

Article XII. Design Review Board.

Sec. 21-106. Authority.

The Design Review Board is established in pursuance of authority conferred by the South Carolina Code, Title 6, Chapter 29, Sections 870 through 940 and in accordance with the Town of Sullivan's Island's Comprehensive Plan.

Sec. 21-107. Intent.

The intent of establishing the Design Review Board and initiating design review is to enhance the Island's character, preserve property values and protect the unique island identity of Sullivan's Island. The Design Review process is intended to promote design that is compatible in mass and scale with existing development of the Island and in harmony with the natural environment. The process is aimed at improving and augmenting other development controls included in the Zoning Ordinance.

Sec. 21-108. Creation and responsibilities.

A. Establishment and purpose.

The Town Council hereby establishes the Design Review Board for

- (1) The preservation and protection of historic and architecturally valuable districts and neighborhoods or significant or natural scenic areas;
- (2) The protection of and/or provision for the unique, special, or desired character of Sullivan's Island and defined districts within the Island or any combination of it; and,
- (3) Governing the erection, demolition, removal in whole or in part, or alteration, of buildings, structures and/or grounds by the issuance of a Certificate of Appropriateness.

B. Powers.

In accordance with procedures and standards set forth in the Article, the Design Review Board shall have the power to:

- (1) Review, approve, approve subject to modification or conditions, or deny approval for: 1) construction, enlargement or improvements governed by this Zoning Ordinance that affect the exterior appearance of a structure, except for those actions deemed to be routine maintenance by the Zoning Administrator.
- (2) Oversee the requirements of the HP Historic Preservation Overlay District upon the establishment of such district in accordance with the HP Historic Preservation Overlay District, including the issuance of Certificates of Appropriateness.
- (3) Hear appeals from alleged error in any order, requirement, determination, or decision of the Zoning Administrator or other appropriate administrative.
- (4) In connection with the administration of subsections 1 and 2 above, interpret and apply the standards of this Zoning Ordinance.

C. Composition of board.

In making appointments to the Design Review Board, the Town Council shall make an attempt to maintain a balance of interest and skills on the Board by assessing the individual qualifications of the candidates including but not limited to their knowledge and demonstrated interest in architecture, history, archaeology, planning, urban or community design, landscape architecture, construction and restoration, or law. Membership should include at least one state licensed design professional and a member at large. All members should have knowledge and demonstrated interest in the design and preservation of buildings and places. (11-15-05)

Appointment and terms.

- (1) The Design Review Board shall consist of seven (7) members at least six (6) of whom must be residents and the seventh (7th) of whom may be a nonresident of Sullivan's Island appointed by the Town Council (11-15-05) (12-17-13).
- (2) No Board member shall hold any other public office or position in the Town.
- (3) The Board members shall serve overlapping terms of three (3) years each. At the time of the creation of the Design Review Board, three of the Board's five (5) members shall serve terms of one (1), two (2) and three (3) years, as designated by the Town Council. Their successors shall be appointed for a full three (3) year term. The Board members appointed to fill the additional two (2) places on the Board shall serve terms of two (2) years and three (3) years, as designated by Town Council, and their successors shall be appointed for full three (3) year terms. Members are all eligible for reappointment.

D. Removal and replacement of board member.

The Town Council may remove any Design Review Board member for repeated failure to attend meetings of the Board or for any other cause deemed sufficient cause. A member appointed to replace a removed member shall serve the balance of the removed member's unexpired term. At the completion of the unexpired term, the member shall be eligible for reappointment to a full term.

E. Election/appointment of officers.

The Design Review Board shall elect one of its members as chair. The chair shall serve for one (1) year or until he or she is re-elected or his or her successor is elected. The Board shall appoint a secretary who may be an officer of the governing authority or a member of the Design Review Board.

Sec. 21-109. Application, notice, meetings, conflicts, quorum, procedures and time limits.

