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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 REPLY BRIEF OF APPELLANTS

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INTRODUCTION

Respondents' brief asks this Court to shield the HRB's decision from meaningful review by invoking discretion, collateral estoppel, and preservation doctrines. Their arguments cannot overcome the fundamental problems with the preliminary approval: (1) the HRB acted without a final Special Exception in place; (2) the Project violates mandatory Code requirements for liner buildings and parking; (3) the HRB failed to follow the Preservation Manual; and (4) the preliminary approval involved different issues from the conceptual approval, making the appeal timely.

ARGUMENT

I. THE HRB'S LACK OF JURISDICTION REQUIRES REVERSAL

Respondents misconstrue Appellants' jurisdictional argument. This is not about "sequential ordering" or which board acts first. (Resp. Br. at 7). It concerns whether the HRB can approve a project that explicitly requires a Special Exception when no final Special Exception has been granted.

The Beaufort Code requires Large Footprint Buildings to obtain a Special Exception under Section 4.5.10(B)(5). At the December 8, 2021, hearing, the Special Exception was being appealed to the Circuit Court. (R. p. 420). Ms. Jenkins told 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 staff did not inform the Board: "You were not informed that the Zoning Board of Appeals decision is being appealed." (R. p. 201).

The Circuit Court's conclusion that there is "no provision in the Beaufort Code requiring ZBOA approval of any project prior to HRB approval" (R. p. 013) misses the point. The Code does not need to specify the sequence when it already states that Large Footprint Buildings *require* a Special Exception. Without a final, valid Special Exception, the property lacked the necessary zoning authorization for HRB approval.

Respondents cite no authority permitting an approval board to ignore a mandatory zoning requirement simply because another board might fix the issue later. The HRB's initial approval was premature and lacked proper jurisdiction.

II. COLLATERAL ESTOPPEL DOES NOT APPLY

Respondents' collateral estoppel argument fails because the previous litigation involved different projects at different approval stages with distinct factual records.

The Second Lawsuit (2021-CP-07-01231) involved the Hotel Project and Parking Garage Project. (Resp. Br. at 2, 6). This case pertains to the Apartment Project. Whether the HRB properly approved *this specific project at this preliminary approval stage with this particular factual record* was not addressed in the previous cases.

Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim. *Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986).

The issue here—whether the preliminary approval of the Apartment Project on December 8, 2021, was proper—is not the same as the issues decided about different projects in separate proceedings. Respondents cannot immunize every future HRB decision from being challenged based on litigation concerning unrelated projects.

III. THE HRB'S DECISION LACKS SUBSTANTIAL EVIDENCE ON MANDATORY REQUIREMENTS

A. Liner Buildings

Respondents claim the HRB "specifically granted approval of the glazing." (Resp. Br. at 8). But approval is not the same as findings. The record contains no evidence that the HRB determined

the Project meets the mandatory 40% clear and unobstructed glazing threshold required by Section 4.5.10(B)(2) for the liner building exception.

Mr. Trask testified: "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 HRB made no specific findings on glazing percentages. The architectural drawings show commercial space "ON THE FIRST FLOOR FACING CHARLES STREET" (R. pp. 385-419) but contain no glazing calculations or analysis demonstrating 40% compliance.

B. Parking Requirements

Respondents contend that since the Project does not include on-site parking, the parking placement requirement does not apply. (Resp. Br. at 8). This interpretation makes Section 4.5.10(B)(7)(a) meaningless—any developer could bypass the requirement by simply not providing on-site parking.

The Code states: "A minimum of 75% of all parking shall be located behind the primary building or a Liner Building." Beaufort Code § 4.5.10(B)(7)(a). Mr. Trask testified: "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).

The Project provides a "REMOTE PARKING DIAGRAM" showing 34 spaces within 400 feet of the site (R. p. 385), but no on-site spaces. The HRB's interpretation—adopted by the Circuit Court—conflicts with the Code's clear language requiring designated parking for Large Footprint Buildings.

C. Preservation Manual Compliance

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). Ms. Sundrla demonstrated that the Project violates the 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. pp. 197-300).

Respondents assert these are "discretionary" interpretations. (Resp. Br. at 12-13) However, the HRB cannot exercise discretion without first applying the mandatory standards. The record demonstrates that the HRB failed to adequately consider the requirements outlined in the Preservation Manual.

