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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

THE HONORABLE B. ALEX HYMAN, Circuit Court Judge

Appellate Case No.: 2026-____
Case No.: 2024-CP-26-08031

Michael Smith, Cynthia Vanaman-Setzer, Clarence E. Frazier
(incorrectly identified as Frazer in the lower court pleadings),
Richard J. Owen, and Erika Farthing.....Plaintiffs

Of Whom,

Michael Smith, Cynthia Vanaman-Setzer,
Clarence E. Frazier are the Appellants

v.

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

INITIAL BRIEF OF RESPONDENT GD CP PROPERTIES, LLC

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May 4, 2026

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STATEMENT OF ISSUES ON APPEAL

1. Whether Appellants improperly sought to appeal the June 18, 2024, Myrtle Beach Planning Commission decision by appealing such decision to the Myrtle Beach Board of Zoning Appeals.
2. Whether there was a Zoning Administrator decision upon which Appellants could have based an appeal to the BZA.

STATEMENT OF THE CASE

This appeal arises from the City of Myrtle Beach Planning Commission’s (the “Planning Commission”) June 18, 2024, approval of Respondent GD CP Properties, LLC’s (“GDGP”) subdivision application for a sixty-two lot development in Myrtle Beach, South Carolina (the “City”). Rather than appealing that approval directly to the circuit court as required by law, Appellants improperly appealed the Planning Commission’s decision to the Myrtle Beach Board of Zoning Appeals (the “BZA”). Because the authority to approve or deny subdivision applications rests exclusively with the Planning Commission—and appeals from such decisions lie exclusively with the circuit court—the BZA correctly determined it lacked jurisdiction to entertain an appeal of the Planning Commission’s June 18, 2024, decision and thus denied the appeal.

Unsatisfied with the BZA’s determination, Appellants subsequently appealed the BZA’s decision to the circuit court, which held that Appellants failed to timely appeal the Planning Commission’s decision to the circuit court in accordance with S.C. Code Ann. § 6-29-1150(D)(1) and dismissed the appeal. On January 16, 2026, Appellants filed their notice of appeal, attempting to recharacterize the Planning Commission’s subdivision approval as an action of the City of Myrtle Beach Zoning Administrator from which an aggrieved party can seek an appeal under S.C. Code Ann. § 6-29-800.

FACTS AND PROCEDURAL HISTORY

By way of background, property owned by Respondent GDCP, commonly known and referred to as the Cane Patch Tract – a tract of land at the corner of 76th Avenue North and Highway 17 Bypass in Myrtle Beach, South Carolina – was subdivided into two parcels, as evidenced by a plat recorded in the Office of the Register of Deeds for Horry County, South Carolina, on May 21, 2024, at Plat Book 322, Page 104. This subdivision created what was subsequently known as Parcel 2-A and Parcel 2-B, respectively consisting of 11.33 acres and 14.27 acres. Parcel 2-B, upon which Respondent GDCP intends to construct sixty-two homes (the “Cane Patch Project”), is the only parcel at issue in this appeal.

On June 18, 2024, following three meetings, the Planning Commission approved the subdivision of Parcel 2-B to reflect sixty-two single-family home sites as well as other, attendant areas to be developed (the “Property”). It is undisputed that no proper or timely appeal was taken from the Planning Commission’s decision dated June 18, 2024.

Following Planning Commission’s June 18th approval, on July 15, 2024, Appellant Michael Smith (“Smith”) filed an application with the BZA appealing the Planning Commission’s approval of the subdivision of the Property. Appellant Smith’s application to the BZA stated he was appealing the Zoning Administrator’s approval of the application of the Cane Patch project to appear before the Planning Commission (“Appeal 24-14”).

Subsequently, on July 16, 2024, Appellant Cynthia Vanaman-Setzer (“Setzer”), as agent for Mark Garrow,¹ filed an application with the BZA also appealing the subdivision of the Property

¹ It is stated in the application for appeal to the BZA that Appellant Setzer is acting as agent for Mark Garrow (“Mr. Garrow”). Application 24-15 also sets forth that Mr. Garrow, as the President of the Seville Property Owners Association, represents the interest of 91 Seville property owners, constituting a total of approximately 166 residents. There is not, however, any resolution or any other proof of Mr. Garrow’s authority to proceed with an appeal to the BZA on behalf of any other individual, or even a homeowners’ association. Rather, there was a single application and a single application fee remitted to the City of Myrtle Beach.