A. Application and fees.

Applications to the Design Review Board shall be those required by the Zoning Administrator and any other information required for issuance of a Certificate of Appropriateness accompanied by an application fee the amount of which shall be established by resolution of the Town Council. (9-18-07)

B. Public notice of meetings.

- (1) Hearings shall be required on all applications made to the Design Review Board. Public notice of all hearings and meetings of the Design Review Board shall be published in a newspaper of general circulation in the Town at least fifteen (15) days prior to the meeting.
- (2) Written notice of the hearing date shall be mailed to the applicant, or the agent for the applicant, and, in the case of Administrative Appeals, the administrative officer from whom the appeal is taken.
- (3) Ten (10) days prior to the hearing before the Design Review Board, the Zoning Administrator shall require a sign that is conspicuous in color, size and location shall be posted on the property subject to the review. Such notice shall be visible from each public thoroughfare that abuts the property. The sign provided by the Zoning Administrator shall indicate that the Design Review Board shall be considering proposed improvements on the property and shall furnish the time and date of the Design Review Board hearing.

C. Meetings and record of actions.

- (1) Meetings of the Design Review Board shall be held at the call of the chair and at such other times as the Board may determine. The chair or, in his or her absence, the acting chair, may administer oaths and compel the attendance of witnesses by subpoena.
- (2) All meetings of the Design Review shall be open to the public.
- (3) All actions of the Design Review Board's findings of fact and conclusions shall be separately stated in final decisions or orders of the Board.
- (4) The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed at Town Hall and be considered as a public record.

D. Conflicts of interest.

Any member of the Design Review Board who has a personal or financial interest, either directly or indirectly, in any property which is the subject of, or affected by, a decision of the Board shall be disqualified from participating in the decision of the Board concerning the property.

E. Quorum and required vote.

Three (3) members are required for a quorum and a concurring vote of three (3) members of the Design Review Board shall be necessary to take any action.

F. Procedures.

- (1) An application for a Certificate of Appropriateness shall be submitted to the Zoning Administrator who initially determines whether the application is complete and whether it requires approval by the Design Review Board.
- (2) If the Zoning Administrator determines the application for a Certificate of Appropriateness does not require approval by the Design Review Board, the Zoning Administrator shall make the determination as to whether or not the application is in compliance with the Zoning Ordinance.
- (3) If the Zoning Administrator determines the application requires approval by the Design Review Board, the Zoning Administrator shall place the application on the Design Review Board's next meeting agenda that falls within the time limits and notification requirements of this Article. The Zoning Administrator shall note any inconsistencies between the application and the Zoning Ordinance including the need for modifications or variance to such standards.
- (4) If the Zoning Administrator informs the applicant that the submission does not meet the Zoning Ordinance standards, and adequate relief from such standards is not available from the Design Review Board under this Ordinance, the applicant may request that the Zoning Administrator deny the application prior to its submission to the Design Review Board to enable the applicant to appeal forthwith for a variance to the Board of Zoning Appeals. In such a case, the Zoning Administrator shall issue such denial and, if the variance is granted, the applicant may reapply to the Zoning Administrator who shall then forward the application, along with a copy of the variance decision, to the Design Review Board for further action.
- (5) Upon hearing the application, the Design Review Board shall approve, approve subject to modification or conditions, or deny the Certificate of Appropriateness. The Design Review Board may also continue the application hearing to allow for changes to be made to the application or additional information being provided.
- (6) If the Design Review Board finds that the application is inconsistent with one or more of the Zoning Ordinance Standards which it does not have the power to modify, or if the Design Review Board determines that a requested application does not meet the Standards of neighborhood Compatibility as described in Sec. 21-111, the Design Review Board shall
 - (a) Deny the application accompanied by suggested changes that might be made to the application and/or variances that might be sought that would make the application more appropriate and consistent with the spirit of the Zoning Ordinance; or,
 - (b) Approve the application subject to a variance being granted by the Board of Zoning Appeals modifying the required standards.
- (7) In case of a denial by the Zoning Administrator the following appeal processes shall apply (Sec. 21-110 for Administrative Appeals to the Design Review Board and Article XVIII Sec. 21-177 for Administrative Appeals to the Board of Zoning Appeals):
 - (a) The applicant may appeal a determination based upon an interpretation based upon an interpretation of the Design Standards to the Design Review Board. The Design Review Board shall have final authority to interpret and apply the Design Standards.
 - (b) The applicant may appeal a determination based upon an interpretation of the Zoning Standards to the Board of Zoning Appeals. The Board of Zoning Appeals shall have final authority to interpret and apply the Zoning Standards.
 - (c) In case of any conflict between a Zoning Standard and a Design Standards, or where it is unclear as to the determination being a Zoning or Design Standard, the Board of Zoning Appeals shall have final authority in such appeals.
- (8) Staff level review and approval of minor improvements and accessory structures. (7/21/09)
 - (a) Notwithstanding provisions to the contrary in this chapter, the following items may be reviewed and approved at the Staff level in accordance with the procedures prescribed herein. (7/21/09)

