appellants claim that is inconsistent with Section 3:2.1 that dictates that an application for a text amendment (regardless of whether it is citizen-initiated or initiated by staff or Council) is filed with the Greenville County Planning Commission staff. Section 3:2.1, however, only states with whom the application is filed and not which body will be the first to review the text amendment request. The Appellants also raise other provisions in Section 3:2 that merely describe certain procedural steps in the process, but none of those provisions contradict, overrule, or repeal the requirement in Section 3:2.3 that a citizen-initiated text amendment request first be presented to the Planning and Development Committee. Undoubtedly, those provisions require submission to the Planning Commission for review and recommendation, but they do not mandate that the Planning Commission review be the first step in the process. The first step in the process, as indicated, is established by Section 3:2.3.

As the Circuit Court recognized, the ordinances contained in Section 3:2 are subject to the same rules of construction as statutory law. Thus, it is well established that "[w]hen interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used." *Mikell v. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326, 330 (2009). "An ordinance must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *Olds v. City of Goose Creek*, 424 S.C. 240, 818 S.E.2d 5, 10 (2018). "Further, where two provisions deal with the same issue, one in a general and the other in a specific and definite manner, the more specific prevails." *Mikell*, 687 S.E.2d at 330. As a result, even if the Appellants may be correct that there may be inconsistencies in the various sub-parts of Section 3:2, that is not determinative. As the Circuit Court explained, legislative intent is the goal, and based thereon, the Court concluded that "Section 3:2.3 is the

only provision that addresses a citizen-initiated text amendment request and thus is the specific provision that prevails over more general provisions within Section 3:2." (Order, p. 8).

The Appellants have changed their approach on appeal to this Court and now attempt to interject a different rule of statutory construction, namely the "last legislative expression rule," into the analysis. In a fairly circuitous argument, the Appellants suggest that the language pertaining to a citizen-initiated text amendment request in Section 3:2.3 should be deemed, in essence, implicitly repealed by revisions made to other provisions within Section 3:2. However, the "last legislative expression rule" does not override Section 3:2.3, which is the specific ordinance at issue. The "last legislative expression rule" applies "in instances where it is not possible to harmonize two sections of a statute, the later legislation supersedes the earlier enactment." *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 429 S.E.2d 802, 804 (1993). However, "[t]he law does not favor the implied repeal of a statute" or an ordinance for that matter. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578, 583 (2000). "It is presumed that the Legislature is familiar with prior legislation, and that if it intends to repeal existing laws it would expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first." *Justice v. Pantry*, 330 S.C. 37, 496 S.E.2d 871, 874 (Ct. App. 1998). However, most importantly, "[s]tatutes of a specific nature are not to be considered as repealed by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is implicit." *Rhodes v. Smith*, 273 S.C. 13, 254 S.E.2d 49, 50 (1979). In the case at bar, the Appellants have not shown that any later enactment by the County Council directly referenced the provision in Section 3:2.3 providing for a citizen-initiated text amendment request or have

they pointed to any implication that Section 3:2.3 was superseded in any respect. In effect, Section 3:2.3 was not implicitly repealed.

In sum, as upheld by the BZA and the Circuit Court, the interpretation of the Section 3:2.3 of the Greenville County Zoning Ordinance is correct in setting forth the process to be followed with a citizen-initiated text amendment request. It is the prerogative of County Council to establish the steps to be followed in that process. There is no state law mandate requiring that the planning commission be the first to review any zoning amendment, let alone a citizen-initiated text amendment request. State law only requires that the planning commission be part of the process before any new regulation or amendment is enacted. The steps in the process established in Section 3:2.3 are not at odds with or in violation of state law or at odds with other ordinances, and for these reasons, the Zoning Administrator's interpretation of Section 3:2.3 should be upheld by this Court just as it was upheld by the BZA and by the Court of Appeals.[2]

[2] The Appellants have stated a third ground for appeal which takes exception solely with footnote two of the Circuit Court's order, which reads: "As a result, it is common for the zoning processes to differ from jurisdiction [to] jurisdiction. Consistent with Home Rule, the General Assembly allowed municipalities and counties to develop their own processes and procedures." (Order, p. 5). There is nothing incorrect stated in that footnote, and certainly nothing that would warrant a reversal of the affirmance of the BZA's decision. Despite complaining about this footnote, the Appellants concede as follows: "While it is true that the General Assembly, consistent with the principles of home rule, grants municipalities and counties the authority to develop their own zoning schemes this does not necessarily mean that such differences are widespread or significant." *See*, Appellants' Brief, p. 33. In essence, the Appellants agree with the substance of the challenged footnote – that Home Rule has given political subdivisions the ability to tailor zoning processes and procedures to their own needs as opposed to providing for a "one size fits all" and mandated process. As indicated, that footnote is much ado about nothing and certainly does not warrant a reversal.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Greenville County Board of Zoning Appeals requests that this Court affirm the Order of the Circuit Court, which in turn affirmed the Final Decision and Order of the Greenville County Board of Zoning Appeals dated November 8, 2023, thereby upholding the Zoning Administrator's interpretation of Section 3:2 of the Greenville County Zoning Ordinance.

Respectfully submitted,

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