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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2025-000624

West Street Farms, LLC, and Mix Farms, LLC..... Appellants,

v.

City of Beaufort, Beaufort Historic District Review
Board, and 303 Associates, LLC Respondents.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR IN AFFIRMING THE HISTORIC REVIEW BOARD'S PRELIMINARY APPROVAL WHEN THE BOARD LACKED JURISDICTION TO ACT WITHOUT A FINAL SPECIAL EXCEPTION FROM THE ZONING BOARD OF APPEALS?
2. DID THE CIRCUIT COURT ERR IN FINDING SUBSTANTIAL EVIDENCE SUPPORTED THE HISTORIC REVIEW BOARD'S DECISION WHEN THE PROJECT FAILED TO COMPLY WITH MANDATORY REQUIREMENTS OF THE BEAUFORT CODE REGARDING LINER BUILDINGS AND ONSITE PARKING?
3. DID THE CIRCUIT COURT ERR IN DEFERRING TO THE HISTORIC REVIEW BOARD'S INTERPRETATION WHEN THE BOARD FAILED TO CONSIDER OR APPLY THE REQUIREMENTS OF THE BEAUFORT PRESERVATION MANUAL AND BEAUFORT CIVIC MASTER PLAN?
4. DID THE CIRCUIT COURT ERR IN FINDING THE APPELLANTS' APPEAL UNTIMELY WHEN THE HISTORIC DISTRICT REVIEW BOARD'S PRELIMINARY APPROVAL ADDRESSED SUBSTANTIVE COMPLIANCE ISSUES THAT WERE DISTINCT FROM THE CONCEPTUAL APPROVAL OF BASIC MASSING?
5. DID THE CIRCUIT COURT ERR IN APPLYING PRINCIPLES OF MOOTNESS WHEN APPELLANTS' CHALLENGE TO THE PRELIMINARY APPROVAL RAISED ONGOING LEGAL VIOLATIONS THAT PERSIST REGARDLESS OF SUBSEQUENT FINAL APPROVAL?

STATEMENT OF THE CASE

This appeal stems from the circuit court's denial of the Appellants' petition challenging the December 8, 2021, preliminary approval by the City of Beaufort Historic District Review Board ("HRB") of a three-story apartment and commercial building project at 211 Charles Street ("Project").

Appellants West Street Farms, LLC, and Mix Farms, LLC, are property owners within the historic district who filed their petition on January 7, 2022 (R. pp. 016-022), within thirty days of the HRB's decision on December 8, 2021. After the circuit court initially denied the appeal with a Form 4 Order on August 29, 2023 (R. pp. 001-003), Appellants submitted a Motion to Reconsider on September 8, 2023 (R. pp. 081-083), seeking a ruling on the merits to preserve issues for appellate review.

On March 5, 2025, the circuit court granted the Motion to Reconsider for the limited purpose of issuing a detailed order denying the appeal on multiple grounds, including timeliness, mootness, and the merits (R. pp. 004-015). This appeal followed.

STANDARD OF REVIEW

In reviewing a decision by a board of architectural review, the circuit court should act when the board abuses its discretion by committing errors of law or bases its decision on findings of fact that are not supported by the evidence. *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 185, 621 S.E.2d 361, 362 (Ct. App. 2005), citing *Gurganious v. City of Beaufort*, 317 S.C. 481, 486, 454 S.E.2d 912, 915 (Ct. App. 1995). Furthermore, the appellate court's standard of review of a board of architectural review's decision is the same as that of the trial court. *Blind Tiger, LLC*, 621 S.E. 2d at 362, citing *Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach*, 294 S.C. 475, 479-80, 366 S.E.2d 15, 18 (Ct. App. 1988) (holding the appellate court will not reverse the circuit court's affirmance of the board unless the board's findings of fact have no evidentiary support or the board commits an error of law).

FACTS

A. The Project and Regulatory Framework

303 Associates, LLC sought approval for a three-story apartment and commercial building at 211 Charles Street in Beaufort's Historic District (the "Project"). The Project required both a Special Exception from the Zoning Board of Appeals ("ZBOA") for Large Footprint Buildings under Beaufort Code Section 4.5.10(B)(5), and review by the HRB under the city's historic preservation ordinances.

