UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1802

WHITE CAP BEACH HOUSE, LLC,

Plaintiff – Appellant,

v.

THE CITY OF NORTH MYRTLE BEACH,

Defendant – Appellee.

Appeal from the United States District Court for the District of South Carolina, at Florence. Joseph Dawson, III, District Judge. (4:23-cv-03952-JD)

Submitted: October 16, 2026 Decided: November 13, 2025

Before KING and RUSHING, Circuit Judges, and Mark S. DAVIS, United States District Judge for the Eastern District of Virginia, sitting by designation.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Kenneth R. Moss, II, WRIGHT, WORLEY, POPE, EKSTER & MOSS, North Myrtle Beach, South Carolina, for Appellant. Rhett D. Ricard, Charleston, South Carolina, Kirsten E. Small, MAYNARD NEXSEN PC, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

The City of North Myrtle Beach denied White Cap Beach House, LLC's building permit applications. White Cap then sued the City, alleging in part that the City violated its procedural and substantive due process rights. Relevant to this appeal, the district court granted summary judgment to the City on the due process claims and denied White Cap's motion to alter or amend the judgment. Because White Cap does not present any protected property interest to support its due process claims, we affirm.

I.

To alter critical areas like beaches in South Carolina, one needs a permit from the State. White Cap received these permits generally authorizing a dune walkover, gazebo, and other structures on its beachfront property in North Myrtle Beach. The permits conditioned authorization on various requirements, including that any walkover "be shore-perpendicular," as guidance from the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (OCRM) requires through promulgated regulation.[*] Each permit also notified White Cap that obtaining a permit "does not relieve the permittee . . . from the necessity of complying with all applicable local laws, ordinances, and zoning regulations." *See*, *e.g.*, J.A. 378.

White Cap concedes that its proposed walkover is "not exactly shore perpendicular." Opening Br. 11. Nevertheless, White Cap sought an admittedly

[*] In 2024, OCRM became the Bureau of Coastal Management within the new South Carolina Department of Environmental Services. *See* S.C. Code Ann. Regs. 30-1; S.C. Code § 48-6-10. We use OCRM as the name in effect during the period relevant to this appeal.

"necessary" building permit for the project from the City, which regulates building projects through zoning ordinances. J.A. 13. The City issues building permits only after a compliant application has been made proposing a project "in conformity with" its zoning requirements. North Myrtle Beach, S.C., Code of Ordinances §§ 23-100, 23-146, 23-147. One such requirement arises from the City's Coastal Protection Overlay ordinance, which provides that "[w]alkways and dune crossovers may be built only in accordance with [OCRM] guidelines." *Id.* § 23-31(1)(c)(4) (2019). Therefore, when White Cap repeatedly applied to the City for building permits, it did not receive its desired authorization because, among other grounds, "dune walkovers shall be perpendicular to the shore." *See*, *e.g.*, J.A. 58.

White Cap requested relief from its City permit denials to no avail. The City then adopted Resolution 22-12, which authorized the City Manager to "conduct an appeal" of certain decisions of the City Engineer, including those concerning construction in OCRM critical areas. J.A. 404. White Cap appealed to the City Manager. But he denied relief because, among other things, "[t]he drawings submitted are not consistent with the conditions of the OCRM Permit; specifically, the proposed walk-over is not shown as shore-perpendicular." J.A. 217.

In January 2023, White Cap filed a civil complaint against the City in state court but did not serve the City with any filing. In July 2023, White Cap filed and served the City with an amended complaint, which included a cause of action pursuant to 42 U.S.C. § 1983 for violation of its procedural and substantive due process rights under the Fourteenth Amendment of the U.S. Constitution. The City removed the case to federal

court, where the parties each moved for summary judgment. White Cap did not respond to the City's motion. The district court then denied White Cap's motion, granted summary judgment to the City on the federal claims, and declined to exercise supplemental jurisdiction over the state law claims. The court subsequently denied White Cap's motion to alter or amend the judgment.

II.

We review the district court's decision to grant summary judgment de novo, "applying the same legal standards as the district court, and viewing all facts and reasonable inferences therefrom in the light most favorable to" White Cap as "the nonmoving party." *United States v. Rund*, 191 F.4th 204, 209 (4th Cir. 2026) (internal quotation marks omitted). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). White Cap did not respond to the City's statement of facts below, so we consider the City's factual statements "undisputed for purposes" of review. Fed. R. Civ. P. 56(e). Moreover, this Court may "affirm on any ground appearing in the record, including theories not relied upon or rejected by the district court." *Scott v. United States*, 328 F.3d 132, 137 (4th Cir. 2003).

On appeal, White Cap challenges the district court's rulings only as to its procedural and substantive due process claims brought under Section 1983. White Cap contends (1) that it has a property interest in issuance of a building permit for the walkover and gazebo and that the City's permit denials and appeal process unlawfully deprived it of that interest; (2) that the permit denials were "[a]rbitrary and [i]rrational"; and (3) that South

Carolina law preempts the City from denying its permits based on "untethered unwritten categorical bans." Opening Br. 13, 15.

"The first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in property or liberty." *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999) (internal quotation marks omitted). To succeed on its due process claims, then, White Cap must show a property interest in approval of its building permit that is cognizable under the Fourteenth Amendment's Due Process Clause. *See Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach*, 420 F.3d 322, 328 (4th Cir. 2005). "To have a property interest in a benefit, a person . . . must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972).