H. By-laws.

In addition to the rules, regulations and procedures set out in Section 21, the Design Review Board shall adopt a set of by-laws further governing their procedures.

Sec. 21-110. Administrative appeal.

A. Appeals of the administrative official.

Decisions of the Zoning Administrator or other appropriate administrative official in matters under the purview of the Design Review Board may be appealed to the Design Review Board where there is an alleged error in any order, requirement, determination, or decision. Appeals to the Design Review Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town.

B. Time limits.

The appeal shall be taken within a thirty (30) days, by filing with the officer from whom the appeal is taken and with the Design Review Board notice of appeal specifying the grounds of it. The officer from whom the appeal is taken immediately shall transmit to the Design Review Board all the papers constituting the record upon which the action appealed from was taken.

C. Effect of appeal.

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application, upon notice to the officer from whom the appeal is taken, and on due cause shown.

D. Setting a time for the hearing.

The Design Review Board shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice of the hearing, as well as due notice to the parties in interest, and decide the appeal or other matter within a reasonable time.

E. Hearing and order.

Upon the hearing any party may appear in person or by agent or by attorney. The Design Review Board may reverse or affirm wholly or partially or may modify or reverse the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as should be made.

Sec. 21-111. Standards of Neighborhood Compatibility

Where this Ordinance grants the Design Review Board discretion to modify a Zoning Standard or a Design Standard, the Board shall determine whether or not the proposed modification is compatible with the neighborhood. In making this determination the Board shall consider, with reference to adjoining lots, lots facing across the street, and lots in the immediate vicinity:

- A. The pattern of setback, foundation elevations and building heights;
- B. The massing and orientation of structures;
- C. Fenestration (windows) and doorway spacing and alignment patterns;
- D. The placement and use of porches, decks and patios;
- E. The placement and alignment of driveways;
- F. The treatment of front and side facades;
- G. Where appropriate, the types of roofs, the roof pitches, and other aspects of roof design;
- H. Where appropriate, distinctive architectural styles that characterize a street or neighborhood; and
- I. Such other factors as the Board may consider relevant to defining the character of the neighborhood.

Sec. 21-112. Historic preservation responsibilities.

A. Maintenance of historic inventory and map

- (1) The Design Review Board shall maintain an inventory of buildings, structures, objects, and sites that are considered as historic or contributing to the historic character of the Island.
- (2) Design Review Board shall insure that all locally designated historic districts and/or HP Overlay Districts shall be clearly shown on the Official Zoning Map.

B. Nominations to the National Register.

The Design Review Board may conduct the initial review and evaluation of all proposed nominations for the National Register of Historic Places for properties that are within its jurisdiction, prior to consideration by the State Board of Review. The Design Review Board may send their recommendations to the State Historic Preservation Office for consideration at the meeting of the State Board of Review.