The Project was described in the application as "CONSTRUCTION OF A NEW 3-STORY BUILDING TO HOUSE APARTMENTS WITH SOME COMMERCIAL SPACE ON THE FIRST FLOOR FACING CHARLES STREET." (R. p. 383). The Project covered 27,500 square feet

across three floors: 9,311 SF on the first floor, 9,109 SF on the second, and 9,130 SF on the third. (R. p. 383).

B. The HRB Approval Process

The HRB follows a three-stage process: conceptual approval, preliminary approval, and final approval. The HRB granted conceptual approval on February 10, 2021, addressing basic massing concepts. On December 8, 2021, the HRB granted preliminary approval, which Appellants timely appealed on January 7, 2022.

The February 2021 conceptual approval included thirteen detailed staff conditions that addressed fundamental design issues, including parking requirements, building types, frontage compliance, roof design complexity, and compliance with the preservation manual. (R. pp. 378-380). The staff explicitly noted that "this building contains two different building types" and required detailed compliance demonstrations for future applications. (R. p. 378)

C. Jurisdictional Issues

At the time of the HRB's preliminary approval on December 8, 2021, the required Special Exception from the ZBOA had not been issued because it was pending a decision in Case No. 2021-CP-07-01639. (R. p. 181). Cynthia Jenkins, a representative of the Historic Beaufort Foundation, informed the Board that "there are two pending appeals to Circuit Court involving the decision of the Zoning Board of Adjustment of this City, and there's not been a court date set." (R. p. 181). Property owner Graham Trask stated, "You were not informed that the Zoning Board of Appeals decision is being appealed," and questioned why staff did not inform the Board of this important jurisdictional issue. (R. p. 201). The application form specifically required disclosure of any restrictions, but the pending appeal status was not accurately communicated to the Board. (R. p. 382).

The HRB still granted preliminary approval without resolving this jurisdictional requirement, even though staff acknowledged that the project needed ZBOA approval as a Large Footprint Building. (R. p. 148).

D. Code Violations

The preliminary approval violated multiple provisions of the Beaufort Code, as documented in the hearing record:

Liner Buildings (Section 4.5.9): Mr. Trask testified that "if it's a mixed use live/work, the zoning Code requires liner buildings, there's no liner building here." (R. p. 185). While staff claimed an exception applied, the record lacks evidence that the Project provides the minimum 40% clear and unobstructed glazing required for the exception. (R. p. 230).

Onsite Parking (Section 4.5.10): Mr. Trask specifically cited the code requirement that "specific to T4 and T5, a minimum of 75 percent of all parking should be located behind the primary building or a liner building" and noted "Does this design have that? No." (R. p. 202). The Project provides no on-site parking, despite this being a mandatory requirement.

Preservation Standards: Historic Beaufort Foundation representative Lise Sundrla testified that the Project violates the Beaufort Preservation Manual requirement that "new construction in Beaufort must go beyond the aspect of form follows function and blend harmoniously with the fabric of the town." (R. p. 196). She further noted that the Beaufort Code requires that "new construction should complement the massing of neighboring buildings" and that when "large scale construction is proposed that is not consistent with the predominant building height and lot width of the surrounding area, special attention shall be paid to specific building design elements." (R. pp. 196-197).

ARGUMENTS

I. THE CIRCUIT COURT ERRED IN AFFIRMING THE HISTORIC REVIEW BOARD'S PRELIMINARY APPROVAL WHEN THE BOARD LACKED JURISDICTION TO ACT WITHOUT A FINAL SPECIAL EXCEPTION FROM THE ZONING BOARD OF APPEALS.

The Beaufort Code requires Large Footprint Buildings to obtain a Special Exception under Section 4.5.10(B)(5). (R. p. 148). 1 When the HRB granted preliminary approval on December 8, 2021, no final Special Exception was in place because the ZBOA's decision was under appeal to the Circuit Court. 2 Ms. Jenkins specifically informed the Board that "there are two pending appeals to Circuit Court involving the decision of the Zoning Board of Adjustment of this City, and there has not been a court date set." (R. p. 181).

Mr. Trask asked why the Board was not properly informed: "Are you aware of that? You probably are from the press, but why not from staff? Does it raise a question in your mind?" (R. pp. 201-202). This pattern of "mission omission" by staff, as Mr. Trask called it, deprived the Board of essential jurisdictional information needed for its decision. (R. p. 201).

