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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

In the Supreme Court

Appeal from Charleston County
Court of Common Pleas
Thomas J. Rode, Circuit Court Judge

Case No. 2024-CP-10-05670
App. No. 2025-001337

Paul R. Vannatta and Jennifer S. Vannatta,

Appellants,

v.

Town of Sullivan's Island Board of Zoning Appeals,

Respondent.

INITIAL BRIEF OF RESPONDENT
TOWN OF SULLIVAN'S ISLAND BOARD OF ZONING APPEALS

G. Trenholm Walker (SC Bar ID# 5777)
John P. Linton, Jr. (SC Bar ID# 79130)
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STATEMENT OF THE ISSUES PRESENTED ON APPEAL

I. Whether the circuit court correctly affirmed the BZA's decision that Section 21-75(B)(2) does not constitute impermissible reverse spot zoning where the restriction applies to thirty-nine properties abutting over a mile of marshfront coastline and was enacted through an affirmative legislative act rather than a failure to rezone.

II. Whether the circuit court correctly affirmed the BZA's decision that Section 21-75(B)(2) does not violate substantive due process where the ordinance was enacted after a seven-month public process and is rationally related to legitimate government purposes including marsh preservation, viewshed protection, and environmental conservation.

III. Whether the circuit court correctly affirmed the BZA's decision that Section 21-75(B)(2) does not violate equal protection where the geographic restriction rationally relates to legitimate government purposes and treats all property owners between Stations 18 and 27 equally.

IV. Whether the circuit court correctly affirmed the BZA's denial of Appellants' variance request where Appellants failed to satisfy the four-part test under S.C. Code § 6-29-800, including failing to demonstrate extraordinary and exceptional conditions unique to their property and failing to show the restriction unreasonably prohibits utilization of the property.

V. Whether Appellants' challenge to the validity of Section 21-75(B)(2) is time-barred by S.C. Code § 6-29-760(D), which requires challenges to zoning ordinances to be brought within sixty days of the governing body's decision where there has been substantial compliance with notice requirements.

STATEMENT OF THE CASE

This appeal arises from the BZA's affirmation of the Zoning Administrator's denial of a dock permit and the BZA's denial of a variance request for construction of a dock at Appellants' property located at 1802 Back Street, Sullivan's Island, South Carolina (the "Property"). The Property is situated in both the Single-Family Residential District and the RC-2 Area District—a Recreation and Conservation zoning district designed to preserve the marsh in its natural state. (TOSI-VANNATTA 0102, 0586-87).

Relevant Background Facts

Appellants Paul R. Vannatta and Jennifer S. Vannatta purchased the Property in August 2014, well after the enactment of the zoning restrictions they now challenge. (TOSI-VANNATTA 0002, 0110-15). Their deed explicitly states: "**SAID** property is subject . . . to all applicable governmental statutes, ordinances, rules and regulations." (TOSI-VANNATTA 0110-15). Notably, Paul Vannatta previously applied to the BZA in 2014, shortly after purchasing the Property, for a variance from RC-2 District restrictions, which further demonstrates actual knowledge of these restrictions a decade ago. (TOSI-VANNATTA 0008, 0021-22, 0048).

The Property is located at the westernmost edge of the area between the centerline extensions of Station 18 Street and Station 27 Street, which encompasses thirty-nine parcels abutting over a mile of marshfront coastline. (TOSI-VANNATTA 0051-54, 0103, 0586).

Legislative History of Ordinance Section 21-75

The Town has regulated private dock construction for over forty years. (TOSI-VANNATTA 0059, 0102-03). The Town first implemented restrictions on private docks in 1980. (TOSI-VANNATTA 0001-02, 0106-07, 0129). In 1996, the Town amended the ordinance to limit dock length to 300 feet. (TOSI-VANNATTA 0001-02, 0107, 0131-33).

In 2004, following a rigorous seven-month public process, the Town enacted the current version of Section 21-75(B)(2), which prohibits dock construction between the centerline extensions of Station 18 and Station 27. (TOSI-VANNATTA 0001-02, 0103-0107, 0134-188). The amendment was "a result of a substantial process of public involvement during 2002-2004, in response to residents' growing concerns over the increasing amount of residential construction." (TOSI-VANNATTA 0590).

The Planning Commission held a public hearing on December 10, 2003, where numerous citizens spoke both for and against the proposal. (TOSI-VANNATTA 0139-43). After extensive public input, the Planning Commission voted 3-2 to recommend protecting the marsh between Stations 18 and 27 while allowing some longer docks in other areas. (TOSI-VANNATTA 0143). Town Council then discussed the issue over multiple meetings from September 2003 through April 2004, receiving substantial public comment at each meeting, and adopted the ordinance after three readings between January and April 2004. (TOSI-VANNATTA 0144-88).

Section 21-75(B)(2) provides:

> **No dock shall be permitted to be constructed across marshland in the RC-2 Area District from the centerline extension of Station 18 to the centerline extension of Station 27** and no dock shall be permitted to be constructed in the marsh lands of the RC-2 Area District in the area located between the intersection of the eastern point of the Sullivan's Island Fire Rescue Squad Boat Landing lot located at the end of Point Street, TMS#523-06-00-070, and the Osceola Avenue right-of-way and the intersections of the western point of the lot located at 1010 Osceola Avenue, TMS#523-06-00- 003, and the Osceola Street right-of-way. **In all other areas of the RC-2 Area District, no dock shall be permitted to be constructed where the length of the dock shall exceed three hundred (300) feet in total length**; (4-18-06)
>
> > (a) **Exception: a dock may extend up eight hundred (800) feet to reach a creek that is two hundred (200) feet or more in width** (width of creek measured from land or marsh grass to land or marsh grass); however, said dock shall not be permitted to cross a creek that is greater than eight (8) feet in width to reach the two hundred (200) foot width creek.

(TOSI-VANNATTA 0126) (emphasis added).

The ordinance was enacted to preserve the viewshed from the Ben Sawyer causeway and codify marsh conservation for over a mile of back beach frontage. (TOSI-VANNATTA 0002, 0059, 0107). Currently, only one dock exists between the centerline extensions of Station 18 and Station 27—a community dock at Stith Park, which is a legal non-conforming structure built prior to the 2004 amendment. (TOSI-VANNATTA 0059, 0107).

The Town's Comprehensive Plan

The Town's Comprehensive Plan for 2018-2020 identifies several characteristics considered in the planning process, including "[o]penness of the landscape." (TOSI-VANNATTA 0585). The Comprehensive Plan notes: "The Island exhibits a park-like appearance with expansive views and openness." (Id.).

The Comprehensive Plan describes the "Recreation/Conservation" use area as follows:

> **RECREATION/CONSERVATION**: Recognizes limited use of land for recreational purposes (i.e. docks where otherwise permitted by applicable laws and regulations), but otherwise envisions long-term preservation of the land without commercial activity or subdivision, with minimal impact on the view corridor. This land use pertains to both marsh and ocean front areas (RC1 and RC2).

(TOSI-VANNATTA 0587). The Plan's Future Land Use provision provides for a "continuation of the established land uses set forth in the previous Comprehensive Plan." (TOSI-VANNATTA 0590).

Zoning Ordinance Section 21-67, which explains the findings of fact and intent for the area zoned RC, states that RC Areas contribute to health, safety, and welfare; provide aesthetic value in their natural state; and must be "preserved in their natural state" for public enjoyment and environmental protection. (TOSI-VANNATTA 0582).

Appellants' Prior Attempt to Change the Law

On February 13, 2020, Paul Vannatta appeared before the Town Council's Land Use & Natural Resources Committee requesting permission to build a dock. (TOSI-VANNATTA 0284-86). The Zoning Administrator explained that a dock at the Property would violate Section 21-75(B)(2) in two ways: (1) docks are not allowed in the area where the Property is located, and (2) the proposed dock would exceed the length restriction without meeting the exception because it does not reach a creek that is 200 feet wide. (See TOSI-VANNATTA 0284). Vannatta asked the Committee to recommend changes to the law to reduce the size of the restricted area and extend the maximum dock length. (TOSI-VANNATTA 0285). The law was not changed.