(“Appeal 24-15”). Appellant Setzer asserted the Planning Commission inaccurately interpreted the Code of Ordinances City of Myrtle Beach, South Carolina (“City Ordinance(s)”), erroneously granted approval of Appellant GDCP’s subdivision application, and requested that the BZA rescind the issued approval for the subdivision.

On September 12, 2024, the BZA heard separate arguments on Appeals 24-14 and 24-15 during the BZA’s regularly scheduled meeting. Appellant Smith presented his case and represented to the BZA that Appeal 24-14 was made on behalf of himself and ninety others living in nearby communities. However, the BZA found there was no evidence that anyone other than Appellant Smith filed an appeal or paid a filing fee. Appellant Setzer presented as to Appeal 24-15, noting her appearance on behalf of Mark Garrow, who was unavailable.

Based upon the presentation of all “interested parties,” and the records before the BZA, on October 25, 2024, the BZA issued two separate orders denying both Appeal 24-14 and Appeal 24-15. (BZA Order Appeal 24-14; BZA Order Appeal 24-15, Oct. 25, 2024). The orders found the Cane Patch Appeals were not timely, and more importantly, were not properly before the BZA because “[a]n appeal from the decision of the planning commission” was required to “be taken to *the circuit court* within *thirty days* after actual *notice* of the decision.” S.C. Code Ann. § 6-29-115(D)(1) (emphasis added). Therefore, the BZA found that it did not have jurisdiction to hear Appellants Smith and Setzer’s appeals. The orders further explained that the Cane Patch Appeals were untimely in two separate ways. First, the Appeals were untimely because Appellants Smith and Setzer failed to meet the 30-day deadline for challenging the Zoning Administrator’s decision regarding the Cane Patch Project. Second, the Orders found that the issue as to the applicability of the R-7 zoning classification was previously decided “years ago” on two separate occasions, and therefore, the time for Defendants’ appeal of that issue had long since passed.

On November 22, 2024, Appellants filed an Appeal and Petition for Judicial review in the Court of Common Pleas for the Fifteenth Judicial Circuit.² Importantly, Appellants’ Appeal and Petition for Judicial Review, in Paragraph 1, states “[t]his matter is before the Court on appeal from a decision of the City of Myrtle Beach Zoning Administrator and Planning Commission approving the subdivision of a 14.26 acre parcel of land” owned by Respondent GDCP. (App. Pet. for Jud. Rev. p. 1). Paragraph 9 states “Petitioners are aggrieved by the decision of the Zoning Administrator and Planning Commission made on June 18, 2024,” and that Petitioners request “[a]n appeal from the Zoning Administrator and Planning Commission decision....” (App. Pet. for Jud. Rev. p. 3). Numerous other Paragraphs in the Petition purport to challenge the Planning Commission’s actions, while including reference to the Zoning Administrator. Paragraph 39 alleges the Planning Commission’s decision was contrary to City’s ordinances; Paragraph 40 alleges the Planning Commission lacked statutory authority to act in this case; Paragraph 41 alleges the Planning Commission’s decision is contrary to law; and Petitioner’s Prayer for Relief asks the Court to reverse the Planning Commission’s approval of the subdivision request.(App. Pet. for Jud. Rev. p. 12).³

On October 7, 2025, the circuit court dismissed Appellant’s appeal, finding Appellants failed to timely perfect their appeal of the Planning Commission decision dated June 18, 2024. The circuit court additionally found in the alternative that (1) the BZA properly determined Appellants’ appeal of the Zoning Administrator’s determination was untimely and (2) Appellants failed to identify an appealable action taken by the zoning administrator.

² Despite the BZA’s issuance of two separate orders, Appellants Smith and Setzer filed a “joint” appeal with the circuit court while adding Appellants Clarence E. Frazer (“Frazer”), Richard J. Owen (“Owen”), and Erika K. Farthing (“Farthing”); neither Frazer, Farthing, nor Owen were identified as appellants before the BZA.

³ The first paragraph of Petitioners’ Appeal and Petition for Judicial Review alleges a BZA Order on June 18, 2024. However, there is no such BZA Order of that date.

Appellants now attempt to conflate their appeal of a Planning Commission decision and that of an appealable action taken by the zoning administrator, arguing they were not actually appealing the Planning Commission’s decision. As set forth below, the only action from which Appellants could appeal is the June 18, 2024 decision of the Planning Commission.

