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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Appellate Case No.: 2026-000122

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Case No.: 2024-CP-26-08031

Michael Smith, Cynthia Vanaman-Setzer, Clarence E. Frazer, Richard J. Owen, and Erika K. Farthing ..... Plaintiffs

of whom Michael Smith, Cynthia Vanaman-Setzer, and Clarence E. Frazer are the ..... Appellants

vs.

The City of Myrtle Beach, South Carolina, and GD CP Properties, LLC..... Respondents

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INITIAL BRIEF OF APPELLANTS

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1. Whether the circuit court erred in applying S.C. Code Ann. § 6-29-1150 instead of S.C. Code Ann. § 6-29-800 to Appellants' challenge to a zoning determination.

2. Whether the circuit court erred in dismissing Appellants' appeal as untimely, where the Zoning Ordinance of the City of Myrtle Beach, South Carolina § 504 defines the exclusive triggering events for the appeal period and no such event occurred.

3. Whether the circuit court erred in concluding that no appealable zoning administrator action was properly before the City of Myrtle Beach Board of Zoning Appeals, while simultaneously affirming dismissal as untimely.

STATEMENT OF THE CASE

This appeal arises from decisions of the City of Myrtle Beach ("the City") Board of Zoning Appeals ("BZA") dismissing Appellants' zoning appeals as untimely and from an order of the circuit court affirming that dismissal. Appellants filed appeals to the BZA on July 15, 2024, challenging the City's determination that property located within the Cane Patch Tract of the Grande Dunes Planned Unit Development ("PUD") was not subject to R-7 zoning restrictions. (Smith Appeal, R., p. ___ and Setzer Appeal, R., p.___). After a hearing on September 12, 2024, the BZA entered orders dismissing the appeals as untimely. (BZA Order on Smith Appeal, R., p. __ and BZA Order on Setzer Appeal, R., p.__).

Appellants timely appealed the BZA's decisions to the circuit court pursuant to S.C. Code Ann. § 6-29-840 by filing and serving a Notice of Appeal and Summons and Petition on November 22, 2024 (R., p. ___). Respondent GD CP Properties, LLC filed a motion to dismiss to the Notice of Appeal on December 9, 2024 (R., p. ___) and the City of Myrtle Beach filed a motion to dismiss on December 10, 2024 (R., p. ____). The circuit court heard the Motions to Dismiss on March 26, 2025. By order dated October 7, 2025, the circuit court affirmed the BZA's dismissal of both appeals, concluding both appeals were untimely and that no appealable zoning administrator decision had been identified. (Order, R., p. ____). The circuit court denied the Appellants' Rule 59(e) Motion to Reconsider, Alter or Amend by Form 4 Order entered on December 19, 2025 (Order, R., p. _____).

Appellants served their Notice of Appeal in this Court on January 16, 2026. (R., p. ___).

STATEMENT OF FACTS

This appeal arises from the dismissal of Appellants' challenge to the City's zoning determination, which was applied in connection with the Planning Commission's approval of a plat on a small parcel within the Cane Patch Tract of the Grande Dunes PUD. The case presents a narrow but dispositive question: whether the time to appeal can run in the absence of the formal, public-record action required by Zoning Ordinance of the City of Myrtle Beach Ordinance § 504 ("the Ordinance"). (Ordinance § 504, R., p.__)

As the City never issued a written zoning administrator decision or a permit determination placing its position in the public record, no triggering event occurred. The BZA, nevertheless, dismissed the appeal as untimely, and the circuit court affirmed while also concluding that no appealable zoning decision had been identified. (Order, R., p. ___).

