

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2018-CP-07-00784

Bradley Circle Vacation Partners, LLC and Monti Development HH, LLC... Appellants,

v.

Town of Hilton Head Island, Town of Hilton Head Island Board of Zoning Appeals,
Tamara Becker, and Rhonda Carper Respondents.

REPLY BRIEF OF APPELLANTS

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INTRODUCTION

The essential issue in this case is whether approval of variances to allow the construction of two single family homes each having four stories over parking constitutes approval of a site specific development plan and establishes a vested right to build the homes as depicted in the approved variance application. Respondents' argument that the variance applications did not describe a site specific development plan because the exact height of the homes was not specifically stated ignores the plain language of the South Carolina Vested Rights Act and of the Town of Hilton Head Island's Land Management Ordinance ("LMO").

§ 16-2-102J.1 of the LMO states, in relevant part:

Approval ... of ... a Variance shall constitute approval of a site specific development plan that established a vested right in accordance with the Vested Rights Act, S.C. Code Ann. § 6-29-1510 et seq.

§ 6-29-1520(9) of the South Carolina Vested Rights Act states:

Site specific development plan means a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density and intensity of uses for a specific property or properties. The plan may take the form of, but is not limited to, the following plans or approvals: planned unit development; subdivision plat; preliminary or general development plan; variance; conditional use or specific use permit plan; conditional or special use district plan; or other land-use approval designations as are used by a county or municipality.

§ 6-29-1550 of the South Carolina Vested Rights Act states:

The landowner and all successors to the landowner who secure a vested right pursuant to this article may rely upon and exercise the vested right for its duration subject to applicable federal, state, and local laws adopted to protect public health, safety, and welfare including, but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right.

There is no dispute that the variance applications described and graphically depicted a plan to build single family homes having four stories of living space over parking on two specific single family lots and that the applications included site plans that showed the footprint and location of each home on each lot. There can be no credible argument that the applications failed to meet the requirements for submittal of variance applications or that they failed to describe the type and density and intensity of the uses for the subject properties.

ARGUMENTS

I. The Variance Applications Described the Types and Density and Intensity of Uses for Specific Single-Family Lots with Reasonable Certainty.

The applications sought variances from the Town Land Management Ordinance's requirements for adjacent street setbacks and adjacent street buffers in order to allow for the construction of a single-family home on each of two specific properties. The applications included, among other things, graphic depictions of the homes and scaled site plans showing the placement of the homes on each property. The applications were deemed complete by the Town's development staff and were approved by the Town's Board of Zoning Appeals. The applications described the type of use (single-family homes) and the density and intensity of the use (one home of four stories over parking on each of two single-family lots of specific dimensions). If the applications had not sufficiently described the proposed development, they would not have been deemed complete or approved.

At the time the applications were submitted and approved, the Land Management Ordinance allowed the homes to be built to a maximum height of 75' over base flood elevation. The applications did not seek a variance from the height limitation. Accordingly, there was no need to include an exact height for the completed homes. However, the applications did include elevation drawings which clearly showed the homes would have four stories of living space over parking. The Staff Report to the BZA noted that "Staff has met several times over the past few months with the developer of the property, Radu Chindris, to determine what the buildable area of the property would be

after the LMO requirements were applied and how the two properties could be reconfigured and redeveloped.” [BZA CRA pp. 12-13, 261-262]

The applications sought variances from the Town’s adjacent street setbacks and buffers. These setbacks and buffers included setback angles, the effect of which is directly related to the height of structures. Because of that, the application included scaled elevation drawings of the proposed homes in order to show the effect of all the setback angles. [Application, Attachment G, BZA CRA pp. 77, 111, 279] The overall height of the homes is not specifically called out, but it can be reasonably determined from the drawing, which includes measurements for other dimensions, including the width the homes, the applicable setbacks and setback angles.

There was much discussion about the height of the homes when the BZA reviewed and approved the variance applications, but at no time was there any indication that the height was unknown, or concern that the proposed development plan failed to describe the type, density, or intensity of the use for the properties.

II. The Determination of the BZA and the Master that Appellants Did Not Submit a Site Specific Development Plan is Not an Unappealed Independent Basis to Affirm the Master’s Order.

Respondents’ argument that Appellants’ have not made any argument attacking the determinations of the BZA and the Master that Appellants did not submit a “site specific development plan” as defined by S.C. Code Ann. § 6-29-1520(9) is both a mischaracterization of Appellants’ Brief and legally flawed.

The first argument of Appellants’ Brief is that the Master erred in affirming the BZA’s determination that approval of the variances did not constitute approval of a site specific development plan. Appellants specifically argued that the determinations of the

BZA and Master were erroneous because the variance applications were complete and included all information necessary to describe the type, density and intensity of the use of specific properties. [Appellants' Brief, pp. 8-11]

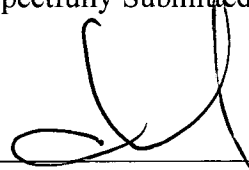
Appellants also challenged the determinations of the BZA and the Master because they ignored the plain language of the S.C. Vested Rights Act and the Town's LMO and were based on erroneous interpretations and applications of both the State statutes and local Town ordinances. The finding of the BZA and the Master cannot be reconciled with the S.C. Vested Rights Act definition of site specific development plan and ignores the legal effect of approval of the variances as set forth in the Town LMO. The finding cannot be an independent basis to affirm. It is inseparable from its erroneous legal foundation. *See, e.g., Wofford v. City of Spartanburg, ex rel. South Carolina Municipal Insurance Trust*, 415 S.C. 152, 781 S.E.2d 146 (Ct. App. 2015), *cert. denied* March 27, 2017.

CONCLUSION

For the reasons stated in this Reply and in Appellants' principal Brief, this Court should reverse the Master's Order and the decision of the Town BZA and find that Appellants have the vested right to construct the homes described in the variance application subject to the height restriction in the Town's LMO on the date the variances were granted.

Respectfully Submitted,

By:



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December 30, 2019

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Marvin H. Dukes, III, Circuit Court Judge

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v.

Town of Hilton Head Island, Town of Hilton Head Island Board of Zoning Appeals,
Tamara Becker, and Rhonda Carper Respondents.

PROOF OF SERVICE

I, Drew A. Laughlin, do hereby certify that I have this date served one (1) copy of the Reply Brief of Appellants to be included in the Record on Appeal upon the following counsel of record and pro se respondents by causing said copy to be deposited with the United States Postal Service, First Class Mail, as follows:

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December 30, 2019

VIA FEDERAL EXPRESS

The Honorable V. Claire Allen, Deputy Clerk
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1220 Senate Street
Columbia, SC 29201

Re: Bradley Circle v. Town of Hilton Head
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Dear Ms. Allen:

Enclosed for filing are the original and one (1) copy of the Reply Brief of Appellants and Proof of Delivery. Please file the originals and return clocked copies to me in the enclosed self-addressed stamped envelope.

Thank you for your courtesies. If you have any questions, please do not hesitate to contact me.

Yours truly,

LAUGHLIN & BOWEN, P.C.



Drew A. Laughlin

Enclosures

cc: Clients
Curtis L. Coltrane, Esquire
Tamara Becker
Rhonda Carper

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