

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 Fayrell Furr and Karole Jensen, )  
 )  
 Appellants, )  
 )  
 v. )  
 )  
 Horry County Zoning Board of )  
 Appeals, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT

C/A No.: 2012-CP-26-9291

**ORDER REVERSING HORRY  
 COUNTY ZONING BOARD OF  
 APPEALS**

FILED  
 Horry County  
 2013 MAY - 1 PM 2:03  
 MELANIE HUGGINS-WARD  
 CLERK OF COURT

**I. INTRODUCTION**

This matter came before the Court for a hearing on February 28, 2013 in Conway, South Carolina. The Appellants, Fayrell Furr and Karole Jensen, challenge a decision by the Horry County Zoning Board of Appeals (hereinafter "Zoning Board") affirming the Zoning Administrator's finding that a hospice facility was a permissive use in the Commercial Forest Agricultural ("CFA") Zoning District. For the reasons set forth below, the Court finds for the Appellants and reverses the decision of the Zoning Board.

*JMB*

**II. FACTUAL AND PROCEDURAL BACKGROUND**

Appellants reside in a home at 3740 Indigo Run, Conway, South Carolina, also known as the Wildhorse Subdivision. This subdivision of approximately forty homes borders the Waccamaw River and has an entrance off of South Carolina Highway 90. Mercy Hospice intends to build a fourteen bed inpatient hospice facility at 3341 Wildhorse Drive, Conway, South Carolina, with the entrance to Mercy Hospice located inside the Wildhorse Subdivision, as the proposed hospice site has no direct access to Highway 90. This proposed site for the facility is directly adjacent to

Appellants' property. Appellants have challenged the proposed facility on the basis that a hospice facility does not constitute a permissive use in the CFA Zoning District.

After their challenge was rejected by the Zoning Administrator, Appellants then appeared before the Horry County Zoning Board of Appeals on November 5, 2012 (Case No. 2012-10-003) for a hearing. The Board upheld the Zoning Administrator's opinion. In reaching its decision, recognizing that the zoning scheme for Horry County does not define nor mention "hospice facilities," the Zoning Board analogized a hospice facility to permanent overnight resident group care homes and nursing homes. The Zoning Board concluded that an inpatient hospice facility would fit the definition of a permanent overnight resident group care home or a nursing home, rendering the hospice facility a permissive use in the CFA Zoning District.

Thereafter, Appellants timely filed their appeal in this Court pursuant to S.C. Code Ann. § 6-29-830(a) and S.C. Code Ann. § 6-29-825, *et seq.* A required mediation was held without resolution between the parties on February 21, 2013. In their appeal, Appellants maintain that it was an error of law for the Zoning Administrator and the Zoning Board to analogize the hospice facility to a permanent overnight resident group care home or nursing home, and as a result, to conclude that such a facility constituted a permissive use within a CFA Zoning District.

### III. STANDARD OF REVIEW

It is well established in South Carolina that circuit courts have appellate authority to review decisions of zoning boards. When reviewing the decisions of zoning boards, however, the Court must uphold factual findings made by the Board if there is any evidence in the record to support those findings. *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000). In reviewing the legal issues raised by Appellants in this case, the Court may "determine only whether the decision of the Board is correct as a matter

of law.” *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 209, 211 (Ct. App. 2004). For the reasons set forth below, the Court finds for Appellants and reverses the decision of the Board, finding that the decision is based upon an error of law.

#### IV. DISCUSSION

Among various other permissive uses, the CFA Zoning District explicitly permits permanent overnight resident group care homes and nursing homes. See Horry Cnty. Zoning Ordinances, Art. VII, § 703.2. The Horry County Zoning Ordinances define the terms “permanent overnight resident group care home” and “nursing home” as follows:

**Permanent overnight resident group care homes.** A facility or dwelling unit housing persons unrelated by blood or marriage and operating a group family household. A Group Care Home may include half-way houses; recovery homes; and homes for orphans, foster children, the elderly, battered children and women. It could also include a specialized treatment facility providing less than primary health care. *Id.*, Art. IV, § 436.1.