The Zoning Process

Despite having failed to convince Town Council to change the law, Appellants obtained permits from the Office of Ocean and Coastal Resource Management ("OCRM") and the United States Army Corps of Engineers for a proposed 486-foot dock. (TOSI-VANNATTA 0468, 0472-81, 0494-0511). Both permits explicitly require and are conditioned upon compliance with local ordinances. The OCRM permit states: "[t]his permit does not relieve the permittee . . . from the necessity of complying with all applicable local laws, ordinances, and zoning regulations." (TOSI-VANNATTA 0475). The Army Corps permit requires the applicant to obtain "any other required Federal, State or local authorizations" prior to starting work. (TOSI-VANNATTA 0510).

On May 22, 2024, Appellants applied to the Town's Department of Planning and Zoning for a dock permit. (TOSI-VANNATTA 0513). Zoning Administrator Charles Drayton denied the permit for two independent reasons: "A dock is not permitted by the Town in this location; no docks are permitted between the Station 18 centerline extention [sic] and the Station 27 centerline extension. Furthermore, no docks longer than 300 linear feet are permitted unless they reach a 200-

ft wide creek." (TOSI-VANNATTA 0513). The proposed dock would be 486 feet long and reach a creek that is only 62 feet wide. (TOSI-VANNATTA 0481).

Appellants appealed to the BZA and submitted a variance request. (TOSI-VANNATTA 0011-14). Appellants conceded they were not challenging the Zoning Administrator's interpretation of Section 21-75(B)(2) but instead claimed "the ordinance constitutes illegal spot zoning, is an arbitrary, capricious, and unreasonable ordinance, and the denial of the dock permit on the basis of the ordinance provisions should be reversed." (TOSI-VANNATTA 0012).

The BZA Meeting

The BZA held a hearing on September 12, 2024. (TOSI-VANNATTA 0001-06). Mr. Drayton presented a comprehensive staff report reviewing Section 21-75's legislative history, explaining that the ordinance was enacted after extensive public comment over a seven-month period following appropriate processes for adopting ordinances. (TOSI-VANNATTA 0001-02, 0049-63, 0102-04, 0139-88). The staff report included minutes from Planning Commission and Town Council meetings between September 2003 and April 2004 documenting the public vetting process. (TOSI-VANNATTA 0002, 0139-88).

Mr. Drayton explained that there was "no basis for [Appellants'] argument that [Section 21-75(B)(2)] is unconstitutional" because the ordinance was not arbitrary or capricious and did not constitute spot zoning. (TOSI-VANNATTA 0103). He noted that the Property is "part of a section of the Island that includes properties that abut over a mile of the marshfront coastline" subject to the same restriction. (TOSI-VANNATTA 0103).

Regarding the variance request, Mr. Drayton noted that no variances had been granted to allow either a dock within the boundaries of Stations 18 and 27, nor have any variances been approved to allow a dock longer than 300 feet since 2004. (TOSI-VANNATTA 0103). The staff

report explained that the restrictions affect thirty-nine properties with respect to location and forty-seven properties with respect to dock length. (TOSI-VANNATTA 0104). The report concluded that Appellants failed to satisfy the variance test because: (1) the restrictions apply to numerous properties stretching over a mile along the marshfront, not just the Property; (2) the distance-to-navigable-waters restriction affects forty-seven properties; (3) not having a dock does not prohibit or restrict the primary use of the property as a single-family home; and (4) a dock would change views of the marsh and impact pristine marsh habitat. (TOSI-VANNATTA 0003, 0104).

Appellants, represented by counsel, argued that Section 21-75(B)(2) was unconstitutional because it allegedly constitutes illegal spot zoning and is arbitrary, capricious, and unreasonable. (TOSI-VANNATTA 0003-04, 0011). Appellants conceded that neither the BZA nor Mr. Drayton could determine the constitutionality of the ordinance. (TOSI-VANNATTA 0003-04) ("[Appellants] understand the Board itself is not able to overturn the ordinance").

Appellants asserted that Section 21-75(B)(2) constituted illegal spot zoning because, according to their calculations, the Property was one of only five properties (out of thirty-nine) between Stations 18 and 27 that could potentially build a dock absent the geographic restriction.

The BZA unanimously voted to deny Appellants' administrative appeal, finding:

> Zoning Ordinance, Section 21-75 (B) 2 was validly enacted by the Town of Sullivan's Island after extensive public comment and input and consideration of both the Planning Commission and Town Council over a 7-month period, and after following the appropriate process for adopting and/or amending Town ordinances; further, the Board finds that Zoning Ordinance 21-75 (B) 2 is neither arbitrary nor capricious, but rather the ordinance is rationally related to a number of legitimate government purposes, including, but not limited to the preservation of the marsh area, the preservation of views, lessening environmental impact, and general conservation within the Recreation and Conservation Zoning District; finally the Board finds that 21-75 (B) 2 does not constitute impermissible Spot Zoning because it does not target a single parcel or relatively small parcel of land or single land owner, rather it includes properties that abut over a mile of marsh front coastline (looks like over thirty parcels).

(TOSI-VANNATTA 0035).

The BZA also unanimously denied Appellants' variance request, finding:

> [Appellants] have not shown that the application of the ordinance would result in unnecessary hardship because there is nothing that has been shown that would evidence that there are extraordinary exceptional conditions pertaining to this piece of property that do not apply to others; there is nothing that can be shown that the conditions don't generally apply to properties in the vicinity; [Appellants] have not shown that the property would effectively be prohibited from use or unreasonably restricted in its use; [Appellants] have not established that if we give the variance, [Appellants] have not shown there [will] not be a substantial detriment to the adjacent property or the general public; and [Appellants] have not shown that granting the variance would not harm of the character of the district where it's located[.]

(TOSI-VANNATTA 0004, 0034).

The Circuit Court Appeal

Appellants appealed to the circuit court. On May 29, 2025, the Honorable Thomas J. Rode heard oral arguments and issued an order affirming the BZA's decision in full and dismissing the Petition for Appeal. The circuit court's order was filed June 11, 2025.

Regarding spot zoning, the circuit court found that Appellants' arguments were unpersuasive because "the Property is one of thirty-nine parcels making up a 'section of the Island that includes properties that abut over a mile of the marshfront coastline' subject to the same restriction." (Order p. 4). The court noted that even if only five properties could potentially build docks absent the restriction, which was Appellants' assertion, this did not prove the ordinance constituted spot zoning or impacted the Property differently than other similar properties. (Id.). The circuit court found that Section 21-75(B)(2) was an affirmative legislative act that prohibited a specific use between Stations 18 and 27, not a failure to rezone creating a "zoning island." (Id.). Furthermore, the circuit court found that, if spot zoning had occurred, it would still be legal because the ordinance "is consistent with the [Town's] Comprehensive Plan and promotes public welfare." (Order pp. 4-5, n. 2).

Regarding substantive due process, the circuit court found the geographic and length restrictions were not arbitrary, capricious, or unreasonable. (Order p. 5-6). The court noted the ordinance was enacted “after a rigorous seven-month process where the Planning Commission and Town Council publicly vetted and voted to approve Section 21-75(B)(2).” (Order p. 5). The court found that even if only five properties were practically affected, that would not be conclusive evidence of arbitrary or capricious legislation. (Id.). The court also found that approval from OCRM and Army Corps did not render the Town’s more restrictive rules arbitrary or unreasonable, particularly where both permits were conditioned upon compliance with local ordinances. (Order at 6).

Regarding equal protection, the circuit court found “ample evidence” in the record establishing “Section 21-75(B)(2) relates to a legitimate government purpose, treats all property owners between Stations 18 and 27 equally, and forms its rule on a rational basis.” (Order at 6). The court noted the geographic restriction affects at least thirty-nine properties in an area specifically zoned to preserve the marsh. (Id.).