In the context of land-use decisions, whether a person "possesses a legitimate claim of entitlement to a permit or approval turns on whether, under state and municipal law, the local agency lacks *all* discretion to deny issuance of the permit or to withhold its approval." *Gardner v. City of Balt. Mayor & City Council*, 969 F.2d 63, 68 (4th Cir. 1992). We have repeatedly explained that zoning in particular "is an inherently discretionary system." *Siena Corp. v. Mayor & City Council of Rockville Md.*, 873 F.3d 456, 462 (4th Cir. 2017) (internal quotation marks omitted). And "the issuance of something as important as a building permit is" discretionary if "the necessary conditions" have not been met. *Id.*

In conceding that its proposed walkover is not shore perpendicular, White Cap concedes that it has not met a necessary building permit condition. The City's ordinances provide that building permits will issue only for an application accompanied by plans that

conform with its zoning requirements, including that "[w]alkways and dune crossovers may be built only in accordance with [OCRM] guidelines." North Myrtle Beach, S.C., Code of Ordinances § 23-31(1)(c)(4) (2019); *see id.* §§ 23-100, 23-147; *see also* S.C. Code § 6-29-950(A) (authorizing municipalities to enforce their zoning ordinances by withholding permits unless an applicant satisfies the governing statutes and ordinances). OCRM guidance in Regulation 30-13 unambiguously mandates that "[w]alkways over dunes . . . shall . . . [b]e shore perpendicular, except as necessary for disability access." S.C. Code Ann. Regs. 30-13(O)(1). Because White Cap did not comply with that mandate, "'significant discretion' . . . remained with the zoning authorities," and that discretion "'defeats the claim of a property interest'" in approval of the nonconforming permit applications. *Siena*, 873 F.3d at 463 (quoting *Gardner*, 969 F.2d at 68); *cf. Worsley Cos., Inc. v. Town of Mount Pleasant*, 528 S.E.2d 657, 660 (S.C. 2000).

White Cap resists this conclusion on three bases. None succeed.

First, White Cap argues that the City's Coastal Protection Overlay ordinance lists gazebos as a permitted use which brought its permit applications within bounds. But White Cap did not apply only for gazebo construction. Each application sought authorization for the dune walkover, and White Cap asserts a property interest in a permit for both. So White Cap must show that both are compliant. It does not.

Second, White Cap contends that the requirement that a walkover be shore-perpendicular arose only from its OCRM permits and only as an "objective non-mandatory condition[]" which it "accepted and can satisfy." Opening Br. 10–11. This argument is doubly wrong. The OCRM permits and the City's zoning ordinance at Section 23-31 *both*

expressly incorporate Regulation 30-13, which, as previously discussed, unambiguously mandates that "[w]alkways over dunes . . . shall meet" certain requirements, including that any walkover "[b]e constructed with as little environmental damage as possible" and "[b]e shore perpendicular, except as necessary for disability access." S.C. Code Ann. Regs. 30-13(O)(1)(e), (h). South Carolina interprets regulations according to their plain meaning and thus ordinarily treats "shall" as mandatory. *See Murphy v. S.C. DHEC*, 723 S.E.2d 191, 195 (S.C. 2012); *Wigfall v. Tideland Utils., Inc.*, 580 S.E.2d 100, 105 (S.C. 2003). Because Subsections (e) and (h) are separate mandates, even if White Cap believed an angled walkover would "minimize disturbance to the adjacent dunes," Opening Br. 11, satisfying Subsection (e) does not excuse discarding Subsection (h). Yet White Cap submitted project plans depicting a concededly angled walkover and never invoked Subsection (h)'s accessibility exception. Moreover, issuance of the OCRM permits does not prove a compliant walkover because the permits specified that the shore-perpendicularity condition controlled over submitted plans. Nor does White Cap's asserted willingness to submit or work from a different plan in the future establish an entitlement to approval of permit applications submitted with the nonconforming plans.

Finally, White Cap argues that the City is preempted from "enforcing OCRM's [shore-perpendicularity] regulation that they chose not to enforce," suggesting that OCRM having issued permits on the noncompliant plans effectively waived the perpendicularity defect. Opening Br. 16. This argument misunderstands the permits. The OCRM permits expressly hinge authorization on special conditions like walkover shore-perpendicularity, which "take precedent [*sic*] over submitted plans." J.A. 376. OCRM's permits and the

City's building approval are also distinct authorizations. *Cf.*, *e.g.*, *Rockville Haven, LLC v. Town of Rockville*, 714 S.E.2d 277, 279 (S.C. 2011) ("[S]tate law permits local governments to require docks and walkways comply with local laws and regulations," even where the applicant has an OCRM permit.). Here, the City neither revoked the OCRM permits nor altered their conditions; it determined only that White Cap's building permit applications did not meet the City's own ordinance requirements. Because a plan with a shore-perpendicular walkover would comply with this aspect of both the OCRM permits and the City's ordinances, the requirements do not conflict.

Having failed to show a protected property interest, White Cap cannot state a substantive or procedural due process claim, so we do not reach the parties' arguments about the City's alternative permit denial grounds or its permit appeals process.

III.

For the foregoing reasons, the district court's judgment is

AFFIRMED.