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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2022-000392

Wolfe Marie Vernon Trust, Appellant,

v.

The Town of Mount Pleasant and The Mount Pleasant Board of Zoning Appeals, Respondents.

INITIAL BRIEF OF APPELLANT

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INTRODUCTION

Appellant ("Owner") is the owner of a home located at 520 Whilden Street[1] (the "Lot"), in the Town of Mount Pleasant (the "Town"). This matter arises from a decision of the Town's Board of Zoning Appeals ("BZA") which refused to permit Owner from making certain improvements expanding the home. This refusal was premised on the BZA's conclusion that the extension would exceed the permissible "Building Line" by encroaching on a purported 25' "backyard" setback on the East side of the Lot. The essence of the issue on appeal is whether the East boundary is subject to this 25' setback or whether the BZA should have properly determined the East boundary was subject to the smaller 15' front yard setback under the applicable ordinance.

Here, the BZA's decision was expressly based on the orientation of the house and resulted in decreasing, rather than increasing, the buildable area of the Lot. This violates the plain language of the Town's Zoning Code which mandates the Building Line be established "*regardless of lot and building orientation so to provide the greatest amount of buildable area*." M.P. Zoning Code. §156.007 (all emphasis added). Furthermore, Owner asserts that because the BZA's decision is based on an inflexible interpretation of the Town's yard requirements and fails to promote continued renovation to the homes in the neighborhood, it is inconsistent with the stated purpose for which the Town created the Special R-2 Overlay Zoning District ("SR2-OD") where the Lot is located. *See* M.P. Zoning Code § 156.315(A)&(B)(3) ("The purpose of the district is to allow for continued construction, addition to, and renovation of homes" there, and to "enable homeowners to add porches [and] living space" to homes where the existing code would not accommodate it).

[1] The "Lot" is known to the tax assessor by TMS No. 532-01-00-271.

ISSUES ON APPEAL

I. Where the plain language of the Town's Zoning Code requires the Building Line must allow for the greatest buildable area, did the BZA err when it established the front Building Line on the East side of the Lot, because it decreased the Buildable Area of the Lot?

II. Where the Town's Zoning Code requires the Building Lines be determined "regardless of lot and building orientation," did the BZA err when it established the front Building Line on the East side of the Lot based on the orientation of the Lot and the house?

III. Where the stated purpose to the "SR2-OD" zoning district is to provide "flexible yard requirements" to allow "addition to and renovation of the homes located there," did the BZA err when it established the front Building Line on the East side of the Lot based on an inflexible and subjective interpretation of the yard requirements of the Code?

STATEMENT OF THE CASE

It is not disputed that the Lot is in the Town's Special R-2 Overlay Zoning District ("SR2-OD"). *See* M.P. Zoning Code § 156.315. Therefore, the buildable area of the Lot is limited by "[m]inimum front, side, and rear yard setbacks" as follows: 15' from the front lot line; 25' from the rear lot line, and 10' from each side lot line. M.P. Zoning Code. § 156.106(A); *see id.*; M.P. Zoning Code. § 156.303. Because the setbacks are different, identifying the front, back, and side lot lines is a necessary first step to the establishment of what the Code calls the "Building Line." The means for how the Building Line is to be established is prescribed in the following portion of Section 156.007 of the Zoning Ordinance:

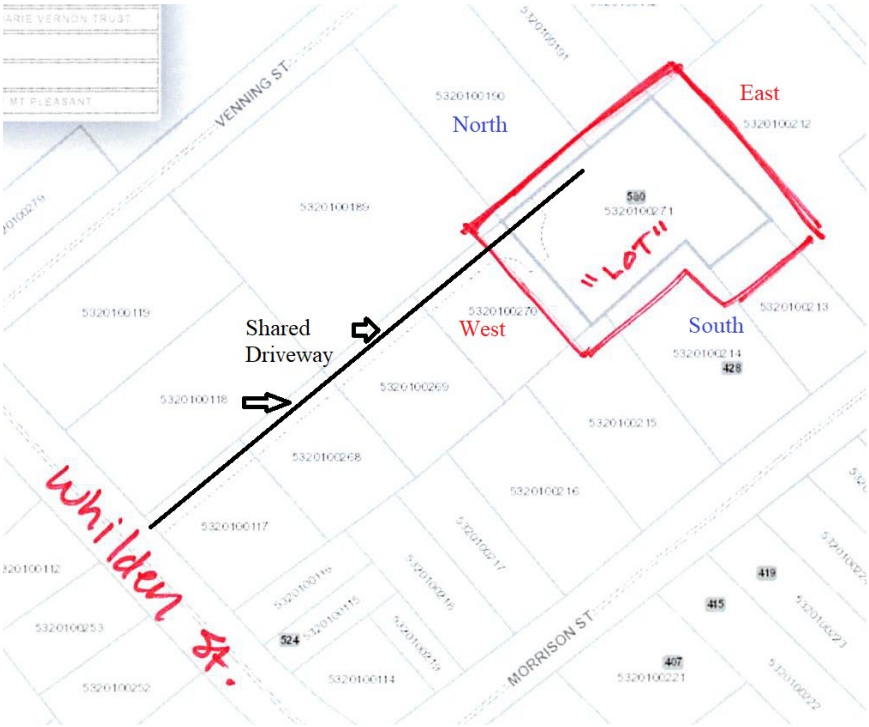
> *BUILDING LINE* (includes *SETBACK*). That line which represents the minimum distances, when measured at right angles, which a building or structure must be placed from a lot line in accordance with the terms of this chapter. Front and rear yards should be located along the width of the lot (shorter dimension) and side yards should be located along the length of the lot (longer dimension), **both regardless of lot and building orientation so as to provide the greatest amount of buildable area**.

M.P. Zoning Code. § 156.007 (emphasis added).

FACTS

Owner purchased the Lot in 2019. (***Fig. 1*** below). The crux of the dispute concerns the East and West lot lines and asks which is the front lot line and which is the rear lot line for the purposes of the Code's setback requirements.[2] To this question, certain characteristics of the Lot are important.

Fig. 1 – The Lot



First, despite having a "Whilden Street" address, the Lot does not physically border this street. Instead, the Lot is landlocked, located directly in the middle of a block and bounded on all sides by other lots.[3] The sole means of access is an ingress/egress easement over a shared driveway that connects the Lot (and several other lots) to Whilden Street. *See* (*Fig. 1*). Because it is

[2] Although there is no disagreement that the North and South boundaries of the Lot are the "sides," Owner does not concede this point to the extent that certain arguments and reasoning asserted by the Respondents in this matter are logically inconsistent with this contention.

[3] This block is bounded by Simmons Street to the East which is not shown on *Fig. 1*.

landlocked, the Lot is misaligned to its neighbors, and therefore does not have a front yard or back yard in the traditional sense. In other words, the North and South boundaries of the Lot (*i.e*., the sides) abut the rear of the neighboring lots. Meanwhile, the East and West boundaries (*i.e.,* purported front/back) abut the sides of the neighboring lots.

Second, the Lot is not uniformly shaped. Instead, it is "L" shaped, with the East boundary being substantially longer (at 137.29') than the opposite West boundary (at 110.06'). (R. __). This fact is significant when it comes to evaluating how the setback requirements affect the buildable area of the Lot because, as explained herein, applying a larger setback to a longer boundary reduces the buildable area to a greater extent than would result from application of a smaller setback.

