

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Spartanburg County and Cole Alverson in his Official Capacity of County Administrator,

Petitioners/Appellants,

v.

The Spartanburg County Board of Zoning Appeals, and Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc.,

Respondents/Appellees.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No.: 2023-CP-42-01155
Appellate Case No.: 2024-000735

ORDER DENYING RESPONDENT CAMP'S MOTION TO ALTER OR AMEND

THIS MATTER came before the Court by Respondent Adam Washington Ballenger Camp #68, Sons of Confederate Veterans, Inc.'s ("Camp/Respondent") January 7, 2026 Motion to Alter or Amend this Court's December 29, 2025 Formal Order. Pursuant to Rule 59(f), SCRCR, this Court issues its ruling in reliance on the parties briefs and without oral arguments.¹ After considering the arguments offered by the parties, this Court **DENIES** the Camp's Motion to Alter or Amend for the following reasoning:

NATURE OF THE CASE

This case concerns Petitioners' appeal to this Court from a decision of the Spartanburg County Board of Zoning Appeals ("Zoning Board").

PROCEDURAL BACKGROUND²

On October 21, 2022, the Spartanburg County Planning and Development Department issued a Notice of Violation to the Camp after the Camp constructed a 120-foot flagpole on its

¹ A trial court does not commit reversible error by "denying [a] motion to alter or amend the judgment under Rule 59(e)[,] SCRCR, without first conducting a hearing or allowing [a party] 'to fully brief' the issues raised in [their] motion." *Pollard v. County of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994).

² A substantial portion of this Order is adopted from Petitioners' submission because this Court agrees with Petitioners' analysis.

property on Teaberry Road without obtaining a required development permit in violation of Section 1.07 of the Spartanburg County Unified Land Management Ordinance (“ULMO”). *See* Pet. for Appeal. The Notice of Violation cited the establishment of an accessory use without a principal use and directed the Camp to either remove the flagpole or obtain a permit for a principal use and reduce the flagpole’s height to thirty (30) feet). *See id.* The Camp appealed the Notice of Violation to the Zoning Board, which considered the appeal on January 31, 2023. *Id.* The Zoning Board’s review was limited to whether the Planning and Development Department had properly issued the Notice of Violation under the ULMO. The Zoning Board voted to overturn the Notice of Violation.

On March 30, 2023, Petitioners filed a petition for appeal of the Zoning Board’s decision to this Court. This Court’s review was limited to determining whether the Zoning Board abused its discretion in overturning the Notice of Violation. *See* Order, 6-7, Feb. 20, 2024. On February 20, 2024, the Court issued an order reversing the Zoning Board’s decision and reinstating the Notice of Violation in its entirety. *Id.* The Camp appealed this decision to the South Carolina Court of Appeals where such appeal is pending. *See* Notice of Appeal, May 1, 2024. On August 5, 2024, Petitioners filed a motion to lift the automatic stay and allow enforcement of the Notice of Violation. *See* Mot. Lift Automatic Stay, Aug. 5, 2024). That Motion was heard on November 14, 2025.³

On December 29, 2025, this Court issued an Order granting Petitioners’ Motion to Lift Automatic Stay. Order, Dec. 29, 2025. The Court expressly limited its analysis to the issue presented under Rule 241, SCACR, namely whether its judgment reinstating the Notice of Violation should be enforced during the pendency of the appeal, and declined to revisit the merits

³ The Court appreciates both parties cooperation with the additional briefing and arguments requested.

of the underlying appeal. *Id.* The Court determined that lifting the stay was appropriate given the safety concerns associated with the continued presence of an unpermitted structure and the impact that continued non-enforcement would have on the Petitioners' ability to uniformly enforce its zoning ordinances. *Id.* Accordingly, the Court ordered the Camp to comply with the intent of the Notice of Violation by either removing the flagpole or lowering the flag to thirty (30) feet and displaying a flag that does not exceed five (5) by eight (8) feet within thirty days of the Order. *Id.*

Thereafter, on January 7, 2026, the Camp filed the present motion to alter or amend this Court's Order lifting the automatic stay. The Camp served this Court with the present motion on January 16, 2026. Petitioner filed a Response to the present motion on January 22, 2026. No further briefing was received, even though the Court related to Respondent that such could be submitted by January 26, 2026.

