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.

REPLY BRIEF OF APPELLANT

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RE-INTRODUCTION

This matter began when appellant (herein "Owner") sought permission to build an extension on the east side of her home, which is located at 520 Whilden Street (the "Lot)" in the Town of Mount Pleasant (the "Town"). In November of 2020, the Town's zoning administrator refused to permit the project, asserting it would exceed the Lot's Building Line because the east side of the Lot is subject to a purported 25' foot rear yard setback. Owner appealed this decision to the Town's Board of Zoning Appeals ("BZA"), asserting that under the Town's Zoning Ordinances, the east side was subject to a lesser 15' front yard setback. Therefore, in December 2020, this matter went before the BZA for a determination of how far the Building Line needed to be setback from the east Lot Line. On January 26, 2021, the BZA issued an order finding the Building Line on the east side of the Lot must accommodate a 25' rear yard setback, rather than the lesser 15' front yard setback. Owner appealed first to the Circuit Court, then to this Court, asserting the BZA's ruling violates the plain language of the Town's Zoning Ordinances which, in defining both "Building Line" and "Setback," directs that the location of the front and rear yards must be "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).

In its Brief, Respondent does not dispute that the BZA's decision was based on orientation of the lot and building, nor does Respondent dispute that the BZA's decision failed to provide the greatest amount of buildable area. Instead, Respondent makes the conclusory assumption that these requirements—which appear in the definition of both "Building Line" and "Setback"—do not apply to the BZA's determination regarding the location of the Building Line for the front and rear yard setbacks in this case. As explained herein, Respondent's assumption is meritless, and this Court should reverse.

SUMMARY OF STATUTORY SCHEME AND THE BZA'S ERRORS

The Town's Zoning Ordinance prohibits building to the property line by imposing setback requirements for minimum front, rear, and side yards, within which no construction is permitted. In the SR-2OD district (where the Lot is located) there is a 15' front yard setback; a 25' rear yard setback; and a 10' setback for each side yard. This leaves construction limited to the "Buildable Area" which the ordinance defines 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 (emphasis added).

The boundary between the Buildable Area (where construction is permitted) and the setback areas (where construction is prohibited) is demarcated by the "Building Line." The ordinance defines Building Line and Setback synonymously, in a single definition which provides:

> *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).

In this case, Owner's proposed extension would be roughly 16.5' from the east property line—well within the 15' front yard setback. Thus, no matter how much Respondent may try to suggest this matter does not implicate the definition of Building Line, there is no way around the fact that whether Owner's extension is permissible turns on how far the Building Line must be setback from the east property line. For this, there are only two opposite alternatives:

Owner's Position	Respondent's/BZA's Position
East = Front yard setback (15')	East = Rear yard setback (25')
West = Rear yard setback (25')	West = Front yard setback (15')
Resulting Buildable Area = Maximized	Resulting Buildable Area = Minimized

Of these two options, Respondent does not (because it cannot) dispute that its interpretation yields the smaller amount of Buildable Area. Only Owner's interpretation provides the greatest amount of Buildable Area.[1] While Respondent attempts to paint this case as posing a question of "front vs. rear," rather than location of the Building Line, this does not change the analysis.

No matter how it is phrased (or how Respondent spins it) the fundamental question before this Court is: Does the above statutory language permit the BZA to make a decision regarding the location of the front and rear of the Lot in such a way that the resulting Building Line and Setback provides the least, rather than the greatest, amount of Buildable Area? It does not. Therefore, this Court should reverse the BZA's order and instead find the Building Line need only be setback 15' from the east boundary.

ARGUMENTS IN REPLY TO RESPONDENT

Because Respondent cannot dispute that the BZA's decision was based on building and lot orientation and resulted in a minimized Buildable Area, Respondent is left to argue that these requirements do not apply to the BZA when deciding the location of the front and rear yards. Respondent also attempts to argue the BZA's decision is consistent with the purpose for which the Town created the SR-2OD because it enhances the streetscape. However, as explained herein, Respondent's arguments are both illogical and inconsistent with the plain language of the ordinance.

[1] *See* (App. Br. p. 10 fn. 6) (explaining the effect on Buildable Area of these competing alternatives).

I. **Respondent's argument that the BZA could ignore the orientation and Buildable Area requirements is inconsistent with the plain language of the ordinance**.

