

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Mar 13 2026

S.C. 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.

FINAL REPLY BRIEF OF APPELLANTS
PAUL R. VANNATTA and JENNIFER S. VANNATTA

HOOD LAW FIRM, LLC

172 Meeting Street
Post Office Box 1508
Charleston, SC 29401/02
Ph: (843) 577-4435
Fx: (843) 722-1630

James B. Hood (70212)
james.hood@hoodlaw.com
Deborah Harrison Sheffield, *Of Counsel* (2757)
deborah.sheffield@hoodlaw.com

Attorneys for the Appellants
Paul R. Vannatta and Jennifer S. Vannatta

TABLE OF CONTENTS

	Page
Clarification of Facts.....	1
Clarification of the Standard of Review	7
Clarification of Spot Zoning Analysis under <i>Ani Creation</i>	8
Argument in Reply on Statute of Limitation Argument	9
CONCLUSION.....	10

TABLE OF AUTHORITIES

Cases	Page
<u>Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals</u> , 440 S.C. 266, 890 S.E.2d 748 (2023)	8
<u>Blanks v. Rawson</u> , 296 S.C. 110, 370 S.E.2d 890 (Ct. App. 1988)	5
<u>Conway v. City of Greenville</u> , 254 S.C. 96, 173 S.E.2d 648 (1970)	6
<u>Dawkins v. Fields</u> , 354 S.C. 58, 580 S.E.2d 433 (2003).....	6
<u>Grays Hill Baptist Church v. Beaufort Cnty.</u> , 431 S.C. 630, 850 S.E.2d 29 (2020)	7
<u>Harbit v. City of Charleston</u> , 382 S.C. 383, 675 S.E.2d 776 (Ct. App. 2009)	1
<u>Hill v. The Beach Company</u> , 279 S.C. 313, 306 S.E.2d 604 (1983).....	5
<u>James v. City of Greenville</u> , 227 S.C. 565, 88 S.E.2d 661 (1955).....	6
<u>Quail Hill, LLC v. Cnty. of Richland</u> , 379 S.C. 314, 665 S.E.2d 194 (Ct. App. 2008), <i>aff'd in part, rev'd in part on other grounds</i> , 387 S.C. 223, 692 S.E.2d 499 (2010)	9
<u>Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals</u> , 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000)	7
 Statutes	
S.C. Code Ann. § 5-7-270.....	10
S.C. Code Ann. § 6-29-760.....	9

Clarification of Facts

The Vannattas offer the following points for clarification of certain facts as stated by the Town:

1. In the section designated “Relevant Background Facts,” the Town states facts regarding the Vannattas’ knowledge of the dock limitation when they bought the property. The Town also argues that the Vannattas’ challenges fail because the zoning ordinance was already in place at the time they purchased the property, citing to Harbit v. City of Charleston, 382 S.C. 383, 387, 675 S.E.2d 776, 778 (Ct. App. 2009). However, while it is accurate that Section 21-75(B)(2) was already in place when the Vannattas purchased the property, Harbit does not support the argument that that fact is conclusive as to whether the Zoning Board’s decision to deny the Appellants a dock permit constitutes unconstitutional spot zoning.

In Harbit, a property owner made several claims arising from the city’s denial of an application to rezone a single-family residential property for limited commercial use. In rejecting the plaintiff’s substantive due process challenge, the Court noted that the plaintiff was aware of the zoning at the time of purchasing and had knowledge that a prior attempt to rezone had been denied. Here, the Vannattas have not made any attempt to rezone the property. The issue is permitting for a dock and the fact that Section 21-75(B)(2) has been in place since 2004 does not preclude them from maintaining their challenges to the unconstitutional spot zoning.

Similarly, the Town also references that the Vannattas made a prior application for a variance from the Ordinance in 2014. However, the Record shows that the variance request did not involve a dock; rather it involved a reduction of a setback. [ROA 36-38; BZA Record 008-010. See also application ROA 94-95; BZA Record 066-067.] Again, that previous variance

request is irrelevant to the issue of whether the Zoning Board's decision to deny the Appellants a dock permit constitutes unconstitutional spot zoning.

2. In the section designated "Legislative History of Ordinance Section 21-75," the Town contends that the Ordinance was intended to preserve the "viewshed:"

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 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). [Respondent's Brief, p. 4.]

However, the official Record does not support that particular contention.

First, none of the public comments of the citizens (individually or collectively) made during the legislative process are relevant to the legal issue of the unconstitutional spot zoning. No matter how many citizens oppose docks because they want to protect their view of the marsh, the constitutional protections set the standard for whether the permitting restrictions can legally impose limitations on a property-owner's rights. Further, the term "viewshed" found in the BZA Record as cited by the Town only appears in reports of Staff or public comments.¹ There is no reference to "viewshed" in the official history of the Ordinance as found in the official BZA Record in this action.