**Nursing home.** An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves. *Id.*, Art. IV, § 447.1.

As stated previously, there is no Horry County zoning ordinance that defines the term “hospice facility” or “hospice,” nor addresses whether it is allowed in a CFA Zoning District. Consequently, the Court deems it appropriate to look to the definitions of hospice as defined by the South Carolina General Assembly under Licensure of Hospitals and the Hospice Licensure Act:

(3) “**Hospice**” means a centrally administered, interdisciplinary healthcare program. This program must provide a continuum of medically supervised palliative and supportive care for the terminally ill patient and the family including, but not limited to, outpatient and inpatient services provided directly or through written agreement. The inpatient services include, but at not

limited to, services provided by hospice in a licensed hospice facility.<sup>1</sup>

In reviewing the above definitions, the Court concludes that the term "hospice facility" cannot be properly analogized with either "permanent overnight resident group care home" or "nursing home." Specifically, the sophistication and level of care, including the provision of primary medical care if needed, required in a hospice facility is greater than that of both permanent overnight resident group care homes and nursing homes. A hospice facility provides supportive and palliative health care to patients at the end of their lives. In addition, a doctor's order is required for admission to a hospice facility in South Carolina. See S.C. Code Ann. § 44-71-20(4). Testimony provided by Dr. Preston Strosnider, Medical Director at Conway Medical Center, at the November 5, 2012 hearing before the Zoning Board also indicates that the services planned to be offered at the proposed hospice facility are much more substantial than what would be anticipated in a permanent overnight resident group care home or nursing home: nurses available for assistance; doctors making rounds; and medical staff available on a 24/7 basis. Patients at a hospice facility require more complex care including narcotic drug and pain therapies necessitating direct medical oversight. See Testimony of Dr. Preston Strosnider.

In contrast, there is no similar requirement that a patient obtain an order from a licensed physician before admission to a permanent overnight resident group care home or nursing home. Furthermore, the definitions outlined in the zoning ordinances envisage a lower level of care and treatment than that of a hospice facility. For example, individuals in a nursing home are there for convalescent or chronic care and not for specialized end of life care. Only a hospital and a hospice facility require physicians to supervise the care and treatment of the patients while an inpatient in those facilities. See S.C. Code Ann. R. 61-78.504.

---

<sup>1</sup> S.C. Code Ann. § 44-71-20(3).

The Court finds that the Zoning Board has impermissibly expanded the definitions within its zoning ordinances to permit the hospice facility in a CFA zone. This expanded definition is inconsistent with Horry County's own zoning scheme, which specifically contains zones for medical facilities. See Horry Cnty. Zoning Ordinances, Art. VII, §§ 740, 741. The analogies used by the Zoning Board to permit the hospice facility are not supported by state law. Finally, just by the common understanding of the purposes for which hospice facilities exist, it is clear that these operations are more akin to a medical facility than a group home or even a nursing home.

A zoning scheme is a plan of limitation. Thus, in the absence of a pre-existing specific definition for a hospice facility within the Horry County zoning regulations that contemplates and includes the medical operations permitted therein, and then specifically permits such a facility to be located within a CFA Zoning District, the Board cannot analogize among other non-related permissive uses in such a way as to expand the locations where a hospice facility may be located.

Jan 15

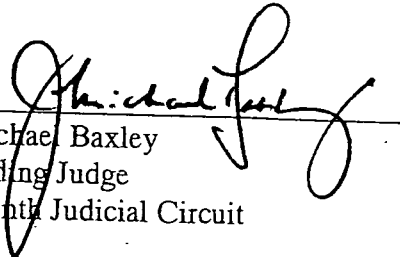
During the course of this appeal, the Court had the opportunity to view the proposed hospice site with counsel. While technically not an issue on appeal, the Court would be remiss in failing to comment that, while there seems to be an economic development push by County authorities to support the building of this hospice facility, the chosen location is not a good one, completely inconsistent with the current use of that location, which while zoned CFA, is clearly a residential neighborhood. More importantly, the proposed facility's lack direct access to Highway 90 is a significant impediment to the function of the proposed facility. The brick entrance columns and roads within the Wildhorse subdivision are narrow, and there is no plan or consensus to alter them. Lack of Highway 90 access is a substantial infrastructure deficiency that creates a

tremendous logistical problem for emergency responders. This is particularly true where multiple infirm residents are intended to live communally, and where the passage of seconds may make the difference in saving lives and property.

**V. CONCLUSION**

IT IS ORDERED that the decision of the Horry County Zoning Board of Appeals is reversed and that the Court finds as a matter of law, for the reasons stated above, that a hospice facility cannot be permitted in the Commercial Forest Agricultural ("CFA") Zoning District as such district is currently defined and promulgated within the Horry County zoning scheme.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
J. Michael Baxley  
Presiding Judge  
Fifteenth Judicial Circuit

April 24, 2013

Hartsville, South Carolina