ANALYSIS

Respondent's Motion is Improper

This matter came before this Court on Petitioners' Motion pursuant to Rule 241, SCACR. This matter was not presented to this Court pursuant to the Rules of Civil procedures that traditionally apply subsequent to a trial or merit-based decision. Therefore, the present motion is not properly presented for consideration.

The Camp's motion is improper because Rule 59(e), SCRCR, applies only to "judgments" as defined in the SCRCR. The Court's December 29, 2025 Order lifting the automatic stay is an interlocutory order, not a final judgment, and therefore cannot be the subject of a motion to alter or amend under Rule 59, SCRCR.

Rule 59(e), SCRCR, provides that: "[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." *Rule 59(e),*

SCRCP. Rule 54, SCRCP, narrowly defines judgment as follows: “[j]udgment’ as used in these rules includes any decree or order which dismisses the action as to any party or finally determines the rights of any party.” *Rule 54, SCRCP*. The South Carolina Supreme Court has made it clear that Rule 59(e) is intended to allow the trial court to “reconsider matters properly encompassed in a decision on the merits.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). A judgment is final, “leaving nothing to be done but to enforce by execution what has been determined.” *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 42, 21 S.E.2d 209, 212 (1942).

While a judgment is final, many orders, including orders granting, lifting, or denying stays, are not final. *See Gateway Enters. v. S.C. Dep’t of Revenue*, 341 S.C. 103, 533 S.E.2d 896 (2000) (holding that the circuit court’s order dissolving the stay of an ALJ order was not a “judgment” as defined in Rule 54(a)); *see also Mid-State Distrib., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (defining an order involving the merits as one which “must finally determine some substantial matter forming the whole or a part of some cause of action or defense”); *Carolina Water Service, Inc. v. Lexington Cnty. Joint Mun. Water and Sewer Com’n*, 373 S.C. 96, 98 644 S.E.2d 681, 682 (2007).

In *Edwards v. SunCom*, the South Carolina Supreme Court explained that for an order to be final, it must “involve the merits, affect a substantial right, or prevent a judgment from which an appeal may later be taken.” 369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006). “An order which involves the merits is one that must finally determine some substantial matter forming the whole or a part of some cause of action or defense.” *Id.* at 94, 631 S.E.2d at 530 (internal quotations omitted). Interlocutory orders affecting a substantial right are those which “discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.” *Mid-State Distrib., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 n.4 (1993).

An order regarding an automatic stay under Rule 241, SCACR, is by its very nature collateral to the merits of the underlying litigation. It does not determine the ultimate rights of the parties; rather, it merely determines whether a prior judgment will be enforced while an appeal is pending. Because the Court's December 29, 2025 Order is not a final determination of the rights of the parties, it does not constitute a judgment. Consequently, the Camp's reliance on Rule 59(e), SCRCP, is misplaced.

While Respondent also cites Rule 60(b), SCRCP, that rule is similarly limited to "a final judgment, order, or proceeding" and requires a showing of "mistake, inadvertence, excusable neglect, newly discovered evidence, [or] fraud," none of which apply here. *See Rule 60(b), SCRCP.*

The Order lifting the automatic stay is not a judgment. The Camp's motion is simply an attempt to relitigate a discretionary stay determination, and because that determination does not constitute a final judgment, the motion must be dismissed as procedurally improper. *See Carolina Water Service, Inc. v. Lexington Cnty. Joint Mun. Water and Sewer Com'n*, 373 S.C. 96, 98, 644 S.E.2d 681, 682 (2007) (holding that an order lifting a stay is not immediately appealable).