C. Establishment of HP Historic Preservation Overlay District.

The Design Review Board shall ensure that the provisions related to the HP Historic Preservation Overlay District are met.

Sec. 21-113. Protection against liability.

Any member of the Design Review Board acting within powers granted by the Ordinance shall be relieved from personal liability for any damage and held harmless by the Town of Sullivan's Island. Any suit brought against any member of the Board shall be defended by a legal representative furnished by the Town of Sullivan's Island until the termination of the proceedings.

Sec. 21-114. Appeal to circuit court.

A person who may have a substantial interest in any decision of the Design Review Board or any officer, or agent of the appropriate governing authority may appeal from any decision of the Board to the circuit court in and for the county by filing with the clerk of court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal shall be filed within thirty (30) days after the affected party receives actual notice of the decision of the Design Review Board.

Sec. 21-115. Reserved.

Sec. 21-116. Reserved.

EXCERPT REGARDING DESIGN REVIEW BOARD

2014 Comprehensive Planning Guide for Local Governments

MASC Municipal Association
of South CarolinaSM

Chapter 3 - Board of Architectural Review

The Comprehensive Planning Act allows a local government to create a board of architectural review or similar body by specific provisions in the local zoning ordinance. S.C. Code § 6-29-870. The title of the board is left to the discretion of the local governing body. In some communities, this board is called the historic district board, the landmarks commission, design review board or other titles. For purposes of this manual, the term “board of architectural review” is used.

A board of architectural review is a part of the administrative mechanism designed to implement the zoning ordinance for specific areas. The board has no legislative authority.

Purpose

To create a board of architectural review, the zoning ordinance must make specific provision for one or more of the following activities:

1. preservation and protection of historic and architecturally valuable districts and neighborhoods
2. preservation and protection of significant or natural scenic areas
3. protection and/or provision for the unique, special or desired character of a defined district, corridor or development area.

Architectural review provisions of the zoning ordinance must include restrictions and conditions governing the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the designated areas. S.C. Code § 6-29-870(A). Separate architectural review ordinances may be incorporated into the zoning ordinance by reference.

The powers of the board of architectural review involving structures and the designated areas are to be set out in the zoning ordinance. One specific power of the board provided for by the Act is the power to hear and decide appeals from decisions of the zoning administrator (or other appropriate administrative official) in matters within the board’s purview when an error is alleged in the order, requirement, determination or decision of the administrative official. S.C. Code § 6-29-880.

Composition and Qualifications

The local governing body appoints the members of the board. The board cannot have more than ten members; however, the Act does not set a minimum number of members. S. C. Code § 6-29-870(B). Board members cannot hold any other public office or position in the local government. S.C. Code § 6-29-870(C).

The qualifications of the board members can be set in the zoning ordinance. Specific professional qualifications can be required. S.C. Code § 6-29-870(B). The governing body sets the amount of compensation, if any, for board members. S.C. Code § 6-29-870(C).

The Act does not specify the length of the terms of members. The governing body making the appointment may remove board members. A finding of cause is not required. S.C. Code § 6-29-870(B).

Organization and Operation

Organizational requirements for the board of architectural review are virtually identical to those for the board of zoning appeals. S.C. Code § 6-29-870(D).