As stated above, the ordinance provides a single statutory definition for both "Building Line" and "Setback" which provides:

> *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).

Respondent's arguments to this Court are premised upon its assumption that the statutory requirements to fix the Building Line "regardless of lot and building orientation so as to provide the greatest amount of buildable area" did not apply to the issue before the BZA. Hoping to justify this illogical assumption Respondent mischaracterizes the issue. This Court should not be fooled. These requirements absolutely apply here, and to allow the BZA to ignore these requirements in this case would effectively nullify the Town's Ordinances.

A. Respondent mischaracterizes Owner's argument. This case is not about the front vs. rear of the *house,* this case is about the front vs. rear *yards*, and the corresponding Building Line and Setback requirements.

As a threshold matter, Respondent consistently mischaracterizes the nature of Owner's arguments on appeal. This begins with the very first sentence of Respondent's argument section in which Respondent claims, "[Owner] takes issue with the [BZA's] determination that the West end *of their home* is the front, and the East end *of their home* is the rear." (Resp. Br. p. 4) (emphasis added). This is wrong and fundamentally misses the point.

The BZA stated that the 15' front yard setback would apply to the west side of the Lot because "in our opinion" this corresponds to the "primary façade of the principal structure designed

as the 'front'". (R. __). However, to be clear, Owner does not take issue with the fact that the BZA offered an "opinion" that the west side of the *house* was the "primary façade" because determination of the front vs. rear of the *house* should be irrelevant. The ordinance makes this plain, directing the decision should be "**regardless of** lot and **building orientation**." M.P. Zoning Code. § 156.007 (emphasis added). The problem does not lie in the BZA's opinion regarding the front and rear of the *house.* Instead, the problem lies in the fact that the BZA's order leaves the location of the front and rear *Setback* to be determined by the location of the front and rear of the *house—i.e.*, building orientation. Exactly the opposite of what the ordinance mandates. **That** is what Owner "takes issue with."

Had the Town's legislative body intended the Building Line or Setback to be dictated by the "primary façade" of the building, it could have stated as much. This is particularly true considering that the ordinance employs the term "primary façade" in other provisions. *See e.g.,* M.P. Zoning Code. § 156.310(E)(2) (discussing the "architectural design[s]" of commercial buildings—not residential buildings—and explaining the primary façade should face the street). Thus, the fact that the ordinance does not reference the "primary façade" in the sections concerning Building Line, Setback, or Front Yard indicates that Respondent's interpretation is not what the Town intended. *See Hughes v. W. Carolina Reg'l Sewer Auth.*, 386 S.C. 641, 649, 689 S.E.2d 638, 643 (Ct. App. 2010) ("The general provisions of statutory construction would mandate that when the legislature employs a term other than one specifically defined, the implicit intent is that the undefined term has a different meaning.") (*citing State v. Leopard*, 349 S.C. 467, 472-73, 563 S.E.2d 342, 345 (Ct. App. 2002) for the "canon of construction *expressio unius est exclusio alterius* or *inclusio unius est exclusio alterius* holds that to express or include one thing implies the exclusion of another, or of the alternative."); *see also* M.P. Zoning Code. § 156.007 (defining

"YARD, FRONT. A yard situated between the front building line and the front lot line extending the full width of the lot") *and* ("YARD, REAR. A yard situated between the rear building line and rear lot line and extending the full width of a lot.)

Simply put, a reasonable interpretation of the ordinance does not permit the setbacks to be located based on building orientation. This is consistent with a prior interpretation of the Town's ordinance by the Circuit Court which has held the Town's decision to fix the front vs. rear yard setbacks based on a lot's orientation to the surrounding streets was unreasonable. *See Shem Creek Development Group, LLC v. Town of Mount Pleasant*, 2017-CP-10-05493, Murphy, J. (Order filed July 13, 2020). In that case, there was a dispute over the location of the front vs. rear yard setback. The Town refused to apply the "rear yard" setback to the boundary that was adjacent to a street even though this resulted in decreasing the buildable area. *Id*, at ¶ 67; *see also id* at ¶66 (finding the Town's decision "reduced the buildable area of the project site."). Pointing out that the definition of "rear yard" contained "no prohibition on the lot adjoining a [] street" the Circuit Court correctly found the Town "fail[ed] to apply reasonable interpretations of the zoning code" *Id.* at ¶67 (also stating "it would have been entirely reasonable for [the Town] to . . . apply a rear setback [] on [the] street" where "this interpretation alone would have increased the total [buildable area]").[2]