STANDARD OF REVIEW

On appeal, this Court applies “the same standard of review as the circuit court below: the findings of fact by the Board shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence.” *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209 (Ct. App. 2004); S.C. Code Ann. § 6–29–840(A) (Supp.2003); *see also Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 405, 552 S.E.2d 42, 44 (Ct. App. 2001); *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 466, 602 S.E.2d 76, 79 (Ct. App. 2004) (“[A] court will uphold the decisions of a reviewing body if there is any evidence in the record to support its decision.”), *aff’d*, 372 S.C. 230, 642 S.E.2d 565 (2007). “In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the Board is correct as a matter of law.” *Austin*, 362 S.C. at 33, 606 S.E.2d 211 (citing *Heilker*, 346 S.C. at 405, 552 S.E.2d at 44).

The decision of the zoning board will be upheld when the appellant fails to show that the board’s decision was based on errors of law, where there is no legal evidence to support it, where the board acted arbitrarily or unreasonably, or where, in general, the board abused its discretion. *Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 755 (1953); *Heilker*, 346 S.C. at 406, 552 S.E.2d at 44; *Peterson Outdoor Advert. v. City of Myrtle Beach*, 327 S.C. 230, 489 S.E.2d 630 (1997). The decision of the zoning board must be supported by competent, substantial, and material evidence, and cannot be based on mere opinion or speculation testimony. *Wyndham*

Enterprises, LLC v. City of North Augusta, 401 S.C. 144, 151, 735 S.E.2d 659, 663 (2012);
Bannum, Inc. v. City of Columbia, 335 S.C. 202, 516 S.E.2d 439 (1999).

ARGUMENT

I. The Circuit Court did not error in applying § 6-29-1150.

The subdivision of land in South Carolina is governed by both state statutes and local ordinances. The General Assembly has enacted a comprehensive statutory scheme that vests local planning commissions with authority over land subdivision approvals. South Carolina Code, Title 6, Chapter 29, Article 7, entitled “Local Planning—Land Development Regulation,” contains the applicable state statutes. Subsection 6-29-1110(2) defines “Land development” as “the changing of land characteristics through . . . subdivision into parcels . . . for sale.” S.C. Code Ann. § 6-29-1110(2). Furthermore, § 6-29-1110(4) defines “Subdivision” as

“all divisions of a tract or parcel of land into two or more lots . . . for the purpose, whether immediate or future of sale, lease, or building development and includes all division of land involving a new street or change in existing streets, and includes re-subdivision which would involve the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law. . .”

S.C. Code Ann. § 6-29-1110(4).

Consistent with these definitions, the Legislature expressly directed that land development regulations include a defined approval process administered by the planning commission or its designee. S.C. Code Ann. § 6-29-1150 provides, in pertinent part:

(A) The land development regulations adopted by the governing authority must include a specific procedure for the submission and approval or disapproval by the planning commission or designated staff. These procedures may include requirements for submission of sketch plans, preliminary plans, and final plans for review and approval or disapproval.

S.C. Code Ann. § 6-29-1150.

The City Ordinances regarding the subdivision of land is consistent with the state law above. Chapter 20 of the City’s Ordinances, entitled “Subdivision Regulations,” contains the applicable local ordinances. Section 20-1 states “This ordinance is adopted pursuant to the authority conferred by S.C. Code 1994, Section 6-29-1110 et seq.” Myrtle Beach, S.C., Code of Ordinances, ch. 20. § 1. Section 20-2(a) sets forth that “[t]hese regulations shall govern all subdivision of land lying within the corporate limits of the city.” Myrtle Beach, S.C., Code of Ordinances, ch. 20. § 2(a). The City’s definition of “Land development” expressly includes the subdivision of land in Section 20-3. Myrtle Beach, S.C., Code of Ordinances, ch. 20. § 3.

Myrtle Beach Ordinance Sec. 20-22 and 20-23 sets forth the procedure for the preliminary and final approval of an application to subdivide land within the City of Myrtle Beach. *See* Myrtle Beach, S.C., Code of Ordinances, ch. 20. § 22(a); § 23(b) (2026). Critically, an appeal from a planning commission decision approving or disapproving a subdivision “***must*** be taken to ***the circuit court*** within 30 days after ***actual notice*** of the decision.” S.C. Code Ann. § 6-29-1150(D)(1) (emphasis added); Myrtle Beach, S.C., Code of Ordinances, ch. 20. § 64 (2026).