Regarding the variance, the circuit court found the BZA correctly determined Appellants failed all four prongs of the variance test. (Order at 7). The circuit court found Appellants failed the first two prongs because the restriction applies to all properties in the RC-2 Area District from Station 18 to Station 27, not just their Property. (Id.). Appellants failed the third prong because there was no evidence that without a dock, Appellants could not reasonably enjoy the Property, which is zoned for Single Family Residential Use. (Id.). Appellants failed the fourth prong because evidence in the record supports that granting the variance “could be of substantial detriment to surrounding properties and the public’s enjoyment of the area.” (Id.).

Appellants filed a Notice of Appeal to this Court on July 3, 2025, pursuant to Rule 203(d)(1)(A)(ii), SCACR, asserting jurisdiction based on their constitutional challenges to the section of the zoning ordinance.

STANDARD OF REVIEW

On appeal from a final decision of a board of zoning appeals, the Court's role is to determine whether the BZA's decision was correct as a matter of law. S.C. Code Ann. § 6-29-840(A); Austin v. Bd. of Zoning Appeals, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004). The Court must treat the BZA's findings of fact "in the same manner as a finding of fact by a jury, and the court may not take additional evidence." Austin, 362 S.C. at 33, 606 S.E.2d at 211 (citing S.C. Code Ann. § 6-29-840(A)).

"[A] court will uphold the decisions of a reviewing body **if there is any evidence** in the record to support its decision." Clear Channel Outdoor v. City of Myrtle Beach, 360 S.C. 459, 466, 602 S.E.2d 76, 79 (Ct. App. 2004), aff'd, 372 S.C. 230, 642 S.E.2d 565 (2007) (double emphasis added). The court must "refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." Austin, 362 S.C. at 33, 606 S.E.2d at 211 (quoting Rest. Row Assocs. v. Horry Cnty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999) (internal quotation marks omitted)).

"[A] decision of [the BZA] will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." Austin, 362 S.C. at 33, 606 S.E.2d at 211; see also Heilker v. Zoning Bd. of Appeals for the City of Beaufort, 346 S.C. 401, 412, 552 S.E.2d 42, 48 (Ct. App. 2001) ("In zoning matters, this [c]ourt is obligated to apply the extremely narrow standard of review . . . . The local zoning boards, and not the courts, are the primary entities responsible for the planning and development of our communities.").

"An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." Newton v. Zoning Bd. of Appeals for Beaufort Cty., 396 S.C. 112, 116, 719 S.E.2d 282, 284 (Ct. App. 2011) (quoting Cty. of Richland v. Simpkins, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002)). "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." Deese v. State Bd. of Dentistry, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (Ct.App.1985).

The party challenging an ordinance's validity bears the burden of proving by "clear and convincing evidence that the acts of the city council were arbitrary, unreasonable, and unjust." Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals, 440 S.C. 266, 279, 890 S.E.2d 748, 754 (2023), cert. denied sub nom. Ani Creation, Inc. v. Myrtle Beach, 144 S. Ct. 556 (2024). "[W]hen a local city council enacts a zoning ordinance after considering all of the relevant facts, the Court should not disturb the council's action unless the council's findings were arbitrary and capricious or had no reasonable relation to a lawful purpose." Id.

ARGUMENT

I. THE CIRCUIT COURT SHOULD BE AFFIRMED BECAUSE SECTION 21-75(B)(2) DOES NOT CONSTITUTE ILLEGAL REVERSE SPOT ZONING.

The circuit court correctly affirmed the BZA's decision that Section 21-75(B)(2) does not constitute illegal reverse spot zoning. The record is replete with evidence supporting the BZA's findings, and Appellants have failed to meet their burden of proving by clear and convincing evidence that the ordinance is unconstitutional.

A. Section 21-75(B)(2) Does Not Constitute Reverse Spot Zoning Because It Affects Over a Mile of Marshfront Properties and Did Not Create a Zoning "Island."

Appellants' spot zoning argument fails for multiple reasons. First, the ordinance does not single out a small parcel or small area—it applies to thirty-nine properties abutting over a mile of marshfront coastline. Second, the ordinance was an affirmative legislative act, not a failure to rezone creating a "zoning island." Third, Appellants misunderstand both the factual record and the applicable legal standards.

1. *The Ordinance Applies to Thirty-Nine Properties Over a Mile of Marshfront Coastline.*

This Court has defined reverse spot zoning as occurring "when a zoning ordinance restricts the use of a property when virtually all the property's adjoining neighbors are not subject to the use restriction." Ani Creation, 440 S.C. at 282, 890 S.E.2d at 756. Reverse spot zoning typically involves "a zoning 'island' [that] develops as the result of a municipality's failure to rezone a portion of land to bring it into conformity with similar surrounding parcels that are otherwise indistinguishable." Id.

Here, the only evidence is that Section 21-75(B)(2) applies to thirty-nine properties that "abut over a mile of the marshfront coastline." (TOSI-VANNATTA 0103-04, 0035). The BZA specifically found that the ordinance "does not target a single parcel or relatively small parcel of land or single land owner, rather it includes properties that abut over a mile of marsh front coastline (looks like over thirty parcels)." (TOSI-VANNATTA 0035). The circuit court affirmed this finding, noting "the Property is one of thirty-nine parcels making up a 'section of the Island that includes properties that abut over a mile of the marshfront coastline' subject to the same restriction." (Order at 4).

This finding is supported by the record. The staff report explains that the restriction affects properties "that stretch for over a mile along the marsh front." (TOSI-VANNATTA 0104). The plats and maps in the record confirm that the geographic area between Stations 18 and 27 encompasses a substantial stretch of marshfront property. (TOSI-VANNATTA 0051-54, 0586, 0594-97).

Appellants do not dispute that thirty-nine properties are located within the geographic boundaries of the restriction. Instead, they argue the restriction only practically affects five properties because, according to their calculations, only five could potentially construct docks complying with OCRM regulations absent the Town's restriction. (Appellants' Initial Br. at 11). This argument fails.

First, the relevant inquiry is not how many properties are practically affected in Appellants' view, but whether the ordinance applies to virtually all properties within the restricted area. See Ani Creation, 440 S.C. at 282, 890 S.E.2d at 756. Section 21-75(B)(2) applies uniformly to all thirty-nine properties—it prohibits docks on all without exception. (TOSI-VANNATTA 0060, 0126). That separate state regulations may also prohibit some properties in the zone from constructing docks does not alter the uniform application of Section 21-75(B)(2) or transform it into spot zoning. See Ani Creation, 440 S.C. at 286, 890 S.E.2d at 758 (finding no equal protection violation where ordinance applied uniformly to all properties within overlay district boundaries).

Second, Appellants' calculation is speculative. Conditions affecting individual properties—distance to navigable water, marsh conditions, creek configurations—can change over time, as can OCRM regulations. The staff report correctly noted: "If neither regulation existed all of the affected properties may be able to construct docks out to navigable waters." (TOSI-VANNATTA 0104). Even accepting Appellants' assertion that five properties are realistically or

practically affected, this does not constitute spot zoning. While spot zoning challenges "generally require proof the ordinance has affected a single landowner," Ani Creation, 440 S.C. at 284, 890 S.E.2d at 757 (citing 39 Am. Jur. Proof of Facts 3d 433), the key inquiry is whether the restriction creates "a small area within the limits of a zone in which are permitted uses different from or inconsistent with those permitted within the larger," Talbot, 222 S.C. at 175, 72 S.E.2d at 71 (quoting 149 A.L.R. 293 (internal quotation marks omitted)), or treats property differently than "virtually all the property's adjoining neighbors." Ani Creation, 440 S.C. at 282, 890 S.E.2d at 756. Here, the geographic restriction applies to over a mile of marshfront. All properties within that area are treated identically. None are allowed to build docks.

2. *The Ordinance Was an Affirmative Legislative Act, Not a Failure to Rezone.*

Appellants' spot zoning argument also fails because Section 21-75(B)(2) was an affirmative legislative act adopted after extensive public deliberation, not a "zoning island" created by a failure to rezone. As this Court explained in Ani Creation: "Oftentimes, reverse spot zoning occurs where a zoning 'island' develops as the result of a municipality's failure to rezone a portion of land to bring it into conformity with similar surrounding parcels that are otherwise indistinguishable." 440 S.C. at 282, 890 S.E.2d at 756.

