STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Honorable Michael M. Jordan, Master in Equity

Appellate Case No. 2026-000451

Lakewood Links Property Owners Association, Inc.,

Respondent,

v.

Jason M. Josey and April W. Josey,

Appellants.

INITIAL REPLY BRIEF OF APPELLANTS

Stephanie Trotter Kellahan
D. Ryan McCabe
McCabe Trotter & Beverly, PC
4500 Fort Jackson Blvd, Suite 335
Columbia, South Carolina 29209
(803) 724-5000
Stephanie.Kellahan@mccabetrotter.com
Ryan.McCabe@mccabetrotter.com
ATTORNEYS FOR APPELLANTS

RECEIVED
Sep 28 2026
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT 1

I. Section 2(f) Requires the Review Board to Answer the Joseys' Written Request and Conditions Waiver on Nothing Else. 1

A. Anderson's Distinct Facts are Immaterial Because Section 2(f) Conditions Waiver Solely on the Board's Failure to Respond Within Thirty Days. 2

B. An Unrecorded ARB Procedure Cannot Rewrite the Covenants' Waiver Provision. 2

II. Palmetto Dunes and Sea Pines Sustain Aesthetic Denials Only Where the Stated Reason Relates to a General Plan of Development, and the Master Found No Such Plan for Fences in Lakewood Links. 3

A. Palmetto Dunes and Sea Pines Require More Than an Abstract Preference for Aesthetics. 4

B. The Master's Own Findings Establish the Absence of a Common Fence-Design Scheme. 4

C. The HOA's Equitable Arguments Presuppose a Violation That Its Waiver and Arbitrariness Arguments Fail to Establish. 5

CONCLUSION 3

TABLE OF AUTHORITIES

Cases

Anderson v. Buonforte, 365 S.C. 482, 617 S.E.2d 750 (Ct. App. 2005).....2

Cmty. Servs. Assocs., Inc. v. Wall, 421 S.C. 575, 808 S.E.2d 831 (Ct. App. 2017) 1

Palmetto Dunes Resort, Div. of Greenwood Dev. Corp. v. Brown,
287 S.C. 1, 336 S.E.2d 15 (Ct. App. 1985) 4

Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 363 S.E.2d 891 (1987) 4

Taylor v. Lindsey, 332 S.C. 1, 498 S.E.2d 862 (1998).....1

Statutes

S.C. Code Ann. § 27-30-130 6

ARGUMENT

The HOA waived its rights to require removal of the Joseys' fence by failing to grant or deny their June 13, 2022 written request for retroactive approval within the Covenants' 30-day deadline. The HOA's aesthetic objection was also arbitrary and capricious because the Master found no common fence-design scheme in Lakewood Links and the record shows varied wooden, privacy, chain-link, picket, brick, and other fences throughout the community.

I. Section 2(f) Requires the Review Board to Answer the Joseys' Written Request and Conditions Waiver on Nothing Else.

Section 2(f) provides that if architectural approval is neither granted nor denied within thirty days after the Review Board receives a written request for approval, the provisions of that section are waived. (Pl. Ex. 1, Part Two, Art. I, § 2(f).) The provision further requires that the HOA return disapproval in writing and include a reasonable statement of the items found unacceptable. (Id.)

The HOA does not identify any language in § 2(f) requiring that a written request be made on a particular form. Nor does it identify language excluding a request for retroactive approval from the 30-day deadline. Instead, it argues that the June 13, 2022 letter was ineffective because it was not presented on the ARB Request Form used for other projects and because the fence was already built. (Resp. Br. P. 9-10.) Those arguments seek to impose prerequisites omitted from the Covenants' waiver provision. The Court may not enlarge a recorded restriction by construction or implication beyond its clear terms. Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998). Thus, absent an express or unmistakably implied form requirement, the Court cannot add one to § 2(f)'s requirement that the Review Board respond to a "written request for approval." See Cmty. Servs. Assocs., Inc. v. Wall, 421 S.C. 575, 584–85, 808 S.E.2d 831, 836–37 (Ct. App. 2017).

The June 13 letter expressly asked the HOA to retroactively approve the existing fence. (Def. Ex. 4.) It was therefore a written request for the very approval at issue. The HOA acknowledges that the letter also included separate ARB forms for other proposed work and that the ARB promptly acted on those separate submissions. (Resp. Br. 8-10.) But approval of a garage proposal or a fence-alteration proposal was not a written approval or disapproval of the existing wooden privacy fence. The Board had to answer the request it received, not merely the different requests it elected to recognize.

A. Anderson's Distinct Facts are Immaterial Because Section 2(f) Conditions Waiver Solely on the Board's Failure to Respond Within Thirty Days.

In Anderson v. Buonforte, the Court applied an automatic-approval provision after the designated reviewing authority failed to approve or disapprove within 30 days. 365 S.C. 482, 495-97, 617 S.E.2d 750, 757-58 (Ct. App. 2005). The Court enforced the covenant as written and reversed the removal and alteration relief based on the reviewing authority's failure to act within the contractual period. The HOA attempts to distinguish Anderson because the owners there lacked actual knowledge of the covenants, submitted before construction, and faced a different degree of hardship. (Resp. Br. P. 7-12.) Those factual differences do not remove this case from Anderson's core holding. The question is whether the Covenants' express consequence followed when the Review Board did not grant or deny the written request within 30 days. Section 2(f) does not make that consequence depend on the owner's actual knowledge, on whether construction preceded the submission, or on the cost of removal.