Appellants argue the circuit court “mischaracterized the appeal as one arising from Planning Commission approval under § 6-29-1150,” contending instead that this appeal concerns a zoning determination. This characterization is contradicted by the record and reflects an effort to avoid the jurisdictional consequences of failing to timely and appropriately appeal the Planning Commission’s decision. The record, however, unequivocally demonstrates that Appellants sought to challenge—and repeatedly described their challenge as arising from—the Planning Commission’s June 18, 2024, approval. *See* (Garrow Appeal, p. 1) (“On June 18, 2024, the Planning Commission erroneously granted approval to GD CP Properties, LLC (J. Cameron Parker, DRG Agent), to move forward with the subdivision of 14.26 acres at the SW intersection of 76th Ave N and HWY 17 (PIN#39500000034). The Planning Commission approved a 62-home

development on 14.26 Acres that does not comply/conform with the current R-7 zoning minimum lot size.”); (Smith Appeal, p. 1) (“This is an appeal from the action, inaction or neglect of the Zoning Administrator in either failing to reject, or otherwise approving, the application of the Cane Patch project to appear before the City’s Planning Commission Board for approval.”); (BZA Rec. p. 25:5-11) (“We are appealing the June 18th decision by the Planning Commission which approved the subdivision project of 62 homes at the corner of 76th Avenue North and 17 Bypass.”).

As further evidence Appellants sought to appeal the decision of the Planning Commission, Appellants’ Appeal and Petition for Judicial Review filed in the circuit court repeatedly asserts they are appealing Planning Commission’s approval to subdivide the Property. (*See* Pet’rs.’ Appeal, p. 1, 10, 12, 16, 18). Paragraph 1 of Petitioners’ Appeal and Petition states, “[t]his matter is before the Court on appeal from a decision of the City of Myrtle Beach...approving the subdivision of a 14.26 acre parcel of land.” Similarly, Paragraph 9 states “Petitioners are aggrieved by the decision...granting the subdivision...” Paragraph 9(a)(1) states Petitioners request “Declaratory relief finding and declaring that any decision... approving the subdivision of the Property is contrary to law, *ultra vires*, void and invalid as a matter of law....” Section A of Petitioners’ Prayer for Relief asks this Court for an Order “Declaring any determination or any attempt...to make a determination that the Property could be subdivided...is void, invalid, *ultra vires* and contrary to law.” (all quotes in this paragraph with emphasis added).

Although Appellants continue to argue they are appealing a determination of the Zoning Administrator, the authority to approve or disapprove the subdivision of land is vested exclusively in the Planning Commission. Appellants’ attempts to distinguish between the Planning Commission’s approval and its reliance on an alleged improper interpretation of the zoning ordinances confuses the merits of the Planning Commission’s decision with the identity of the

decision-maker. Regardless of the arguments advanced, the only operative and appealable decision was the Planning Commission's June 18, 2024, approval of the subdivision.⁴

If Appellants believed that Planning Commission relied on inaccurate or improper information in forming its basis to approve Respondents' application to subdivide the Property, Appellants should have appealed that decision to the circuit court in accordance with S.C. Code Ann. § 6-29-1150(D)(1) and the Myrtle Beach Code of Ordinances 20-64(d). Appellants' failure to do so cannot be cured by recasting their objections as a separate zoning appeal. Appellants mistakenly conflate the *grounds* for their challenge with the *decision* being challenged. Both the BZA and circuit court correctly found that the basis for Appellants' appeals was the June 18th decision of the Planning Commission, as that was the only decision made by the City upon which Appellants could have based an appeal.

If we were to accept Appellants' argument that they were appealing both the decision of the Planning Commission and the Zoning Administrator's determination that R-7 did not apply, it would afford Appellants two bites of the same apple. Any aggrieved party challenging a planning commission decision that included an interpretation of the zoning ordinances would be able to appeal that decision directly to the circuit court while simultaneously challenging that same decision to the board of zoning appeals. Allowing for such is contrary to the applicable statutes and ordinances, contrary to the statutory intent, and would result in conflicting determinations on appeal.

As set forth above, the Planning Commission is vested with the exclusive authority to approve or disapprove applications to subdivide land. Because Appellants sought to reverse Planning Commission's approval of Respondent GDCP's subdivision application, the only

⁴ Even if it were to be assumed, *arguendo*, there was an action of the Zoning Administrator relative to the Planning Commission's approval of the subdivision, that decision was public when the Planning Commission agenda was published on May 31, 2024. Consequently, Appellants' appeal would still be untimely.

decision Appellants could have appealed was that of the Planning Commission. Therefore, the circuit court correctly applied § 6-29-1150 when analyzing Appellants' appeal.

II. There was no determination or enforcement of the Zoning Administrator for which Appellants could have separately appealed.

Appellants additionally argue the circuit court erred in finding they failed to timely appeal the decision of the Zoning Administrator. In support of this position, Appellants argue there was no written decision of the Zoning Administrator to trigger the time for an appeal. That concession is dispositive. If no written decision of the Zoning Administrator exists upon which the time period for an appeal can commence, then there is no appealable action within the jurisdiction of the Board of Zoning Appeals.⁵

Accordingly, the only appeal that could have been taken following the Planning Commission decision dated June 18, 2024, was from the Planning Commission's approval of Appellant GDCP's subdivision application.