The circuit court correctly found that "the area between Stations 18 and 27 was not rezoned while the Property was left behind, rather, Section 21-75(B)(2) was an affirmative legislative act that prohibited a specific use between Stations 18 and 27." This finding is consistent with Ani Creation, where the Court found no spot zoning where the city council affirmatively enacted an ordinance prohibiting certain uses within an overlay district. 440 S.C. at 284-86, 890 S.E.2d at 757-59.

The record establishes that Section 21-75(B)(2) was enacted in 2004 after a rigorous seven-month process involving multiple Planning Commission and Town Council meetings with extensive public input. (TOSI-VANNATTA 0002, 0035, 0107, 0139-88). The ordinance was "a result of a substantial process of public involvement during 2002-2004, in response to residents' growing concerns over the increasing amount of residential construction." (TOSI-VANNATTA 0587, 0590). The 2004 amendment creating the geographic restriction was enacted "to preserve the viewshed from the Ben Sawyer causeway and codified marsh conservation for over a mile of back beach frontage." (TOSI-VANNATTA 0107).

This deliberate legislative process—with extensive public participation and clear policy objectives—is the antithesis of the arbitrary failure to rezone that characterizes reverse spot zoning. The Town did not inadvertently create a "zoning island" by failing to update its maps; it intentionally enacted a restriction to preserve a specific area of marsh and protect viewsheds.

3. *The Circuit Court Applied The Spot Zoning Caselaw Correctly*

Appellants argue that the circuit court "misconstrued the applicable spot zoning caselaw" by requiring that spot zoning involve a single parcel. (Appellants' Initial Br. at 12). This argument reveals a misunderstanding of the circuit court's ruling.

The circuit court did not hold that spot zoning can only involve a single parcel. Rather, the court found—correctly—that Section 21-75(B)(2) does not constitute spot zoning because it applies to thirty-nine properties over more than a mile of marshfront, and because it was an affirmative legislative act rather than a failure to rezone. (Order at 5, n. 2). These findings are consistent with this Court's spot zoning jurisprudence.

In Ani Creation, the Court found no spot zoning where an ordinance applied to an overlay district encompassing multiple properties, even though the ordinance practically affected only

certain businesses, such as smoke shops and tobacco stores, within that district. See 440 S.C. at 284-86, 890 S.E.2d at 757-59. The Court emphasized that the ordinance "corresponded with the boundaries of the historic downtown area . . . as was practical" and applied uniformly within those boundaries. Id. at 286, 890 S.E.2d at 758.

Similarly, here, Section 21-75(B)(2) corresponds with a defined geographic area—from Station 18 to Station 27—and applies uniformly to all properties within that area. The fact that some properties may face additional practical constraints does not transform this uniform restriction into spot zoning.

Appellants also err in arguing that the circuit court improperly required a "rezoning" for spot zoning to occur. (Appellants' Initial Br. at 12). While the circuit court noted that no rezoning occurred, it did not hold that rezoning is a prerequisite for spot zoning. Rather, the court correctly based its ruling, in part, on finding that the typical "zoning island" scenario—where a parcel is left behind when surrounding areas are rezoned—did not occur here. (Order at 4). This finding is consistent with Ani Creation's description of reverse spot zoning as often involving such "zoning islands." 440 S.C. at 282, 890 S.E.2d at 756.

In sum, the BZA's finding that Section 21-75(B)(2) does not constitute spot zoning is supported by the evidence and is correct as a matter of law. The ordinance applies uniformly to thirty-nine properties over more than a mile of marshfront coastline. It was enacted through a deliberate legislative process, not through inadvertent failure to rezone. Appellants have failed to prove by clear and convincing evidence that the ordinance constitutes illegal spot zoning.

B. Even If Section 21-75(B)(2) Constituted Spot Zoning, It Is Valid Because It Adheres to the Town's Comprehensive Plan and Promotes the Common Welfare.

Even if this Court were to find that Section 21-75(B)(2) constitutes spot zoning—which it does not—the ordinance would still be valid because it adheres to the Town's Comprehensive Plan and promotes the common welfare. Spot zoning is not per se illegal in South Carolina. Ani Creation, 440 S.C. at 282, 890 S.E.2d at 756. Rather, spot zoning is invalid only "where the ordinance does not form a part of a comprehensive plan of zoning or is for mere private gain as distinguished from the good of the common welfare." Id. (quoting Talbot, 222 S.C. at 175, 72 S.E.2d at 71).

When a court finds spot zoning, "the appropriate analysis is to closely scrutinize the following factors: (1) the adherence of the zoning to the City's comprehensive plan; and (2) promotion of the good of the common welfare but to only correct injustices which are clearly shown." Ani Creation, 440 S.C. at 283, 890 S.E.2d at 756-57 (quoting Knowles v. City of Aiken, 305 S.C. 219, 223, 407 S.E.2d 639, 642 (1991) (internal quotation marks omitted)). The record establishes that Section 21-75(B)(2) satisfies both factors.

1. *Section 21-75(B)(2) Adheres to the Town's Comprehensive Plan.*

The record demonstrates that Section 21-75(B)(2) adheres to and implements the Town's Comprehensive Plan. Appellants' contrary argument is based on a selective and distorted reading of the Comprehensive Plan that ignores its overall objectives and the context of its provisions.

The Comprehensive Plan identifies as a key Town characteristic the "[o]penness of the landscape," noting: "The Island exhibits a park-like appearance with expansive views and openness." (TOSI-VANNATTA 0585). The plan also reflects an objective of the Town that the marsh "should be maintained in its natural state." (TOSI-VANNATTA 0587) (emphasis added).

The Comprehensive Plan's description of the "Recreation/Conservation" use area explicitly recognizes the dock restrictions in Section 21-75(B)(2), stating it "envisions long-term preservation of the land without commercial activity or subdivision, with minimal impact on the view corridor" and recognizes "limited use of land for recreational purposes (i.e. docks where otherwise permitted by applicable laws and regulations)." (TOSI-VANNATTA 0587). This provision does not conflict with Section 21-75(B)(2). Rather, it expressly contemplates that docks will be permitted only "where otherwise permitted by applicable laws and regulations"—which includes the Town's zoning ordinances. Section 21-75(B)(2) is one such "applicable law" and directly implements the Plan's goal of "long-term preservation . . . with minimal impact on the view corridor."

The Comprehensive Plan's Future Land Use provision provides for "continuation of the established land uses set forth in the previous Comprehensive Plan[,]" (TOSI-VANNATTA 0590), confirming the Plan embraces existing zoning regulations, including Section 21-75(B)(2), which had been in place since 2004. The Plan explicitly acknowledges that the 2004 amendments were "a result of a substantial process of public involvement during 2002-2004, in response to residents' growing concerns over the increasing amount of residential construction." (TOSI-VANNATTA 0590).

Zoning Ordinance Section 21-67 further demonstrates consistency with the Comprehensive Plan. It declares that the RC Areas contribute to health, safety, and welfare; provide aesthetic value in their natural state; and must be "preserved in their natural state" as "areas of recreation and conservation for the purpose of protecting the ecology, the adjoining property, and the environment" and "for the public enjoyment." (TOSI-VANNATTA 0582). Section 21-67 provides that "any activity shall be prohibited in these areas that would detract from their natural

state . . . ." (Id.). Section 21-75(B)(2) implements these purposes by prohibiting docks in a specific area to preserve the marsh in its natural state and protect viewsheds.