A. The Grande Dunes PUD and the Applicable Zoning Framework

The subject property ("the Property") which is at the center of this appeal lies within the Grande Dunes PUD, a legislatively enacted zoning framework governing land use within the development. (Color-labeled diagram in City's Record on Appeal, p. 1136, R., p. ___). A PUD establishes binding land use classifications and development standards that remain in effect unless amended by ordinance. The Property comprises a 14.26 acre parcel of land situated in the extreme northeast corner of the larger Cane

Patch Tract within the Grande Dunes PUD. The Property represents a portion of the larger 226 acre "Cottages at Cane Patch" which was the focus of the 2022 litigation and settlement agreement discussed below. The southern boundary of the Property directly abuts the Grade Dunes residential communities of Siena Park (sometimes known as Sienna Park) and Seville. (Cottages CAB Approval, Exhs. 1, 1A and 2, and diagram on p. RR001136, R., p. ___).

In 2002, the City adopted Ordinance No. 2002-28 imposing R-7 zoning requirements on portions of the Cane Patch Tract, including the Property. (PUD Amendment, City's RR994-1023, R., p.__). These requirements include minimum lot sizes and development standards applicable to residential uses within the tract. (Ordinance 1603.B, R., p.__).

In 2013, the City adopted Ordinance No. 2013-40, amended portions of the PUD, including setback provisions, but that amendment did not remove or modify the R-7 zoning classification applicable to the property. (Proposed Amendment to the Grande Dunes PUD, R., p. ___). Although Exhibit 1-A referenced in the 2002 ordinance was not included in the final and passed 2013 ordinance, the amendment contains no language eliminating or altering the R-7 designation. The record is clear that Ordinance 2013-40 only dealt with reducing rear yards setbacks for pools and screen pool enclosures (Ordinance 2013-40, R., p. ___).

No subsequent ordinance in the record removed or amended the R-7 zoning classification applicable to the Cane Patch Tract. On February 7, 2022, Kelly Mezzapelle, with the City's Planning and Zoning department, confirmed in writing that

the zoning remained the same as when it was adopted by the City in 2002. (Falatovich emails and Mezzapelle email, City's RR492, R., p. ___).

B. The Appellants and Their Relationship to the Property

Appellants are residents and property owners in neighborhoods adjacent to or in close proximity to the Property that is the subject of the proposed subdivision (City's RR001136, R., p. ___). Their properties are located within or immediately bordering the Grande Dunes PUD and are directly affected by development within the Cane Patch Tract. The neighboring subdivisions are referred to as the Northwoods community, Siena Park (sometimes referred to in the County records as Sienna Park), and Seville.

Appellant Michael Smith, a resident of Siena Park, submitted an appeal application to the BZA on July 15, 2024, that was supported by approximately 90+ additional nearby residents who signed in support of the appeal. (Smith Appeal, R., p. ___). Those individuals were not included as appellants based on the City's position that each appellant was required to submit a separate filing fee.

Cynthia Vanaman-Setzer, a resident of Seville, submitted an appeal application to the BZA on July 16, 2024 on behalf of Mark Garrow (Setzer Appeal, R., p. ___).

Appellants filed their appeal to challenge the City's determination that the proposed subdivision could proceed without compliance with R-7 zoning requirements applicable to the property. (June 18, 2024 Planning Commission Minutes, City's RR00741, R., p. ___).

C. The Ordinance Defines When the Appeal Period Begins

The Ordinance provides, in pertinent part:

> All appeals must be taken within thirty days from the date the decision becomes a matter of public record by denial or issuance of a permit or the filing of a written decision in the office of the zoning administrator. ... (Ordinance § 504, R., p. ___).

This Ordinance establishes objective triggering events tied to the public record—either the issuance or denial of a permit or the filing of a written zoning administrator decision. It does not reference or rely upon "actual notice," general awareness, participation in prior proceedings, or placement of a matter on a public agenda as triggering events. (Ordinance § 504, R., p.__)

D. The 2022 Settlement Agreement Was Project-Specific and Preserved Future Challenges

A prior dispute involving a different development proposal resulted in a settlement agreement in 2022. (Cottages Settlement Agreement, Exhibit 13, City's RR001146-52, R., p. ___).The development contemplated by that agreement—referred to as the "Cottages at Cane Patch"—was not constructed.