1. **Chairperson.** The board must elect one of its members as chairperson. The chairperson serves for one year or until a successor is elected and qualified. The chairperson may be re-elected.
2. **Secretary.** A secretary must be appointed. The secretary may be an officer of the local government or of the board of architectural review. It is customary to appoint as secretary the staff member who works with the board.
3. **Minutes.** Minutes of board meetings and proceedings are required. The minutes must show the vote of each member on each question or show the member's absence or failure to vote. Minutes (and other records of the board's official actions) must be filed in the board's office and kept as public records.
4. **Rules.** The board must adopt rules of procedure complying with the zoning ordinance. The rules should address the following elements as a minimum.
 - a. Election of a chairperson and duties
 - b. Procedure for electing an acting chairperson
 - c. Appointment of a secretary and duties
 - d. Procedures for calling meetings
 - e. Time and place for meetings
 - f. Posting of meeting notices to comply with Freedom of Information Act
 - g. Setting agenda
 - h. Quorum and attendance requirements
 - i. Rules of procedure for conduct of meetings
 - j. Time for appeal from decisions of the administrative official
 - k. Time and procedure for hearing appeals
 - l. Time and procedure for rendering and serving decisions
 - m. Procedure for making and keeping records of actions (including minutes of all meetings)
 - n. Procedure for ordering remands to the administrative official and otherwise granting rehearings by the board
 - o. Oath administered to witnesses.

The board should adopt rules of evidence that provide due process. The board also should adopt a method of examining witnesses that avoids intimidation. See the sample rules of procedure in Appendix E.

Freedom of Information Act

The Freedom of Information Act (S.C. Code § 30-4-10, et seq.) requires all public bodies (including committees of public bodies) to conduct their meetings in public, except when an executive session is authorized. An executive session is authorized only for the reasons specified in the FOIA, such as receipt of legal advice, employment matters and contract negotiations. S.C. Code § 30-4-70. Written public notice of regular meetings (including dates, times and places) must be given at the beginning of each calendar year. The agenda for regular meetings must be posted at the meeting place 24 hours prior to a meeting. Notice and agenda of a called, special or rescheduled meeting must be posted at least 24 hours before the meeting. The board also must notify persons, organizations and news media that request meeting notifications. S.C. Code § 30-4-80.

Educational Requirements for Board of Architectural Review

Members of the board of architectural review are subject to the mandatory orientation and continuing educational requirements required by the Comprehensive Planning Act. S.C. Code § 6-29-1310 through § 6-29-1380. See the discussion of these requirements in Chapter 1.

Powers

Powers of the board of architectural review should be clearly set out in the local zoning ordinance. These powers will differ from locality to locality depending upon the purposes the local governing body is trying to achieve. Limits on matters the board may consider should be explicit. Broad general language in the zoning ordinance can lead to unnecessary conflict and dissension. S.C. Code § 6-29-880.

Appeals

1. **Appeal to board.** Any person aggrieved (or any officer, department, board or bureau of the local government) may appeal to the board of architectural review from actions of the zoning administrator or other administrative official in matters within the jurisdiction of the board. S.C. Code § 6-29-880, § 6-29-890(A). The requirements of the Act concerning appeals to the board of architectural review are essentially the same as those for an appeal to the board of zoning appeals. The following procedures are required by the Act (S.C. Code § 6-29-890).
 - a. The party appealing must file a notice of appeal (specifying the appeal grounds) with the officer from whom the appeal is taken **and** with the board within the time provided by the zoning ordinance or rules of the board.
 - b. The administrative officer from whom the appeal is taken immediately must transmit to the board all documents constituting the record for the appealed action.

- c. An appeal to the board stays all legal proceedings to enforce the appealed action, unless the officer certifies to the board that a stay would cause imminent peril to life and property. In that case, proceedings to enforce the appealed action may only be stayed by a restraining order granted by the board or a court of record, on notice to the officer and for due cause shown.
- d. The board sets a reasonable time for hearing the appeal or matter, gives public notice of the hearing, and gives due notice of the hearing to the parties in interest. The time for giving notice is not prescribed by the Act. It should be set in the zoning ordinance.
- e. At the hearing, a party may appear in person or be represented by an agent or attorney.
- f. The board, either in response to a party's motion or on its own motion, may remand a matter to an administrative official if the board determines the record is insufficient for review. The board must set a rehearing on the remanded matter without further public notice for a time certain within 60 days unless otherwise agreed to by the parties. However, those persons who expressed an interest in being informed of the rehearing date must be mailed a notice of the rehearing in advance.
- g. The board must decide the appeal (or any other matter referred to it) "within a reasonable time."