Appellants argue the dock prohibition conflicts with the Comprehensive Plan because it prevents recreational activities and that OCRM approval establishes their dock is "otherwise permitted." (Appellants' Initial Br. at 13). These arguments fail. The Plan does not guarantee every property owner the right to build a private dock; it recognizes docks are subject to regulation and preservation is paramount. The phrase "otherwise permitted by applicable laws and regulations" includes local ordinances, not just state and federal permits. Moreover, both the OCRM and Army Corps permits explicitly require compliance with local ordinances (TOSI-VANNATTA 0255, 0510), and South Carolina law authorizes municipalities to enact more restrictive regulations than state agencies. S.C. Code Ann. § 5-7-30.

Section 21-75(B)(2) is congruent with—indeed, implements—the Comprehensive Plan's goals of preserving the marsh in its natural state, maintaining openness and viewsheds, and allowing docks only where otherwise permitted by applicable regulations. As in Ani Creation and Knowles, the ordinance adheres to the comprehensive plan. See 440 S.C. at 285-86, 890 S.E.2d at 758; 305 S.C. at 223-24, 407 S.E.2d at 642.

2. *Section 21-75(B)(2) Promotes the Common Welfare.*

Section 21-75(B)(2) promotes the common welfare and does not result in clear injustice to Appellants. The ordinance serves multiple legitimate public purposes, was enacted after extensive public input, and has substantial public support.

In Ani Creation, the Court found an ordinance promoted the common welfare where it was enacted to address public concerns about crime and to create a family-friendly atmosphere that would promote tourism. 440 S.C. at 285-86, 890 S.E.2d at 758. The Court emphasized that the city

council received complaints from residents prior to enacting the ordinance and that the ordinance was designed to address those concerns. Id.

Similarly, here, Section 21-75(B)(2) was enacted in response to "residents' growing concerns over the increasing amount of residential construction." (TOSI-VANNATTA 0590). The ordinance was adopted after a seven-month process involving multiple public meetings where residents expressed support for protecting the marsh and preserving viewsheds. (TOSI-VANNATTA 0002, 0139-88).

The record also contains evidence of public support for the dock restrictions. When Appellants sought a variance, numerous residents opposed the request. (TOSI-VANNATTA 0218-29). Three residents on Appellants' own street, Back Street, opposed construction of the dock. (TOSI-VANNATTA 0194). The Coastal Conservation League submitted a letter noting that docks are "[h]ard structures that disrupt the marsh landscape can contribute to run-off and the die-off of marsh grasses; this can devastate local ecosystems, impairing water quality." (TOSI-VANNATTA 0219).

The record also contains photographs demonstrating that the public actively uses the marsh area for recreation, including fishing, photography, kayaking, bird watching, paddleboarding, and even as scenic backgrounds for Tik Tok videos. (TOSI-VANNATTA 0195-202). These photographs show that members of the "community stop by frequently to rest, relax and enjoy the unobstructed views" of the marsh. (TOSI-VANNATTA 0200). The preservation of these unobstructed views and public recreational opportunities serves the common welfare.

Ultimately, it is clear from the record that Section 21-75(B)(2) promotes the common welfare by serving multiple legitimate government purposes: protecting pristine marsh habitat from fragmentation, preserving the viewshed from the Ben Sawyer causeway and expansive views

identified as key Town characteristics, maintaining the marsh for public recreational use, and implementing conservation goals within the RC-2 District. (TOSI-VANNATTA 0103, 0104, 0107, 0585). As the staff report noted, "[b]etween Stations 18 and 27 there are only a few impediments in the pristine marsh habitat; a dock would change the views of the marsh from neighboring properties, as well as chip away at a vast uninterrupted marsh area that is critical natural habitat." (TOSI-VANNATTA 0104).

Appellants argue the ordinance does not promote the common welfare because other docks exist in the RC-2 District. (Appellants' Initial Br. at 15). This argument falls flat. The existence of some docks in other areas of the RC-2 District does not establish that additional docks in the Station 18-27 area would serve the common welfare. To the contrary, the Town made a considered judgment that this particular area—over a mile of marshfront—should be preserved without docks to protect viewsheds and maintain the marsh in its natural state.

Appellants also argue that OCRM and Army Corps approval establishes that the dock would not harm the common welfare. (Appellants' Initial Br. at 15-16). This argument ignores the fact that state and federal agencies have different regulatory objectives than municipalities. Municipalities have broad police powers to regulate land use for purposes including aesthetics, viewshed protection, and community character, which are not necessarily the focus of OCRM or the Army Corps. The Town is authorized to impose more restrictive regulations than state or federal agencies. See S.C. Code Ann. § 5-7-30.

Moreover, the OCRM permit itself recognizes the role of local regulation, stating: "[t]his permit does not relieve the permittee . . . from the necessity of complying with all applicable local laws, ordinances, and zoning regulations." (TOSI-VANNATTA 0255). The Army Corps permit similarly requires obtaining "any other required Federal, State or local authorizations." (TOSI-

VANNATTA 0510). These provisions confirm that state and federal approval does not override local zoning restrictions.

Finally, Appellants have not demonstrated any clear injustice resulting from the ordinance. The second prong of the Talbot and Knowles test requires courts "to only correct injustices which are clearly shown." Ani Creation, 440 S.C. at 283, 890 S.E.2d at 757. Appellants purchased the Property in 2014 with knowledge of the dock restrictions. (TOSI-VANNATTA 0110-15). Their deed explicitly subjected the Property to "all applicable governmental statutes, ordinances, rules and regulations." Id. One of the Appellants had even applied for a variance from RC-2 District restrictions in 2014, demonstrating actual knowledge of those restrictions within months of purchasing. (TOSI-VANNATTA 0008, 0021-22, 0048.)

The Property retains value and utility as a single-family residence—its permitted use. (TOSI-VANNATTA 0108, 0586). The record shows that prior owners enjoyed the Property and the marsh without a dock. (TOSI-VANNATTA 0196, 0211). Public dock access to the marsh is available nearby. (TOSI-VANNATTA 0107). Appellants have not been deprived of any reasonable use of their Property; they simply cannot build a private dock in an area specifically designated for marsh preservation.

In sum, the record establishes that Section 21-75(B)(2) promotes the common welfare by serving multiple legitimate government purposes and does not result in clear injustice to Appellants. Even if the ordinance constituted spot zoning—which it does not—it would be valid under the Talbot and Knowles test.

II. SECTION 21-75(B)(2) DOES NOT VIOLATE APPELLANTS' SUBSTANTIVE DUE PROCESS RIGHTS BECAUSE IT IS NEITHER ARBITRARY, CAPRICIOUS, NOR UNREASONABLE.

Appellants' substantive due process challenge fails because Section 21-75(B)(2) is rationally related to legitimate government purposes and was enacted after careful deliberation. Municipalities have police power to enact zoning ordinances restricting the use of private property. Dunes W. Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280, 296, 737 S.E.2d 601, 609 (2013). "The exercise of police power is subject to judicial correction only if the action is arbitrary and has no reasonable relation to a lawful purpose." Denene, Inc. v. City of Charleston, 359 S.C. 85, 93, 596 S.E.2d 917, 921 (2004) (quoting Main v. Thomason, 342 S.C. 79, 86-87, 535 S.E.2d 918, 922-23 (2000) (internal quotation marks omitted).

Courts presume zoning ordinances are constitutional and must make every presumption in favor of constitutionality. Dunes West, 401 S.C. at 296, 737 S.E.2d at 609. The party challenging an ordinance bears the burden of proving by clear and convincing evidence that it is arbitrary, unreasonable, and unjust. Ani Creation, 440 S.C. at 279, 890 S.E.2d at 754. Courts should not disturb an ordinance "[w]hen the planning commission and the city council of a municipality have acted after reviewing all of the facts . . . ." Harbit v. City of Charleston, 382 S.C. 383, 391, 675 S.E.2d 776, 780 (Ct. App. 2009).

A. The Ordinance Is Rationally Related to Legitimate Purposes and Was Enacted After Extensive Deliberation.

Section 21-75(B)(2) was enacted in 2004 after a seven-month process involving multiple Planning Commission and Town Council meetings with extensive public input. (TOSI-VANNATTA 0002, 0107, 0139-88). The BZA found the ordinance "was validly enacted by the Town of Sullivan's Island after extensive public comment and input and consideration of both the Planning Commission and Town Council over a 7-month period, and after following the

appropriate process for adopting and/or amending Town ordinances." (TOSI-VANNATTA 0035). As the circuit court found, this "rigorous, seven-month process where the Planning Commission and Town Council publicly vetted and voted to approve," Section 21-75(B)(2) demonstrates the ordinance is not arbitrary or capricious.