The settlement agreement expressly provides that:

> if any future development is proposed, planned or constructed, by GDMB, its agents, employees, successors, successors in interest to the property or their assigns, that is materially inconsistent with Exhibit 1 or increases the density of the development or otherwise materially changes the 305-unit horizontal apartment complex referred to as the Cottages at Cane Patch, this agreement shall be deemed void and shall not restrict or limit the Residents from challenging any future development on any basis whatsoever. (R., p. ___).

The subdivision proposed in 2024 is not the same project addressed in the 2022 settlement and is not proposed by the same developer. (Application to Planning

Commission, R., p. ___). Appellants Frazer, Owen, and Farthing were not parties to the 2022 action or the settlement agreement.

By its terms, the settlement agreement applies to a specific development proposal and preserves challenges to materially different future development.

E. The 2024 Subdivision and the City's Zoning Position

In 2024, Respondent proposed a 62-lot subdivision within the Cane Patch Tract (City's RR000230-240, R., p. ___). The proposed lots do not satisfy the minimum lot-size requirements applicable under R-7 zoning. (Ordinance § 1603.B, R., p. ___).

The Planning Commission processed the application and ultimately approved the subdivision. In order to do so, the City took the position that the Property was not subject to R-7 regulations under the current Grande Dunes PUD. (BZA Transcript, R., p. ___).

The subdivision was presented to and considered by the Planning Commission as part of the development review process. (Planning Commission Minutes 5/21/24, City's RR000736, R., p. ___). The Planning Commission approved the subdivision in June 2024. (Minutes of 6/18/24, RR000742, R., p. ___).

No written zoning administrator decision reflecting the determination that R-7 does not apply was filed in the public record. Nor does the record contain a permit issuance or denial reflecting that determination.

F. Proceedings Before the BZA and Circuit Court

Appellants filed appeals to the BZA on July 15 and July 16, 2024, challenging the City's determination that the subdivision could proceed without compliance with R-7 zoning requirements. (Smith Appeal, R., p. ___ and Setzer Appeal, R., p.___). The BZA entered two orders finding that Appellants' appeals were untimely and that the issue

whether R-7 zoning applied to the Property had been decided years earlier. (Decision of Smith Appeal, R., p. _____ and Decision on Setzer Appeal, R., p.__).

Appellants appealed to the circuit court pursuant to S.C. Code Ann. § 6-29-840. (Appeal, R., p. ___). Following a hearing, the circuit court entered an order dated October 7, 2025, affirming the BZA's dismissal. (Order, R., p. ___). The court concluded that the appeals were untimely and that no appealable zoning administrator decision had been identified. (Order, R., p. ___).

G. Summary of Relevant Facts

The record reflects that the City approved a subdivision that does not comply with R-7 zoning requirements while taking the position that R-7 does not apply. That position was never reduced to a written zoning administrator decision and was not reflected in any permit issuance or denial in the public record.

Moreover, even if it was reduced to writing, it could not, as a matter of law, change the zoning classification of the property. As set forth hereafter, changing the Zoning Classification of a property is a legislative function which implicates surrounding property owners' due process rights. It requires advertising, the posting of the property, actual notice to immediately affected property owners, planning commission review, a full public hearing and the enactment of an Ordinance by City Council. That process cannot be avoided at the whim of the zoning administrator.

STANDARD OF REVIEW

Appeals from a board of zoning appeals are governed by S.C. Code Ann. § 6-29-840. The circuit court sits in an appellate capacity and reviews the record to determine whether the decision of the board is supported by substantial evidence or is affected by

affected by an error of law. On further appeal, this Court applies the same standard of review as the circuit court. See *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004). Questions of statutory interpretation and ordinance construction are questions of law, which this Court is free to decide without any deference to the court below. *City of Rock Hill v. Harris*, 391.S.C. 149, 152, 705 S.E.2d 53, 54 (2011).