The Act does not expressly require (as it does for the BZA) that the board issue a final decision in writing with findings of fact and conclusions of law separately stated. However, a written decision with separately stated findings of fact and conclusions of law clearly is the best practice. The sample form for board of zoning appeals decisions could be modified for this purpose. See Appendix F, Form 5.

A written decision with separately stated findings of fact and conclusions of law serves to make the positions of the board clear both to the appealing party and to the reviewing courts. It also serves to increase the likelihood that the courts will affirm the board's decision. S.C.Code § 6-29-920 refers to the certified record from the board as including "the decision of the board including its findings of fact and conclusions." In the consideration of any appeal to the court, the circuit judge is required by S.C.Code § 6-29-930 to treat the board's findings of fact as "final and conclusive."

Additionally, to comply with the due process rights of the appealing party, the board should conduct the hearing by following its adopted procedural rules. Another recommended procedure for the board is to serve a copy of its decision on the parties in interest by certified mail and retain a copy as a permanent public record.

2. **Appeal to Council.** There is no provision for an appeal to the local governing body from any action of an administrative officer or from a decision of the board of architectural review. Appeals from actions of an administrative official must go to the board and appeals from the board's decision must go to circuit court.
3. **Appeal to Circuit Court.** The requirements concerning appeals to the circuit court are, with some exceptions, the same as those for an appeal from the board of zoning appeals to the circuit court.

- a. **Petition/ Notice of Appeal and Request for Pre-litigation Mediation.**

A person with a "substantial interest" in any decision of the board of architectural review (or any officer or agent of the appropriate governing authority) may appeal a board decision to the circuit court in the county by filing with the clerk of court a written petition setting forth "plainly, fully, and distinctly" why the decision is contrary to law. The appeal petition must be filed within 30 days after the affected party "receives actual notice" of the board's decision [not within 30 days of **mailing** of the decision as with appeals from the BZA]. S.C. Code § 6-29-900(A).

In *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 621 S.E. 2d 361 (2005), the court held that the triggering event for filing an appeal from a decision of an architectural review board, under the plain meaning of S.C. Code § 6-29-900, was actual notice of the adverse decision, not receipt of the written notice. Because the appealing party was present at the board hearing when its decision was rendered, it had actual notice of the decision on the day of the hearing. The court ruled that the appeal to circuit court, filed 82 days after the hearing (but within 30 days of receipt of the written notice of the decision), was untimely and was properly dismissed by the trial court.

Although the Act does not require service of the appeal petition on the board, it is advisable to do so. The clerk of court is required to give immediate notice of the appeal to the board secretary. Filing an appeal does not automatically stay or supersede the board's decision, but the circuit judge may grant an order of supersedeas upon such terms and conditions as may seem reasonable and proper. S.C. Code § 6-29-920.

A 2003 amendment to the Comprehensive Planning Act allows an alternative appeal procedure for a property owner whose land is the subject of a decision of the board of architectural review. Pursuant to S.C. Code § 6-29-900(B), such a property owner can file either an appeal petition **or** a notice of appeal accompanied by a request for pre-litigation mediation. Any notice of appeal accompanied by a request for pre-litigation mediation must be filed within 30 days after the decision of the board is postmarked.

- b. **Pre-litigation Mediation.** Mediation is a negotiation session, facilitated by a neutral third-party mediator, in which the parties can arrive at a voluntary,

mutually agreeable resolution of their dispute. S.C. Code § 6-29-915 provides for mediation of a property owner's appeal prior to court hearing. The mediation is mandatory if the property owner properly and timely files a request for mediation under S. C. Code § 6-29-900(B). The mediation is to be conducted in accord with the South Carolina Circuit Court Alternative Dispute Resolution Rules and S. C. Code § 6-29-915. A person who is not the owner of the property at issue may petition to intervene as a party in the mediation. This motion must be granted if the person has a "substantial interest" in the board's decision. S. C. Code § 6-29-915(A).