For the same reason that fixing the front vs. rear setbacks based on building orientation was unreasonable in *Shem Creek* (*supra*), it is equally improper to locate the front vs. rear yard setbacks based on building orientation. Here, the BZA did both, basing the location of the front vs. rear yard on the orientation of the building and the orientation the Lot to Whilden Street. *See*

[2] Although the Town has appealed this order on other grounds, it has not specifically appealed this interpretation of the ordinance. *See* Appellate Case No. 2021-000501.

(R. __). Whether the BZA was factually correct in finding the east side of the house to be the front is immaterial. The problem is that the BZA took the orientation of the Lot and house into consideration to begin with—particularly when to do so resulted in a decrease of Buildable Area.

Therefore, this Court should not be fooled by Respondent's mischaracterization. This appeal is not about the front of the *house.* The issue here is one of law, not one of architecture.[3]

B. Respondent's summary presumption that the orientation and Buildable Area requirements do not apply to determining the location of the front and rear setbacks is both illogical and inconsistent with the plain language of the ordinance.

Respondent's attempt to mischaracterize Owner's argument discussed above is more than simply semantic. It is a subtle yet calculated subterfuge to distract this Court from the fact that there is no logical support for Respondent's claim that the requirements for the BZA to ignore orientation and maximize Buildable Area "do not apply to determining the front vs. the rear of the [Lot]." (Resp. Br. p. 5).

Contrary to Respondent's suggestion, the question of the location of the front vs. rear of Lot is not distinct from the question concerning the location of the front vs. rear yard Setbacks. Nor is the question of front vs. rear of the Lot different from the question concerning the location of the Building Line. No matter how it is phrased, the question is the same: Where, on the Lot is

[3] Respondent relies on the "common sense understanding" of the "front of a property" and the front of the existing home. (Resp. Br. p. 6). While "common" parlance may suggest the yard outside one's front door is the "front yard," this ignores that the ordinance specifically defines Front Yard, Rear Yard, Building Line, and Setback for the purposes relevant here. The point, which is fundamentally lost to both Respondent and the BZA, is that what the common man may call the front door, could open onto what the ordinance defines as the rear or side yard. What may be the "back yard" for weekend BBQ plans, might be the front or side yard in the eyes of the ordinance. The very reason the ordinance (like any other law) provides specific definitions is to avoid the discrepancies and ambiguity of "common" parlance. *See,* M.P. Zoning Code. § 156.007 ("For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. For any terms not defined herein, the applicable definition from Black's Law Dictionary shall be used."); *accord Shem Creek,* (*supra*).

construction permitted vs. where is construction prohibited? Respondent is simply playing word games which, in the end, have no effect on the analysis. Under the ordinance, construction cannot exceed the Building Line, which demarks the applicable Setback. Therefore, whether Owner is permitted to build the planned extension—at 16.5' from the east boundary—turns on whether the Building Line is setback 15' (*i.e.,* the front yard Setback) or 25' (*i.e.,* the rear yard Setback) from the east boundary. Plainly the BZA's decision that the east side of the Lot is the rear had the effect of fixing the Building Line 25'(rather than 15') from the east boundary in order to accommodate the 25' rear yard Setback. Therefore, Respondent's claim that deciding front vs. rear of the Lot does not implicate the provisions concerning Building Line and Setback is simply illogical.

Obviously, Respondent cannot dispute that in defining "Building Line" and "Setback" the plain language of the Town's Ordinance directs: "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. The law commands these requirements concerning orientation and Buildable Area must be interpreted to have some meaning and effect. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[W]e must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous [because] the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law.") (internal quotations and citations omitted); *Lawrence v. Gen. Panel Corp.*, 425 S.C. 398, 402, 822 S.E.2d 800, 802 (2019) ("[T]he Court should seek a construction that gives effect to **every word** of a statute.") (emphasis added).

Respondent's summary presumption that the orientation and Buildable Area requirements "do not apply" here naturally begs the question: When do these requirements apply? To this, all Respondent can muster is the single conclusory statement that these requirements "apply only to two determinations: what lot lines are the shorter width (front/rear) and what lot lines are the longer length (sides)." (Resp. Br. p. 5). However, there are several reasons this assumption makes no sense.