The BZA found Section 21-75(B)(2) "is rationally related to a number of legitimate government purposes, including, but not limited to the preservation of the marsh area, the preservation of views, lessening environmental impact, and general conservation within the Recreation and Conservation Zoning District." (TOSI-VANNATTA 0035). As discussed above, Section 21-75(B)(2) serves multiple legitimate purposes: preserving pristine marsh habitat, protecting viewsheds including the view from the Ben Sawyer causeway, maintaining the marsh for public recreational use and enjoyment, and implementing conservation goals within the RC-2 District. (TOSI-VANNATTA 0104, 0107, 0582, 0585, 0587). These purposes are expressly stated in Section 21-67, which declares the RC Areas should be "preserved in their natural state" as "areas of recreation and conservation for the purpose of protecting the ecology, the adjoining property, and the environment" and "for the public enjoyment . . . ." (TOSI-VANNATTA 0582).

In Denene, the Court upheld an ordinance restricting bars' hours of operation, finding it was rationally related to maintaining public order, safety, and "quality of life in Charleston . . . ." 359 S.C. at 93, 596 S.E.2d at 921. The Court emphasized that after "allowing debate and public input," the city council "determined that the operation of bars between 2 a.m. and 6 a.m. had detrimental effects on the quality of life of residents," as well as the city itself, and it "legitimately sought to address those problems by enacting the ordinance." Id. Here, the Town Council similarly determined, after extensive public input, that dock construction between Stations 18 and 27 would

have detrimental effects on the marsh, viewsheds, and the community's quality of life, and legitimately sought to address those concerns through Section 21-75(B)(2).

B. Appellants' Arguments About the Number of Affected Properties and OCRM Approval Do Not Establish a Substantive Due Process Violation

Appellants argue the geographic restriction is arbitrary because it only "realistically" affects five properties and that the dock length restriction is arbitrary because they obtained OCRM and Army Corps approval. (Appellants' Initial Br. at 17-18). These arguments fail. The restriction applies uniformly to thirty-nine properties, and the fact that some properties face additional constraints to building a dock does not render the ordinance arbitrary. Even if only five properties were affected, this would not establish the ordinance is arbitrary—the Town has legitimate interests in preserving specific areas of marsh and protecting specific viewsheds, even if those interests affect a limited number of properties.

Municipalities may enact regulations that are more restrictive or different than state or federal agencies. See, e.g., S.C. Code Ann. § 5-7-30. Both the OCRM and Army Corps permits explicitly require compliance with local ordinances. (TOSI-VANNATTA 0255, 0510). State and federal agencies have different regulatory objectives and apply different standards than municipalities. To the extent OCRM approval establishes the proposed dock meets state environmental standards, it does not establish the dock is consistent with the Town's land use objectives regarding marsh preservation, viewshed protection, and community character. Moreover, state and federal regulations, and even physical conditions, are subject to change. The Town's dock restrictions provide stability and predictability regardless of external changes.

C. Appellants Had No Prior Property Interest in Building a Dock

Appellants' due process challenge also fails because they held no property interest in building a dock prior to purchasing the Property. In Harbit, the Court of Appeals rejected a due

process challenge where the property owner purchased property with knowledge of zoning restrictions, holding that an expectation the application would be granted is "insufficient to establish a violation of [the owner's] constitutional rights." 382 S.C. at 395, 675 S.E.2d at 782.

Here, Appellants purchased the Property in 2014—ten years after Section 21-75(B)(2) was enacted—with their deed explicitly subjecting the Property to "all applicable governmental statutes, ordinances, rules and regulations." (TOSI-VANNATTA 0110-15). Appellants also had actual knowledge of RC-2 District restrictions, as evidenced by Paul Vannatta's 2014 variance application. (TOSI-VANNATTA 0008, 0021-22, 0048). Appellants purchased the Property subject to the dock restrictions and cannot now claim a constitutional violation based on restrictions that predated their ownership.

In sum, Section 21-75(B)(2) does not violate substantive due process. The ordinance was enacted after extensive deliberation and is rationally related to multiple legitimate government purposes. Appellants have failed to meet their burden of proving by clear and convincing evidence that the ordinance is arbitrary, capricious, or unreasonable.

III. SECTION 21-75(B)(2) DOES NOT VIOLATE APPELLANTS' EQUAL PROTECTION RIGHTS BECAUSE THE GEOGRAPHIC RESTRICTION IS RATIONALLY RELATED TO LEGITIMATE GOVERNMENT PURPOSES.

Appellants' equal protection challenge fails for essentially the same reasons as their due process challenge. Equal protection challenges to zoning ordinances are reviewed under the rational basis standard. *Ani Creation*, 440 S.C. at 285, 890 S.E.2d at 758. Under this standard, a classification survives constitutional scrutiny if "(1) the classification bears a reasonable relation to the legislative purpose sought to be affected; (2) the members of the class are treated alike under similar circumstances and conditions; and [ ] (3) the classification rests on some reasonable basis." Denene, Inc. v. City of Charleston, 359 S.C. 85, 91, 596 S.E.2d. 917, 920 (2004). The challenger

must prove by clear and convincing evidence that there is no basis for the classification. Ani Creation, 440 S.C. at 285-86, 890 S.E.2d at 758. This is a "steep hill to climb." Id. (quoting Bodman v. State, 403 S.C. 60, 69-70, 742 S.E.2d 363, 367-68 (2013)).

Section 21-75(B)(2) easily satisfies all three prongs. First, as discussed in Section II.A, the ordinance is rationally related to multiple legitimate government purposes: preserving the marsh, protecting viewsheds, conserving the environment, and maintaining the area for public enjoyment. (TOSI-VANNATTA 0035, 0104, 0107, 0582, 0585, 0587). The Town enacted Section 21-75(B)(2) in response to "residents' growing concerns over the increasing amount of residential construction" and to preserve viewsheds and marsh. (TOSI-VANNATTA 0587, 0590). The Town Council received public input over a seven-month period supporting these objectives. (TOSI-VANNATTA 0139-88). When Appellants sought a variance, numerous residents opposed the dock, demonstrating continued public support for the restriction. (TOSI-VANNATTA 0194, 0218-29).

Second, Section 21-75(B)(2) treats all properties between Stations 18 and 27 identically—it prohibits docks on all such properties without exception. (TOSI-VANNATTA 0060, 0126). Appellants argue the classification violates equal protection because it treats their Property differently than properties outside the Station 18-27 area. (Appellants' Initial Br. at 18). But this misconceives the nature of the classification. The relevant class consists of properties within the Station 18-27 area, and all members of that class are treated identically. The fact that properties outside the class are subject to different rules does not violate equal protection—that is the very nature of zoning. In Ani Creation, the Court found an overlay district that "corresponded with the boundaries of the historic downtown area . . . as was practical" satisfied equal protection where all properties within the overlay district were treated alike. 440 S.C. at 286, 890 S.E.2d at 758. Here, the boundaries of the Station 18-27 restriction similarly correspond to a defined geographic area

where the Town determined marsh preservation and viewshed protection were particularly important, and all properties within those boundaries are treated identically.

Third, the classification rests on multiple reasonable bases: geographic coherence (a defined area from Station 18 to Station 27 encompassing over a mile of marshfront), viewshed protection (the restriction was enacted specifically "to preserve the viewshed from the Ben Sawyer causeway," and the Station 18-27 area is visible from this causeway), marsh preservation (protecting "over a mile of back beach frontage" and "pristine marsh habitat"), and preventing dock proliferation (prohibiting docks prevents gradual fragmentation of the marsh that would occur if docks were permitted). (TOSI-VANNATTA 0103, 0104, 0107). Appellants have not shown—and cannot show—that there is no reasonable basis for the classification. At most, Appellants disagree with the Town's policy judgment about where to draw the line. But disagreement with a legislative policy judgment does not establish an equal protection violation. "If any state of facts reasonably can be conceived that would sustain [the ordinance], the existence of that state of facts at the time the law was enacted must be assumed." Dunes West, 401 S.C. at 298, 737 S.E.2d at 610 (citation omitted).