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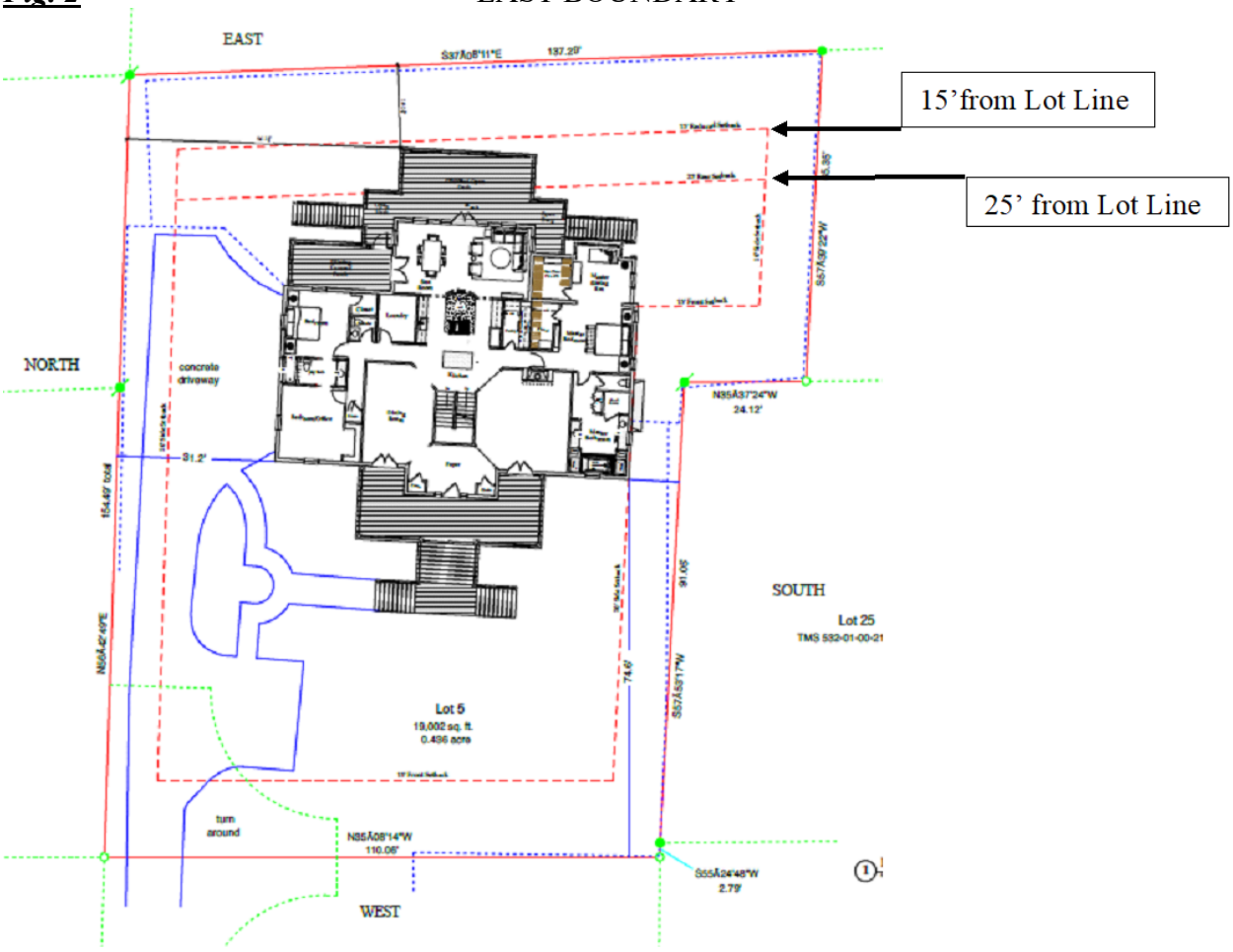
Before moving in, Owner prepared plans to renovate the home. [4] These plans included the addition of an enclosed porch on the East side of the house which was designed to accommodate a 15' setback and generally depicted in ***Fig. 2*** below. *See* (R. __). However, the Town refused to permit the project, claiming, for the first time, that the East side was subject to a 25' setback under the "Building Line" provision of Section 156.007.

Fig. 2

EAST BOUNDARY



WEST BOUNDARY

[4] Owner is a trust; the beneficiaries of the trust are the residents of the home.

PROCEDURAL HISTORY

The Town's decision was initially made by an employee of the Town's Planning and Development Department (the "Department") and sent to Owner *via* email on November 20, 2020. (R. __). Under the procedures established by law, Owner timely requested the employee's decision be reviewed by the Town's Board of Zoning Appeals (the "BZA"). (R. __). Owner asserted the Department's email decision was in direct violation of Section 156.007 and inconsistent with the purpose for which the SR2-OD was created. (R. __). After a hearing on January 25, 2021, the BZA issued a written order that simply copied and pasted the relevant section of the employee's email as follows:

> Although the definition notes that the setbacks are applied "regardless of lot and building orientation," [this] phrase is used in the context of establishing the setbacks based on the Lot dimensions, not lot or building orientation. If the longer dimension was on the street and the shorter dimension was the Lot depth from the street, then the front and rear setbacks would still be applied to the lot on the shorter dimension. The actual front yard of 15 feet allowed by [statute], in our opinion, would be the side from which the access to the lot is provided, in this case, the access easement side or primary façade of the principal structure designed as the "front."