Although findings of fact by the BZA will be upheld if supported by any evidence, issues involving the construction of an ordinance are reviewed as matters of law under a broader, more independent standard of review. *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 184, 813 S.E.2d 874, 881 (Ct. App. 2018). While some deference is accorded to local officials in applying zoning ordinances, "a broader and more independent review is permitted when the issue concerns the construction of an ordinance." *Id.* (quoting *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 9–10, 776 S.E.2d 753, 757 (Ct. App. 2015)) and "[t]his deferential standard of review does not mean a zoning board can never be reversed.". As *Boehm* makes clear, this deferential standard does not insulate a zoning board from reversal where the board misinterprets the governing ordinance.

In construing an ordinance, the Court's task is to ascertain and give effect to the intent of the legislative body as expressed in the ordinance's language. *Hinde*, 414 S.C. at 10, 776 S.E.2d at 758 (quoting *Mikell v. County of Charleston*, 386 S.C. 153, 160, 687 S.E.2d 326, 330 (2009)). Courts may not rewrite an ordinance or impose restrictions not adopted by the legislative body. *Id.* at 13, 776 S.E.2d at 759.

Since this appeal turns on whether the BZA and the circuit court applied the correct legal standard in determining when the appeal period was triggered under the governing ordinance, the dispositive issues presented are questions of law subject to *de novo* review.

ARGUMENT AND CITATION OF AUTHORITIES

This appeal turns on three interrelated legal errors: the circuit court applied the wrong statutory framework, dismissed the appeal based on a deadline that was never triggered under the Ordinance, and upheld a zoning determination that was never formally issued in accordance with governing law. (Ordinance § 504, R., p.__)

I. THE CIRCUIT COURT ERRED IN APPLYING THE WRONG STATUTORY FRAMEWORK

This appeal concerns a zoning determination—not a subdivision appeal. Appellants challenged the City's determination that the Cane Patch Property is not subject to R-7 zoning. That determination concerns the applicability of an existing zoning classification and falls within the jurisdiction of the Board of Zoning Appeals under S.C. Code Ann. § 6-29-800(A)(1) (2004), which states, in pertinent part:

> (A) The board of appeals has the following powers:
>
> (1) to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;

The circuit court mischaracterized the appeal as one arising from Planning Commission approval under § 6-29-1150, which deals with the submission of plans or plats to a planning commission. The order states that Petitioners were "appealing the City Planning Commission's June 18, 2024, decision to approve [the] subdivision." (R.,

p. ___) That characterization is inconsistent with both the record and South Carolina land use law.

Respondents and the circuit court focus on the Petition's references to the Planning Commission. The order further states that, except for the Notice of Appeal, Petitioners' filing was "devoid of any reference to the BZA's decision." (R., p. ___). However, the Notice of Appeal expressly noticed an appeal "from Orders of the City of Myrtle Beach Board of Zoning Appeals ... (Appeal 24-14 and Appeal 24-15, dated October 25, 2024., R., p.___). The Petition, itself, was also filed pursuant to S.C. Code Ann. § 6-29-820 (2004) and City of Myrtle Beach Zoning Ordinance § 506.A as an "Appeal and Petition for Judicial Review" of the BZA and the Zoning Administrator. (Ordinance § 506.A, R., p.__)

Although the Petition referenced the Planning Commission's approval of the subdivision, the appeal was not limited to that approval. The Notice of Appeal, the Petition and the administrative record challenged the City's determination that the property was not subject to R-7 and the resulting decision to permit a nonconforming subdivision to proceed. The references to the Planning Commission describe the procedural context in which the zoning issue arose and the consequences of the City's zoning position; they do not define the legal nature of the challenge.

The characterization of an appeal is determined by the substance of the issues presented, not the labels used in a pleading. Here, the substance of the appeal concerns zoning interpretation and enforcement. The circuit court therefore erred in treating the matter as a subdivision appeal governed by § 6-29-1150.

Subdivision approval does not define zoning; it presupposes it. The Planning Commission lacks authority to interpret, apply, or alter zoning classifications. That authority resides with the zoning administrator and is reviewable by the BZA.