In sum, Section 21-75(B)(2) easily satisfies rational basis review. The geographic restriction bears a reasonable relation to multiple legitimate government purposes, treats all properties within the class identically, and rests on multiple reasonable bases. Appellants have failed to meet their burden of proving by clear and convincing evidence that the restriction violates equal protection.

IV. THE CIRCUIT COURT CORRECTLY AFFIRMED THE BZA'S DENIAL OF APPELLANTS' VARIANCE REQUEST BECAUSE APPELLANTS FAILED THE FOUR-PART TEST UNDER S.C. CODE § 6-29-800.

Even if this Court were to find Section 21-75(B)(2) unconstitutional—which it should not—the BZA's denial of Appellants' variance request should be affirmed as an independent ground for affirmance. The BZA correctly found that Appellants failed to satisfy the statutory requirements for a variance, and the circuit court correctly affirmed that decision.

S.C. Code Ann. § 6-29-800(A)(2) authorizes a board of zoning appeals "to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship." A variance may be granted only if the applicant proves four elements:

a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;

b) these conditions do not generally apply to other property in the vicinity;

c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

d) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

S.C. Code Ann. § 6-29-800(A)(2)(a)-(d); (see also Ordinance § 21-79, (TOSI-VANNATTA 0002-0061) (setting forth variance test).

The applicant bears the burden of proving all four elements. Rest. Row Assocs. v. Horry Cnty., 335 S.C. 209, 217, 516 S.E.2d 442, 446 (1999). "If [Appellants] failed to meet the requirements of each element of the ordinance, then the [BZA] correctly denied the variance." Id. The decision of a BZA denying a variance will be upheld unless it is "arbitrary, capricious, has no

reasonable relation to a lawful purpose, or if the board has abused its discretion." Austin, 362 S.C. at 33, 606 S.E.2d at 211.

The BZA found that Appellants failed to satisfy any of the four elements. (TOSI-VANNATTA 0034). This finding is supported by evidence and should be affirmed.

A. Appellants Failed to Prove Extraordinary and Exceptional Conditions Unique to Their Property That Do Not Generally Apply to Other Properties.

The BZA found that Appellants "have not shown that . . . there are extraordinary exceptional conditions pertaining to this piece of property that do not apply to others" and "have not shown that . . . the conditions don't generally apply to properties in the vicinity." (TOSI-VANNATTA 0034). These findings are supported by the evidence.

The "extraordinary and exceptional conditions" that warrant a variance must be unique to the particular property, not conditions that affect numerous properties in the area. S.C. Code Ann. § 6-29-800(A)(2)(a)-(b) (requiring proof that "there are extraordinary and exceptional conditions pertaining to the particular piece of property" and that "these conditions do not generally apply to other property in the vicinity"); see also Black v. Lexington Cnty. Bd. of Zoning Appeals, 396 S.C. 453, 460-61, 722 S.E.2d 22, 26 (2012) (recognizing that extraordinary and exceptional circumstances must be shown that do not apply to other properties in the vicinity).

Here, the dock restrictions apply to thirty-nine properties between Stations 18 and 27 with respect to the geographic restriction, and forty-seven properties with respect to the dock length restriction. (TOSI-VANNATTA 0104). The staff report explained: "The restrictions that prohibit a dock in this location are two-fold: the location is not permitted and the distance from the private property to the navigable waters is farther than the ordinance allows. These conditions exist for properties that stretch for over a mile along the marsh front to the east of the subject property, affecting 39 properties." (TOSI-VANNATTA 0104).

Appellants argue their Property is subject to extraordinary conditions because it is "at the absolute edge of the geographic dock prohibition" and they are one of few properties that could potentially build a dock absent the restriction. (Appellants' Initial Br. at 21-22). These arguments fail. The fact that the Property is located at the edge of the restricted zone does not constitute an extraordinary condition unique to the Property—it is simply a description of where the Property is located within a larger restricted area. Every property at the edge of any zoning boundary could make the same argument, if permitted. See Ani Creation, 440 S.C. at 286-87, 890 S.E.2d at 758 (rejecting constitutional challenge based on location at zoning boundary because accepting such argument would cause "the entire zone plan in any municipality [to] crumble by chain reaction"). Moreover, by Appellants' own calculation, at least four other properties are in the same situation. (Appellants' Initial Br. at 18). While the BZA was not required to accept Appellants' calculation, it alone establishes that the conditions are not unique to Appellants' Property but affect multiple parcels.

Furthermore, the staff report correctly noted: "If neither regulation existed all of the affected properties may be able to construct docks out to navigable waters, so this concern is not limited to the subject property or a 'very few' as the application states." (TOSI-VANNATTA 0104). The conditions Appellants identify—location within the restricted zone and distance from navigable water—are conditions shared by numerous other properties.

B. Appellants Failed to Prove the Ordinance Effectively Prohibits or Unreasonably Restricts Utilization of the Property.

The BZA found that Appellants "have not shown that the property would effectively be prohibited from use or unreasonably restricted in its use." (TOSI-VANNATTA 0034). This finding is amply supported by the evidence.

The Property is zoned for single-family residential use, and Appellants have constructed and occupy a single-family residence. (TOSI-VANNATTA 0108, 0586). The staff report explained: "Not having a dock does not prohibit or restrict the primary use of the property, which is in the RS, Single-Family Residential District, and it is developed with a single-family home." (TOSI-VANNATTA 0104).

The absence of a dock does not effectively prohibit or unreasonably restrict the Property's utilization as a residence. The record even shows a prior owner of the Property enjoying the waterway without a dock. (TOSI-VANNATTA 0196). Public dock access is available nearby. (TOSI-VANNATTA 0107). Appellants can access the marsh and waterways for recreational purposes; they simply cannot do so via a private dock from their Property.

Appellants argue that the restriction "acts as an absolute barrier to the rest, relaxation, and recreation meant to be afforded by preserving the RC-2 Area District." (TOSI-VANNATTA 0013). This argument is hyperbolic and unsupported by evidence. The RC-2 District is preserved for public recreation and enjoyment, not to guarantee that every property owner can build a private dock. Section 21-67 states that the RC Areas should be preserved "for the public enjoyment," not for the exclusive benefit of adjacent property owners. (TOSI-VANNATTA 0582).

C. Appellants Failed to Prove the Variance Would Not Be Detrimental to Adjacent Property or the Public Good.

The BZA found that Appellants "have not established that if we give the variance, [Appellants] have not shown there [will] not be a substantial detriment to the adjacent property or the general public" and "have not shown that granting the variance would not harm of the character of the district where it's located." (TOSI-VANNATTA 0034). This finding is supported by record evidence. As the staff report explained,

> Between Stations 18 and 27 there are only a few impediments in the pristine marsh habitat; a dock would change the views of the marsh from neighboring properties, as well as chip away at a vast uninterrupted marsh area that is critical natural habitat.

(TOSI-VANNATTA 0104).

The record contains ample evidence that granting the variance would be detrimental to the public good: public opposition from numerous residents, including three on Appellants' own street (TOSI-VANNATTA 0194, 0218-29); environmental impacts, as the Coastal Conservation League explained that docks "can contribute to run-off and the die-off of marsh grasses" and "devastate local ecosystems, impairing water quality" (TOSI-VANNATTA 0219); view impacts to neighboring properties and public vantage points (TOSI-VANNATTA 0104, 0195-202, 0602-03); and marsh fragmentation, as the dock would "chip away at a vast uninterrupted marsh area that is critical natural habitat" in an area that currently has only one dock, preserving over a mile of pristine marsh (TOSI-VANNATTA 0107).

