RECEIVED
Apr 16 2026
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Case No. 2024-CP-08-03363
Appellate Case No. 2025-000960

Bliss MK, LLC d/b/a Macedonia Liquor .....Respondent,

v.

Berkeley County Board of Zoning Appeals .....Appellant.

BRIEF OF APPELLANT

HAYNSWORTH SINKLER BOYD, P.A.

Sarah P. Spruill (SC Bar #68337)
ONE North Main Street, 2nd Floor (29601)
P.O. Box 2048
Greenville, SC 29602
(864) 240-3200
sspruill@hsblawfirm.com

Stafford J. McQuillin III (SC Bar #78203)
134 Meeting Street, 3rd Floor
P.O. Box 340 (29402-0340)
Charleston, SC 29401
(843) 722-3366
mmcquillin@hsblawfirm.com

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court err in reversing a decision of the Berkeley County Board of Zoning Appeals ("ZBA") based on its finding that a county zoning ordinance relating to the minimum distance between an establishment selling alcohol or alcoholic beverages and a religious institution is preempted by state law?

2. Did the circuit court err in declaring Berkeley County Zoning Ordinance Section 11.4.2 void?

STATEMENT OF THE CASE AND FACTS

The facts in this matter are not contested. Bliss MK, LLC, d/b/a Macedonia Liquor ("Bliss MK") and/ or its principal member purchased 2307 N. Hwy 17A (the "Property"), located in unincorporated Berkeley County (the "County"). (R. at 8-9, ¶¶3-4). The Property was abandoned but had been a convenience store at some point in the past. (*Id.*). The South Carolina Department of Revenue ("DOR") issued a retail liquor store license to Mahik LLC under the trade name and business address of Macedonia Liquors, 2307 N. Highway 17A, Bonneau, South Carolina 29430-3213. (R. at 9, ¶5, 22).

While renovating the Property and preparing to open a liquor store, Bliss MK received notice from the County that the proposed use was inconsistent with the County's Zoning Ordinance Section 11.4.2 ("Section 11.4.2") due to the proximity of the Property to a religious institution. (R. at 9-10, ¶¶7-10). Section 11.4.2 provides in pertinent part as follows:

> A. No establishment or use in which the predominant activity, or the majority of gross sales, involves the sale of alcohol or alcoholic beverages shall be located within 1,000 feet of any other such establishment or use.
>
> B. A commercial bar and/or liquor store shall not operate within 1,000 feet of:
> . . .
>
> 2. A religious institution . . ..
>
> C. *For the purpose of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a commercial bar and/or liquor store is operated, to the nearest property line of the premises of a religious institution,* or public or private school, or public park or public recreation area, or youth activity center, or public library, or child care facility, or to the nearest boundary of any residential district or residential lot[.]

(R. at 21 (emphasis added)).

Bliss MK commissioned a survey to determine the distance between the property and the church in question, which showed a straight-line distance from the rear corner of the building on the Property to the corner of the church property of 892.2 feet. (R. at 9-10, ¶10, 23-24). Since this measurement was less than 1000 feet, Bliss MK sought a variance from the requirements of Section 11.4.2.

The ZBA held a public hearing and considered the matter on October 15, 2024. (R. at 14-15). As reflected in the minutes, Bliss MK presented its position through counsel, arguing that the Property complied with state law as far as proximity and that there was a conflict between Section 11.4.2 and state law. (R. at 66-70). Counsel further stated that beer and wine had been sold in the past on the Property, that there had been no protest during the Department of Revenue review, and that the only concern of which Bliss MK was aware was a neighbor that wanted a buffer fence. (*Id.*). Counsel admitted that the location was less than 1000 feet from the church "as the crow flies." (*Id.*). Speaking in opposition were three representatives of the church, who expressed concerns relating to the presence of children, loitering, and religious and practical reasons, and the neighbor with the buffer concerns referenced by Bliss MK. (*Id.*).

The variance request was denied by unanimous vote. (*Id.*). A written order was mailed to Bliss MK on October 31, 2024, showing a postmark of November 1, 2024. (R. at 8, 14-15). In that order, the ZBA found that there was no unnecessary hardship because there were no extraordinary or exceptional conditions, that the proximity requirements were generally applicable in the area, that the ZBA "did not receive evidence sufficient to demonstrate that the applicant is unreasonable restricted . . .," and that the request would be "detrimental to the character of adjacent properties and the public good." (*Id.*).

Bliss MK filed a notice of appeal with the circuit court on December 2, 2024.[1] (R. at 8-13). Bliss MK did not challenge the ZBA's factual findings, but instead argued that Section 11.4.2 contradicted state law and was preempted. (*Id.*; R. at 28-35). The County answered. (R. at 25-27).