South Carolina authority likewise recognizes that a board, such as the BZA, includes administrative review of a zoning official's determination. In *Brock v. Board of Adjustment & Appeals of City of Rock Hill*, 303 S.C. 539, 544-45, 419 S.E. 2d 773, 776-77 (1992), the Supreme Court quoted the board's statutory authority to hear appeals alleging error in a "decision or determination made by an administrative official" and held that the matter before the board was properly treated as an administrative review of the zoning administrator's action rather than as a different form of zoning relief. That same application matters here. Appellants challenged the City's zoning determination that R-7 did not apply; they are not pursuing a subdivision appeal under a different statutory track.

The City's own ordinance confirms this allocation of authority. The Zoning Ordinance of the City of Myrtle Beach, South Carolina, § 503.A (Ordinance § 503.A, R., p.__) provides that the Board of Zoning Appeals has the power to hear and decide appeals where it is alleged that there is an error in any "order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Ordinance," and authorizes the Board to "reverse or affirm, wholly or in part, or may modify" such determinations, and to exercise "all the powers of the zoning administrator" in doing so. This provision makes clear that challenges to zoning determinations–whether framed as action, inaction, or erroneous interpretation–fall squarely within the

jurisdiction of the BZA. The circuit court's characterization of this matter as a subdivision appeal cannot be reconciled with this ordinance-defined grant of authority.

As explained in the *Guide to Land Use Planning for South Carolina*, published by the South Carolina Association of Counties:

> The Planning Act makes it clear that the planning commission cannot administer the zoning ordinance. The commission makes no final decisions regarding zoning. There are no provisions for appeals to or from the planning commission. It cannot grant variances, special exceptions, or use variances... Appeals, variances, special exceptions, and conditional uses requiring review are the exclusive authority of the board of zoning appeals.

SCAC Guide (2017 ed.), at 9.[1]

The *Guide* further explains: "The zoning administrator is the only official that should be relied upon when questions arise over a parcel's official zoning..." *Id.* at 28–29. This distinction is dispositive because the circuit court treated a Planning Commission action as though it were a zoning administrator decision. By treating a zoning interpretation as a subdivision appeal, the court applied the wrong statutory scheme.

Appellants did not challenge the subdivision approval in isolation. They challenged the zoning determination that made that approval possible. The City took the position that the Cane Patch property was not subject to R-7 zoning restrictions, and

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[1] The South Carolina Association of Counties, Guide to Land Use Planning for South Carolina (2017) is online at: https://www.sccounties.org/sites/default/files/uploads/publications/g uide-to-land-use-planning.pdf.

then acted upon that position. That determination is a zoning interpretation subject to review by the BZA pursuant to § 6-29-800.

The Planning Commission's approval was not the source of the dispute—it was the consequence of the City's zoning position. Since the appeal challenged a zoning determination, the circuit court erred in applying § 6-29-1150 instead of § 6-29-800.

II. THE CIRCUIT COURT ERRED IN DISMISSING APPELLANTS' APPEAL AS UNTIMELY

This case presents a narrow but dispositive question: When does the time to appeal begin?

A. The Ordinance Defines the Trigger

The Ordinance states:

> 504.A. Zoning Appeals. Appeals to the Board may be filed by anyone aggrieved by a decision of the zoning administrator in the administration or enforcement of this ordinance. All appeals must be taken within 30 days from the date the decision becomes a matter of public record by denial or issuance of a permit or the filing of a written decision in the office of the zoning administrator ... .

(Ordinance § 504, R., p.__)

This provision identifies both the appealable decision and the exclusive triggering events for the appeal period.

B. State Law Defers to the Ordinance

S.C. Code Ann. § 6-29-800(B) (2004) provides: "The *appeal must be taken within a reasonable time, as provided by the zoning ordinance* or rules of the board ... . If no time limit is provided, the appeal must be taken within thirty days from the date the appealing party has received actual notice..." [emphasis added.] The statute makes

clear that the ordinance controls when it provides a time limit. "Actual notice" applies only if no time limit is provided. Here, the City provided a time limit and defined precisely how it is triggered.