D. The HRB Made No Findings

Respondents acknowledge that the HRB considered "conflicting evidence" on these issues. (Resp. Br. at 13). Exactly. The HRB received conflicting testimony regarding liner buildings, parking, and Manual compliance but did not make any findings to resolve those conflicts. Without such findings, there is nothing for this Court to review under the substantial evidence standard. *Gurganious v. City of Beaufort*, 317 S.C. 481, 486-487, 454 S.E.2d 912, 915-916 (Ct. App. 1995).

IV. APPELLANTS PRESERVED ALL ISSUES

Respondents argue that Appellants failed to preserve various arguments. (Resp. Br. at 14-15). This is incorrect.

Appellants' Petition of Appeal specifically challenged: (1) the HRB's jurisdiction without ZBOA approval; (2) violations of liner building requirements; (3) parking requirement violations; and (4) non-compliance with the Preservation Manual. Appellants' Motion to Reconsider explicitly sought "a ruling on the merits" to "preserve issues for appellate review." (R. pp. 016-022)

The fact that Appellants refine legal arguments or cite additional authority on appeal does not mean they failed to preserve the issue. The issues were fairly and reasonably presented to the Circuit Court. Moreover, the Circuit Court raised collateral estoppel and mootness sua sponte. Appellants are

entitled to respond to these alternative grounds on appeal, even though the Circuit Court did not provide Appellants an opportunity to brief them below.

V. THE PRELIMINARY APPROVAL ADDRESSED DISTINCT ISSUES FROM THE CONCEPTUAL APPROVAL

The Circuit Court erred in finding the appeal untimely because it confused conceptual approval with preliminary approval. These are separate stages that deal with different issues.

The February 2021 conceptual approval addressed only "basic massing concepts." (R. pp. 378-380). It included thirteen detailed staff conditions requiring future demonstration of compliance with parking requirements, building types, frontage standards, and Preservation Manual requirements. (R. pp. 378-380).

The December 2021 preliminary approval included detailed compliance assessments with specific Code requirements, demonstrated by:

- **Eight specific staff conditions** addressing technical compliance issues, including column specifications, material details, and awning specifications. (R. pp. 424-425).
- **Detailed analysis of code compliance** for frontage types, transparency ratios, ceiling height deviations, and column materials—none addressed at the conceptual stage (R. pp. 424-425).
- **Board recognition of distinct review.** Board member Lutz emphasized the importance of examining "the position of the old board" since "four of you weren't involved in that decision making process," confirming that preliminary approval involved substantive new determinations. (R. pp. 227-228).
- **Preservation Manual compliance** was not adequately addressed until the preliminary review. Ms. Jenkins stated that the staff's report contained almost no references to the Manual. (R. p. 185).

The Circuit Court's interpretation would prevent meaningful appellate review of preliminary approvals, as any major issue could be considered "conceptually approved" earlier. This conflicts with the purpose of the stepped approval process, which involves separate reviews at each stage.

VI. THE APPEAL IS NOT MOOT

Respondents argue that the subsequent Final Approval renders this appeal moot. Not so. If the Preliminary Approval was invalid, the Final Approval that "ratified" it is equally invalid.

More importantly, this case raises ongoing legal issues with practical consequences beyond this particular project.

- **Precedential effect.** As Ms. Jenkins noted, this approval jeopardizes "the integrity of the overall historic district" and establishes a precedent for future developments. (R. p. 188)
- **Pattern of violations.** Mr. Trask documented a pattern of staff "mission omission" where essential information is withheld from the Board. (R. pp. 200-204). Board member Lutz acknowledged: "This is a controversial project. It's a big box. There are numerous contradictions that have been brought forward about—with the Code." (R. pp. 227-228)
- **Capable of repetition yet evading review.** The expedited approval process, combined with the pattern of staff omissions, demonstrates that similar violations will recur and evade appellate review without guidance from this Court.

A reversal would set an important precedent regarding: (1) the distinct roles of preliminary versus conceptual approval; (2) mandatory compliance with preservation standards; and (3) the necessity of a final Special Exception prior to HRB action. These issues continue to have practical implications that deserve review.

CONCLUSION

The HRB approved a project that breaches mandatory Code provisions, acted without a final Special Exception, and failed to follow Preservation Manual requirements. The Circuit Court erred by fully deferring to unexplained conclusions and in labeling the appeal as untimely or moot. This Court should reverse and remand with instructions to deny the Preliminary Approval or, alternatively, remand to the HRB for compliance with Code requirements and accurate factual findings.

Respectfully submitted,

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