While the circuit court argued that administrative proceedings can occur simultaneously, this overlooks a key point: the HRB cannot grant preliminary approval for a project that lacks the necessary underlying zoning authorization. The Special Exception is not just administrative; it defines the legal zoning framework within which the HRB must operate. At the time the HRB issued this preliminary approval, it lacked the jurisdiction to do so because the property was not properly zoned. For these reasons, and primarily, the circuit court's decision and the HRB's preliminary approval must be reversed.

II. THE CIRCUIT COURT ERRED IN FINDING SUBSTANTIAL EVIDENCE SUPPORTED THE HISTORIC REVIEW BOARD'S DECISION WHEN THE PROJECT FAILED TO COMPLY WITH MANDATORY REQUIREMENTS OF THE BEAUFORT CODE REGARDING LINER BUILDINGS AND ONSITE PARKING.

A. There is no evidence in the record that the applicant satisfied the Liner Building requirements.

Mr. Trask testified that the mixed-use classification requires linear buildings: "If it's a mixed-use live/work, the zoning Code requires linear buildings; there's no linear building here." (R. p. 185). While staff claimed Section 4.5.10.B.2.A provides an exception when buildings provide primary street entry and 40% clear glazing, (R. p. 230), the record contains no evidence that the HRB made specific findings regarding glazing percentages or that the Project meets the 40% threshold.

The staff presentation materials depict the project location context, highlighting the mixed-use nature of the surrounding Charles Street corridor that activates liner building requirements. (R. pp. 386-387). The submitted architectural drawings show commercial space "ON THE FIRST FLOOR FACING CHARLES STREET" without the necessary liner building configuration. (R. p. 383).

B. There is no evidence in the record that the applicant satisfied the parking requirements.

Mr. Trask specifically cited the mandatory parking placement requirement: "specific to T4 and T5, a minimum of 75 percent of all parking should be located behind the primary building or a liner building. Does this design have that? No." (R. p. 202). He questioned why staff failed to address this clear code violation: "Why doesn't city staff bring that up? It's mission omission." (R. p. 202).

The Project has no onsite parking spaces. The HRB's view that this requirement doesn't apply when no parking is provided makes the provision meaningless. It conflicts with the code's plain language, which requires designated parking for Large Footprint Buildings.

The preliminary application included a "REMOTE PARKING DIAGRAM" showing 34 designated spaces within 400 feet of the site, but this remote parking arrangement fails to meet the code's specific requirement that "a minimum of 75 percent of all parking should be located behind the primary building or a liner building." (R. p. 385). The applicant's parking diagram indicates zero on-site parking spaces, despite the Large Footprint Building requirements. (R. p. 385).

C. Neither the applicant nor the City staff attempted to demonstrate that the application complied with the Preservation Manual as required by City Code.

Ms. Sundrla testified that the Project violates fundamental preservation principles. She cited the Beaufort Preservation Manual's requirement that "new construction in Beaufort must go beyond the aspect of form follows function and blend harmoniously with the fabric of the town." (R. p. 196). She further noted that Beaufort Code Section 4.3.2.C requires that "new construction should complement the massing of neighboring buildings" and that when "large scale construction is proposed that is not consistent with the predominant building height and lot width of the surrounding area, special attention shall be paid to specific building design elements in order to articulate a building form that is appropriate to the neighborhood context." (R. pp. 196-197).

Ms. Sundrla demonstrated through visual evidence that "the mass and scale of this structure is the dominant, the dominant structure that—over all of the other buildings" in the streetscape. (R. p. 198). The record shows the HRB made no meaningful findings addressing these mandatory compatibility standards.

In reviewing the issuance of the preliminary injunction by the HRB, the circuit court found no substantial evidence in the record to support the Board's decision. This Court must reverse the decision of the circuit court for failing to hold this architectural review board to the standard required by state law, which mandates basing its decisions and actions on substantial evidence in the record before it.

III. THE CIRCUIT COURT ERRED IN DEFERRING TO THE HISTORIC REVIEW BOARD'S INTERPRETATION WHEN THE BOARD FAILED TO CONSIDER OR APPLY THE REQUIREMENTS OF THE BEAUFORT PRESERVATION MANUAL AND BEAUFORT CIVIC MASTER PLAN.