The circuit court heard the appeal on March 17, 2025. At the hearing, the ZBA argued that Section 11.4.2 is more restrictive than state law and therefore valid under S.C. Code Ann. § 6-29-960 ("When the regulations made under authority of this chapter . . . impose other more restrictive standards than are required in or under another statute, or local ordinance or regulation, the regulations made under authority of this chapter govern."). (R. at 41:25-43:4). The ZBA further argued its ability to impose zoning requirements as part of its police powers. (R. at 43:11-15). At the close of the hearing, the circuit court solicited proposed orders from both sides and asked the parties to further detail whether Section 11.4.2 was preempted. (R. at 44:14-24). In its proposed order, the ZBA provided additional authority for its position, including a discussion of *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 554, 397 S.E.2d 662, 664 (1990) and an analysis of why Section 11.4.2 is not preempted and does not conflict with state law. (R. at 83-87).

By order dated April 15, 2025, the circuit court reversed the ZBA and found that Section 11.4.2 is void "as it is preempted by state law." (R. at 3-7). This appeal followed.

[1] December 1, 2024, a Sunday, marked the thirty-day mark from the mailing of the order.

STANDARD OF REVIEW

"A strong presumption exists in favor of the validity and application of zoning ordinances." *Peterson Outdoor Advert. v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 632 (1997). By statute,

> [t]he findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence. In the event the judge determines that the certified record is insufficient for review, the matter may be remanded to the zoning board of appeals for rehearing. In determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law.

S.C. Code Ann. § 6-29-840(A). In this case, Bliss MK did not argue that the findings of the ZBA were not supported by the evidence. Bliss MK admits that the Property is within 1000 feet of a religious institution as calculated under Section 11.4.2. Instead, it argued, and the circuit court found that Section 11.4.2 was preempted by state law. As such, this Court's review hinges on that single issue of law.

ARGUMENT

"[C]ourts have no legislative powers." *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 395, 134 S.E.2d 206, 209 (1964). Generally, "all laws concerning local government shall be liberally construed" in the local government's favor. S.C. Const., art. VIII, § 17; *see also* S.C. Code Ann. § 4-9-25 ("The powers of a county must be liberally construed in favor of the county"). The reason for this deference to local governments is the legislature's "realization that different local governments have different problems that require different solutions. . .. By enacting statutes like § 4-9-25 . . . the General Assembly gave local governments the power to deal with these problems at the local level rather than at the State Capitol." *Hosp. Ass'n of S.C., Inc. v. Cnty. of Charleston*, 320 S.C. 219, 230, 464 S.E.2d 113, 120 (1995). To that end, "[t]he party attacking an ordinance

bears the burden of proving its unconstitutionality beyond reasonable doubt." *Skyscraper Corp. v. Cnty. of Newberry*, 323 S.C. 412, 417, 475 S.E.2d 764, 766 (1996); *Univ. of S.C. v. Mehlman*, 245 S.C. 180, 139 S.E.2d 771 (1964) (holding that a legislative enactment will be held invalid only when its invalidity appears so clearly as to leave no room for reasonable doubt).

In considering whether a local ordinance has been preempted by a state statute,

> [a] two-step process is used to determine whether a local ordinance is valid. First, the Court must consider whether the municipality had the power to enact the ordinance. If the State has preempted a particular area of legislation, a municipality lacks power to regulate the field, and the ordinance is invalid. If, however, the municipality had the power to enact the ordinance, the Court must then determine whether the ordinance is consistent with the Constitution and the general law of the State.
>
> To preempt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way. Furthermore, for there to be a conflict between a state statute and a municipal ordinance both must contain either express or implied conditions which are inconsistent or irreconcilable with each other.... If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.

Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008) (citations and quotations omitted).

With respect to the first step in the preemption analysis, South Carolina local governments may enact zoning and other ordinances relating to land use within their boundaries as part of their police power. S.C. Code Ann. § 6-29-710; *see Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963) ("The authority of a municipality to enact zoning ordinances, restricting the use of privately owned property is founded in the police power."). "The exercise of police power is subject to judicial correction only if the action is arbitrary and has no reasonable relation to a lawful purpose." *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 554, 397 S.E.2d 662, 664 (1990).

Here, the circuit court acknowledged that the County "has the right to enact zoning ordinances and exercise proper police power concerning the sale of alcohol[.]" (R. at 5). It then found, however, that "[t]his zoning authority does not authorize a local government to generally regulate commerce of the sale of alcohol under the guise of land use regulations." (*Id.*).

This ruling was in error as reflected in the applicable statutes and long-standing case law. The circuit court relied on S.C. Code Ann. § 61-2-80 as the basis for its preemption analysis. That section provides in pertinent part:

> The State, through the department, is the sole and exclusive authority empowered to regulate the operation of all locations authorized to sell beer, wine, or alcoholic liquors, is authorized to establish conditions or restrictions which the department considers necessary before issuing or renewing a license or permit, and occupies the entire field of beer, wine, and liquor regulation except as it relates to hours of operation more restrictive than those set forth in this title.