All property owners or representatives and intervenors must be notified and have the opportunity to attend the mediation. The governmental entity must be represented at the mediation by at least one person. S.C. Code § 6-29-915(B).

The mediation may result either in an impasse (as determined by the mediator) or a mediation settlement agreement (reduced to writing by the mediator within five working days of a successful mediation). The settlement agreement does not become effective until approved by the local legislative governing body (the municipal or county council) in public session **and** by the circuit court judge. S.C. Code § 6-29-915(C) and (D).

Any land use or other change agreed to in mediation which affects existing law is effective only as to the subject real property and sets no precedent as to other property. S.C. Code § 6-29-915(E).

If the mediation is not successful or if the mediated settlement is not approved by the local legislative governing body, the property owner has the option to pursue an appeal of the board's decision by filing a petition for appeal as provided in S.C. Code § 6-29-900(A). The petition must be filed with the circuit court within 30 days of the report of impasse filed by the mediator or the council's failure to approve. S.C. Code § 6-29-915(F).

The circuit court judge must approve the mediated settlement if the settlement has a rational basis in accord with the standards of the Comprehensive Planning Act. If the court does not approve the settlement, it must schedule an evidentiary hearing and must issue a written opinion containing findings of law and fact. A party may appeal from that decision to the appellate courts or may file a petition for appeal pursuant to S.C. Code § 6-29-915(F). S.C. Code § 6-29-915(G).

- c. **Transcript.** Within 30 days after notice from the clerk of court of the filing of an appeal with a petition, the board's secretary must file with the clerk of court a certified copy of the board proceedings, including a transcript (if any) of the evidence heard by the board, and the board decision including its findings of fact and conclusions. S.C. Code § 6-29-920(A). Although there is no requirement that the certified record be served on parties in interest, it is common practice for the

attorney for the board to file a return to the petition and serve it with a copy of the certified record on counsel for the appealing party.

- d. Standard of Review.** The board’s findings of fact are “final and conclusive” on review by the court, and the court may not take additional evidence. The court may determine only whether the board’s decision is correct as a matter of law. If the record is insufficient for review, the circuit judge must remand to the board for rehearing. S.C. Code § 6-29-930(A). Factual findings, reviewed under the “final and conclusive” standard, must be allowed to stand if there is any evidence in the record to support them and they are not influenced by an error of law. *Fairfield Ocean Ridge, Inc. v. Town of Edisto Beach*, 294 S.C. 475, 366 S.E. 2d 15 (Ct. App. 1988).
- e. Mode of Trial.** S. C. Code § 6-29-930(B) deals with the mode of trial for an appeal from a board decision. The judge determines the appeal without a jury when the appeal involves no issues for which there is an established right to a jury or when the parties consent. However, the subsection also provides that a property owner is not precluded from asserting a pre-existing right to a jury trial for any issue beyond the subject matter jurisdiction of the board of architectural review, such as a determination of the amount of damages due for an unconstitutional taking. In *Cobb v. South Carolina Department of Transportation*, 365 S.C. 360, 618 S.E. 2d 299 (2005), the court determined that, in an inverse condemnation case, a property owner and the government have a right to elect a jury trial on the issue of compensation.
- 4. Appeal to State Appellate Courts.** A decision of the circuit court may be appealed to the state appellate courts in the manner provided by the South Carolina Appellate Court Rules. S.C. Code § 6-29-940. Rule 203, South Carolina Appellate Court Rules, requires service of a notice of appeal on all respondents within 30 days after receipt of written notice of entry of the circuit court order or judgment. The notice of appeal is filed with the clerk of the circuit court and with the clerk of the state Court of Appeals unless the order or judgment involves, as the principal issue, a challenge to the constitutionality of a county or municipal ordinance. In that event, the notice of appeal is filed with the clerk of the circuit court and with the clerk of the state Supreme Court. Rule 204 of the Appellate Court Rules allows either appellate court to transfer an appeal filed in the wrong court and allows the state Supreme Court, in its discretion and on motion of any party to the case, to obtain jurisdiction by certification of an appealed case involving an issue of significant public interest or a legal principle of major importance. The state Supreme Court also has the discretion, on motion of any party or on its own motion, to issue a writ of certiorari to review a final decision of the state Court of Appeals. Rule 226, South Carolina Appellate Court Rules.