B. An Unrecorded ARB Procedure Cannot Rewrite the Covenants' Waiver Provision.

The HOA relies on testimony that the Review Board used ARB Request Forms in practice. (Resp. Br. P. 9-10.) But the Covenants provide that Review Board procedural rules shall be filed

with the Association. (Pl. Ex. 1, Part Two, Art. I, § 2(c)(2).) The HOA has not shown a recorded rule or Covenant term making use of its form a condition to the 30-day waiver provision. The form requirement on which it relies cannot be inserted into § 2(f) to negate the phrase "written request for approval."

The Joseys do not contend that the HOA cannot use a form to facilitate review. But a preference for a form cannot displace an express, recorded Covenant term that makes waiver turn on the Board's failure to decide a written request within 30 days. To hold otherwise would permit the Board to avoid its contractual deadline by disregarding a written request it chose not to label an application.

The HOA's position also fails to confront the Joseys' statutory argument. The record contains no recorded Review Board rule imposing the form requirement, and the HOA conceded that the later C&Rs were unenforceable. S.C. Code Ann. § 27-30-130 requires that rules be recorded in order to be effective. Whatever internal process the Board may have followed, it could not silently add a condition that changes the express waiver consequence of the recorded Covenants.

II. Palmetto Dunes and Sea Pines Sustain Aesthetic Denials Only Where the Stated Reason Relates to a General Plan of Development, and the Master Found No Such Plan for Fences in Lakewood Links.

The Joseys do not argue that an architectural-review covenant may never authorize aesthetic judgments. The question is whether the HOA established a reasonable, good-faith, and non-arbitrary basis for this refusal under these Covenants and this record. It did not.

A. Palmetto Dunes and Sea Pines Require More Than an Abstract Preference for Aesthetics.

The HOA correctly cites Palmetto Dunes Resort, Division of Greenwood Development Corp. v. Brown, 287 S.C. 1, 336 S.E.2d 15 (Ct. App. 1985), for the proposition that an aesthetic-approval provision is not invalid merely because it does not catalog absolute standards of taste. But Palmetto Dunes also required the Board's stated reason to bear a reasonable relation to the other buildings or to the subdivision's general plan of development. Id. at 8-9, 336 S.E.2d at 19-20. The decision sustained an articulated denial supported by a documented review process and evidence connecting the proposed house to the character and quality of the development.

Likewise, Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 893 (1987), did not authorize aesthetic enforcement in the abstract. It held, on that record, that the aesthetic rejection was not arbitrary because it bore a sufficient relation to the subdivision's general plan of development. The association in Sea Pines also relied on specific unapproved modifications, including modifications that obstructed protected views and violated express provisions. Id. at 270-72, 363 S.E.2d at 893-94.

Both decisions turned on a demonstrated connection between the stated aesthetic reason and the subdivision's general plan of development. Where the factfinder has found no such plan, that connection cannot be made, and the aesthetic ground cannot satisfy the reasonableness requirement those cases impose.

B. The Master's Own Findings Establish the Absence of a Common Fence-Design Scheme.

The Master found that existing Lakewood Links fences were not uniform in material, height, construction, color, or appearance. (Order 8, ¶ 36.) The subdivision includes wooden stockade, privacy, picket, brick, chain-link, solid, open, black, green, brown, and white fences.

(Id.) The Master further found that wooden and privacy fences had long existed and that no common design scheme existed for fences in the subdivision. (Id.; Order 16-17, ¶ 65.)

The HOA never reconciles those findings with its invocation of a general plan. It instead points to the Covenants' broad aspiration to create an aesthetically pleasing and functional residential community. (Resp. Br. 13-15.) A general aspiration cannot itself provide the factual nexus necessary to sustain a particular aesthetic denial after the factfinder has found no common fence-design scheme.

The HOA also relies on a purported case-by-case process and factors that "typically" included aesthetics, open views, maintenance, and special circumstances. (Resp. Br. 14-15.) But a list of discretionary considerations is not a substitute for a demonstrated general plan. Case-by-case review cannot resolve arbitrariness if it is not tied to a general scheme of development.

C. The HOA's Equitable Arguments Presuppose a Violation That Its Waiver and Arbitrariness Arguments Fail to Establish.

The HOA emphasizes that the Joseys built before obtaining approval and characterizes removal as a self-created hardship. (Resp. Br. 11-12.) That the fence stood before the request was made does not change the analysis. Section 2(f) conditions waiver on the Board's failure to decide a written request within thirty days, not on the sequence of construction and submission. Equitable balancing cannot restore a contractual right the Covenants declare waived. The Covenants fix the consequence of the Board's silence, and equity does not rewrite that allocation of risk because the result is now inconvenient for the party that stayed silent.

And even absent waiver, the removal remedy depends on a sustainable finding that the HOA's refusal was authorized and non-arbitrary. The Master's findings establish neither a common fence-design scheme nor a recorded, enforceable rule prohibiting the Joseys' wooden

privacy fence. The HOA's general assertions about notice, community aesthetics, and hardship do not overcome the lack of a general scheme of development.

CONCLUSION

The Board never answered the Joseys' written request within thirty days, thus waiving its right to architectural review under § 2(f). Even absent waiver, the refusal cannot stand because the Master found no common fence-design scheme to which the HOA's asserted aesthetic ground could reasonably relate. For these reasons, the Joseys respectfully request that this Court reverse the Master's order and deny the HOA's request for injunctive relief.

Respectfully submitted,

September 18, 2026

s/ Stephanie Trotter Kellahan
Stephanie Trotter Kellahan (SC Bar 77680)
D. Ryan McCabe (SC Bar 16977)
McCabe Trotter & Beverly, PC
4500 Fort Jackson Blvd., Suite 335
Columbia, SC 29209
Office: (803) 724-5000
Fax: (803) 724-5001
Email: stephanie.kellahan@mccabetrotter.com
Ryan.mccabe@mccabetrotter.com
ATTORNEYS FOR APPELLANTS