South Carolina appellate courts have been careful to state that this provision is not intended to preempt the entire field and that local governments are free to enact zoning provisions relating to businesses licensed by DOR. *Town of Hilton Head Island*, 302 S.C. at 552, 397 S.E.2d at 663 (citing predecessor statute and clarifying in upholding zoning provision that "[w]e do not interpret the language of the statute as diminishing the power conferred upon local governments to regulate land use."); *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212–13, 574 S.E.2d 196, 198 (2002) ("In *Fine Liquors*, the Court concluded the predecessor to § 61–2–80 did *not* indicate the legislature intended to pre-empt the field, thereby precluding municipalities from passing any ordinance which affected the operation of liquor stores. Accordingly, the Court has already ruled on the issue presented by this appeal." (citations and quotation omitted)). Rather than finding preemption, courts have found "[t]he authority conferred on the Department of Revenue [] is limited to the issuance and enforcement of licensing." *McKeown v. Charleston Cnty. Bd. of Zoning*

Appeal, 347 S.C. 203, 208, 553 S.E.2d 484, 486 (Ct. App. 2001) (upholding county zoning provision relating to distance between establishments serving beer and wine and residential areas). As such, provisions unrelated to the issuance and enforcement of licensing have not been found to be preeempted. *See id.*, citing *Town of Hilton Head Island*.

Here, the circuit court failed recognize the limited scope of S.C. Code Ann. § 61-2-80 and failed to apply the body of case law upholding zoning regulations applicable to locations with DOR licenses for the sale of alcohol. Given these cases, there is no question but that the County had the power to enact Section 11.4.2.

The circuit court then turned to the second prong of the analysis and S.C. Code Ann. § 61-6-120(A), which relates to the locational standards to be considered by DOR in issuing liquor store licenses, and its implementing regulations, S.C. Code Ann. Regs. 7-303, and found that Section 11.4.2 was inconsistent because it requires more distance between liquor stores and religious institutions and provides a different means of measurement.

Again, the circuit court was in error. "[A]dditional regulation to that of State law does not constitute a conflict therewith." *Denene*, 352 S.C. at 214, 574 S.E.2d at 199, *citing Town of Hilton Head Island and quoting Arnold v. City of Spartanburg*, 201 S.C. 523, 536, 23 S.E.2d 735, 740 (1943). "Further, in order for there to be a conflict between a state statute and a municipal ordinance both must contain either express or implied conditions which are inconsistent or irreconcilable with each other. Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand." *Town of Hilton Head Island*, 302 S.C. at 553, 397 S.E.2d at 664 (quotation omitted). This general rule has been expressly codified in the zoning context in S.C. Code Ann. § 6-29-960. As set forth there,

> *When the regulations made under authority of this chapter* require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or *impose other more restrictive standards than are required in or under another statute*, or local ordinance or regulation, *the regulations made under authority of this chapter govern*. When the provisions of another statute require more restrictive standards than are required by the regulations made under authority of this chapter, the provisions of that statute govern.

(Emphasis added); *see McKeown*, 347 S.C. at 207-08, 553 S.E.2d at 484 (describing § 6-29-960 as "setting forth provisions for determining whether local zoning regulations or State law prevail when restrictions differ").

A DOR license does not exempt a property owner from complying with local zoning requirements. The County's requirements in Section 11.4.2 are in addition to those imposed by the State in S.C. Code Ann. § 61-2-80 and are not inconsistent with the State's requirements. As such, "the ordinance was neither inconsistent nor irreconcilable with the State statute and its passage was a proper and valid exercise of the [County's] police power." *Denene*, 352 S.C. at 214–15, 574 S.E.2d at 199 ("While the Ordinance differs in scope from § 61–4–120 (the ordinance prohibits operation from 2:00 a.m. to 6:00 a.m. on Mondays through Saturdays while the statute prohibits sales from midnight on Saturday through sunrise on Monday), the two are neither inconsistent nor irreconcilable."); *City of Charleston v. Jenkins*, 243 S.C. 205, 133 S.E.2d 242 (1963) (finding an ordinance prohibiting businesses from serving beer or wine between 1:30 a.m. and 7:30 a.m. did not conflict with a statute prohibiting the sale of beer or wine between midnight Saturday and sunrise Monday).

Here, the licensing requirement found in § 61-6-120 barring licenses for liquor stores within 500 feet of a church is wholly separate and distinct from the County zoning provision requiring 1000 feet of separation. Similarly, the fact that DOR and the County employ different

methods of measurement for determining compliance with their respective requirements does not render the two provisions inconsistent. These are "mere difference in detail" and not conflicts. *See Town of Hilton Head Island*, 302 S.C. at 553, 397 S.E.2d at 664. Thus, the circuit court erred in finding that Section 11.4.2 was void as a matter of preemption and in reversing the ZBA.

CONCLUSION

For the above reasons, this Court should find that Section 11.4.2 is not preempted and is a valid exercise of the County's police power and should reverse the order of the circuit court and reinstate the decision of the ZBA.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/ Sarah P. Spruill
Sarah P. Spruill (SC Bar #68337)
ONE North Main Street, 2nd Floor (29601)
P.O. Box 2048
Greenville, SC 29602
(864) 240-3200
sspruill@hsblawfirm.com

Stafford J. McQuillin III (SC Bar #78203)
134 Meeting Street, 3rd Floor
P.O. Box 340 (29402-0340)
Charleston, SC 29401
(843) 722-3366
mmcquillin@hsblawfirm.com

Attorneys for Appellant

April 16, 2026