The Comprehensive Plan, as found in the BZA Record, recounts amendment to the zoning Ordinance: "This 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

¹ References to "viewshed" are found in the staff reports purporting to summarize the history of the Ordinance. [ROA 30, 87, 135; BZA Record 002, 059, 107.] There was also a reference to "viewshed" in the objection of a citizen: "The sheer scale of the proposed structure will be an eyesore that will dominate our viewshed." [ROA 219, 234; BZA Record 191, 206.]

construction that was incompatible in scale and mass with existing Island development.” The Plan also states that the aim of the Zoning Ordinance is “to provide ‘a comfortable home at the beach, safe and friendly, where individuality and diversity are celebrated, neighborhoods are respected, Island resources are appreciated, history intertwined, and families and neighbors seek to thrive.’” [ROA 618; BZA Record 590.] This provision does not speak of any aim to protect the view of other property owners or general citizens.

Likewise, the intent and purpose of the RC [Recreational] Districts as stated in Section 21-67 of the Zoning Ordinance, set forth below, does not mention views or viewsheds:

Sec. 21-67. Findings and intent of RC Area Districts.

A. RC Area Districts’ findings of fact. The Town Council of the Town of Sullivan’s Island finds the following:

(1) The RC Areas greatly contribute to the health, safety and welfare of the residents of Sullivan’s Island and that they provide Island residents as well as visitors, with countless hours of pleasurable activity and rest and relaxation, which is important to the goal of public health, safety and welfare;

(2) The boundaries of the RC Areas are constantly shifting over unpredictable periods of time, in that they are composed of sand dunes and vegetation that ceaselessly change, and that these areas are prone to flooding, and, therefore, not suitable to development for any purpose;

(3) The Town of Sullivan’s Island originated as a health resort for all the people of the State of South Carolina, and that the RC Areas are vital to the purpose, and useful for that purpose only so long as they remain in a natural, undeveloped condition subject to the changing tides;

(4) The RC Areas, left in their natural state, provide protection to adjoining landowners and their property from the hazards of high tides and floods caused by hurricanes, tropical storms and seasonal tides;

(5) The construction of the Santee-Cooper Diversion Canal and subsequent changes in the volume of water flowing through Charleston Harbor may cause further changes of an unknown nature upon the shoreline of Sullivan’s Island, all of which the Town Council find to be a threat to all of the residents and property owners of the Town; and,

(6) The RC Area are of a particular beauty in its natural state so as to provide aesthetic value necessary to the public health, safety and welfare of Island residents and visitors, and in keeping with the historic uses of Sullivan’s Island.

B. Intent and uses in RC Area Districts. The RC Areas shall be preserved in their natural state, except for the trimming, pruning and cutting of bushes and trees as provided in herein, as areas of recreation and conservation for the purpose of protecting the ecology, the adjoining property, and the environment, and enhancing and protecting the safety and welfare of the Town and its residents. Further, any activity shall be prohibited in these areas that would detract from their natural state, including, but not limited to, the activities stated herein, so as to maintain this natural state for the public enjoyment and as protection... [ROA 610; BZA Record 582.]

The Town’s focus on “viewshed” as the justification for the Ordinance is not supported by the official documents as found in the BZA Record. Further, even if there was a valid basis for conditioning dock permits to protect scenic views, the photographs submitted into the record demonstrate the scenic marsh vista with other private docks in clear view and clearly establishes that the proposed dock would have no detrimental impact to the community’s scenic vista. [ROA 223-30, 630-31; BZA Record 0195-0202, 0602-0603.]

3. In the section titled “The Town’s Comprehensive Plan,” the Town refers to certain key characteristics such as “openness of the landscape” and “a park-like appearance with expansive views and openness.” [Respondent’s Brief p. 4.] The Plan does, in fact, identify “four major points that define the character of Sullivan’s Island” which included “Openness of the landscape.” [ROA 613; BZA Record 585.] However, the Plan further discusses this landscape in the context of the height of hedges and fences, and plantings of wildflowers:

Related to this informality is the openness of the landscape on the Island. Many yards do not have tall hedges or tall fences common in some other island communities. The Island exhibits a park-like appearance with expansive views and openness. In the past, the Sullivan’s Island’s landscape has been characterized by large expanses of spring and summer wildflowers on both public and private land. This feature added substantially to the concept of Sullivan’s Island’s special sense of place and informality. [ROA 613; BZA Record 585.]

The provisions do not evidence any concern for whether docks would impact views of the marsh.

On the other hand, the Plan does explicitly address docks as acceptable for recreational purposes.

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). [ROA 615; BZA Record 587 (emphasis added).]

As seen, while the Plan refers to “the view corridor,” there is no definition or description as to what constitutes the “view corridor” in the RC-2 area district in either the Comprehensive Plan or the zoning ordinances. Further, this provision speaks to minimizing impact without preserving any absolute right to unobstructed views².