First, Respondent overlooks that Lot Depth (the longer dimension) and Lot Width (the shorter dimension) are separately defined in the ordinance. *See* M.P. Zoning Code. § 156.007 at ("LOT DEPTH. The average horizontal distance between the front and rear lot lines, measured in the general direction of its side lot lines") *and* ("LOT WIDTH. The distance between side lot lines as measured at the building line."). If the orientation and Buildable Area requirements were limited only to a determination of depth vs. width, one would expect these requirements would appear in the definitions of Lot Depth or Lot Width rather than in the definition of Building Line and Setback. But that is not the case. *See id.*(defining Lot Depth and Lot Width without reference to these requirements).

Further, and not coincidentally, Lot Width—the shorter dimension on which the front and rear yards are to be located—is measured at the Building Line. *See* M.P. Zoning Code. § 156.007 at ("LOT WIDTH. The distance between side lot lines as **measured at the building line**.") (emphasis added). Thus, by definition, **the Lot Width requires the Building Line be determined first, not the other way around** as Respondent's position would assume. Plainly, by including the orientation and Buildable Area requirements in the statutory definition of Building Line and Setback, the Town intended these requirements to apply to decisions that affect the Building Line and Setback. The decision of which dimension is longer vs. shorter does not affect the Building

Line and Setback. Therefore, Respondent's claim that the orientation and Buildable Area requirements only apply when distinguishing the longer from the shorter dimension is inconsistent with the ordinance. *See Hughes*, 386 S.C. at 647, 689 S.E.2d at 641 ("Statutes must be read as a whole and sections that are part of the same statutory scheme must be construed together.") *citing Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992).

Respondent's claim that the orientation and buildable area requirements only constrain the BZA when distinguishing the longer from the shorter dimension (rather than when distinguishing the front yard from the rear yard for Setbacks purposes) completely ignores that these requirements are contained in a sentence that explicitly begins with the words: "**Front and rear yards should be located** along the width of the lot (shorter dimension) . . ." M.P. Zoning Code. § 156.007 (emphasis added). This sentence indisputably speaks to the "location" of the "front and rear yards, which was precisely the issue before the BZA. *See* (BZA's Order) (R. __) (stating "The actual front yard of 15 feet allowed by § 156.315E.1, in our opinion, would be the [west] side."). Because the issue before the BZA was the location of the front yard, it follows that the statutory requirements regarding orientation and buildable area—which are set out in a sentence that explicitly addresses where "[f]ront and rear yards should be located"—were applicable here. Therefore, Respondent's claim that the BZA was not obligated to follow these requirements should be rejected.

Still, there is more. Respondent's assertion that the orientation and buildable area requirements only apply when determining the longer vs. shorter dimension would render the requirement to maximize Buildable Area meaningless. Under the ordinance, the Setback for the front, rear, and side yards, are all excluded from the Buildable Area. *See supra* (definition of Buildable Area). Accordingly, the Buildable Area of the Lot can neither be known nor effected by

simply distinguishing the longer from the shorter dimension. It is only by identifying the location of the Building Line and Setback for the front and rear yards that the Buildable Area could possibly be established or effected. Simply put, deciding the longer vs. shorter dimension is a purely objective exercise, and there is no way to make this decision in a way that either increases or decreases Buildable Area. Accordingly, there would be no reason for the ordinance to include a mandate to "provide the greatest amount of Buildable Area" if this section was only intended to apply when distinguishing length vs. width as Respondent claims. Because there is no way for the BZA to decide the question of length vs. width in a manner that "provide[s] the greatest amount of Buildable Area" Respondent's interpretation would render this language of the ordinance meaningless surplusage and should therefore be rejected. *See Lemmons*, 431 S.C. at 197, 847 S.E.2d at 477 (A "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*.") (emphasis original) (internal quotations omitted); *Lawrence*, 425 S.C. at 402, 822 S.E.2d at 802 ("[T]he Court should seek a construction that gives effect to **every word** of a statute.") (emphasis added).[4]

[4] Although not specifically articulated, it seems that Respondent's argument is premised upon an assumption that the ordinance's use of the word "both" relates to the longer and shorter dimensions which are mentioned only parenthetically. However, this ignores the structure of the sentence, which consists of three separate clauses and reads:

> "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. (italics for identification)

The subject of the first clause of this sentence is the location of front and rear yards; the subject of the second clause is the location of the side yards; and finally, the third clause provides requirements constraining "both" of the preceding clauses. The word "both" at the beginning of

Ultimately, Respondent claims the BZA is immune from the requirements of the Ordinance when deciding the front vs. rear of the Lot, but claims "[o]nce the front and rear lot lines are identified, the Town then applies the appropriate setback distance based on the applicable zoning district." (Resp. Br. p. 7). As explained above, this is the tail wagging the dog. The BZA's decision of front vs. rear of the Lot dictates the location of the Building Line and Setbacks and effects the Buildable Area of the Lot. Thus, to accept Respondent's claim that the BZA is not constrained by the orientation and Buildable Area requirements when deciding the front vs. rear of the Lot is tantamount to deleting the definition of Building Line and Setback from the Town's Ordinance. Further, if the BZA can make this end run around the requirements of § 156.007, then it begs the question: What other sections of the law can the BZA ignore?

For these reasons, this Court should reject Respondent's arguments and reverse the BZA's order.

II. Respondent misstates the purpose of the SR-2OD and incorrectly asserts the BZA's decision is consistent with this purported purpose.

Section 156.315(A) of the Town's Ordinance provides:

> The purpose of the [SR-2OD] district is to allow for the continued construction, addition to, and renovation of homes located in the older, built out neighborhoods between Coleman Boulevard and the Historic District, by creating a special overlay zoning classification with flexible yard requirements. This will lead to an enhanced streetscape and a pedestrian-friendly environment

M.P. Zoning Code § 156.315 (A).

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the third clause operates to make this clause applicable to "both" of the preceding clauses—*i.e.*, the sentence could be restated as requiring both: (1) Front and rear yards should be located along the width of the lot (shorter dimension), regardless of lot and building orientation so as to provide the greatest buildable area; and (2) Side yards should be located along the length of the lot (longer dimension) regardless of lot and building orientation so as to provide the greatest buildable area.

On appeal, Owner argues the BZA's ruling is inconsistent with the stated purpose of the SR-2OD to allow for continued construction, addition to, and renovation of homes by creating flexible yard requirements. However, Respondent audaciously claims the things listed in the sentence—which begins "**The purpose of the district is** . . ." –are not the purpose of the SR-2OD district. *Id.* Instead, Respondent incorrectly asserts the purpose "is to create [an] enhanced streetscape and pedestrian friendly environment." (Resp. Br. 9).

The purpose of the district is precisely what the ordinance states, "The purpose of the district is[.]" *Id.* This includes "to allow continued construction **and addition to**" the home in the district. The ordinance could not possibly have used more unambiguous language to express its purpose. How Respondent can claim the purpose to be anything other than what is so clearly stated is befuddling. While Owner acknowledges the enhancement of the streetscape referenced in a subsequent sentence might be the anticipated public policy benefit to result from implementing the district's stated purpose, this does not change the plain language of the ordinance. Respondent is conflating the means with the end.

Nonetheless, even if enhancement of the streetscape were the purpose of the district, this would only bolster Owner's assertion that the BZA's decision is inconsistent with the purpose. Even Respondent concedes that Owner's Lot does not boarder a public street, and that the east end of the property—where the extension is proposed—is furthest opposite the access street. (Resp. Br. pp. 3-4). As such, the BZA's decision to deny Owner's extension does absolutely nothing to enhance the streetscape. The house is simply not part of the streetscape, nor is it accessible to

pedestrians.[5] Thus, Respondent's claim that the BZA's decision is consistent with the purported purpose of the district has no legs.

Respondent closes by making several unsubstantiated claims about why its interpretation serves the purpose of the district better than Owner's interpretation. For example, Respondent claims that if the BZA had to follow the plain language of the law, it would "cause houses throughout the [SR-2OD] to be facing different directions with no homogeneity or uniformity, which would defeat the enhanced street scape purpose." (Resp. Br. p. 9). However, there are many problems with this assertion. Most importantly, homogeneity is not the purpose of the SR-2OD. In fact, the house at issue here is a prime example of the fact that the houses in the SR-2OD are already facing different directions.[6]

When the Town's Zoning Ordinance is reviewed in full, it becomes even more apparent that the purpose of the Building Line and Setback provisions is not homogeneity. To the contrary, the ordinance affords the means to obtain homogeneity by providing for a providing for a BUILD-TO LINE. *See* M.P. Zoning Code. § 156.007 ("BUILD-TO LINE. The line at which construction of a building façade is to occur on a parcel. A BUILD-TO LINE runs parallel to the street right-of-way and **is established to create a generally consistent building line along a street**.")