The circuit court's complete deference to the HRB's interpretations exceeds the limits of proper judicial review. The hearing record shows that the HRB did not follow mandatory code provisions and preservation standards.

A. The Board Failed to Apply Preservation Manual Requirements

Ms. Jenkins testified that "in the entire staff report, the only reference used was the city Code. There was one reference to the preservation manual, which this Board is charged with carefully analyzing." (R. p. 185). This failure to apply the Preservation Manual requirements constitutes an error of law requiring reversal.

B. The Board Interpreted the Code Inconsistently.

The record shows staff provided inconsistent interpretations of critical code requirements. While initially acknowledging parking requirements, staff later tried to bypass them entirely. Mr. Trask noted this pattern: "mission omission," where "they have continued to omit things which...is tantamount to lying." (R. p. 201).

C. The City HRB Staff Acknowledged Code Violations.

Even city staff acknowledged certain code violations during the hearing. Staff condition No. 1 required material changes to distinguish the building entrance, recognizing design flaws. (R. p. 425). Staff condition No. 3 prohibited cannon motifs as creating "a false sense of history on the project site." (R. p. 177).

D. Members of the Board Recognized Problems With the Application.

Multiple board members expressed concerns about code compliance during deliberations. Board member Lutz stated, "I'm not comfortable going for final because of the appeals that still exist," and noted, "This is a controversial project. It's a big box." (R. p. 227). Board member Prentice emphasized

the need to "control the things that are going to happen" with residential balconies in the historic district. (R. pp. 295-296).

The HRB's failure to make specific findings regarding compliance with mandatory code provisions, combined with the documented pattern of staff "mission omission," constitutes an error of law that warrants reversal, not deference.

E. City Staff Acknowledged Beaufort Code Violations

The staff's materials show awareness of code compliance issues. The decision letter from conceptual approval required future applications to address parking requirements, building type compliance, and preservation manual standards. (R. pp. 378-380). The architect's November 2021 submission noted "Lowered total building height an additional 1' (now 3'4" lower than previously approved submittal)" and included transparency diagrams, indicating ongoing code compliance challenges. (R. p. 384).

The project context photographs in the staff presentation illustrate the size and character of the surrounding historic streetscape, providing visual evidence of the compatibility issues raised by community members. (R. pp. 377, 386). The architectural drawings depict a building mass that greatly exceeds the scale of neighboring historic structures visible in the context photographs. (R. pp. 377, 392-393).

For all these reasons, the Board acted arbitrarily and capriciously, issuing this preliminary approval without evidence. The circuit court erred in relying on this decision without a factual basis, and its affirmation of the approval must be reversed.

IV. DID THE CIRCUIT COURT ERR IN FINDING THE APPELLANTS' APPEAL UNTIMELY WHEN THE HISTORIC DISTRICT REVIEW BOARD'S PRELIMINARY APPROVAL ADDRESSED SUBSTANTIVE COMPLIANCE ISSUES THAT WERE DISTINCT FROM THE CONCEPTUAL APPROVAL OF BASIC MASSING?

The circuit court fundamentally mischaracterized the nature of Appellants' challenge. The December 8, 2021, preliminary approval involved distinct determinations separate from the February 10, 2021, conceptual approval, as the hearing record establishes. A conceptual approval is a distinctly different process and decision by a board than a preliminary approval, as the record indicates. A conceptual approval, as its name suggests, is a high-level, general submission that lacks the detailed requirements of a preliminary approval. Therefore, each is a distinct action by the board, and each may, but need not, be appealed separately based on the nature and content of the decision made in each instance.

Here, the conceptual approval only addressed basic massing concepts, as confirmed by staff testimony. (R. p. 148). However, the preliminary approval process involved detailed compliance determinations with specific code requirements, as evidenced by:

Detailed Staff Conditions: The preliminary approval came with eight specific staff conditions addressing technical compliance issues, including column specifications, material details, awning specifications, and drainage elements. (R. pp. 424-425).

Code Compliance Analysis: Staff acknowledged that preliminary approval required detailed analysis of frontage types, transparency ratios, ceiling height deviations, and column material approvals—none of which were addressed at the conceptual stage. (R. pp. 170-177).