The Town also contends that the reference to allowing docks “where otherwise permitted by applicable laws and regulations” includes permitting under Section 21-75(B). However, the Town’s reference to “*otherwise* permitted by applicable laws and regulations” logically contemplates laws and regulations apart from the Town’s own ordinances. It obviously refers to permitting by other authorities/jurisdictions such as the South Carolina Office of Coastal Resource Management (“OCRM”) and the United States Army Corps of Engineers. As documented in the Record, the Vannattas applied for the appropriate permits from OCRM and the Corps which were granted and establishes that their dock is “otherwise permitted” as contemplated by the Plan. These

² Of note, “South Carolina does not recognize a prescriptive easement of view.” Hill v. The Beach Company, 279 S.C. 313, 306 S.E.2d 604 (1983); Blanks v. Rawson, 296 S.C. 110, 115, 370 S.E.2d 890, 893 (Ct. App. 1988). Notably, the Town has previously taken the position that “there is no common-law right to a view...” Bluestein v. Town of Sullivan’s Island, Ct. App. No. 2015-002550; p. 29; *see* <https://ctrack.sccourts.org/public/caseView.do?csIID=61014>; 2016WL10572820; 2016 SC APP. CT. BRIEFS LEXIS 707.

permitting authorities granted approvals to build the proposed dock after thorough analysis and review was undertaken with respect to preservation and environmental protection of the surrounding area. Thus, there is no real point in issue about whether the proposed dock would interfere with the “long-term preservation of the land” or constitute “commercial activity or subdivision.” Ultimately, under the evidence in this Record, the denial of the Vannattas’ application for a dock permit is inconsistent with the Comprehensive Plan.

4. In a section titled as “Appellants’ Prior Attempt to Change the Law,” the Town recounts that in February 2020, Paul Vannatta had unsuccessfully requested permission to build a dock attempted to change the Ordinance. The Record evidences that Mr. Vannatta had appeared at a meeting of the Town Council’s Land Use & Natural Resources Committee on February 13, 2020, where he was recognized as a resident seeking to build a dock in the area where they are restricted by the Ordinance and he was invited to speak. [ROA 312-14; BZA Record 284-86.] This encounter was not an official application or procedural action, and it is not relevant to the issue of law regarding the unconstitutionality of Section 21-75(B)(2) as raised and preserved in this BZA appeal.

5. In reporting the facts of the proceedings at the BZA Meeting, the Town recounts the legal opinions offered by the Zoning staff. First, the legislative history of Section 21-75, to the extent it is relevant, should be scrutinized based on the actual documents, not the staffer’s summary/recharacterization, as discussed above. Further, the staff’s opinion about the constitutionality of the Ordinance is irrelevant. *See Dawkins v. Fields*, 354 S.C. 58, 66–67, 580 S.E.2d 433, 437 (2003) (“expert testimony on issues of law is rarely admissible”). The question of whether Section 21-75(B)(2) is unconstitutional is a matter for the Court. *Conway v. City of Greenville*, 254 S.C. 96, 104, 173 S.E.2d 648, 652 (1970); *James v. City of Greenville*, 227 S.C.

565, 585–86, 88 S.E.2d 661, 671 (1955); Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000).

Clarification of the Standard of Review

The applicable standard of review of decisions of a zoning board defers to findings of fact under an any evidence standard, but any and all questions of law are for the court and are subject to de novo review. Grays Hill Baptist Church v. Beaufort Cnty., 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020); Conway v. City of Greenville, supra. In this appeal, the documents in the Record generally establish the facts without any genuine dispute. However, one point in dispute is the number of lots that are affected by the dock permitting limits of Section 21-75(B)(2). In defending the constitutionality of the Ordinance, the Town insists that it affects 39 properties on a mile-long stretch mile along the marsh front.

The evidence in this Record, comprised of plats and photos, establish that there are 39 lots/parcels/properties located in the designated area between Station 18 and Station 27, but with the other specific constraints of §21-75(B)(2), the real effect of that Ordinance is to prohibit the construction of docks at 1802 Back Street, and possibly approximately four other parcels. [ROA 624, 625, 622; BZA Record 0596 (illustrating the OCRM’s limits of 1,000 feet to access navigable waters); 0597 (illustrating parcels where docks must cross a creek over eight feet wide); 0594 (illustrating that the majority of parcels in this zone have no otherwise legal or realistic access to the navigable waters). Remarkably, the fact that only five properties are collectively affected by §21-75(B)(2) was recognized by the Planning Commission: “Under the current ordinance there could be 5 possible new docks.” [ROA 167; BZA Record 139 – containing official data from Commission Member (Bobby Thompson).] Accordingly, the fact that there are 39 properties in the applicable stretch is not the decisive fact to the legal constitutional question of spot zoning –

the fact that only 5 properties are prohibited from constructing a dock is the key and establishes the factual foundation for the legal conclusion that Section 21-75(B)(2) is unconstitutional.

