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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III, Master In Equity

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Opinion Number 5646
South Carolina Court of Appeals
Appellate Case No.: 2019-001201
Heard April 12, 2018 – Filed May 8, 2019

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Grays Hill Baptist Church, Petitioner,

v.

Beaufort County and the Beaufort County Zoning Board of Appeals, Defendants,

And

The United States of America, Defendant-Intervenor,

Of Which Beaufort County and The United States of America are Respondents.

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# PETITION FOR REHEARING

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Beaufort County hereby petitions this Honorable Court for a rehearing of the instant action, in response to the opinion filed by this Court on September 16, 2020. The grounds for the within petition are as follows:

> **The Majority opinion errs in applying the standard of review in this case as there was evidence before the Planning Commission that the original development permit was limited to a development that included only the sanctuary and did not include the fellowship hall and once that sanctuary was built a new development permit was required for any further development of the property.**

The standard of review in this case is well established. "The appellate court gives 'great deference to the decisions of those charged with interpreting and applying local *65 zoning ordinances.' *"Arkay, LLC v. City of Charleston*, 418 S.C. 86, 91, 791 S.E.2d 305, 308 (Ct. App. 2016) (quoting Gurganious v. City of Beaufort, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995)). "By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it." Town of Hollywood v. Floyd, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013) (citing S.C. Code Ann. § 6-29-840(A) (Supp. 2005)). "A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." Furr v. Horry Cty. Zoning Bd. of Appeals, 411 S.C. 178, 184, 767 S.E.2d 221, 224 (Ct. App. 2014) (quoting Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 234, 642 S.E.2d 565, 567 (2007)).

In the majority opinion, the court finds that there "is no evidence in the record to support the Commission's finding that the original permit only authorized development of the church and that the certificate of compliance

closed out the 1997 development permit." This is simply not the case and ignores the plain language on several key documents which were evidence presented before the Planning Commission upon which they based their evidentiary findings.

The Development Permit at issue is Beaufort County Permit Number 3057 **[Record on Appeal p. 243]** It was received as the result of the Church's submission of the "Final Plan Application" **[Record on Appeal p. 244]** This application sets out specifics of the property such as the District/Map/Parcel of the property, the address, the project type, and importantly, the building square footage of the development. Under the space indicating building area (sq.ft.), the applicant Church indicated 15,872. This is the square footage of the sanctuary, and does not include the square footage of the fellowship hall. This may seem like a simple omission until viewed with the Narrative. **[Record on Appeal p. 245]** The Narrative which was the descriptive basis of the Church's 1997 Development Permit Application clearly divides the project into phases. Phase I being a 15,872 square foot church with 25,150 square foot asphalt and concrete paving. Phase II of the development will consist of a 11,250 square foot building shown on the enclosed plans as the building south of the church. The application for the permit itself only requests to construct the "Phase I" building. **[R. pp. 244, 245]** Clearly, it was not the Church's intent in 1997 that the 11,250 sq ft. building be included in this development permit, otherwise it would have included the square footage in its application. The face of the application is clear that they were requesting the development permit include a building area of only

15,872 square feet. If the Church had intended the Development Permit include both buildings they would have put 27,122 in the place designated for the requested building area. Additionally, if they intended the development permit to include the fellowship hall, there was no need to designate separate phases of development.

The documents referenced above are clear evidence upon which the Planning Commission relied to support its findings that the fellowship hall while shown on the plat as a future phase of development was not part of the development included in the subject development permit. While the majority may not agree with that finding, it is certainly supported in the record, and this court is not allowed to substitute it's judgment for the Planning Commissions. Furr v. Horry Cty. Zoning Bd. of Appeals, 411 S.C. 178, 184, 767 S.E.2d 221, 224 (Ct. App. 2014).

Similarly, there is evidence that the Certificate of Compliance closed out the development permit in this matter on the face of the document. **[Record on Appeal 247]** The very first words on this document in all caps are "FINAL INSPECTION," indicating a terminal approval. This document is a verification that the requirements of the development plan as approved by the County have been met by the applicant and that the applicant's project is constructed in compliance with the County's zoning regulations. The Planning Commission would have understood this to be the case. Again, this coupled with the foregoing is evidence upon which the Planning Commission properly relied to support its finding that the development permit included only the sanctuary building and

once that structure was built as requested in the application the development permit was closed by the county and any further construction on that property required a new development permit.

Based on the foregoing, it is respectfully submitted that the majority erred applying the standard of review in this case inasmuch as it has replaced its judgment with that of the Planning Commission as there was evidence to support the findings of the Planning Commission.

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