Enforcement

The board is created by the zoning ordinance. The regulations relating to architectural review of buildings and structures in the designated areas are part of (or are incorporated by

reference in) the zoning ordinance. Therefore, enforcement of the regulations and orders of the board is done in the same manner as for zoning regulations and orders. See Chapter 4.

Historic Preservation Ordinance

A local government may encourage preservation of the character of the community through a local board of architectural review. S.C. Code § 6-29-870, § 6-29-880. Some communities rename these boards by using “historic preservation” or “landmarks” in the title. Local historic preservation legislation may be a part of the zoning ordinance, or it could be a separate ordinance that is incorporated into the zoning ordinance by reference to comply with S.C. Code § 6-29-870(A). A model historic preservation ordinance can be obtained from the South Carolina Department of Archives and History.

Historic Preservation Ordinance Elements

A preservation ordinance should contain procedures and standards for designating historic property, setting design guidelines and reviewing proposed changes to historic properties. The Municipal Association suggests the following be included in a historic preservation ordinance.

1. **Title.** Architectural review, historic preservation and landmarks are terms used in existing ordinance titles.
2. **Purposes.** The generally stated purposes are to protect, preserve and enhance the distinctive architectural heritage and history of the community; to promote educational, cultural, economic and general welfare; to ensure harmonious, orderly and efficient growth and development; to strengthen the local economy; and to stabilize and improve property values.
3. **Legal authority.** Ordinances should refer to S.C. Code §§ 6-29-710, 6-29-870 and 6-29-880.
4. **Definitions.** Definition of key terms, especially those having a particular technical meaning (e.g., historic district, historic property, landmark, substantial hardship.)
5. **Creation of Board.** If a board is created specifically for historic preservation, the following factors should be considered.
 - a. **Qualification.** The board should have both an architect and a historian, if available. All members should have a demonstrated interest in historic preservation.
 - b. **Powers and duties.** The board approves, denies or approves with conditions the demolition or alteration of building exteriors. It also reviews proposed new construction in a historic district. The board should maintain an inventory of local historic properties, promote education about historic preservation and procedures,

review and comment on National Register nominations and exercise other duties specifically needed by a community.

- c. **Designation of historic properties.** Based on the local inventory and criteria, the board recommends individual properties to the local governing body for historic property designation. The process includes owner notification and public hearing.
 - d. **Design guidelines.** The board uses guidelines set by the ordinance for reviewing applications. Typically, the Secretary of Interior's "Standards for Rehabilitation" are incorporated by reference and used with additional local standards.
 - e. **Application procedure.** The ordinance should establish a process for changes that require a permit, the application procedure itself, required documents, exterior elements included in the permit and the requirements for a certificate of appropriateness as a condition for receiving a building permit.
 - f. **Appeal.** The appeal process is described earlier in this chapter. For example, substantial economic hardship may be the basis for appeal of a design review decision.
 - g. **Substantial hardship.** When denying a certificate of appropriateness results in substantial economic hardship, the ordinance may allow the owner to reapply to the board citing the hardship. Economic hardship should not be allowed as a basis for review until an application is rejected for noncompliance with the design guidelines.
6. **Enforcement.** Enforcement is discussed in Chapter 4.