

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	Civil Action No.: 2024-CP-46-02641
COUNTY OF YORK)	
)	
Silfab Solar, Inc., and Exeter 7149 Logistics, L.P.,)	
)	
)	ORDER DENYING INTERVENOR
Appellants,)	WALTER BUCHANAN’S MOTION TO
)	DISMISS AND MOTION FOR
vs.)	SUMMARY JUDGMENT
)	
York County Board of Zoning Appeals,)	
)	
Respondent.)	
_____)	
Walter Buchanan,)	
)	
Intervenor.)	
_____)	

This matter is before the Court on Intervenor Walter Buchanan’s Motion to Dismiss and Motion for Summary Judgment, which was filed on June 13, 2025. A hearing was held before the undersigned on August 4, 2025 wherein the parties presented oral arguments. After careful consideration of the law, arguments of counsel, and authorities presented at the hearing, this Court denies Walter Buchanan’s Motion to Dismiss and Motion for Summary Judgment based on the following findings and conclusions of law.

PROCEDURAL BACKGROUND

Silfab is a solar cell and panel manufacturer that is in the process of constructing a manufacturing facility in York County. (Am. Pet. Appeal ¶ 1.) On February 1, 2024, Intervenor submitted a request to the York County Planning & Services Department for a zoning code interpretation relating to Silfab’s use of the property where its facility is located. (*Id.* at ¶ 5.) The York County Zoning Administrator responded to that request on February 16, 2024, concluding

that Silfab’s business was a permitted light industrial use under the use category of Computer and Electronic Product Manufacturing. (*Id.* at ¶ 6.)

On March 14, 2024, Intervenor submitted an administrative appeal of the Zoning Administrator’s interpretation to the York County Board of Zoning Appeals (the “BZA”). (*Id.* at ¶ 7.) The BZA held a public hearing at its meeting on May 9, 2024, and reversed the Zoning Administrator’s interpretation. (*Id.*) The BZA subsequently issued a written decision on May 30, 2024. (*Id.* at ¶ 8.)

On June 28, 2024, Appellants filed a notice of appeal and request for mediation in accordance with S.C. Code Ann. §§ 6-29-820 and 6-29-825. (*Id.* at ¶ 9; Not. Appeal.) Intervenor filed a motion to intervene in the appeal on July 24, 2024, which was granted by the Court on October 22, 2024. (Mot. Intervene; Order Granting Mot. Intervene.)

The parties mediated the appeal on April 21, 2025, but were unable to reach a resolution. (Proof of ADR.) As a result, the mediator filed on May 2, 2025 a Proof of ADR reporting that the parties were at an impasse. (*Id.*) Pursuant to S.C. Code Ann. § 6-29-825(F)(1), Silfab filed its petition for appeal, and Appellants subsequently filed their Amended petition for appeal, which sets forth several different grounds why the BZA’s decision was contrary to the law. (Am. Pet. Appeal.)

In response to this filing, Intervenor filed a motion to dismiss under Rule 12(b)(1), SCRCPP, or in the alternative, for summary judgment under Rule 56(c), SCRCPP. The only ground supporting this motion is that “the issues now raised before the circuit court were not properly preserved below for appellate review.”

CONCLUSIONS OF LAW

I. The South Carolina Rules of Civil Procedure do not apply to appeals from a decision of a board of zoning appeals.

In Intervenor’s motion, Intervenor moves to dismiss Appellants’ appeal under Rule 12(b)(1), SCRCF, or in the alternative, for summary judgment under Rule 56(c), SCRCF. However, neither rule is applicable to this appeal from the decision of the BZA, which Appellants have filed under S.C. Code Ann. §§ 6-29-820 and 6-29-825.