(Order p. 3) (R. __).

Plainly, the BZA's finding was based on the orientation of the Lot and the house. (R. __). Although acknowledging the relevant portion of Section 156.007 requires the Building Line be determined "regardless of lot and building orientation" the BZA summarily concludes it is not constrained by this because "the phrase is used in the context of establishing the setbacks based on the lot dimensions, noy lot or building orientation." *Id.* (R. __). Presumably, for the same reason, it did not matter to the BZA that its decision did not provide the greatest amount of buildable area. *See* (Order p. 1) (R. __).

Unable to understand how the BZA rationalized its conclusion that it was not constrained by the plain language of the Code, Owner timely appealed the BZA's Order to the circuit court on February 18, 2021, pursuant to S.C. Code Ann. § 6-29-710 *et seq*. (R. __). The matter was heard by the circuit court on December 16, 2021, which issued a Form 4 Order on January 10, 2022, denying Owner's appeal. (R. __). Because the circuit court did not address any of Owner's arguments, Owner timely filed a motion pursuant to Rule 59, SCRCP. (R. __). The circuit court denied this motion on March 21, 2022. (R. __). This appeal timely followed.

STANDARD OF REVIEW

"[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review" and are subject to the same rules which apply to the interpretation of a statute. *Eagle Container LLC v. County of Newberry*, 379 S.C. 564, 666 S.E.2d 892 (2008); *see also Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E.2d 326, 329 (2009) (interpreting an ordinance); *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 8, 776 S.E.2d 753, 757 (Ct. App. 2015) (affirming the circuit court's reversal of a Board of Zoning Appeals' interpretation of an ordinance). "Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." *CFRE, L.L.C. v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

ARGUMENT

As a threshold matter, the question here is not which face of the *house* appears to be the front, but which *lot line* is the front. Whether the BZA erred turns not on an interpretation of architecture, but on the interpretation of the Code. The BZA's decision is inconsistent with the Code for three reasons: (1) its decision does not "provide the greatest amount of buildable area" as required by Section 156.007; (2) its decision was based on the lot and building orientation which

is contrary to Section 156.007; and (3) the BZA's decision is inconsistent with the purpose for which the SR2-OD was created as stated in Section 156.315.

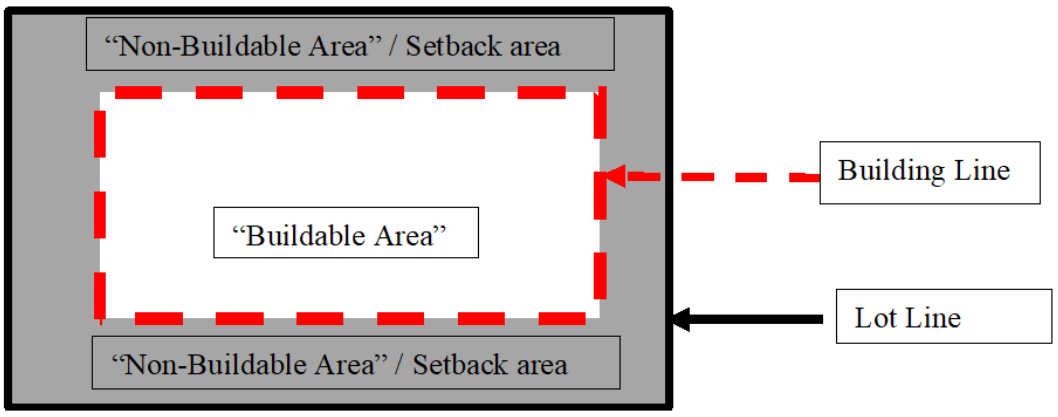
1. The BZA's Order is Contrary to the Requirement of Section 156.007 that Buildable Area Be Increased.