To the extent that further review is needed, this Court exercises its discretion to determine the present motion on the briefs filed by the parties without oral arguments. *Rule 59(f), SCRCP.*

Respondent Presents No Proper Basis to Alter or Amend This Court's Prior Order

A motion to alter or amend is appropriate only in limited circumstances when a party believes the Court has misunderstood, failed to fully consider, or failed to rule upon an argument or issue that was properly before it, or when necessary to preserve an issue for appellate review. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). As the South Carolina Supreme Court explained in *Elam*, a motion under Rule 59(e), SCRCP, involves reconsideration of matters properly encompassed in the decision under review, not an opportunity to expand the

scope of that decision. *Id.* at 22, 602 S.E.2d at 779 (citing *Osterneck v. Ernst & Whinney*, 489 U.S. 169 (1989)). A party's dissatisfaction with the outcome of the underlying litigation is not grounds for relief under Rule 59, SCRCP. *Id.*

Here, after further review, this Court's opinion is that it identified the governing law, applied the appropriate standard under Rule 241, and exercised its discretion based on the record before it. The Camp's motion does not identify any point of law or fact that was properly before the Court that the Court misunderstood or overlooked. Instead, the Camp argues, once again, that the Court should have considered additional constitutional and merits-based issues that were outside the scope of the Rule 241, SCACR, inquiry. As correctly stated by Petitioners, disagreement with the Court's decision does not warrant alteration or amendment of the Court's Order.

This Court Has Subject Matter Jurisdiction

This Court concluded that it has subject matter jurisdiction over this appeal pursuant to section 6-29-820 of the Code of Laws of South Carolina, which expressly authorizes the circuit court to review decisions of the Board of Zoning Appeals and provides that such an appeal must be filed within thirty (30) days of the underlying decision. Section 6-29-820 governs appeals from zoning board decisions and sets forth the statutory basis for circuit court review. The Camp's renewed reliance on general appellate statutes is misplaced where the General Assembly has enacted a specific statutory scheme to govern the appeal at issue in this case. *See* S.C. Code Ann. § 6-29-820, *et seq.*

After once again reviewing these issues, no alteration is needed in the prior decision.

Rule 241 was Correctly Applied in Lifting the Stay

After reviewing the application of Rule 241 in this matter, this Court's correctly applied Rule 241, SCACR, in determining that lifting the automatic stay was appropriate under the circumstances. Rule 241, SCACR, provides that the circuit court may determine whether enforcement of its judgment should proceed during the pendency of an appeal, and that determination necessarily requires consideration of the practical consequences of continued non-enforcement. The Camp's Motion reflects an internally inconsistent reading, a kin to a whiplash, of Rule 241. Respondent urges a narrow construction of the rule to exclude Petitioners' safety and enforcement concerns, while simultaneously invoking the same provision to argue that the Court should consider the Camp's constitutional, grandfathering, and other merits-based arguments. Rule 241 cannot be construed so narrowly as to preclude consideration of the real-world effects of continued delay, yet so broadly as to permit re-litigation of substantive arguments reserved to the South Carolina Court of Appeals. Here, the Court considered the record and the consequences of continued non-enforcement and granted Petitioners' motion accordingly. The Camp's disagreement with this Court's decision does not demonstrate any misapprehension of law or fact and provides no basis for relief under Rule 59(e).

Additionally, the Camp originally requested this Court to invoke its equitable powers to deny the lifting of the automatic stay. The Camp once again requests equity from this Court. In its prior order, this Court noted that to benefit from equity, a party must come to court with clean hands. Because the height of the flagpole structure—the height being a (probably the most) material element of the construction project—was never disclosed preconstruction to Petitioners, the request for equitable relief was denied. The Court noted that the height of the flagpole was disclosed to the Federal Aviation Administration (“FAA”) preconstruction when the “structure”

was identified by Mr. Merting, as the Camp's president. Seeking FAA approval for construction of the structure is recognition of the foreseeability of the harm/danger that such a structure presents. The concept that foreseeability is a key element of proximate cause is basic legal theory and knowledge. This Court struggles to find that equity favors Respondent when this Court's belief is that a reasonably prudent person concerned about safety would have immediately disclosed a foreseeable risk of harm to governmental regulators, and, surely, would not conceal material facts.

Further, the Court noted that this non-disclosure of a material element of the construction project was concealment, whether actual or constructive, and preempted equitable considerations. In its present motion, the Camp contorts the record before this Court to falsely suggest the Zoning Board found as a matter of fact that a development permit to construct the 120-foot-tall structure was requested or approved. Such a permit for the structure was never requested or approved.