The procedures governing appeals of decisions from a board of zoning appeals to the circuit court are prescribed by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “Act”), S.C. Code Ann. §§ 6-29-820, *et seq.* Under the Act, a board of zoning appeals has the power to hear and decide appeals from a decision made by an administrative official in the enforcement of the zoning ordinance; to hear and decide applications for variances from the strict requirements of the zoning ordinance; and to permit land uses by special exception. S.C. Code Ann. § 6-29-800(A). A person having a substantial interest in any such decision may appeal the board’s decision to the circuit court. § 6-29-820. On appeal, the circuit court sits as an appellate court, and its review is strictly limited to the facts raised to the board below. *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 38, 606 S.E.2d 209, 214 (Ct. App. 2004); S.C. Code Ann. § 6-29-840(A). Thus, the circuit court’s role in an appeal from a board of zoning appeals “is a stark contrast” to its role in its original jurisdiction as a fact finder under the South Carolina Rules of Civil Procedure. *Austin*, 362 S.C. at 38, 606 S.E.2d at 214.

Because of this stark contrast between a circuit court’s appellate and trial capacities, it is “error for the circuit court to adhere to the rules designed to govern the conduct of civil trial litigation when sitting in its appellate capacity.” *Id.* Yet, that is precisely what Intervenor asks this Court to do by moving to dismiss under Rule 12(b)(1) and for summary judgment under Rule

56(c). These rules, however, apply to civil trial litigation and not to appeals. Therefore, Intervenor's motion is procedurally improper and is denied accordingly.

II. Normal issue preservation rules do not apply to appeals from a decision of a board of zoning appeals.

Regardless of whether Rules 12(b)(1) and 56(c) apply to this appeal, Intervenor has failed to articulate any grounds that would warrant dismissal or summary judgment. Intervenor's motion states only one ground for such requested relief, which is that "the issues now raised before the circuit court were not properly preserved below for appellate review." Intervenor's motion, thus, overlooks that the issue preservation rules that normally apply to other appeals do not apply in appeals from a board of zoning appeals under the Act.

The argument supporting Intervenor's motion has been expressly rejected by the South Carolina Court of Appeals in *Newton v. Zoning Bd. of Appeals for Beaufort County*, 396 S.C. 112, 719 S.E.2d 282 (Ct. App. 2011). In that case, the appellants appealed the decision of the Beaufort County BZA granting a special use permit. *Id.* at 115-16, 719 S.E.2d at 283-84. On appeal, the BZA argued that the appellants' arguments on appeal were unpreserved because they were not raised to the Board during the administrative process. *Id.* at 117, 719 S.E.2d at 284. But the Court of Appeals directly rejected this argument. *Id.*

According to the court, the statutory procedure governing appeals from a board of zoning appeals, as well as its non-adversarial nature, "does not allow for issue identification, or even party identification, prior to the filing of a petition with the circuit court." *Id.* As the court explained, § 6-29-820 does not require an appellant to attend the public hearing on the board's decision or to communicate its concerns prior to filing the appeal petition with the circuit court. *Id.* Thus, the court held that "the sole preservation requirement for a first-level appeal of a zoning board's decision is that the appellant must set forth his issues on appeal in a written petition . . ." *Id.*

Newton directly forecloses Intervenor’s argument supporting his present motion. Like the appellant in that case, Appellants had no obligation to identify any, much less all, of the grounds for their present appeal when the underlying decision of the BZA was first made. Instead, they presented their grounds for appeal when they filed their petition on appeal in accordance with the Act. Therefore, Appellants have complied with their statutory obligation and are not foreclosed from raising grounds on appeal that were not raised to or considered by the BZA when it granted Intervenor’s appeal. As a result, *Newton* dictates that Intervenor’s motion must be denied.

ORDER

THEREFORE, it is hereby ordered that Intervenor Walter Buchanan’s Motion to Dismiss and Motion for Summary Judgment is DENIED and the appeal shall proceed in accordance with the following schedule:

1. Appellants’ brief shall be filed within 30 days of the issuance of this Order;
2. Respondent’s and Intervenor’ response briefs shall be filed within 30 days of the filing of Appellants’ brief;
3. Any reply brief to be submitted by Appellants shall be submitted within 15 days of the last filed response brief of Respondent or Intervenor;
4. Upon completion of the briefing, oral argument on the appeal shall be scheduled.

AND IT IS SO ORDERED.

The Honorable R. Keith Kelly

_____, 2025

_____, South Carolina



York Common Pleas

Case Caption: Silfab Solar Inc , plaintiff, et al VS York County Board Of Zoning Appeals
Case Number: 2024CP4602641
Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165