"When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used." *Helicopter Sols.,* 414 S.C. at 10, 776 S.E.2d at 758 (quoting *Mikell*, 386 S.C. at 160, 687 S.E.2d at 330); *quoting Charleston Cty. Parks & Recreation Comm'n v. Somers,* 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). A court must "read the statute *as a whole* and in a manner consonant and in harmony with its purpose [and i]n that vein, [it] must read the statute so that no *word*, clause, sentence, provision or part shall be rendered *surplusage, or superfluous*, for [legislature] obviously intended the statute to have some efficacy, *or the legislature would not have enacted it into law*." *Lemmons v. Maced. Water Works, Inc.*, 431 S.C. 186, 197, 847 S.E.2d 471, 477 (Ct. App. 2020) (emphasis original) (internal quotations omitted); *see also Olds v. City of Goose Creek*, 424 S.C. 240, 251, 818 S.E.2d 5, 11 (2018) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.").

The setbacks function to establish the Building Line as set out in Section 156.007. Under this provision a building cannot be erected outside the "Building Line." This section also directs that the Building Line is to be established "so as to provide the greatest amount of *buildable area*." M.P. Zoning Code. § 156.007. (emphasis added). The Code defines "Buildable Area" as "[t]he maximum two-dimensional space on a lot within which a structure or structures can be built, as permitted by applicable setback[.]" M.P. Zoning Code. § 156.007. Naturally, a property owner is not permitted to build in the setback area. Thus, for the purposes of the analysis here, the applicable setbacks function to divide the Lot into "buildable area" and "non-buildable" area. The "Building

Line" is the boundary between the two.[5] Each of the front, back, and side lot lines will have a corresponding front, back, and side Building Line. *See* M.P. Zoning Code. § 156.007 (separately defining the side yard, front yard, and rear yard, as being (respectively) the space between the "side lot line" and "side building line;" "front lot line" and "front building line;" and "back lot line" and "back building line"). Once all the various Building Lines are determined, it will establish an interior boundary (or "box") within the Lot. This box represents the Buildable Area. *See* (***Fig. 3***) (as a visual example of a Building Line creating the Buildable Area as a "box" within a lot).

Fig. 3. (Example of Building Line dividing Buildable Area from Non-Buildable Area)



(all shaded area is non-buildable setback area)

As the Code makes plain, the "Buildable Area" is the total area of the Lot minus the setback areas or "non-buildable area." Thus, the larger the total setback area, the smaller the Buildable Area. Therefore, it becomes significant that the East boundary is 137.29' in length and substantially longer than the West boundary, which measures only 110.06'.

[5] For clarity, while the Code specifically defines "Buildable Area" it does not specifically define "non-buildable area" because it is synonymous with the setback area. Owner uses "non-buildable area" as a convenient way to refer to all that area of the Lot which is not contained in the "Buildable Area."

Keeping the total of the two side setback areas constant, simple geometry demonstrates that the BZA's application of the larger 25' rear setback to the longer East boundary (and therefore the 15' front setback to the shorter West boundary) yields a sum total for the front and back setback areas of 5,083.15' sq. ft. On the other hand, using the East boundary as the *front* and the West boundary as the rear, the sum total of the front and rear setback is less, measuring only 4,810.85 sq. ft.[6] Because a larger setback area yields a smaller "Buildable Area," it follows that in order to "provide the greatest amount of buildable area" as required by the Code, the East boundary must be deemed the front. Thus, among the two alternatives, it is only by applying the front yard setback to the East boundary that the statutory requirement to "provide the greatest amount of buildable area" can be satisfied.