Respondent asserts it did not disclose the height of its structure because no one with or authorized by the County told them that they need a permit for a flagpole. Predictably, if you go to the County and ask for a permit to construct a 120-foot-tall doghouse, you will be told no permit is needed, if all you disclose in your request is that you're constructing a doghouse. Doghouses are not usually 120-feet-tall. It is the height of doghouse that makes the doghouse subject to county regulation not the fact that it is a doghouse.

Failure to disclose known material information is not acting in good faith. This is not acting with clean hands to justify equity from a court. The difference between the doghouse analysis and the request for equity in this case is the Respondent's knowledge and/or foreseeability of the danger/harm of constructing a 120-foot-tall structure. The foreseeability of the danger/harm created an obligation to disclose to the County the height of the flagpole; especially given its close

proximity to a major state highway. In other words, the Camp foresaw that the height of the structure was such that they validly had concerns that airplanes flying in close proximity may be distracted and endangered, so they sought FAA approval. The same structure that was foreseeable to be distracting to airplanes is the same structure that foreseeably distracts and endangers the drivers on the interstate. But yet, they concealed the height of the structure from the County.

For the reasons stated in this Court's prior order, including the foreseeable risks of safety to the public traveling the interstate corridor, equity does not favor the Respondents in the present motion.

While not determinative to the present issue, the Camp raises an issue with Petitioners' prior attorney that is not in the record. At some point in time, Petitioners' prior counsel chose to leave the practice of law. No public announcements concerning why he left the practice of law have been issued from which judicial notice can be taken. With the calling of an unrelated court matter, this Court was advised that prior counsel had left the practice of law. No further information was announced. In its present motion, the Camp states that prior counsel left for medical reasons. This Court views the decision, for whatever reason, to leave the practice of law as very significant to a long-tenured attorney and often is private. Presenting this information is inappropriate and, as stated, is not supported by the record. Additionally, there is no evidence in the record that prior counsel declined to brief the issues in this case.

Again, this Court's opinion is that equity is not available to the Respondent as part of this decision and that Rule 241, SCACR, was correctly applied to the circumstances presented to warrant lifting the automatic stay.

Declining to Consider Constitutional and Other Arguments Is Proper

The Court properly declined to entertain the Camp's constitutional, grandfathering, and other merits-based arguments in the context of Petitioners' Motion to Lift the Automatic Stay. As the Court recognized, the sole issue before it was whether its judgment reinstating the Notice of Violation should be enforced during the pendency of appeal, not whether that judgment was substantively correct, which is an issue currently before the South Carolina Court of Appeals. The Camp's effort to present its constitutional/jurisdictional arguments in its Motion to Alter or Amend improperly conflates interim enforcement with ultimate appellate review. Rule 241, SCACR, is not a vehicle for relitigating the merits of the underlying appeal or expanding the issues beyond those necessary to determine whether enforcement should proceed. This Court's decision to limit its analysis was correct and it will not alter or amend its prior decision.

CONCLUSION

Therefore, and based on the above, the Respondent's Motion to Alter or Amend this Court's December 29, 2025 Order is **DENIED**, and this Court's prior ruling remains unaltered, except that the date for compliance is extended to February 5, 2026.

AND IT IS SO ORDERED.⁴

Honorable J. Mark Hayes, II
Presiding Judge

January 29, 2026

Spartanburg, South Carolina

{ELECTRONIC SIGNATURE PAGE TO FOLLOW}

⁴ Respondent only raised the issue of a bond in the closing sentence of its brief. Its request for bond is related to its First Amendment issues. Because the present motion is not procedurally proper and any First Amendment issues are not part of the present motion, this Court will not issue a bond as requested. This Court advises Respondent to document all reasonable and necessary expenses related to compliance with this Court's Order. In the event Respondent prevails on appeal, this Court may consider a motion for reasonable and necessary expenses.



Spartanburg Common Pleas

Case Caption: Spartanburg County , plaintiff, et al VS The Spartanburg County Board Of Zoning Appeals , defendant, et al

Case Number: 2023CP4201155

Type: Order/Other

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132