C. No Triggering Event Occurred

No written zoning administrator decision exists. No permit issuance or denial reflects the City's zoning position. The defect lies not in the existence of an appealable issue, but in the absence of any ordinance-defined event triggering the time within which that appeal had to be filed. No written zoning administrator decision was issued, and no permit action occurred to trigger the appeal period under the Ordinance. (Ordinance § 504, R., p.__)

The City's determination that the property "is not subject to R-7 regulations" was never reduced to a written decision and never placed in the public record in any form recognized by the Ordinance. The issue is not the absence of an appealable controversy. The City took and acted upon a zoning position that directly affected Appellants, thereby giving rise to the right of appeal. The defect lies not in the existence of an appealable issue, but in the absence of any ordinance-defined event triggering the time within which that appeal had to be filed.

As the Ordinance defines the exclusive triggering events, and none occurred, there is no definitive trigger to start the appeal period. (Ordinance § 504, R., p.__)

D. The Circuit Court Applied a Trigger Not Found in the Ordinance.

The circuit court's timeliness analysis confirms that it did not apply the triggering events defined in the Ordinance. Instead, the court relied on the premise that the City's zoning position "was decided years ago" and that "the time to appeal or in any way

challenge the City zoning classification as to this Property has long passed." (R., p. ___). This reasoning cannot be reconciled with the Ordinance. The Ordinance does not tie the appeal period to when a position was first asserted, discussed, or allegedly understood. It ties the appeal period to when a zoning decision becomes a matter of public record through the issuance or denial of a permit or the filing of a written zoning administrator decision.

The events described in the Ordinance did not occur in this case. By substituting historical awareness, prior staff positions, or earlier proceedings for the ordinance-defined triggering events, the circuit court applied a timing rule that does not exist in the governing Ordinance. The Ordinance does not recognize that a matter being "decided years ago" triggers the running of the appeal period. The result is a dismissal based on a deadline that was never triggered.

In *Massey v. City of Greenville*, 341 S.C. 193, 532 S.E.2d 885 (Ct. App. 2000), the Court of Appeals addressed the importance of a clear, final written decision in determining when an appeal period begins. There, the court remanded the case because no final written decision with findings of fact and conclusions of law had been issued, emphasizing that such a decision is necessary both to establish when the time to appeal commences and to provide an adequate record for judicial review.

Although *Massey* involved an appeal from a board to the circuit court, its reasoning applies by analogy here. The same principle governs administrative appeals: without a written zoning administrator decision or permit action establishing a clear, identifiable event, there is no definite point from which the appeal period can run.

The requirement of a written, identifiable decision serves a practical and legal function-it avoids uncertainty, prevents disputes over when a deadline begins, and ensures that parties are not deprived of appellate rights based on informal understandings or undocumented determinations.

Here, as in *Massey*, no such written decision exists. The absence of a written zoning administrator decision leaves no clear event from which the appeal period could be measured. Under both the reasoning of *Massey* and the express requirements of the Ordinance, the appeal period therefore did not begin to run.

E. Notice Does Not Substitute for the Ordinance Trigger

The Ordinance does not include notice as a triggering event. (Ordinance § 504, R., p.__) The circuit court's reliance on notice rewrites the Ordinance. Nor can the City rely on the placement of items on a Planning Commission agenda as a substitute for a legally cognizable zoning decision. The inclusion of a matter on an agenda does not satisfy the Ordinance's requirements and does not create a reviewable administrative decision. (Ordinance § 504, R., p.__)

Because the Ordinance defines the exclusive triggering events for the appeal period, and no such event occurred, the appeal period never began to run. The City cannot invoke a deadline it never triggered. (Ordinance § 504, R., p.__)

III. THE CIRCUIT COURT'S RULING IS INTERNALLY INCONSISTENT AND BASED ON ERRONEOUS LEGAL PREMISES

A. The Order Is Internally Inconsistent

The circuit court's ruling rests on two conclusions that cannot be reconciled. The court determined that Petitioners "have failed to establish an action of the Zoning Administrator that was properly before the BZA." (Order, R., p. ___) At the same time,

however, the court concluded that "Petitioners did not timely perfect an appeal of the June 18, 2024 decision." (Order, R., p. ___).