Here the BZA's ruling completely ignores this plain and explicit requirement. This is an error of law. *See e.g., Lemmons*, 431 S.C. at 197, 847 S.E.2d at 477 (confirming that when interpreting and applying an ordinance "that no *word*, clause, sentence, provision or part be rendered *surplusage, or superfluous*, for [legislature] obviously intended the statute to have some efficacy"). Had the Legislature intended a different means of identifying the building lines it would have stated as much. *See Taylor v. S.C. DMV,* 382 S.C. 567, 570, 677 S.E.2d 588, 590 (2009) ("if [the] Legislature had intended [a] certain result in a statute it would have said so") (citation

[6] Because the side setbacks are the same for each side (*i.e.,* 10' on the North and South each) the total side setback area remains constant, regardless of whether the East is considered the front or back. Thus, the point can be illustrated by considering only the total front and rear setback areas under the two alternatives:

Alternative 1: East as rear and West as front (as the BZA found) yields a total front and back setback area of 5,083.15 sq. ft. This is reflected by: (137.29' x 25') + (110.06' x 15') = 5,083.15.

Alternative 2: East as front and West as rear (as Owner argues) yields a total front and back setback area of 4,810.85 sq. ft. This is reflected by: (137.29' x 15') + (110.06' x 25') = 4,810.85.

omitted); *see also State v. Zulfer,* 345 S.C. 258, 262-63, 547 S.E.2d 885, 887 (Ct. App. 2001) ("[H]ad the legislature intended [a statute to produce a certain result] it could easily have limited the statute [accordingly]."). [7]

Therefore, the BZA's ruling must be reversed.

2. The BZA's Finding is Specifically Based on the Orientation of the Lot and the House Which is Also Contrary to the Plain Language of the Ordinance.

The BZA's Order expressly acknowledges that Section 156.007 requires that the determination of the Building Lines be made "regardless of lot and building orientation." (R. __). Here, there can be little debate that the BZA's decision is based precisely on lot and building orientation. The BZA's Order acknowledges as much. The premise of the BZA's Order is not that its decision is consistent with this statutory requirement, but instead that this requirement does not apply here. Or as the BZA stated: it only applies "in the context of establishing the setbacks based on the Lot dimensions, not lot or building orientation." (R. __). While it is not entirely clear what this means, it seems the BZA is suggesting it is only the determination of a lot's dimensions (*i.e,* determining which dimension is longer and which is shorter) that must be made without regard to lot or building orientation. As such, it appears the BZA takes the position that it is free to make other decisions based on the otherwise prohibited consideration of lot and/or building orientation.

This reasoning makes little sense. The determination of which dimension is shorter, and which is longer, is purely objective and could never be affected by building or lot orientation. It is simple math. If the establishment of the Building Lines under Section 156.007 is limited to simply

[7] It bears mention that the Lot's West boundary (what the BZA determined to be the front) abuts the side of a "postage stamp" This postage stamp lot has zero side setback. Thus, the BZA's reasoning would be that Owner cannot build a porch on the East side which would be at least 25' from any neighboring structure but could erect a structure 15' form the exterior wall of the western neighbor.

determining the longer and short dimension, the Code would have provided such and there would be no reason to include this "regardless of [] orientation" phrase. To the contrary, it must be that this phrase was intended to do something, and to give this phrase effect, it must be that it exists to inform the decision-making process where lot or building orientation may otherwise be a tempting basis to distinguish one building line from another not distinguish the longer dimension from a shorter dimension. *See CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 (holding that statutes we must read so "that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.").

The problem with the BZA's suggestion is that Section 156.007 is not limited to simply determining the longest and shortest dimensions of a lot. Rather, this provision deals with the establishment of the "Building Line." This is significant, because at least in the context of the SR2-OD where the front and back yards have different setbacks, the Building Line cannot be established until the front and back are determined. Thus, there is little merit to the BZA's suggestion that distinguishing between the front and back setbacks is not contemplated by Section 156.007, and therefore not controlled by the "regardless of [] orientation" phrase. *See S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) (statutes must be "read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.").[8]

At bottom the BZA has ruled that for the purposed of setbacks, the front yard is the yard between the front façade of a house front lot line and the rear yard is the yard between the rear

[8] The SR2-OD is the only low-density residential zoning district in the Town that has different setbacks for the front and back. In all the others, the front and rear setback are equal. As a result, the BZA's reasoning, although incorrect, would be of no consequence outside the SR2-OD. *See* M.P. Zoning Code. § 156.303 (establishing equal front and back setbacks for R-1, R2, and R-3 districts).

façade of a house and the rear lot line. While this may, at first blush, seem a reasonable assumption based on how the terms may be used in common parlance, that assumption cannot carry the day because these terms are specifically defined by the Code in the definitions of Section 156.007. There, front yard is defined "a yard situated between the **front building line** and the front lot line." M.P. Zoning Code § 156.007 at "yard, front" (emphasis added). Similarly, the Code specifically defines rear yard as "a yard situated between the **rear building line** and the rear lot line extending the full width of the lot." *Id.* at "yard, rear" (emphasis added).