The Zoning Administrator's interpretation, or lack thereof, upon which Appellants now attempt to base this appeal was not a separate and distinct action upon which state statute or municipal ordinance allow for an appeal to be taken. As set forth in City of Myrtle Beach Ordinance Sec. 20-22, the review and comment upon a subdivision application is but one step in the process of application's submission before it is decided upon by Planning Commission. Myrtle Beach, S.C., Code of Ordinances, ch. 20. § 22.

Only the Planning Commission can approve or deny an application to subdivide property. S.C. Code Ann. § 6-29-1150. Because this authority rests solely with Planning Commission, state

⁵ Appellants challenge the circuit court's ruling in the alternative, wherein the court found Appellants' appeal of the Zoning Administrator's determination as to the applicability of R-7 was untimely. However, the circuit court found there was sufficient factual evidence in the record supporting the BZA's determination that the challenge to R-7 was untimely.

statute and city ordinance provide a specific and exclusive procedure for appealing such decisions—directly to the circuit court. *Id.*

Appellants misapply § 6-29-800 in their attempt to appeal the “determination of the Zoning Administrator.” That statute concerns zoning *enforcement*, not subdivision approval. *See* S.C. Code Ann. § 6-29-800(A)(1). Pursuant to Section 301.A.(9), the Zoning Administrator can “Enforce the Zoning Ordinance.” Myrtle Beach, S.C., Code of Ordinances, App. A – Zoning, art. 3, § 301.A.(9) (2026). Pursuant to Section 301.B., the Zoning Administrator can “enforce” the Zoning Ordinance by:

- (1) Notifying in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it; or
- (2) Ordering in writing the person responsible to discontinue the illegal use, addition, alteration, or structural change; or
- (3) Ordering in writing the person responsible to immediately discontinue the illegal work being done; or
- (4) Issuing an ordinance summons, or by taking any other action authorized by law to ensure compliance with or to prevent violation of the ordinance

Myrtle Beach, S.C., Code of Ordinances, App. A – Zoning, art. 3, § 301.B (2026).

Section 503.A. of the City Zoning Ordinance gives the BZA jurisdiction over matters where it is alleged the Zoning Administrator made an error regarding the “enforcement of the Zoning Ordinance.”⁶ Section 503.A specifically states:

The Board shall have the power to hear and decide appeals where it is alleged that there is an error in an order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Ordinance. In such cases the Board may reverse or affirm, wholly or in part, or may modify, the order, requirements, decision or determination of said administrative official. The Board has all the powers of the zoning administrator in such cases and may issue or direct the issuance of a permit.

⁶ This language is the same as in S.C. Code Ann. 6-29-800(A)(1).

Myrtle Beach, S.C., Code of Ordinances, App. A – Zoning, art. 5, § 503.A (2026).

In this case, no enforcement action—written or otherwise—was taken by the Zoning Administrator as contemplated by Section 301.B. In fact, Appellants admit there was no appealable decision of the Zoning Administrator for them to appeal. (*See* App. Int. Brief, pg. 16). Absent an enforcement action, there is no jurisdiction for the BZA to exercise.

Appellant cites to the South Carolina Association of Counties, Guide to Land Use and Planning for South Carolina (2017) in support of their proposition that the zoning administrator’s involvement in the approval process to subdivide the Property was somehow a zoning administrator decision. However, Appellants’ authority specifically contradicts their assertion as it specifically states that “[t]he planning commission administers the land and subdivision regulations” and that “[t]he board of zoning appeals is not involved.” *SCAC Guide* (2017 ed.), at 9. Thus, even Appellants’ own authority confirms that subdivision approval lies outside the BZA’s jurisdiction.

Both the circuit court and the BZA correctly found that because there was no action of the Zoning Administrator upon which Appellants could have based their appeal, Appellants were statutorily required to file their appeal of the Planning Commission decision to the circuit court within 30 days of the June 18th decision to approve the subdivision of the Property. Their failure to do so deprived the BZA and the circuit court of jurisdiction.

CONCLUSION

The circuit court correctly determined what Appellants sought to appeal was the June 18, 2024, decision of the Planning Commission. Having failed to timely file their appeal with the circuit court within the 30-day time period allowed by statute, the circuit court correctly

determined it was without jurisdiction to hear the appeal and dismissed Appellants' appeal as untimely.