These conclusions cannot logically coexist. If Petitioners failed to establish any zoning administrator action properly before the BZA, then no ordinance-defined event occurred that could trigger the running of the appeal period under the Ordinance. Absent such a triggering event, the appeal period could not begin to run.

Conversely, a finding of untimeliness necessarily presupposes the existence of a triggering decision from which the appeal period began to run. The circuit court's untimeliness determination therefore depends on the existence of the very type of decision it simultaneously found to be absent.

The order thus rests on mutually exclusive premises. It denies the existence of a qualifying zoning administrator action while simultaneously relying on such an action to bar the appeal as untimely.

This inconsistency is not merely semantic. It reflects a fundamental error in the court's analysis of both the nature of the appeal and the operation of the governing ordinance. Where the existence of a triggering administrative act is both rejected and relied upon in the same order, the resulting dismissal cannot stand.

B. Zoning Cannot Be Altered Without Legislative Action

The Zoning Ordinance of the City of Myrtle Beach, South Carolina, § 401 (Ordinance § 401, R., p.__) prescribes the procedure for amending zoning classifications. The record contains no ordinance removing or amending the R-7 classification applicable to the Cane Patch Property. The City's position that R-7 zoning

does not apply is, therefore, not the product of legislative action—it is an administrative departure from enacted law. Administrative practice cannot displace zoning law.

Nor can a municipality accomplish indirectly what it cannot do directly. The City cannot avoid the legislative process required to change zoning by proceeding as though a zoning classification no longer applies. In *Turner v. Barber*, 298 S.C. 321, 380 S.E.2d 811 (1989), the Supreme Court held that a Planning Commission recommendation was "fatally flawed" where it failed to comply with ordinance requirements and where the Commission did not act with all essential information before it.

The same defect exists here. The City approved a subdivision predicated on a zoning position—that R-7 zoning does not apply—that was never adopted through legislative action, reduced to a written zoning-administrator decision, or reflected in any permit issuance or denial, as required by the Ordinance.

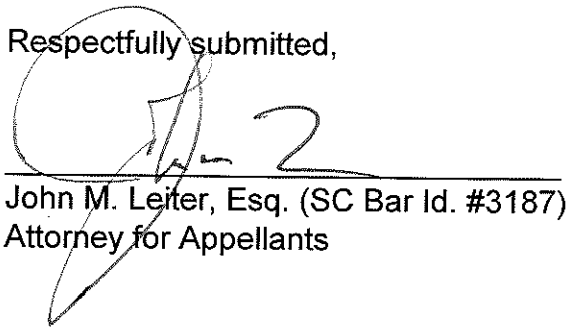
That approval rests on a legally insufficient foundation and cannot be sustained. The City's zoning position is not merely unsupported—it is contrary to the governing ordinance and therefore cannot constitute a valid zoning determination. Administrative officials are bound to apply the zoning ordinance as enacted and lack authority or power to alter or disregard its provisions through interpretation or practice. See *Knowles v. City of Aiken*, 305 S.C. 219, 407 S.E.2d 639 (1991) where, as here, the City proceeds on a zoning position that conflicts with the ordinance and is never reduced to a written decision or permit action as required by the Ordinance, that position has no legal effect for purposes of triggering appellate deadlines or sustaining subsequent approvals.

An administrative interpretation that conflicts with the governing ordinance cannot supply the legal foundation for either subdivision approval or the running of an appeal period.

CONCLUSION

The circuit court applied the wrong statutory framework, dismissed the appeal based on a deadline that was never triggered under the Ordinance, and upheld a zoning determination that was never formally issued in accordance with governing law. Because no written zoning administrator decision or permit action occurred, the appeal period never began to run, and the City cannot invoke a deadline it did not trigger. The order should be reversed and the matter remanded for consideration of the merits.

Respectfully submitted,



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April 3, 2026