Clarification of Spot Zoning Analysis under *Ani Creation*

The Town argues that the spot zoning argument 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. In support of that argument the Town cites to Ani Creation, Inc. v. City of Myrtle Beach Bd. of Zoning Appeals, 440 S.C. 266, 890 S.E.2d 748, 756 (2023), “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.” The Court’s qualifying use of “oftentimes,” does not support any contention that spot zoning can only arise in rezoning situations.

Under the proper *Ani* analysis, as more fully discussed in the Appellants’ opening brief, the prohibition of a dock at the Vannattas’ property located between Station 18 and Station 27 constitutes spot zoning because it imposes a significant land use restriction that is not imposed on all neighboring properties. Further, the spot zoning is invalid because (1) the Ordinance does not form a part of the Town’s comprehensive zoning plan which expressly contemplates permitting for docks for recreational uses in RC area; and (2) the spot zoning of these five lots fails to promote the common welfare and results in clear injustice. The Record shows that the common welfare in protecting the marsh wetlands has been addressed by the OCRM and/or Army Corps in that permitting process.

The Town relies on certain 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. [ROA 223-30; BZA Record

0195-202.] The Town argues that these photographs show that members of the “community stop by frequently to rest, relax and enjoy the unobstructed views” of the marsh; and that preservation of these unobstructed views and public recreational opportunities serves the common welfare. However, as stated yet again, the Comprehensive Plan contemplates the building of docks for recreational use and nothing in the Plan or the common law supports the contention that social media streaming outbalances the property rights of these particular five lots.

Argument in Reply on Statute of Limitation Argument

The Town argues, as an additional sustaining ground, that the challenge to Zoning Ordinance, Section 21-75(B)(2) is time barred under S.C. Code Ann. § 6-29-760(D)³, which provides that:

(D) No challenge to the adequacy of notice or 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.

However, this provision does not apply to a challenge to the constitutionality of the Town’s Ordinance. Section 6-29-760 sets forth procedures for enactment or amendment of zoning regulations or map, regarding notice, and the language of subsection (D) references challenges to notice and procedural requirements. There is nothing in this statute that sets a time limit to challenge the constitutionality of a zoning ordinance.

The Town cites to Quail Hill, LLC v. Cnty. of Richland, 379 S.C. 314, 320, 665 S.E.2d 194, 197 (Ct. App. 2008), *aff’d in part, rev’d in part on other grounds*, 387 S.C. 223, 692 S.E.2d 499 (2010), for the proposition that §6-29-760 bars challenges to zoning ordinances brought long

³ Of note, Circuit Court did not address this issue. [ROA 6; Order p. 3 n. 1.]

after enactment. However, review of that opinion does not support application to the constitutional challenges presented in this case. In Quail Hill, a property buyer challenged the validity of a 1978 zoning ordinance on the ground of certain irregularities in connection with the approval of the zoning ordinance. While the Court of Appeals held there that the buyer was statutorily barred from challenging the validity of the zoning ordinance after the passage of over twenty years, that holding does not support the Town's argument that the Vannattas are time barred from presenting their constitutional challenges.

The opinion in Ani Creation is compelling on this point. There, the property owners/businesses presented a challenge to an ordinance on the multiple grounds, including an argument that the ordinance was defective as a matter of law because it was not adopted following the procedure set forth S.C. Code Ann. § 5-7-270 (requiring generally that municipal ordinances be "read two times on two separate days with at least six days between each reading" prior to being adopted and having the force of law). The Court held that they were statutorily barred from raising this issue by Section 6-29-760(D), citing Quail Hill. Notably, however, that time bar was not applied to the other constitutional challenges which parallel the challenges raised by these Appellants in this case. The time limit of §6-29-760 only applies to challenges to the process of the enactment, not to constitutional spot zoning, substantive due process, or equal protection challenges such as presented here.

CONCLUSION

WHEREFORE, based on the foregoing, the facts set forth in the Record on Appeal, when applied to the proper legal principles, show that the order of the Circuit Court should be reversed, and the matter should be remanded with directions for the Town to issue a permit for the proposed dock.

Respectfully submitted,

HOOD LAW FIRM, LLC

172 Meeting Street
Post Office Box 1508
Charleston, SC 29401/02
Ph: (843) 577-4435
Fx: (843) 722-1630

/s/ James B. Hood

James B. Hood (70212)

james.hood@hoodlaw.com

Deborah Harrison Sheffield, *Of Counsel* (2757)

deborah.sheffield@hoodlaw.com

Attorneys for the Appellants

Paul R. Vannatta and Jennifer S. Vannatta

March 12, 2026