Appellants argue the variance would not be detrimental because properties to the west have docks and because they obtained OCRM approval. (TOSI-VANNATTA 0013; Appellants' Initial Br. at 23). These arguments ring hollow. The properties to the west are outside the Station 18-27 area and not subject to the geographic restriction. The fact that docks are permitted elsewhere does not establish that a dock in the restricted area would not be detrimental—the Town specifically determined this area should be preserved without docks. And, as discussed above, OCRM approval does not address the full range of considerations relevant to local land use regulation, including aesthetics, viewsheds, and community character.

D. The BZA Did Not Abuse Its Discretion by Denying the Variance Request.

The BZA's denial of the variance is supported by the evidence and reflects a reasonable application of the statutory factors. The BZA heard extensive testimony, reviewed documentary evidence, and made detailed findings addressing each of the four statutory elements. (TOSI-VANNATTA 0001-06, 0034). The BZA's decision was neither arbitrary nor capricious and did not abuse its discretion.

Appellants argue that the BZA's findings were "made summarily and with no reference to the ample evidence presented at the hearing and with no factual findings taken therefrom." (Appellants' Initial Br. at 22). This argument mischaracterizes the record. The BZA's order addresses each of the four statutory elements and explains why Appellants failed to satisfy them. (TOSI-VANNATTA 0034). The order must also be read in conjunction with the staff report, which contains detailed factual findings supporting the denial. (TOSI-VANNATTA 0102-04). The BZA explicitly adopted the staff's recommendation, (TOSI-VANNATTA 0004), which is permissible. See Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals, 342 S.C. 480, 494, 536 S.E.2d 892, 899 (Ct. App. 2000) (finding no error where circuit court considered staff report in conjunction with board's decision where board explicitly adopted staff recommendation).

Moreover, the BZA is not required to make elaborate written findings. The statute requires only that the BZA "makes and explains in writing" its findings on the four elements. S.C. Code Ann. § 6-29-800(A)(2). The BZA's order satisfies this requirement by explaining that Appellants failed to prove each element. "Generally, the format of a final administrative decision is immaterial as long as the substance of the decision is sufficiently detailed to allow a reviewing court to determine if the decision is supported by the facts of the case." Vulcan Materials, 342 S.C. at 494, 536 S.E.2d at 899. Here, the BZA's order provides sufficient detail for judicial review, particularly when read in conjunction with the incorporated staff report containing extensive factual findings.

V. AS AN ADDITIONAL AFFIRMING GROUND, APPELLANTS' CHALLENGE TO SECTION 21-75(B)(2) IS TIME-BARRED BY S.C. CODE § 6-29-760(D).

As a threshold matter, Appellants' challenge to the validity of Ordinance Section 21-75(B)(2) is time-barred by statute. Section 21-75(B)(2) was last amended in 2004—over two decades ago and more than a decade before Appellants purchased the Property in 2014. (TOSI-VANNATTA 0002, 0107, 0110-15, 0134-38). South Carolina law expressly limits the time within which challenges to zoning ordinances may be brought. S.C. Code Ann. § 6-29-760(D) provides:

> No . . . challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission.

S.C. Code Ann. § 6-29-760(D).

Courts have applied Section 6-29-760(D) to bar challenges to zoning ordinances brought long after their enactment, even by subsequent purchasers of property. In Quail Hill, LLC v. Cnty. of Richland, the Court of Appeals held that a purchaser of real property was statutorily barred from challenging the validity of zoning ordinances enacted nearly thirty years earlier: "Initially Buyer contends there is a material issue of fact as to whether County validly enacted its 1978 zoning ordinances. We agree with the circuit court that Buyer is statutorily barred from challenging the validity of the zoning ordinance at this juncture." 379 S.C. 314, 318, 665 S.E.2d 194, 196 (Ct. App. 2008).

Here, the record establishes that the Town substantially complied with all notice requirements and established procedures in enacting the 2004 amendment to Section 21-75(B)(2). The Planning Commission and Town Council held multiple public meetings between September 2003 and April 2004, where the proposed amendment was extensively debated and subjected to

substantial public comment. (TOSI-VANNATTA 0002, 0139-88). The amendment was the "result of a substantial process of public involvement during 2002-2004." (TOSI-VANNATTA 0590). The BZA specifically found that Section 21-75(B)(2) "was validly enacted by the Town of Sullivan's Island after extensive public comment and input and consideration of both the Planning Commission and Town Council over a 7-month period, and after following the appropriate process for adopting and/or amending Town ordinances[.]" (TOSI-VANNATTA 0035).

Appellants purchased the Property in 2014, ten years after the 2004 amendment was enacted. (TOSI-VANNATTA 0002, 0110-15). While Appellants' knowledge of the ordinance is not legally required to trigger the time bar, the record demonstrates they cannot claim ignorance or unfair surprise. Their deed explicitly states: "**SAID** property is subject . . . to all applicable governmental statutes, ordinances, rules and regulations." (TOSI-VANNATTA 0112). Thus, Appellants took title with a constructive knowledge of the restrictions in Section 21-75(B)(2).

Appellants were on actual notice of the restrictions in 2014, as well. Shortly after purchasing the Property, Paul Vannatta applied to the BZA for a variance from RC-2 District restrictions to reduce the thirty-foot critical line setback requirement. (TOSI-VANNATTA 0008, 0021-22, 0048). Appellants have been aware of the RC-2 District restrictions for an entire decade.

Appellants' challenge to Section 21-75(B)(2) was not brought until 2024—twenty years after the ordinance was enacted and ten years after they purchased the Property. This challenge is untimely under Section 6-29-760(D). Allowing property owners to challenge decades-old zoning ordinances would undermine the stability and predictability essential to municipal governance and would contravene the clear statutory limitation period.

Appellants cannot circumvent the sixty-day limitation period by framing their challenge as arising from the denial of their permit application. The substance of their challenge is to the validity

of the ordinance itself, not to the Zoning Administrator's interpretation or application of it. Appellants expressly conceded: "There is no challenge to the Zoning Administrator's interpretation of Section 21-75(B)(2), except that the ordinance constitutes illegal spot zoning, [and] is an arbitrary, capricious, and unreasonable ordinance . . . ." (TOSI-VANNATTA 0012). Their challenge is to the ordinance's constitutional validity—a challenge that was required to be brought within sixty days of the ordinance's enactment in 2004.

Therefore, because Appellants' challenge to Section 21-75(B)(2) is time-barred by Section 6-29-760(D), this Court should affirm the BZA's decision and dismiss the appeal on this threshold ground alone.

CONCLUSION

For the foregoing reasons, this Court should affirm the circuit court's decision upholding the BZA's denial of Appellants' appeal and variance request.

Section 21-75(B)(2) does not constitute illegal spot zoning because it applies uniformly to thirty-nine properties along over a mile of marshfront coastline. The ordinance adheres to the Town's Comprehensive Plan and promotes the common welfare by preserving pristine marsh habitat, protecting viewsheds, and maintaining the area for public recreation and enjoyment. The restriction is rationally related to these legitimate government purposes and satisfies both substantive due process and equal protection requirements under rational basis review.

Additionally, and separately, the circuit court correctly affirmed the BZA's denial of Appellants' variance request. Appellants failed to prove any of the four statutory elements required under S.C. Code § 6-29-800. The conditions they cite affect numerous properties in the area, not just their Property. The absence of a dock does not prohibit reasonable use of the Property as a

single-family residence. And granting the variance would harm the character of the district and be detrimental to adjacent properties and the public good.

As an additional affirming ground, Appellants' constitutional challenge to Section 21-75(B)(2) is time-barred under S.C. Code § 6-29-760(D). The ordinance was validly enacted in 2004 following extensive public deliberation and substantial compliance with all procedural requirements. Appellants purchased the Property in 2014—ten years later. Their challenge, brought in 2024, is untimely.

The BZA's decisions are supported by the evidence and reflect reasonable applications of the law. The circuit court correctly affirmed those decisions, and this Court should do the same.

Respectfully submitted,

s/ James W. Clement

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