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[5] *See* (App. Br. pp. 3-5) (providing a detailed explanation and discussion of the Lot's location and characteristics).

[6] Even the BZA's own Order makes clear that homogeneity is neither the purpose nor the goal of the SR-2OD or the statutory scheme concerning Building Line and Setbacks. For example, in its Order the BZA states that "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 [] shorter dimension." (R. __). This means, that in such a case, the setback applicable to the boundary adjacent to the street would be the 10' side yard setback. Under Respondent's reasoning, the owner of such a lot would be able to construct a side façade of house a mere 10' from the street, while the neighbors would have homes with front façades setback 15' from the street. Obviously, the BZA recognizes no requirement for homogeneity in the relevant portions of the ordinance.

(emphasis added). Unfortunately for Respondent, this case concerns the Building Line, not a Build-To Line. The Lot in question here is not subject to a Build-To Line, nor was the Build-To Line implicated in the question before the BZA.

Finally, Respondent claims that because the ordinances apply "Town wide" to accept Owner's interpretation would "end the Town's ability to designate front vs. rear of the property based on which side faces the street and/or primary façade of the home." (Resp. Br. pp. 9-10). However, and as an initial point, there is no basis for Respondent's claim that this ruling would apply "Town wide." To the contrary, the issue in this case arises only by virtue of the fact that the Lot is located in the SR-2OD (where the front and rear yard setbacks are different) **and** that the Lot is uniquely shaped such that front and rear lot lines are of differing length. If the front and rear yard setback requirements for the Lot were the same (as they are in all of the Town's other low-density residential zoning districts) the issue here would not have arisen. *See* M.P. Zoning Code. § 156.303 (Both the RR and R-1 districts have front and rear yard setbacks of 30' each; the R-2 district has front and rear yard setbacks of 25' each; the R-3 district has front and year yard setbacks of 20' each). [7] Thus, Respondent's claim of Town wide calamity is nothing more than colorful rhetoric without substance.

Second, Respondent's reasoning that Owner's interpretation would "end the Town's ability to designate front vs. rear of the property based on which side faces the street and/or primary façade of the home" is fatally circular—assuming the Town had this ability to begin with. If Owner's interpretation is correct (which it is) would mean the Town never had this ability. *Accord*

[7] The Town's R-4 "medium density" district is the only residential zoning district that has disproportionate front and rear yard setbacks at 4' and 20' accordingly. *See* M.P. Zoning Code. § 156.303. However, there is no stated purpose for continued construction, addition to, and renovations of the homes in this district.

Shem Creek, 2017-CP-10-05493, (Murphy, J. holding that fixing the location of front vs. rear yard setbacks based on lot orientation to the surrounding street was not a reasonable interpretation of the ordinance). Accepting Owner's interpretation would not end the BZA's ability to designate front vs. rear based on the façade of the building. The BZA's ability to do this ended when the Town Counsel enacted a Zoning Ordinance that mandates the Building Line and Setback be fixed "regardless of lot or building orientation" as discussed (over and over again) above.

At bottom, if the plain language of the ordinance does not achieve the results the BZA desires, then it should encourage the Town Council to amend the Zoning Ordinance. Until then, this Court must interpret and apply the Town's laws as written. Respondent's request to have this Court re-write the Town's ordinance to suit the BZA's desires should not stand. *See e.g., Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 395, 134 S.E.2d 206, 209 (1964) ("the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced . . . is judicial legislation, forbidden by" the law.).

CONCLUSION

For the reasons stated above, together with those set out in Appellant's Brief, this Court should reverse the BZA's ruling and direct that the plain language of the Town's Ordinances only requires the Building Line be setback 15' from the Lot's east boundary.

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PROOF OF SERVICE

The undersigned certifies that she served a copy of the foregoing **Reply Brief of Appellant** to all counsel of record on December 5, 2022, by mailing a copy of the same, electronically or with proper postage affixed thereto, as follows:

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