While the Town could have passed legislation that defined "front yard" by reference to the orientation of the building—*i.e.*, by reference to the façade of the building—it did not. *See Taylor,* 382 S.C. at 570, 677 S.E.2d at 590 ("if [the] Legislature had intended [a] certain result in a statute it would have said so"). Instead, the Code defines front and rear yards by reference to the "Building Line." This is significant because, it refutes the BZA's contention that the "regardless of [] orientation" phrase in the Building Lines provision of Section of 156.007, does not apply here. These definitions of front and rear yards make clear that the determination must be made as if there were no house on the lot. Here, because the BZA's definition is based on the façade of the house, its decision would be subject to change if it were assumed there were no house on the Lot. This cannot stand under these plain definitions.

Ultimately, the plain language of Section 156.007 establishes a clear legislative intent that the Building Line (which necessarily includes identifying the front and rear setback) is to be established by purely objective criteria—*i.e.*, without regard to building or lot orientation and to maximize buildable area. Here, the BZA's decision is unavoidably based on its *subjective* opinion. *See* (R. __) (Order p. 3) (stating the determination was premised on the BZA's "opinion" based on the orientation of the house). Accordingly, the BZA's decision is inconsistent with the plain

statutory intent the determination be limited to objective, rather than subjective, criteria. *See Hodges v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning."); *see also, Mikell,* 386 S.C. at 160, 687 S.E.2d at 330 ("When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used.").

Thus, this Court should reverse the BZA's ruling.

3. The BZA's Decision is Inconsistent with the Stated Purpose for Which the Town Created the SR2-OD.

Even to the extent there is any ambiguity as to whether the BZA's decision violated the plain language, its decision is nonetheless inconsistent with the stated purpose for which the Town Council created the SR2-OD in which the Lot is located. Specifically, in creating this special overlay district, the Town Council expressly stated: "The purpose of the district is to allow for continued construction, addition to, and renovation of homes" there, and to "enable homeowners to add porches [and] living space" to homes where the existing code would not accommodate it. *See* M.P. Zoning Code §156.315(A)&(B)(3). The Council further elucidated that to serve this policy it was "creating [the SR2-OD] special overlay zoning classification **with flexible yard requirements**." M.P. Zoning Ord. §156.315(A) (emphasis added).

Here, the BZA's decision serves none of these stated purposes. Instead, it created an inflexible approach to the yard requirements that is left to the subjective facies of the BZA. Such an approach effectively ignores the discussed provisions of the Code. Residents and property owners should be entitled to rely on the fact that the Zoning Ordinances will be applied objectively and as written. The BZA's failure to serve the stated purpose of the SR2-OD further demonstrates its decision in this matter was wrong and must be reversed. *See, Hughes v. W. Carolina Reg'l*

Sewer Auth., 386 S.C. 641, 647, 689 S.E.2d 638, 641 (Ct. App. 2010) ("Statutes must be read as a whole and sections that are part of the same *statutory scheme* must be construed together."); *Lemmons,* 431 S.C. at 197, 847 S.E.2d at 477 (requiring a court to "read the statute as a whole and in a manner consonant and *in harmony with its purpose*") (emphasis added).

Therefore, because the BZA's ruling is inconsistent with the stated purpose of the Code, it should be reversed.

CONCLUSION

For these reasons, the BZA's Order must be reversed, and the East boundary of the Lot be determined to be the front rather than the back.

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PROOF OF SERVICE

The undersigned certifies that she served a copy of the foregoing **Initial Brief of Appellant** to all counsel of record on July 20, 2022, by mailing a copy of the same, electronically or with proper postage affixed thereto, as follows:

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