Board Recognition of Distinct Review: Board members acknowledged they were reviewing different issues than at the conceptual stage. Board member Lutz noted the importance of examining "the position of the old board" since "four of you weren't involved in that decision making process." (R. p. 192). This confirms that preliminary approval involved substantive new determinations.

Preservation Manual Compliance: The hearing record shows that compliance with the preservation manual—key to the Appellants' challenge—was not sufficiently addressed until the

preliminary review. Ms. Jenkins stated that "in the entire staff report, the only reference used was the city Code. There was one reference to the preservation manual." (R. p. 185).

The conceptual approval conditions specifically required the applicant to "demonstrate that the proposed development meets the bicycle and motor vehicle parking requirements" and to show compliance with multiple code sections not previously analyzed. (R. p. 378). The preliminary approval process involved detailed staff analysis of transparency ratios, ceiling height deviations, and material specifications—technical compliance issues separate from the basic massing concepts addressed at the conceptual stage. (R. pp. 378-380).

The circuit court's interpretation would effectively remove the opportunity for meaningful appellate review of preliminary approvals, as any significant issue could be considered to have been "conceptually approved" earlier on. This conflicts with the purpose of the stepped approval process, which is designed to include separate reviews at each stage, as shown by the detailed conditions set during preliminary approval. (R. pp. 424-425).

The Circuit Court erred as a matter of law in establishing this reasoning as a bar to the Appellants seeking review of the incorrect decision by the Board in issuing the preliminary injunction, based on all the reasons outlined in this brief. The Appellants waived nothing by not appealing the conceptual approval of generalized massing concepts and waiting until they saw (or did not see, since they were not submitted) the more detailed application at the preliminary injunction stage. This Court should overturn this holding by the circuit court as a legal error.

V. DID THE CIRCUIT COURT ERR IN APPLYING PRINCIPLES OF MOOTNESS WHEN APPELLANTS' CHALLENGE TO THE PRELIMINARY APPROVAL RAISED ONGOING LEGAL VIOLATIONS THAT PERSIST REGARDLESS OF SUBSEQUENT FINAL APPROVAL?

Further compounding its legal error in finding that the Appellants waited too long to appeal the preliminary injunction because they did not appeal the conceptual approval, the circuit court goes

a step further and states that since the Appellants also did not file a separate appeal of the final approval, there could be no appellate review of the Board's decision to issue the preliminary injunction. This, too, is a legal error.

The circuit court's mootness analysis ignores the ongoing legal consequences of the preliminary approval violation and the procedural irregularities documented in the hearing record.

A. The Issuance of the Preliminary Approval Is A Continuing Violation of the Beaufort Code With Precedential Effect and Meaning that Continues Despite Final Approval.

The preliminary approval established binding decisions regarding Code compliance that continue to impact Appellants' interests. As several speakers noted during the hearing, this approval sets a precedent for future development in the historic district. Ms. Jenkins highlighted that projects like this threaten "the integrity of the overall historic district" and should be "considered as such and protected in their entirety." (R. p. 188).

B. The Record Shows A Pattern of Procedural Violations By the Applicant and Staff.

The hearing record details a pattern of staff failures that extend beyond this individual project. Mr. Trask testified about a systematic issue of "mission omission," where staff fails to inform the Board of essential jurisdictional requirements. (R. p. 201). He observed that "For one reason or another, they have continued to omit things which...is tantamount to lying," making the staff's report arbitrary and capricious." (R. p. 201).

C. The Erroneous Issuance of the Preliminary Injunction Resulted from Actions Which Are Capable of Repetition Yet Evading Review

Board member Lutz acknowledged the broader implications: "This is a controversial project. It's a big box. There are numerous contradictions that have been brought forward about—with the Code." (R. p. 227). The expedited nature of the approval process, combined with the pattern of staff omissions, demonstrates that similar violations are likely to recur and evade appellate review without guidance from this Court.

A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. *Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009).

Here, a reversal would set an important precedent concerning: (1) the distinct nature of preliminary versus conceptual approval; (2) mandatory compliance with preservation standards; and (3) the requirement for final ZBOA approval before HRB action. These rulings have ongoing practical effects beyond this specific project and warrant review and a decision by this Court.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

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